



newPerth
Stadium

The new Perth Stadium Project Operator Agreement

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

and

VenuesLive Management Services (WA) Pty Ltd
(**Operator**)

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OPERATOR AGREEMENT

This Agreement is made on

2016

between

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

and

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

and the parties agree as follows:

Recitals

- A. The State invited proposals to perform the Services.
- B. The State has selected the Operator to perform the Services.
- C. This Agreement sets out the terms on which:
 - (a) the Operator agrees to perform the Services;
 - (b) the State agrees to pay the Operator for the performance of the Services; and
 - (c) the risks associated with the performance of the Services are allocated as between the State and the Operator.

Operative Provisions

1 DEFINITIONS, INTERPRETATION AND RELATED MATTERS

1.1 Definitions

In this Agreement, unless the context indicates otherwise:

Term	Meaning
<i>Aboriginal Engagement Strategy</i>	means the aboriginal engagement strategy set out in Schedule 24 (Aboriginal Engagement Strategy), as amended from time to time.
<i>Accounting Standards</i>	means: <ul style="list-style-type: none"> (a) the requirements of the Corporations Act about the preparation and contents of financial reports; (b) the accounting standards approved under the Corporations Act; (c) generally accepted accounting principles, policies, practices and procedures in Australia to the extent not inconsistent with the accounting standards described in paragraph (b); or (d) if no accounting standard applies under (a), (b) or (c) or if the State can demonstrate its reasonable accounting needs are not met, the accounting practice agreed between the Operator and the State each acting reasonably and in good faith.
<i>Adverse Event</i>	means each of the following events: <ul style="list-style-type: none"> (a) (reckless, unlawful or malicious act): a reckless, unlawful or malicious act or omission of the State; (b) (suspension): cessation or suspension of any part of the Services (or a change in the way the Services are provided), because of: <ul style="list-style-type: none"> (i) a direction from a Government Agency other than the State in its capacity as a contracting party to the State Project Documents; (ii) a court or tribunal order; or (iii) a requirement of Law; (c) (Pitch Defect): a Pitch Defect occurs at any time after Commercial Acceptance; (d) (State act or omission): a wrongful act or omission by the State in its capacity as a contracting party to the relevant State Project Documents which prevents, hinders or disrupts the Operator in the performance of the Services in accordance with the State Project Documents, excluding an act or omission by the State: <ul style="list-style-type: none"> (i) in undertaking any part of the State Operational Commissioning Services; (ii) which is authorised or permitted under any State Project Document or which is a reasonably foreseeable consequence of undertaking the acts or omissions permitted under the State Project Documents; or

Term	Meaning
	<ul style="list-style-type: none"> (iii) which is caused by an act or omission of the Operator (other than an act or omission of the Operator authorised or permitted under a State Project Document); (e) (Force Majeure): a Force Majeure Event; (f) (Statutory Step-in): if the State of Western Australia is required by Law to discharge a statutory power or statutory duty in emergency circumstances and the exercise of such power requires the State, a State Associate or the State of Western Australia to take control of all or substantially all of the Stadium and Sports Precinct to the extent that such event has not been caused or contributed to by: <ul style="list-style-type: none"> (i) an act or omission of the Operator or an Operator Associate other than an act or omission in accordance with the requirements of the Project Documents; or (ii) a Force Majeure Event; and (g) (fire, explosion or flood): fire, explosion or flood at or transgressing onto the Site, where the Operator can demonstrate that all reasonably practicable steps were taken to minimise the cause and effect of fire, explosion or flood on the performance of its obligations under this Agreement.
AFL	means the Australian Football League.
Agreement	means this operating agreement between the State and the Operator.
Annual Base Management Fee	means the fee payable by the State to the Operator for the provision of the Services during the Operating Phase in accordance with Schedule 9 (Payment Schedule).
Annual Report	means the report of that name prepared in accordance with this Agreement, including F.4 of Schedule 8 (Services Specifications).
Annual State's Costs	has the meaning given to it in Section 1 of Part A of Schedule 9 (Payment Schedule).
Approved Documents	<p>means the following Deliverables of the Operator provided to the State for review and approval of the State:</p> <ul style="list-style-type: none"> (a) the Budget and the MYR Budget; (b) each User Agreement and the Standard Hirer Agreement (but not each Hirer Agreement); (c) the Operator Business Plan; and (d) each Key Subcontract.
APRA	means the Australian Prudential Regulation Authority.
Artefacts	means all artefacts, fossils, bones, coins, articles of value or antiquity, structures and other remains or things of scientific, geological, sociological, cultural, historical or archaeological interest, including all Aboriginal Cultural

Term	Meaning
	Material (as that term is defined in the <i>Aboriginal Heritage Act 1972</i> (WA)).
<i>Asset Cleaning Plan</i>	means the plan of that name prepared in accordance with this Agreement, including F.6.22 of Schedule 8 (Services Specifications).
<i>Asset Register</i>	means the asset register which includes details of State FF&E maintained by Project Co in accordance with the Project Agreement.
<i>Associate</i>	has the meaning given to that term in the Corporations Act.
<i>Audit Committee</i>	means the committee required to be established under Clause 21.
<i>Authorisation</i>	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.
<i>Authority</i>	means: <ul style="list-style-type: none"> (a) any Government Agency, administrative or judicial body or tribunal; and (b) any private electricity, telecommunications, gas or other Utility Company.
<i>BBSY Rate</i>	means the rate (which is expressed as a yield per centum per annum to maturity) which is the buying rate for bank accepted Bills quoted at approximately 10.10am (Perth time) on page 'BBSY' of the Reuters Monitor System on that day, having a term of one Month.
<i>Best Operating Practices</i>	means operational practices, facilities management practices, and practices in the performance of the Services, performed in accordance with Good Industry Practice and including everything reasonably necessary to ensure that: <ul style="list-style-type: none"> (a) (safety): safety is prioritised; (b) (personnel): sufficient personnel are available and are adequately qualified, experienced and trained to ensure compliance with the requirements of this Agreement; (c) (materials): adequate materials, resources, Consumables and supplies are available to ensure compliance with the requirements of this Agreement; (d) (advancements): there is a commitment to continually meet advancements in technology and practices, and improve the standards and quality of the Services, and the manner in which they are carried out; and (e) (functionality): the integrity and functionality of Operator FF&E is maintained.
<i>Bid Model</i>	means the model agreed between the Operator and the State on the date of this Agreement and attached at Attachment 3 (Bid Model).

Term	Meaning
<i>Bill</i>	has the same meaning as ‘bill of exchange’ in the <i>Bills of Exchange Act 1909</i> (Cth) (but does not include a cheque or payment order).
<i>Bookings Schedule</i>	has the meaning given to it in Annexure A (Glossary) of Schedule 8 (Services Specifications).
<i>Branded Material</i>	means any material on which the Project Trade Marks (in whole or in part) and Project Identity appear or are proposed to appear and include all communications, promotional and marketing matter, all packaging (including, but not limited to, labelling), tickets, point of sale material (including, but not limited to, in banners, promotional leaflets, information handouts, fact sheets, signage or other documents) and advertising materials (including, but not limited to, all storyboards, images, scripts and designs for billboard, print, television, radio, online and mobile media advertisements), and any other matter, material or collateral of any kind.
<i>Budget</i>	has the meaning given to it in Clause 15.2(c).
<i>Business Continuity Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.7.4 of Schedule 8 (Services Specifications).
<i>Business Day</i>	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</i> (WA).
<i>CA</i>	Cricket Australia, ABN 53 006 089 130.
<i>Catering Management Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.6.16 of Schedule 8 (Services Specifications).
<i>Catering Services</i>	has the meaning given to it in Annexure A (Glossary) of Schedule 8 (Services Specifications).
<i>Change in Control</i>	means, at any time: <ul style="list-style-type: none"> (a) in respect of the Manager, a person alone or together with any Associate, ceases to or commences to, directly or indirectly have Corporations Act Control of the Manager; (b) in respect of the Operator, a person alone or together with any Associate, ceases to or commences to, directly or indirectly, be in a position to cast or control the casting of more than: <ul style="list-style-type: none"> (i) where at the relevant time a person and its Associates are able to cast or control the casting of 50% or more of the votes that may be cast at a general meeting of that entity, 50%; or (ii) where at the relevant time no person with its Associates are able to cast or control the casting of 50% or more of the votes that may be cast at a general meeting of that entity, 20%, of the maximum number of votes that may be cast at a general

Term	Meaning
	meeting of the Operator; and
	(c) in respect of a Key Subcontractor, a person alone or together with any Associate, ceases to or commences to, directly or indirectly, be in a position to cast or control the casting of more than 50% or more of the votes that may be cast at a general meeting of that Key Subcontractor.
<i>Change in Obligations</i>	has the meaning given to it in Clause 4.6(d)(ii).
<i>Change of Manager</i>	means a change to the entity that is appointed as the manager of the Diversified Infrastructure Trust, from time to time.
<i>Claim</i>	means any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity), made: <ul style="list-style-type: none"> (a) in connection with this Agreement, the Stadium, the Sports Precinct or the Services; (b) at Law; or (c) for specific performance, restitution, payment of money (including damages), an extension of time or any other form of relief.
<i>Commercial Acceptance</i>	means those criteria that are required to be satisfied to achieve Commercial Acceptance as set out in the Project Agreement have been satisfied to the reasonable satisfaction of the State Representative.
<i>Commercial Acceptance Plan</i>	means the plan of that name to be prepared by Project Co and to be provided to the Operator by the State.
<i>Commercial Acceptance Tests</i>	means the tests (excluding any tests for Technical Completion) required to be carried out by Project Co under the Project Agreement to assist in determining that Commercial Acceptance has been achieved.
<i>Commercial in Confidence Information</i>	means the information contained in Schedule 12 (Confidential Provisions).
<i>Commercial Opportunities</i>	has the meaning given to it in the Project Agreement.
<i>Commercial Partner</i>	has the meaning given to it in Annexure A (Glossary) of Schedule 8 (Services Specifications).
<i>Commercial Partner Management Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.6.4 of Schedule 8 (Services Specifications).
<i>Commissioning Period</i>	means the period commencing on the Date of Technical Completion and ending on the Date of Commercial Acceptance.
<i>Communication</i>	means any materials developed by the Operator in accordance with the

Term	Meaning
<i>Materials</i>	Communications and Marketing Plan, including publishing newsletters, notifications of works, liaison with land owners, conducting information sessions, publishing advertisements, providing or publishing project updates, website or social media updates and publishing journal and periodical articles with respect to the Services.
<i>Communications and Marketing Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.6.2 of Schedule 8 (Services Specifications).
<i>Condition Precedent</i>	means a condition precedent set out in Clause 2.2.
<i>Confidential Information</i>	has the meaning given to it in Clause 38.1.
<i>Consumables</i>	means materials and goods required by the Operator to perform the Services which are used up or worn out by use rather than Fair Wear and Tear.
<i>Consumer Price Index (CPI)</i>	has the meaning given to it in Section 1 of Part A of Schedule 9 (Payment Schedule).
<i>Content Management Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.6.13 of Schedule 8 (Services Specifications).
<i>Contract Management Team</i>	has the meaning given to it in Section 3 of Schedule 3 (Operator Management).
<i>Contract Material</i>	means: <ul style="list-style-type: none"> (a) the Plans; and (b) all other programs, documents, materials or information prepared by or for or on behalf of the Operator.
<i>Controlled Area</i>	means the area indicated as such in the Site Plans.
<i>Corporations Act</i>	means the <i>Corporations Act 2001</i> (Cth).
<i>Corporations Act Control</i>	has the meaning given to that term in section 50AA of the Corporations Act.
<i>Counterparty Details</i>	means, in connection with each person (other than the State) who is a party to a State Project Document: <ul style="list-style-type: none"> (a) a certified copy of its constitution (or other constituent documents); (b) in the case of a trustee who enters into the State Project Documents on behalf of a trust, a certified copy of the relevant trust deed; (c) a certified copy of any powers of attorney under which the person executed each State Project Document; and (d) a certified copy of the extract of minutes evidencing the resolutions of its board of directors, authorising the entry into, delivery and

Term	Meaning
	observance of obligations in accordance with each State Project Document to which it is a party.
<i>Cricket Parties</i>	means CA and the WACA and the term Cricket Party means each one of them.
<i>Cumulative Gross Operating Profit</i>	has the meaning given to it in Section 1 of Part A of Schedule 9 (Payment Schedule).
<i>Customer Service Management Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.7.6 of Schedule 8 (Services Specifications).
<i>Date for Commercial Acceptance</i>	means the date specified as such in Schedule 1 (Contract Particulars), as adjusted in accordance with the Project Agreement and notified to the Operator by the State.
<i>Date for Completion</i>	means: <ul style="list-style-type: none"> (a) the Date for Technical Completion; or (b) the Date for Commercial Acceptance; as the context requires.
<i>Date for Technical Completion</i>	means the date specified as such in Schedule 1 (Contract Particulars), as adjusted in accordance with the Project Agreement and notified to the Operator by the State.
<i>Date of Commercial Acceptance</i>	means the date on which Commercial Acceptance is achieved in accordance with the Project Agreement and notified to the Operator by the State.
<i>Date of Technical Completion</i>	means the date on which Technical Completion is achieved in accordance with the Project Agreement and notified to the Operator by the State.
<i>DBFM Design Specifications</i>	means the design specifications set out in Schedule 12 of the Project Agreement.
<i>DBFM Services</i>	means the services to be delivered by Project Co under the Project Agreement in relation to the facilities management of the Stadium, Sports Precinct and Off-Site Infrastructure as described in the DBFM Services Specifications.
<i>DBFM Services Specifications</i>	means the service specifications set out in Schedule 13 of the Project Agreement.
<i>DBFM Works</i>	means the works to be performed by Project Co under the Project Agreement in relation to the design, construction, completion and commissioning of the Stadium, Sports Precinct and Off-Site Infrastructure.
<i>Deed of Accession</i>	means the deed of that name set out in Schedule 4 of the Independent

Term	Meaning
	Certifier Agreement.
<i>Default Notice</i>	has the meaning given to it in Clause 30.1(b).
<i>Default Rate</i>	means a rate equivalent to 2% per annum above: <ul style="list-style-type: none"> (a) the BBSY Rate; or (b) if the BBSY Rate is no longer available or, if in the reasonable opinion of the State, the BBSY Rate becomes an inappropriate rate to benchmark the default rate or becomes incapable of application, the rate reasonably determined by the State to be the appropriate equivalent rate having regard to prevailing market conditions.
<i>Defect</i>	means: <ul style="list-style-type: none"> (a) any error, deficiency, omission, non-conformity, fault, failure, malfunction or other irregularity in an item of Operator FF&E; or (b) without limiting paragraph (a), any item of Operator FF&E which is not Fit For Purpose.
<i>Deliverable</i>	means the Plans and any other deliverables required to be delivered or products or services required to be provided by or for the Operator to the State in accordance with this Agreement (or any part of any of them).
<i>Development and Transition Manager</i>	means the person identified as such in Schedule 1 (Contract Particulars), or such other person as may be appointed from time to time to replace that person in accordance with Schedule 3 (Operator Management).
<i>Disaster Recovery Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.7.5 of Schedule 8 (Services Specifications).
<i>Disclosed Information</i>	means: <ul style="list-style-type: none"> (a) the Project Information; (b) all documents and information provided to the Operator prior to the date of this Agreement by the State, State Associates, a Key User or potential Key User in connection with the Services that are not incorporated into this Agreement; and (c) all documents and information provided to the Operator by the State or State Associates after the date of this Agreement in connection with the Services, excluding the Project Documents.
<i>Dispute</i>	has the meaning given to it in Clause 34.1.
<i>Distribution Shortfall</i>	has the meaning given to it in Section 1 of Part A of Schedule 9 (Payment Schedule).
<i>Diversified Infrastructure Trust</i>	means the Diversified Infrastructure Trust (ABN 88 255 996 292).

Term	Meaning
<i>Draft SOCP</i>	has the meaning given to it in Clause 11.1(b)(i).
<i>[Not Disclosed]</i>	
<i>Effective Date</i>	means the date on which the Conditions Precedent are satisfied under Clause 2.3.
<i>Emergency Measures</i>	has the meaning given to it in Clause 17.10(b).
<i>Emergency Services Plan</i>	has the meaning given to it in Clause 17.10(c).
<i>Encumbrance</i>	means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set off or any other security agreement or arrangement in favour of any person and includes any Security Interest.
<i>Enforcement Claim</i>	has the meaning given to it in Clause 28.4(a).
<i>Environment</i>	has the same meaning as under the <i>Environmental Protection Act 1986</i> (WA).
<i>Environmental Authorisations</i>	means all Authorisations required under Environmental Laws.
<i>Environmental Complaint</i>	means any complaint, notice or order whether written or oral, received by the Operator: <ul style="list-style-type: none"> (a) under an Environmental Law or any Environmental Authorisation in respect of the Site, or activities conducted at the Site; or (b) otherwise in connection with the Environment concerning the Site or activities conducted at the Site.
<i>Environmental Event</i>	means any event arising in connection with the occupation, use or operation of, or activities conducted on, the Site which has resulted or results in any actual or potential impact on the Environment.
<i>Environmental Laws</i>	means all Laws concerning the Environment including the <i>Environmental Protection Act 1986</i> (WA), the <i>Contaminated Sites Act 2003</i> (WA), the <i>Dangerous Goods Safety Act 2004</i> (WA) and the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth).
<i>Environmental Management Strategy Documents</i>	means the plans prepared by the State, a State Associate or Project Co with the following titles: <ul style="list-style-type: none"> (a) Construction Environmental Management Framework; (b) Operational Environmental Management Framework; (c) new Perth Stadium Environmental Management Plan; (d) the following environmental sub-management plans to the new Perth

Term	Meaning
	<p>Stadium Environmental Management Plan:</p> <ul style="list-style-type: none"> (i) Contaminated Site Management Plan; and (ii) Dewatering Management Plan; <p>(e) Project Co's Construction Environmental Management Plan; and</p> <p>(f) Project Co's Operational Environmental Management Plan,</p> <p>as set out in Schedule 21 (Environmental Management Strategy Documents), as amended from time to time.</p>
Event	has the meaning given to it in Annexure A (Glossary) of Schedule 8 (Services Specifications).
Event Management Plan	means the plan of that name prepared in accordance with this Agreement, including Section F.6.8 of Schedule 8 (Services Specifications).
Event of Default	<p>means any of the following events:</p> <ul style="list-style-type: none"> (a) (fraud): the Operator or any Operator Associate engages in Fraud, collusion, misleading or deceptive conduct in performing their obligations under the State Project Documents; (b) (false representation): a representation or warranty given by the Operator in accordance with a State Project Document is found to be materially incorrect or misleading; (c) (Parent Guarantee): the Parent Guarantee becomes unenforceable for any reason and is not replaced within 5 Business Days; (d) (insurance): the Operator fails to comply with any of its insurance obligations in Clause 27; (e) (Key Subcontractors): the Operator breaches an obligation in Clauses 5.7 or 5.8 in connection with Key Subcontractors or Key Personnel; (f) (assignment): the Operator breaches Clause 35.1; (g) (Probity Event): the Operator fails to comply with its obligations in connection with a Probity Event in accordance with Clauses 36.1 to 36.7, except if the Probity Event relates to a Key User, a Hirer or a Venue Partner and not to the Operator or a Related Person, and such failure is not remedied within 5 Business Days; (h) (breach of User Agreement): the Operator fails to remedy any breach of a User Agreement by the Operator within 20 Business Days and that breach is not the subject of a bona fide dispute brought by the Operator under the dispute resolution process in the relevant User Agreement; or (i) (breach): the Operator fails to remedy any breach of a State Project Document by the Operator or Operator Associate within 20 Business Days or a date otherwise agreed by the parties after written notice from the State (other than a breach set out in paragraphs (a) – (h) of this definition or any of the events described in the definition of Immediate Termination Event or if the relevant breach is the subject of a dispute under the relevant State Project Document).

Term	Meaning
<i>Event Parties</i>	means: <ul style="list-style-type: none"> (a) Key Users; (b) Hirers; (c) Performers; (d) Patrons; (e) Media Personnel; (f) Sponsors; and (g) Match Officials.
<i>Event Partner</i>	has the meaning given to it in Annexure A (Glossary) of Schedule 8 (Services Specifications).
<i>Event Party Losses</i>	has the meaning given to it in Clause 19.6(a).
<i>Event Procurement Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.6.5 of Schedule 8 (Services Specifications).
<i>Event Settlement Date</i>	has the meaning given to it in Clause 25.2(c)(ii).
<i>Event Specific Management Plan</i>	has the meaning given to it in Annexure A (Glossary) of Schedule 8 (Services Specifications).
<i>Expiry Date</i>	means the date on which the Term ends as determined in accordance with Clause 3.2.
<i>Failure</i>	has the meaning given to it in Section 1 of Part A of Schedule 9 (Payment Schedule).
<i>Fair Wear and Tear</i>	means fair wear and tear that can reasonably be expected to occur as a result of the Services or in a facility of the type and nature and at the location of the Stadium and Sports Precinct.
<i>FF&E</i>	means Group 2 FF&E, Group 3 FF&E and Group 4 FF&E.
<i>FF&E Budget</i>	means the sum of the cost to purchase, install and integrate the Group 4 FF&E and provide initial training on the use of the Group 4 FF&E to be purchased by the Operator in accordance with Clause 10.1(a)(ii), as set out in the FF&E List at the date of this Agreement and as amended in accordance with Clause 10.10(c) and Clause 10.10(f).
<i>FF&E List</i>	means the list of FF&E set out in Schedule 13 (FF&E List), as amended in accordance with Clause 10.1.
<i>FFC</i>	Fremantle Football Club Limited, ACN 066 055 249.
<i>Financial Year</i>	means a period commencing on 1 July and ending on the next 30 June.

Term	Meaning
<i>Fit For Purpose</i>	<p>means in respect of State FF&E and Hired Equipment procured by the Operator at all times and, as from the Date of Commercial Acceptance, in respect of Group 2 FF&E, that:</p> <ul style="list-style-type: none"> (a) satisfies each of the purposes, objectives, functions, uses and requirements set out in or reasonably inferred from the Project Brief; (b) is capable of enabling the Operator to perform the Services in accordance with Schedule 8 (Services Specifications); (c) are maintained so that they allow the Services to be performed without impacting, impairing or adversely affecting the manner in which those Services are performed; (d) satisfies all Laws, Authorisations and Quality Standards; (e) is fit for use in accordance with all Sporting Standards; and (f) is in accordance with all other requirements of this Agreement in connection with the operation and maintenance of the Stadium and Sports Precinct, <p>in each case by reference to all Laws, Authorisations and Quality Standards as at the Date of Commercial Acceptance or, if any works are undertaken pursuant to a Modification after the Date of Commercial Acceptance, those works by reference to the Laws, Authorisations and Quality Standards in existence at the time those works are undertaken.</p>
<i>FM Subcontractor</i>	has the meaning given to it in the Project Agreement.
<i>Football Parties</i>	means the AFL, FFC and WCE and the term Football Party means any one of them.
<i>Force Majeure Event</i>	<p>means one or more, or a combination, of the following:</p> <ul style="list-style-type: none"> (a) lightning, natural disasters, cyclones, earthquakes and tsunamis; (b) civil riots (other than immediately before, during or after an Event which involve Patrons in connection with their attendance at the Stadium or Sports Precinct), rebellions, revolutions, insurrections and military and usurped power, act of sabotage, act of public enemy and war (declared or undeclared), civil war or terrorism; (c) nuclear or biological contamination, ionising radiation or contamination by radioactivity; (d) fire or explosion, where the Operator can demonstrate that all reasonably practicable steps were taken to minimise the cause and effect of fire or explosion on the performance of its obligations under this Agreement; ; (e) during the Operating Phase, Utility Interruption; or (f) Project Co has been granted relief from its obligations under the Project Agreement for a force majeure event (as defined under the Project Agreement), <p>which:</p> <ul style="list-style-type: none"> (g) occurs at or directly in the vicinity of the Site, the Stadium and Sports Precinct or impacting on the Site, the Stadium or the Sports Precinct; and

Term	Meaning
	(h) (either separately or together) causes the Operator to be unable to comply with all or a material part of its obligations in accordance with this Agreement.
<i>Force Majeure Termination Event</i>	means a Force Majeure Event which prevents the Operator from undertaking all or substantially all of its obligations in accordance with this Agreement for a continuous period exceeding 6 Months.
<i>Fraud</i>	means an intentional dishonest act or omission done for the purpose of deceiving, but does not include minor theft occurring on a unsystematic basis other than by a member of the Key Personnel.
<i>Function</i>	has the meaning given to it in Annexure A (Glossary) of Schedule 8 (Services Specifications).
<i>Further Term</i>	a period of up to five years commencing upon the expiry of the Initial Term.
<i>Golf Club House Lease</i>	means the lease between the State and the Minister for Works for the purposes of: <ul style="list-style-type: none"> (a) redeveloping the former Burswood Park Golf Club House facilities into a bar, restaurant, function venue or for the preparation of off-site catering; and (b) operating the redeveloped Burswood Park Golf Club House in accordance with the terms and conditions of the lease, in the area indicated on the Site Plans.
<i>Good Industry Practice</i>	means: <ul style="list-style-type: none"> (a) with the exercise of that degree of skill, diligence, prudence and foresight that would be reasonably expected from a professional, reputable and prudent contractor providing services similar to the Services under conditions comparable to those applicable to the Services; and (b) in accordance with all Laws, Authorisations and relevant Quality Standards.
<i>Government Agency</i>	means any organ of government, government entity, government authority, body politic (but excluding any political party) or government department.
<i>Gross Operating Profit</i>	has the meaning given to it in Section 1 of Part A of Schedule 9 (Payment Schedule).
<i>Group 1 FF&E</i>	means any furniture, fittings or equipment identified in the Project Agreement as 'Group 1 FF&E', being furniture, fittings or equipment which is to be provided and installed or located (as applicable, depending on whether the relevant FF&E is loose or fixed) and maintained by Project Co for the duration of the Operating Phase in accordance with the obligations of the Project Agreement.
<i>Group 2 FF&E</i>	means any furniture, fittings or equipment identified as 'Group 2 FF&E' in

Term	Meaning
	the FF&E List, being furniture, fittings or equipment which is to be provided and installed or located (as applicable, depending on whether the relevant FF&E is loose or fixed) by Project Co in accordance with the obligations of the Project Agreement which will be handed over to the Operator by Project Co in accordance with the Project Agreement and maintained by the Operator from the Date of Commercial Acceptance.
<i>Group 3 FF&E</i>	means any furniture, fittings or equipment identified as 'Group 3 FF&E' in the FF&E List which is to be provided by the State, which is to be installed or located (as applicable, depending on whether the relevant FF&E is loose or fixed) by the Operator (as set out in the State Operational Commissioning Plan) and maintained by the Operator.
<i>Group 4 FF&E</i>	means any furniture, fittings or equipment identified as 'Group 4 FF&E' in the FF&E List which is to be designed (to the extent required) and provided by the Operator and which is to be installed or located (as applicable, depending on whether the relevant FF&E is loose or fixed) and maintained by the Operator.
<i>GST</i>	has the meaning given to in the GST Law.
<i>GST Law</i>	has the same meaning as under the <i>A New Tax System (Goods and Services) Tax Act 1999</i> (Cth).
<i>Handover Package</i>	means the package to be prepared and maintained in accordance with this Agreement, including Section F.9 of Schedule 8 (Services Specifications).
<i>Heritage Claim</i>	means a claim made in accordance with any Law in respect of native title or for the protection, preservation or removal of any Artefact.
<i>Hired Equipment</i>	means any furniture, fittings or equipment identified as 'Hired Equipment' in the Hired Equipment List.
<i>Hired Equipment List</i>	has the meaning given to it in Section B.3.3(d) of Schedule 7 (Pre-Operational Services Specifications) which is to be designed (to the extent required) and provided by the Operator and which is to be installed or located (as applicable, depending on whether the relevant item is loose or fixed).
<i>Hirer Agreement</i>	means an agreement between a Hirer and the Operator, as further described in Clause 19.3(d).
<i>Hirers</i>	means those bodies (other than Key Users in their capacity as a party to a User Agreement) that enter into an arrangement with the Operator in relation to the presentation or hosting of an Event or Function at the Stadium or Sports Precinct and includes their employees, agents, contractors, advisers, consultants and officers.
<i>Holding Account</i>	means the account or accounts, established by the Operator in accordance with Clause 25.1(a).

Term	Meaning
<i>ICT Deployment and Integration Pre-Operational Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.5.3 of Schedule 7 (Pre-Operational Services Specifications).
<i>Immediate Termination Event</i>	<p>means any of the following events:</p> <ul style="list-style-type: none"> (a) (abandonment): the Operator wholly or substantially abandons the Services; (b) (Insolvency Event of the Operator): an Insolvency Event occurs in relation to the Operator, whether or not the Operator is then in breach of a State Project Document; (c) (Specified Event): the occurrence of: <ul style="list-style-type: none"> (i) 2 or more different Specified Events in any category in any 3 consecutive Months; (ii) six or more different Specified Events in any category in any 12 consecutive Months; or (iii) 2 or more of the same Specified Event in any 6 consecutive Months; (d) (Failures): more than five occurrences of a Failure of the same nature; (e) (multiple Events of Default): a total of 5 or more Events of Default have been notified by the State to the Operator in any 12 consecutive Months (which notice is not required to be a Default Notice); (f) (Change in Control): a Change in Control of the Operator or the Manager, or a Change of Manager, as the case may be, occurs without the consent of the State in accordance with Clause 35.4; or (g) [Not Disclosed]
<i>Indemnified Person</i>	has the meaning given to it in Clause 26.5.
<i>Independent Certifier</i>	means Savills Project Management Pty Ltd (ABN 59 129 012 700), or the entity that replaces it (if at all) in accordance with the Project Agreement.
<i>Independent Certifier Agreement</i>	means the independent certifier agreement jointly entered into between the State, Project Co and the Independent Certifier dated 19 August 2014, a copy of which is attached at Schedule 20 (Independent Certifier Agreement) and the Operator will become a party to this independent certifier agreement upon execution of the Deed of Accession.
<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 34.
<i>Indigenous Recognition and Engagement Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.7.11 of Schedule 8 (Services Specifications).
<i>Indirect or</i>	means any:

Term	Meaning
<i>Consequential Loss</i>	<p>(a) loss of opportunity, profit, anticipated profit (excluding Gross Operating Profit), business, business opportunities or revenue, including any failure to realise anticipated savings;</p> <p>(b) penalties payable under contracts other than this Agreement;</p> <p>(c) cost of capital and financing costs; or</p> <p>(d) damage to reputation,</p> <p>but excludes any Liability arising from, or in connection with:</p> <p>(e) criminal acts or fraudulent acts or omissions of, or fraudulent misrepresentation by, the State or any State Associate (if the Liability is incurred by the Operator), or the Operator or any Operator Associate (if the Liability is incurred by the State);</p> <p>(f) wilful misconduct under this Agreement by the State or any State Associate (if the Liability is incurred by the Operator), or the Operator or any Operator Associate (if the Liability is incurred by the State);</p> <p>(g) any loss of or damage to third party property or injury to, disease or death of a person;</p> <p>(h) matters which, by Law, the parties cannot limit or exclude; or</p> <p>(i) any statutory fine arising from any breach of Law or Authorisation by the State or a State Associate (if the Liability is incurred by the Operator), or the Operator or any Operator Associate (if the Liability is incurred by the State), including a fine or charge arising under an agreement with a Utility Company for the provision of Utilities,</p> <p>and also does not include payments by the State or the Operator of the Quarterly Service Payment, the State's Payment and the Pre-Operational Monthly Payment (including the calculation of any of the amounts forming part of the Quarterly Service Payment, the State's Payment and the Pre-Operational Monthly Payment) and liquidated damages payable under this Agreement.</p>
<i>Industrial Award, Agreement or Order</i>	<p>means an award, a registered or certified agreement or an order of the Western Australian Industrial Relations 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 any Operator Associate that is lodged, registered or certified under any Law applying in Western Australia.</p>
<i>Initial Term</i>	<p>means the initial term commencing on the Effective Date and ending on the date which is five years after the Operational Commencement Date.</p>
<i>Insolvency Event</i>	<p>means, in relation to a corporation, the occurrence of any of the following events:</p> <p>(a) (informs creditors): that corporation informs its creditors generally that it is insolvent;</p> <p>(b) (receiver): a liquidator, administrator, trustee in bankruptcy, receiver or receiver and manager or similar officer is appointed in connection with any of the assets of that corporation;</p>

Term	Meaning
	<ul style="list-style-type: none"> (c) (execution): a distress, attachment or other execution is levied or enforced upon or against any assets of that corporation 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) (application): an application is made for the administration, dissolution or winding up of that corporation which application is not stayed within 10 Business Days of being made; (e) (winding up): an order is made for the administration, dissolution or winding up of that corporation; (f) (resolution): a resolution is passed for the administration or winding up of that corporation other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the State; (g) (arrangement or composition): that corporation enters, 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; (h) (statutory demand): <ul style="list-style-type: none"> (i) that corporation 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 that corporation 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 that corporation fails to comply with the statutory demand within 5 Business Days of the order of the court dismissing the application; (i) (execution levied against it): that corporation has an execution levied against it by creditors, debenture holders or trustees or under a floating charge which is not satisfied, withdrawn or dismissed within 10 Business Days; or (j) (insolvency): that corporation is unable to pay its debts when they fall due, or is deemed unable to pay its debts in accordance with any applicable Law.
Insurances	means the insurances required to be effected and maintained in accordance with this Agreement.
Intellectual Property Rights	<p>means all intellectual and industrial property rights existing in Australia or throughout the world, including registered and unregistered trade marks, copyright (including future copyright), inventions, patents, designs, circuits and other eligible layouts and database rights, and includes:</p> <ul style="list-style-type: none"> (a) any application or right to apply for registration of any of these rights; and (b) any renewals and extensions of these rights.
Key Management Plan	means the plan of that name prepared in accordance with this Agreement, including Section F.6.24 of Schedule 8 (Services Specifications).

Term	Meaning
<i>Key Performance Indicator (KPI)</i>	has the meaning given to it in Section 1 of Part A of Schedule 9 (Payment Schedule).
<i>Key Personnel</i>	means the persons listed in Schedule 1 (Contract Particulars) who are to carry out the roles and functions described in that Schedule, as amended from time to time in accordance with Clause 5.7.
<i>Key Subcontractor</i>	means: <ul style="list-style-type: none"> (a) the Subcontractor providing Ticketing Services set out in Schedule 1 (Contract Particulars); and (b) if the Catering Services are subcontracted in accordance with Clause 5.5(c), the Subcontractor providing the Catering Services, and any replacement of them in accordance with this Agreement.
<i>Key Subcontracts</i>	means any Subcontract entered into with any Key Subcontractors.
<i>Key Terms</i>	has the meaning given to it in Clause 19.1.
<i>Key User Engagement Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.5.1 of Schedule 7 (Pre-Operational Services Specifications).
<i>Key Users</i>	means the Football Parties and the Cricket Parties and includes any of their employees, agents, contractors, advisers, consultants and officers.
<i>Land Conditions</i>	means any physical conditions on, under or over the surface or in the vicinity of, the Site including: <ul style="list-style-type: none"> (a) (water and gas): ground gas, ground water, ground water hydrology, surface water, water quality, salinity, the existence of any wells and the effects of any dewatering; (b) (physical structures): physical and structural conditions above, upon and below the ground including any fill, waste material, underground obstructions, infrastructure (including utilities and transport infrastructure), partially completed structures, Artefacts or in ground works; (c) (vegetation and fauna): plants, grasses or other vegetation and fauna on the Site; (d) (topography): topography, ground surface and sub-surface conditions and geology including rock or other materials, the effects of loading and unloading and soil quality; (e) (climate): climatic and weather conditions, rain, stormwater, surface water run-off and drainage, water seepage, wind, wind-blown dust and sand storms, airborne salinity, humidity, mud and other effects of climatic and weather conditions; (f) (contamination): any contamination or any substance above background concentrations; (g) (acid sulphate soils): any soils and sediments that contain iron

Term	Meaning
	sulfides; and
	(h) (easements) : all easements over or in connection with the Site, whether or not they were in existence or known to the Operator before the date of this Agreement.
Law	means: <ul style="list-style-type: none"> (a) Commonwealth, Western Australian and local government legislation, including statutes, ordinances, instruments, codes (but excluding any building codes or Quality Standards), requirements, regulations, by-laws and other subordinate legislation; (b) common law; and (c) principles of equity.
Liability	includes any debt, obligation, claim, action, cost (including legal costs, deductibles or increased premiums), expense, loss, damage, compensation, charge or liability of any kind (including fines or penalties), actual, prospective or contingent and whether or not currently ascertainable and whether arising under or for breach of contract, in tort (including negligence), restitution, pursuant to statute or otherwise at Law.
[Not Disclosed]	
Liquor Act	means the <i>Liquor Control Act 1988</i> (WA).
Liquor Licence	has the meaning given to it in Clause 17.2(a).
Main Roads	means the Commissioner of Main Roads (Western Australia) constituted under the <i>Main Roads Act 1930</i> (WA).
Maintenance Plan	means the plan of that name prepared in accordance with this Agreement, including F.6.21 of Schedule 8 (Services Specifications).
Major Event	means: <ul style="list-style-type: none"> (a) a major international sporting event, such as the Olympic Games, Commonwealth Games, FIFA World Cup, the ICC Cricket World Cup and T20 World Cup, the IRB World Cup or the World Athletics Championships; (b) a major civic event that utilises the seating bowl or Pitch which is, in the State's opinion (acting reasonably), of significant importance from an international, national or state perspective; or (c) any other event which is designated or identified as, or covered by the definition of, a major or similar event, under any applicable Law relating to major events (or similar), but does not include AFL games or cricket matches (other than those referred to in paragraph (a) above).
Major Event Period	has the meaning given to it in Clause 20.1(b)(ii).

Term	Meaning
<i>Major Event Ready</i>	<p>means:</p> <ul style="list-style-type: none"> (a) the Stadium; (b) any other part of the Sports Precinct that is within the view of television cameras positioned at the Stadium; and (c) any other part of the Sports Precinct or in the vicinity of the Sports Precinct that is identified by the State to the Operator in writing, <p>do not carry or display any form of advertising, branding, sponsorship or promotional material.</p>
<i>Make Safe</i>	<p>means, in respect of an item of Operator FF&E affected by a Defect, that item of Operator FF&E is, following the Defect, restored to a state or condition such that, in the reasonable opinion of the State:</p> <ul style="list-style-type: none"> (a) persons who are required to use or maintain that item of Operator FF&E are able to do so safely; and (b) any further loss or damage to that item of Operator FF&E which could occur as a result of that Defect has been mitigated.
<i>Management and Integration Services Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.7.1 of Schedule 8 (Services Specifications).
<i>Manager</i>	Infrastructure Capital Group Ltd ACN 094 815 513 or any entity that replaces Infrastructure Capital Group Ltd as manager of the Diversified Infrastructure Trust.
<i>Match Officials</i>	means any third parties used or required for the conduct of an Event, including umpires, timekeepers and officials.
<i>Material Safety Data Sheet</i>	has the meaning given to that term in the <i>Occupational Safety and Health Regulations 1996</i> (WA).
<i>Media Personnel</i>	means members of the media and press associated with broadcast and narrowcast mediums (including radio, television, newspapers, magazines, journals and the internet) attending the Stadium and Sports Precinct for the purposes of covering an Event, including all associated activities undertaken before, during and after that Event, and includes any of their employees, agents, contractors, advisers, consultants and officers.
<i>Minister</i>	means a minister acting for and on behalf of the Crown in right of the State of Western Australia.
<i>Modification</i>	<p>means any permanent change to Schedule 8 (Services Specifications) or the scope of the Services (including a decrease), but excludes:</p> <ul style="list-style-type: none"> (a) an extension under Clause 12.4; (b) changes to the Operator Business Plan in accordance with Clause 15; (c) running a Major Event (unless Clause 20.5 applies);

Term	Meaning
	<p>(d) changes to the provision of the Services as described in the Operational Interface Agreement; or</p> <p>(e) any change to temporarily address an Adverse Event.</p>
<i>Modification Order</i>	has the meaning given to it in Clause 23.1(c)(i).
<i>Modification Price Request</i>	has the meaning given to it in Clause 23.1(a).
<i>Modification Quote</i>	has the meaning given to it in Clause 23.1(a).
<i>Month</i>	means a calendar month.
<i>Monthly Performance Report</i>	means the report of that name prepared in accordance with this Agreement, including Section F.3.1 of Schedule 8 (Services Specifications).
<i>Monthly Pre-Operational Performance Reports</i>	means the report of that name prepared in accordance with this Agreement, including Section F.2 of Schedule 7 (Pre-Operational Services Specifications).
<i>Monthly Pre-Operational Services Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.3 of Schedule 7 (Pre-Operational Services Specifications).
<i>Monthly Services Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.3.2 of Schedule 8 (Services Specifications).
<i>Moral Rights</i>	has the meaning given to it in the <i>Copyright Act 1968</i> (Cth).
<i>MYR Budget</i>	has the meaning given to it in Clause 15.4(a).
<i>Noise Management Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.7.10 of Schedule 8 (Services Specifications).
<i>Notice of Dispute</i>	has the meaning given in Clause 34.1(b).
<i>Off-Site Infrastructure</i>	means each item of infrastructure identified in Schedule 8 of the Project Agreement.
<i>Operating Account</i>	means the account or accounts, established by the Operator in accordance with Clause 25.1(a).
<i>Operating Costs</i>	has the meaning given to it in Section 1 of Part A of Schedule 9 (Payment Schedule).
<i>Operating Loss</i>	has the meaning given to it in Section 1 of Part A of Schedule 9 (Payment Schedule).

Term	Meaning
<i>Operating Phase</i>	means the period commencing on the Operational Commencement Date and ending on the Expiry Date.
<i>Operating Phase Licence</i>	means the licence granted by the State to the Operator in accordance with Clause 7.3 as amended from time to time.
<i>Operational Commencement Date</i>	means the day after the date on which the Operator successfully completes the Operator Completion Items, which for the avoidance of doubt, cannot be before the Date of Commercial Acceptance.
<i>Operational Environmental Management Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.7.9 of Schedule 8 (Services Specifications).
<i>Operational Handover Plan</i>	means the plan of that name prepared by Project Co in accordance with the Project Agreement and provided to the Operator by the State.
<i>Operational Interface Agreement</i>	means the operational agreement for the cooperation and coordination of activities in relation to the operation and maintenance of the Stadium and Sports Precinct between the State, Project Co and the Operator, executed on or about the date of this Agreement.
<i>Operational Objectives</i>	has the meaning given to it in Annexure A (Glossary) of Schedule 8 (Services Specifications).
<i>Operational Performance Bond</i>	means a performance bond which satisfies the requirements of Clauses 6.3 and 6.4.
<i>Operations Manager</i>	means the person identified as such in Schedule 1 (Contract Particulars), or such other person as may be appointed from time to time to replace that person in accordance with Schedule 3 (Operator Management).
<i>Operations Manual</i>	has the meaning given to it in Annexure A (Glossary) of Schedule 8 (Services Specifications).
<i>Operator Associate</i>	<p>means:</p> <ul style="list-style-type: none"> (a) the Operator Representative; (b) officers, agents, advisers, consultants, contractors and employees of the Operator; (c) any Subcontractor and their officers, agents, advisers, consultants, contractors and employees; (d) the Key Personnel; and (e) any visitor to the Site invited onto the Site by the Operator or any of the persons set out in paragraphs (a), (b), (c) or (d) of this definition, only while that visitor is present on the Site at the invitation of the person set out in (a), (b), (c) or (d) above, <p>but does not include Event Parties, the Independent Certifier, the State, any State Associate, Project Co or Project Co Associates.</p>

Term	Meaning
<i>Operator Business Plan</i>	means the plan to be prepared by the Operator in accordance with Clause 15.
<i>Operator Completion Items</i>	means those obligations described in Annexure A to Schedule 7 (Pre-Operational Services Specifications).
<i>Operator Facility Services Management Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.6.20 of Schedule 8 (Services Specifications).
<i>Operator FF&E</i>	means Group 2 FF&E, Group 3 FF&E and Group 4 FF&E.
<i>Operator Induction and Training Program</i>	means the program prepared and maintained in accordance with this Agreement, including Section F.7.7 of Schedule 8 (Services Specifications).
<i>Operator Representative</i>	means the person nominated as such in Schedule 1 (Contract Particulars), or such other person as may be appointed from time to time to replace that person in accordance with Clause 5.4.
<i>Operator's Background IP</i>	<p>means any Intellectual Property Rights of the Operator (or licensed to the Operator by a third party) which:</p> <ul style="list-style-type: none"> (a) are in existence before the date of this Agreement or come into existence after the date of this Agreement, other than Project IP; and (b) the Operator makes available, contributes, brings to or uses in connection with the performance of this Agreement, the Project, the or Services, <p>and Subcontractor's Background IP has a corresponding meaning in respect of Intellectual Property Rights of a Subcontractor.</p>
<i>Operator's Design Management Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.5.2. of Schedule 7 (Pre-Operational Services Specifications).
<i>[Not Disclosed]</i>	
<i>Parent Guarantee</i>	means the parent company guarantee in the form set out in Schedule 6 (Parent Guarantee).
<i>Parent Guarantor</i>	means each person required to give a Parent Guarantee as specified in Section 5 of Schedule 1 (Contract Particulars) and any replacement to that person approved by the State.
<i>Parking and Traffic Management Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.6.12 of Schedule 8 (Services Specifications).
<i>Pass Through Cost</i>	has the meaning given to it in Section 1 of Part A of Schedule 9 (Payment Schedule).

Term	Meaning
<i>Patron</i>	<p>means any person attending the Stadium or Sports Precinct, including:</p> <ul style="list-style-type: none"> (a) any person attending an Event at the Stadium in the capacity of a spectator; (b) any person attending a Function at the Stadium in the capacity of a guest or attendee; (c) any person attending the Stadium or Sports Precinct for enjoyment or leisure purposes; or (d) prior to the Operational Commencement Date only, any person invited or required by the Operator or the State to attend the Stadium or Sports Precinct for the purposes of participating in scenario testing as part of State Operational Commissioning Services, <p>as the context requires, but does not include any of the persons referred to in the definition of Stadium Users other than paragraph (e).</p>
<i>Payment Statement</i>	<p>means a Pre-Operational Payment Statement , a Quarterly Payment Statement or a Reconciliation Payment Statement prepared in accordance with Schedule 9 (Payment Schedule).</p>
<i>Pedestrian Underpass</i>	<p>has the meaning given to it in the DBFM Design Specifications.</p>
<i>Performance Bond</i>	<p>means the Pre-Operational Performance Bond and the Operational Performance Bond, or either of them as the context requires.</p>
<i>Performance Failure Abatement</i>	<p>has the meaning given to it in Part A of Schedule 9 (Payment Schedule).</p>
<i>Performance Improvement Notice</i>	<p>has the meaning given to it in Part A of Schedule 9 (Payment Schedule).</p>
<i>Performance Monitoring Program</i>	<p>means all the performance monitoring activities that the Operator must undertake to monitor the quality of the Services required to be performed by the Operator in accordance with this Agreement, being those performance monitoring activities set out in Part E of Schedule 8 (Services Specifications).</p>
<i>Performer</i>	<p>means any:</p> <ul style="list-style-type: none"> (a) sports person, athlete, sporting team; or (b) performer, entertainer, musician, animals or bands, <p>playing or performing at the Stadium or Sports Precinct (or both) including any participants in any pre-match, half-time or post-match entertainment or activities, and includes any of their employees, agents, contractors, advisers, consultants and officers.</p>
<i>Permitted Encumbrance</i>	<p>means:</p> <ul style="list-style-type: none"> (a) any Encumbrance created by the State or Project Co; (b) any Encumbrance created under this Agreement; (c) every lien created by operation of law (other than the PPSA) securing

Term	Meaning
	<p>an obligation that is not yet due;</p> <p>(d) every lien or retention of title arrangement securing the unpaid balance of purchase money for property acquired in the ordinary course of ordinary business under an instalment contract on the supplier's standard terms where such unpaid balance is not yet due;</p> <p>(e) every lien for the unpaid balance of moneys owing for repairs where such unpaid balance is not yet due;</p> <p>(f) any Encumbrance over any asset that is leased under an operating lease, to secure payment under that operating lease;</p> <p>(g) every Encumbrance arising solely by operation of the PPSA in the proceeds of an asset which is the subject of a lien or retention of title arrangement referred to in paragraph (b) of this definition or any "commingled" (as that term is defined and used in the PPSA) product or mass of which it becomes part, where the obligation secured by that Encumbrance is limited to the unpaid balance of the purchase money for the original asset and that unpaid balance is not yet due;</p> <p>(h) every deemed Security Interest arising under section 12(3) of the PPSA; and</p> <p>(i) every Encumbrance consented to by the State in writing, provided that the amount of the unpaid balances in respect of Encumbrances falling within paragraphs (d), (e), (f) and (g) is managed in accordance with Good Industry Practice.</p>
<i>Permitted Handover Encumbrances</i>	<p>means:</p> <p>(a) each Permitted Encumbrance arising under or in connection with a contract, lease, sublease or licence that is novated or assigned to the State or its nominee in accordance with Clause 33.2(d);</p> <p>(b) each Permitted Encumbrance described in paragraph (a) of the definition of Permitted Encumbrance; and</p> <p>(c) any other Encumbrance expressly consented to by the State in writing as being a Permitted Handover Encumbrance.</p>
<i>Permitted Training</i>	has the meaning given to it in Annexure A (Glossary) of Schedule 8 (Services Specifications).
<i>Pitch</i>	has the meaning given to it in Annexure A (Glossary) of Schedule 8 (Services Specifications).
<i>Pitch Defect</i>	has the meaning given to it in the Project Agreement.
<i>Plans</i>	<p>means each of the plans required to be prepared in accordance with Schedule 8 (Services Specifications), being the:</p> <p>(a) Indigenous Recognition and Engagement Plan;</p> <p>(b) Emergency Management Plan;</p> <p>(c) Operational Environmental Management Plan;</p> <p>(d) Event Procurement Plan;</p>

Term	Meaning
	(e) Event Management Plan;
	(f) Key Management Plan;
	(g) Asset Cleaning Plan;
	(h) Waste Management Plan;
	(i) Safety Management Plan;
	(j) Parking and Traffic Management Plan;
	(k) Operator Business Plan;
	(l) Annual Report;
	(m) Monthly Services Plan;
	(n) Procurement Management Plan;
	(o) Operations Manual;
	(p) Communications and Marketing Plan;
	(q) Precinct Activation Plan;
	(r) Commercial Partner Management Plan;
	(s) Content Management Plan;
	(t) Signage Management Plan;
	(u) Technology Management Plan;
	(v) Catering Management Plan;
	(w) Retail Management Plan;
	(x) Tourism Promotion Plan;
	(y) Maintenance Plan;
	(z) Scheduling Plan;
	(aa) Ticketing Management Plan;
	(bb) Operator Facility Services Management Plan;
	(cc) Management and Integration Services Plan;
	(dd) Noise Management Plan;
	(ee) ICT Deployment and Integration Plan;
	(ff) Risk Management Plan;
	(gg) Business Continuity Plan;
	(hh) Disaster Recovery Plan,
	(ii) Customer Service Management Plan;
	(jj) Event Specific Management Plan;
	(kk) Operator Induction and Training Program;
	(ll) Services Training and Induction Program;
	(mm) Performance Monitoring Plan;
	(nn) Technical Specifications Manual;
	(oo) Monthly Performance Report;

Term	Meaning
	(pp) Weekly Performance Report; and (qq) Handover Package, as updated and amended by the Operator in accordance with this Agreement, and, during the Pre-Operational Phase, includes the Pre-Operational Plans.
<i>Pourage</i>	means the provision of beer and non-alcoholic beverages in respect of the Stadium or Sports Precinct.
<i>PPS Law</i>	means: (a) the PPSA; and (b) any amendment made at any time to the Corporations Act or any other legislation as a consequence of the PPSA.
<i>PPSA</i>	means the <i>Personal Properties Securities Act 2009</i> (Cth).
<i>Precinct Activation Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.6.3 of Schedule 8 (Services Specifications).
<i>Pre-Operational Account</i>	means the account or accounts, established by the Operator in accordance with Clause 24.1(a).
<i>Pre-Operational Annual Report</i>	means the report of that name prepared in accordance with this Agreement, including Section F.4 of Schedule 7 (Pre-Operational Services Specifications).
<i>Pre-Operational Base Management Fee</i>	means the fee for the Pre-Operational Services set out in Schedule 9 (Payment Schedule).
<i>Pre-Operational Monthly Payment</i>	has the meaning given to it in Section 1 of Part A of Schedule 9 (Payment Schedule).
<i>Pre-Operational Performance Bond</i>	means a performance bond which satisfies the requirements of Clauses 6.2 and 6.4.
<i>Pre-Operational Phase</i>	means the period commencing on the date of this Agreement and ending on the Operational Commencement Date.
<i>Pre-Operational Phase Costs</i>	has the meaning given to it in Section 1 of Part A of Schedule 9 (Payment Schedule).
<i>Pre-Operational Phase Costs Deficit</i>	has the meaning given to it in Section 1 of Part A of Schedule 9 (Payment Schedule).
<i>Pre-Operational Plans</i>	means each of the plans required to be prepared in accordance with Schedule 7 (Pre-Operational Services Specifications), being the: (a) Key User Engagement Plan;

Term	Meaning
	<ul style="list-style-type: none"> (b) ICT Deployment and Integration Pre-Operational Plan; (c) Pre-Operational Procurement Management Plan; (d) State Operational Commissioning Plan; (e) Operator's Design Management Plan; (f) Monthly Pre-Operational Performance Reports; (g) Monthly Pre-Operational Services Plans; and (h) Pre-Operational Annual Reports, <p>as updated and amended by the Operator in accordance with this Agreement.</p>
<i>Pre-Operational Procurement Management Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.5.4 of Schedule 7 (Pre-Operational Services Specifications).
<i>Pre-Operational Services</i>	means the services to be performed by the Operator during the Pre-Operational Phase, as described in Schedule 7 (Pre-Operational Services Specifications), including the State Operational Commissioning Services and completing the Operator Completion Items.
<i>Pre-Operational Services Program</i>	has the meaning given to in Annexure B of Schedule 7 (Pre-Operational Services Specifications).
<i>Probity Event</i>	<p>includes any event or thing which:</p> <ul style="list-style-type: none"> (a) relates to the Operator, a Related Person, a Key User, a Hirer or a Venue Partner and has a material adverse effect on the public interest, or public confidence, in the Project; (b) has a material adverse effect on, or on the perception of, the character, integrity or honesty of the Operator, a Related Person, a Key User, a Hirer or a Venue Partner; or (c) involves a material failure of the Operator to achieve or maintain: <ul style="list-style-type: none"> (i) good corporate citizenship; (ii) the avoidance of conflicts of interest which will have a material adverse effect on the ability of the Operator to perform and observe its obligations in connection with the Project; or (iii) other standards of conduct that would otherwise be expected of a party involved in a State government project.
<i>Probity Investigation</i>	means such probity and criminal investigations to report on the character, honesty and integrity of persons or standards of conduct of corporations or other entities as are required by Law or by the State from time to time, to ensure that a person or entity is fit and proper for its proposed or continued involvement in the Project.
<i>Procurement Management Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.6.19 of Schedule 8 (Services Specifications).

Term	Meaning
<i>Project</i>	means the new Perth Stadium Project.
<i>Project Agreement</i>	means the document entitled 'The new Perth Stadium DBFM Project – Design, Build, Finance and Maintain (DBFM) Project Agreement' between Project Co, the State of Western Australia, the Minister for Works and the State dated 13 August 2014, including its schedules and annexures, as amended from time to time.
<i>Project Brief</i>	<p>means the:</p> <ul style="list-style-type: none"> (a) DBFM Design Specifications; (b) DBFM Services Specifications; and (c) other design development documentation, <p>for the new Perth Stadium DBFM Project, as amended from time to time as provided by the State to the Operator.</p>
<i>Project Co</i>	means the contractor engaged to design, construct, partly finance and maintain the Stadium and the Sports Precinct, which as at the date of this Agreement is Westadium Project Co Pty Ltd (ABN 91 169 900 547) in its personal capacity and as trustee for Westadium Project Unit Trust (ABN 27 901 829 646).
<i>Project Co Associate</i>	<p>means:</p> <ul style="list-style-type: none"> (a) the Project Co representative nominated as such in Schedule 1 (Contract Particulars) of the Project Agreement, or such other person as may be appointed from time to time to replace that person in accordance with the Project Agreement; (b) officers, agents, advisers, consultants, contractors and employees of Project Co; (c) Brookfield Multiplex Engineering and Infrastructure Pty Ltd (ACN 095 282 992) or any other person approved by the State who, in addition or substitution, is engaged by Project Co in accordance with the Project Agreement to undertake all of the DBFM Works; (d) means Brookfield Global Integrated Solutions Pty Ltd (ACN 064 638 197) and any other person approved by the State who in addition or substitution is engaged by Project Co in accordance with the Project Agreement to perform any of the DBFM Services; (e) any other subcontractor of Project Co or the persons described in paragraphs (c) or (d) and their respective officers, agents, advisers, consultants, contractors and employees; (f) tenants of the commercial opportunities which are permitted by the State to be delivered by Project Co in accordance with the Project Agreement; and (g) any visitor to the Site invited onto the Site by Project Co or any of the persons set out in paragraphs (a) to (f) of this definition, <p>but does not include the State, any State Associate, the Independent Certifier, the Operator, the Operator Associates, any entities determined to be a precinct partner under the Project Agreement or the Head Lessee (as that term is defined under the Project Agreement).</p>

Term	Meaning
<i>Project Co Costs</i>	has the meaning given to it in Section 1 of Part A of Schedule 9 (Payment Schedule).
<i>Project Co Dedicated Areas</i>	means the Project Co dedicated areas indicated as such in the Site Plans as referred to in clause 7.2(a)(iii) of the Operational Interface Agreement.
<i>Project Co Exclusive Areas</i>	<p>means:</p> <ul style="list-style-type: none"> (a) areas where the tasks performed by the FM Subcontractor or Project Co acting in its capacity as 'main contractor' (as that term is defined in the Safety Laws) require the FM Subcontractor or Project Co to have exclusive occupation, for the duration of the task being performed; or (b) an area of the Site that Project Co (including by the actions of Project Co Associates) otherwise has exclusive occupation of for the delivery of the DBFM Services, for the duration of the exclusive occupation, <p>but excludes the Project Co Dedicated Areas and 'exclusive occupation' when used in this definition means occupation to the exclusion of persons other than Project Co or Project Co Associates.</p>
<i>[Not Disclosed]</i>	
<i>Project Documents</i>	<p>means:</p> <ul style="list-style-type: none"> (a) the State Project Documents; (b) the Key Subcontracts; (c) the User Agreements; (d) the Hirer Agreements; (e) the Venue Partner Agreements; and (f) any other document the parties to this Agreement agree is a Project Document.
<i>Project Identity</i>	means the Project Trade Marks, the Trading Name and any other names (including business names) logos, symbols, emblems, designs, likenesses, visual representations, service marks or trade marks, drawings, artistic works, colour palette, naming conventions and other identifiers as approved by the State as laid out in the Style Guide from time to time.
<i>Project Information</i>	means each of the reports and other information set out or referred to in Volume 4 of the RFP.
<i>Project IP</i>	means all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, and for the purpose of the performance of this Agreement or the Services, or the performance of the Services (including any Intellectual Property Rights in the Contract Material).
<i>Project Stakeholders</i>	means the stakeholders described in Schedule 19 (Project Stakeholders) and any updates to that list as a result of an update to the State

Term	Meaning
	Stakeholder Management Plan.
<i>Project Trade Marks</i>	means the trade marks which are to be selected and registered by the State and used by the Operator in accordance with this Agreement.
<i>PTA</i>	means the Public Transport Authority of the State of Western Australia.
<i>Quality Standards</i>	<p>means all standards, codes, specifications, guidelines, policies and requirements to be complied with in accordance with, and subject to, the terms of this Agreement including:</p> <ul style="list-style-type: none"> (a) the Disability (Access to Premises – Buildings) Standards (2010) under the <i>Disability Discrimination Act 1992</i> (Cth); (b) all relevant standards, codes and guides of Standards Australia and Standards New Zealand and, where an Australian Standard or a New Zealand Standard does not exist, the relevant British standard or International standard; (c) all Sporting Standards; (d) all standards, codes and guides published by the WorkCover Corporation of Western Australia and WorkSafe WA; (e) to the extent they do not conflict with the standards, codes or guides published by WorkSafe WA, the standards, codes and guides published by the National Occupational Health and Safety Commission and Safe Work Australia; (f) relevant national policies and State Policies; (g) the requirements of Utility Companies and Governmental Agencies relevant to the Services, the Stadium and the Sports Precinct (other than to the extent that the requirement is in respect of the structure or fabric of the Stadium or Sports Precinct (other than Operator FF&E), or the DBFM Services); (h) the Guidelines for Concerts, Events and Organised Gatherings, published by the Government of Western Australia, December 2009; (i) the LPA Ticketing Code of Practice; and (j) all other standards, codes, specifications, guidelines, policies and requirements relevant to the Services, the Stadium and the Sports Precinct (other than to the extent that the standard, code, specification, guideline, policy or requirement is in respect of the structure or fabric of the Stadium or Sports Precinct (other than Operator FF&E), or the DBFM Services), <p>as amended, updated or replaced from time to time, except for the documents described in paragraph (b), which version is as approved by the State and notified to the Operator from time to time.</p>
<i>Quarter</i>	<p>means:</p> <ul style="list-style-type: none"> (a) the period commencing on the Operational Commencement Date and ending on the day before the first Quarterly Date during the Operating Phase for the Stadium and Sports Precinct; (b) each 3 Month period commencing on a Quarterly Date; and

Term	Meaning
	(c) the period commencing on the last Quarterly Date during the Operating Phase for the Stadium and Sports Precinct and ending on the Expiry Date.
<i>Quarterly Date</i>	means every 1 January, 1 April, 1 July and 1 October during the Operating Phase.
<i>Quarterly Payment Statement</i>	has the meaning given to it in Section 1 of Part A of Schedule 9 (Payment Schedule).
<i>Quarterly Service Payments</i>	has the meaning given to it in Section 1 of Part A of Schedule 9 (Payment Schedule).
<i>Reconciliation Payment Statement</i>	has the meaning given to it in Section 1 of Part A of Schedule 9 (Payment Schedule).
<i>Records</i>	<p>means any information or documents created or procured by the Operator or any Subcontractor in connection with performing the Services including:</p> <ul style="list-style-type: none"> (a) the Plans and all source information, documentation and data required for, created, produced or prepared in accordance with such documents; (b) the audited accounts referred to in Clause 37(e); (c) all records and information relating to the effects of a Force Majeure Event; and (d) books of account, computer print-outs, records, correspondence, invoices, instructions, plans, drawings, receipts and memoranda, whatever the form, including information stored by computer and other devices.
<i>Related Body Corporate</i>	has the same meaning as 'related body corporate' in the Corporations Act but as if references in the Corporations Act to a 'subsidiary' were references to a Subsidiary as defined in this Agreement.
<i>Related Person</i>	<p>means:</p> <ul style="list-style-type: none"> (a) a director or secretary of the Operator; (b) any officer or employee, agent, supplier or contractor of the Operator who: <ul style="list-style-type: none"> (i) has the ability to exercise influence or control in relation to the Operator, or in matters relating to the Services; (ii) works at the Site; or (iii) has access to confidential information concerning the Services; and (c) any person or entity with Corporations Act Control over the Operator.
<i>Reputable Insurer</i>	means an insurance company having a financial performance rating of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moodys Investors Service Pty Ltd or an equivalent rating from another

Term	Meaning
	internationally recognised rating agency and approved by the State acting reasonably.
<i>Required Rating</i>	means a current long-term foreign currency credit rating of at least A- (issued by Standard and Poor's Australia) or A3 (issued by Moody's Investor Service), or the equivalent credit rating issued by another generally recognised international credit rating agency.
<i>Retail Management Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.6.17 of Schedule 8 (Services Specifications).
<i>RFP</i>	means the document entitled 'Request for Proposal' issued by the State in connection with the Services on 7 August 2015.
<i>Risk Management Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.7.2 of Schedule 8 (Services Specifications).
<i>Safety Laws</i>	<p>means all:</p> <ul style="list-style-type: none"> (a) occupational health and safety; and (b) public safety, <p>related:</p> <ul style="list-style-type: none"> (c) Laws that are in, or come into, force during the Term in the State of Western Australia and the Commonwealth in connection with: <ul style="list-style-type: none"> (i) occupational health and safety including the <i>Occupational Safety and Health Act 1984</i> (WA), the <i>Occupational Safety and Health Regulations 1996</i> (WA) and any Laws made to modernise or replace those Laws; (ii) food safety including the <i>Food Act 2008</i> (WA) and the <i>Food Regulations 2009</i> (WA); (iii) public safety including the <i>Health Act 1911</i> (WA) and the <i>Health (Public Buildings) Regulations 1992</i> (WA); and (iv) public security and crowd control including the <i>Security and Related Activities (Control) Act 1996</i> (WA) and the <i>Security and Related Activities Control Regulations 1997</i> (WA); (d) Australian Standards; (e) codes of practice and guidance materials issued by an Authority; (f) directions on safety or notices issued by any relevant Authority (including any commissioners and inspectors appointed or employed in respect of a relevant Authority) in accordance with any Safety Laws; and (g) directions, instructions, requests or requirements from an Authority or the State relevant to or associated with or necessary for compliance by the Operator, any Operator Associate, any Event Party or the State with any of the instruments identified in paragraphs (c) to (f) and including any such matters of which the Operator has been informed by the State orally or in writing, <p>in respect of the location where any part of the Services are being</p>

Term	Meaning
	performed.
<i>Safety Management Plan</i>	means the plan of that name to be prepared in accordance with this Agreement, including Section F.6.11 of Schedule 8 (Services Specifications).
<i>Scheduling Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.6.6 of Schedule 8 (Services Specifications).
<i>Security Interest</i>	has the meaning given to it in section 12 of the PPSA.
<i>Serious Injury</i>	means: <ul style="list-style-type: none"> (a) death of a person; or (b) an injury which results in the person that suffers the injury being admitted into a hospital as an in-patient for any duration for immediate treatment, excluding out-patient treatment provided by the emergency section of a hospital or admission for corrective surgery which does not immediately follow the injury.
<i>Service Standards</i>	means all sets of service standards set out in Schedule 7 (Pre-Operational Services Specifications) and Schedule 8 (Services Specifications).
<i>Services</i>	means the Pre-Operational Services and all things necessary to operate and manage the Stadium and Sports Precinct and to provide Events and Functions, all in accordance with this Agreement, including the services to be performed by the Operator, as described in Schedule 7 (Pre-Operational Services Specifications) and Schedule 8 (Services Specifications), but excluding the DBFM Services.
<i>Services Equipment</i>	means: <ul style="list-style-type: none"> (a) items of equipment used by the Operator or a Subcontractor in the performance of the Services; and (b) Consumables, but does not include FF&E or Hired Equipment.
<i>Services Specification</i>	means the specifications contained in each of Schedule 7 (Pre-Operational Services Specifications) and Schedule 8 (Services Specifications).
<i>Services Training and Induction Program</i>	means the program prepared and maintained in accordance with this Agreement, including Section F.7.8 of Schedule 8 (Services Specifications).
<i>Signage Management Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.6.14 of Schedule 8 (Services Specifications).
<i>Site</i>	means the area on which the Stadium and Sports Precinct are located, as described and shown on the Site Plans, as updated in accordance with the Project Agreement and notified to the Operator by the State.

Term	Meaning
<i>Site Access and Interface Protocols</i>	means the protocols for accessing the Site during the Pre-Operational Phase as provided by the State to the Operator.
<i>Site Plans</i>	means the plans set out in Attachment 2 (Site Plans) which identify the boundaries of the land on which the Stadium and Sports Precinct are located as at the date of this Agreement and other areas on the Site as referred to in clause 7.2(a)(iii) of the Operational Interface Agreement, each as updated in accordance with the Project Agreement and notified to the Operator by the State.
<i>Specified Event</i>	<p>means any one of the following incidents:</p> <ul style="list-style-type: none"> (a) (security or safety): if caused or contributed to by the Operator, a major security or safety incident being: <ul style="list-style-type: none"> (i) any incident that results in a total or partial loss of actual control of the Stadium or Sports Precinct for which the Operator requires external assistance to regain control; (ii) any Serious Injury to any person present on the Stadium or Sport Precinct; (iii) disruption to an Event such that the relevant Event does not proceed or continue; (iv) any situation that requires the implementation of the Plan called the Emergency Management Plan (e.g. riot); or (v) a material breach of the Safety Management Plan; or (b) (financial): a major financial incident being: <ul style="list-style-type: none"> (i) misappropriation of funds by the Operator; or (ii) failure to make a payment to the State which is due and payable in accordance with this Agreement within the specified time period.
<i>Sponsors</i>	means a person granted sponsorship, marketing, promotional or similar rights in relation to the Stadium or Sports Precinct by the Operator, a Key User or a Hirer including Commercial Partners and includes any of their employees, agents, contractors, advisers, consultants and officers.
<i>Sporting Standards</i>	<p>means all relevant operational standards, regulations, codes, guidelines, laws of the game, rules of the game, manuals, handbooks and other like concepts (as amended, updated or replaced from time to time) of professional sporting bodies and their state, national and international representatives, which apply to or govern the sporting codes (including the facility, engineering services, sporting equipment and other furniture, fittings and equipment, supporting infrastructure and operational practices for such sporting codes) that, based on the Project Brief:</p> <ul style="list-style-type: none"> (a) are to be played; or (b) it is reasonable to infer will be played, <p>at the Stadium or Sports Precinct (or both). If there is a conflict or inconsistency between any of the design and operational standards, regulations, codes, guidelines, laws of the game, rules of the game, manuals, handbooks and other like concepts referred to above, the design</p>

Term	Meaning
	and operational standard, regulation, code, guideline, law of the game, rule of the game, manual, handbook or other like concept which requires the higher standard applies, unless otherwise agreed in writing by the State.
<i>Sports Precinct</i>	means the parkland precinct surrounding the Stadium situated on the Site, and includes the Group 1 FF&E and the transport infrastructure as further described in the Project Brief and all improvements situated on the Site.
<i>Stadium</i>	means the entire physical infrastructure comprising the stadium building and the Controlled Area situated on the Site, including as described in the Project Brief and, for the avoidance of doubt, includes Group 1 FF&E, the Pitch and playing surface.
<i>Stadium Merchandise</i>	has the meaning given to it in Clause 17.6(b).
<i>Stadium Personnel Induction and Training Program</i>	means the induction and training program to be conducted by Project Co in accordance with the Project Agreement.
<i>Stadium Users</i>	means: <ul style="list-style-type: none"> (a) the Operator and Operator Associates; (b) Key Users; (c) Hirers; (d) Performers; (e) any Patron; (f) Media Personnel; (g) Sponsors; (h) Match Officials; (i) the State and State Associates; and (j) Project Co and Project Co Associates employed or contracted at the Stadium or Sports Precinct.
<i>Standard Hirer Agreement</i>	means the template hirer agreements for each of an Event and a Function approved by the State, as amended from time to time in accordance with Clause 19.3(c).
<i>State Access Period</i>	has the meaning given to it in Clause 11.2(a).
<i>State Associate</i>	means State Entities (including Main Roads and PTA): <ul style="list-style-type: none"> (a) to the extent that they are carrying out activities, works or performing services related to the Services; (b) in the Pre-Operational Phase only, to the extent that they are carrying out activities, works or performing services related to the new Perth Stadium Project; and (c) during the Operating Phase only, to the extent that they are carrying out activities, works or performing services on the Site related to the

Term	Meaning
	Stadium, the Sports Precinct or the Stadium Activities.
<i>State Comment</i>	has the meaning given to it in Clause 4.6(d)(i).
<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 Operator, Project Co, any Operator Associate, any Event Party, any Project Co Associate or the Head Lessee (as that term is defined under the Project Agreement)), and the term 'State Entity' means any one of them.
<i>State FF&E</i>	means Group 3 FF&E and Group 4 FF&E.
<i>State Operational Commissioning Plan</i>	means the plan of that name to be prepared by the Operator, which sets out the State Operational Commissioning Services, including the Operator's methodology for that operational commissioning.
<i>State Operational Commissioning Services</i>	means the operational commissioning to be conducted during the State Access Period described in Clause 11, Section B.6 of Schedule 7 (Pre-Operational Services Specifications) and in the State Operational Commissioning Plan.
<i>State Policies</i>	means the policies listed in Schedule 23 (State Policies) and to the extent any new State Policy is introduced, or any State Policy is changed, the new or amended State Policy will only be a State Policy if the new or amended State Policy is notified to the Operator.
<i>State Project Documents</i>	means: <ul style="list-style-type: none"> (a) this Agreement; (b) the Operating Phase Licence; (c) the Operational Interface Agreement; (d) the Independent Certifier Agreement, including the Deed of Accession; (e) the Parent Guarantee; and (f) any other document the parties to this Agreement agree is a State Project Document.
<i>State Representative</i>	means the person identified as such in Schedule 1 (Contract Particulars), or such other person as may be appointed from time to time to replace that person in accordance with Clause 5.2.
<i>State Stakeholder Management Plan</i>	means the plan of that name set out in Schedule 22 (State Stakeholder Management Plan), as amended from time to time.
<i>State's Background IP</i>	means any Intellectual Property Rights of the State (or licensed to the State by a third party) which the State makes available, contributes, brings to or uses in connection with the Services, the DBFM Works or the DBFM

Term	Meaning
	Services.
<i>State's Liability Limit</i>	has the meaning given to it in Clause 26.11(a).
<i>State's Payment</i>	has the meaning given to it in Section 1 of Part A of Schedule 9 (Payment Schedule).
<i>Step-in Event</i>	has the meaning given to it in Clause 31.1.
<i>Style Guide</i>	means the detailed set of guidelines which govern the manner of use of the Project Trade Marks, the Trading Name and Project Identity in relation to Branded Material and include art works and the colour palette as approved by the State from time to time or as amended at the request of the State from time to time.
<i>Subcontract</i>	means an agreement which the Operator or a subcontractor to the Operator intends to, or does, enter into with a Subcontractor (which, for the avoidance of doubt, includes the Key Subcontracts).
<i>Subcontractor</i>	means any person to whom the Operator or a subcontractor to the Operator subcontracts or allows to do any part of the Services (which, for the avoidance of doubt, includes the Key Subcontractors but excludes Key Users and Hirers).
<i>Subcontractor Deed of Novation</i>	means the subcontractor deed of novation set out in Schedule 11 (Subcontractor Deed of Novation) of this Agreement.
<i>Subsidiary</i>	has the same meaning as 'subsidiary' in the Corporations Act, except that an entity may be a subsidiary of a trust and a trust may be a subsidiary of an entity, for the purposes of which a unit or other beneficial interest will be regarded as a share.
<i>Tax</i>	means any tax, levy, impost, deduction, charge, duty or withholding which is levied or imposed by a Government Agency, including any income, capital gains, withholding, stamp and transaction tax, duty or charge together with interest, penalties, charges, fees, or other amounts (if any) imposed or made on or in connection with the above.
<i>Technical Completion</i>	means the criteria that are required to be satisfied to achieve Technical Completion as set out in the Project Agreement have been satisfied in accordance with the terms of the Project Agreement.
<i>Technical Specifications Manual</i>	has the meaning given to it in Annexure A (Glossary) of Schedule 8 (Services Specifications).
<i>Technology Management Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.6.15 of Schedule 8 (Services Specifications).
<i>Term</i>	means the term commencing on the Effective Date and ending on the Expiry Date.

Term	Meaning
<i>Test Events</i>	<p>means any event, match, game, performance, assembly, competition, function or production:</p> <ul style="list-style-type: none"> (a) with more than 100 attendees; (b) conducted by the Operator; and (c) held within the Stadium or Sports Precinct (or both) during the State Access Period, <p>for the purpose of functionality and scenario testing and planning of the Services in preparation for operational commencement.</p>
<i>Third Party IP Claim</i>	has the meaning given to it in Clause 39.7(a).
<i>Ticketing Management Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.6.7 of Schedule 8 (Services Specifications).
<i>Ticketing Services</i>	has the meaning given to it in Annexure A (Glossary) of Schedule 8 (Services Specifications).
<i>Ticketing Services Provider</i>	has the meaning given to it in Clause 39.9(c).
<i>Tortious Act or Omission</i>	means a tortious act or omission including negligence, nuisance or breach of statutory duty and, when used in respect of the State's act or omission, is referring to the State in its capacity as a contracting party to the State Project Documents.
<i>Total Revenue</i>	has the meaning given to it in Section 1 of Part A of Schedule 9 (Payment Schedule).
<i>Tourism Promotion Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.6.18 of Schedule 8 (Services Specifications).
<i>Trading Name</i>	means, as at the date of this Agreement, the registered business name "Perth Stadium", registered by the State, and any other replacement trading or registered business name, as may be directed by the State under Clause 39.12(d).
<i>Urgent Defect</i>	means any Defect which, in the reasonable opinion of the Operator, will adversely affect the health or safety of persons.
<i>User Agreement</i>	means an agreement between a Key User and the Operator.
<i>Utility</i>	means any utility service, including water, electricity, gas, telephone, drainage, sewerage, stormwater and communications services, but not including communications systems provided as part of the Stadium or Sports Precinct (or both).
<i>Utility Company</i>	means any public authority or public or private body who provides a Utility.

Term	Meaning
<i>Utility Infrastructure</i>	means any part of the supply, distribution or reticulation network operated or managed by a Utility Company, including poles, pipes, pipeline, cables, wires, conduits, tunnels, aqueducts, electrical installations, telecommunications plant, water channels and railways and electronic communications systems, but not including communications systems provided as part of the Stadium or Sports Precinct (or both) as generally described in the Project Brief.
<i>Utility Interruption</i>	means any one or more Utilities are not available during the Operating Phase (either at all or in the necessary quantity) for use for any reason other than because of: <ul style="list-style-type: none"> (a) an act or omission or lack of diligence by the Operator or an Operator Associate; or (b) a dispute between the Operator and the relevant Utilities provider, regardless of why that dispute is initiated or by whom, or the likely result of the dispute.
<i>Venue Data</i>	all information and data relating to the usage of: <ul style="list-style-type: none"> (a) the wireless internet network or equivalent or replacement technology owned by the State at the Stadium or Sports Precinct (including the number of Patrons that accessed the network and the volume of data used by those Patrons, but will not include any information or data related to content or websites accessed); or (b) any application or software provided or made available by or on behalf of the State, which is accessed or, downloaded by any person.
<i>Venue Partner Agreement</i>	means an agreement between a Venue Partner and the Operator.
<i>Venue Partners</i>	has the meaning given to it in Annexure A (Glossary) of Schedule 8 (Services Specifications).
<i>WACA</i>	Western Australian Cricket Association Inc, ABN 44 026 744 769
<i>Wage Price Index (WPI)</i>	has the meaning given to it in Section 1 of Part A of Schedule 9 (Payment Schedule).
<i>Waste Management Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Section F.6.23 of Schedule 8 (Services Specifications).
<i>WCE</i>	Indian Pacific Ltd, trading as West Coast Eagles Football Club, ACN 009 178 894.
<i>Weekly Performance Report</i>	means the report to be prepared in accordance with this Agreement, including Section F.2 of Schedule 8 (Services Specifications).
<i>Work Method Statements</i>	means the documents prepared by Project Co as described in Part F, Section 7 of the DBFM Services Specifications.

Term	Meaning
<i>Working Capital</i>	has the meaning given to it in Clause 25.3(b).

1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) **(persons)**: references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), a trust, a trustee or a partnership;
- (b) **(includes)**: the words 'including', 'includes' and 'include' will be read as if followed by the words 'without limitation';
- (c) **(or)**: the meaning of 'or' will be that of the inclusive 'or', that is meaning one, some or all of a number of possibilities;
- (d) **(party)**: a reference to a 'party' is to a party to this Agreement;
- (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 Plans is a reference to that Plan as amended or updated from time to time in accordance with this Agreement;
- (i) **(State plan)**: a reference to any of the plans provided by the State under this Agreement is a reference to the plan as amended or updated from time to time and provided to the Operator;
- (j) **(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;
- (k) **(rights)**: a reference to a right includes any benefit, remedy, discretion, authority or power;
- (l) **(singular)**: words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (m) **(headings)**: headings are for convenience only and do not affect the interpretation of this Agreement;
- (n) **(schedules)**: a reference to this Agreement includes all Schedules and Attachment 2 (Site Plans);

- (o) **(Clauses)**: a reference to:
 - (i) a Clause, Schedule, Attachment 2 (Site Plans) or Attachment 3 (Bid Model) is a reference to a Clause, Schedule, Attachment 2 (Site Plans) or Attachment 3 (Bid Model) of or to this Agreement;
 - (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;
- (p) **(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;
- (q) **(\$)**: a reference to '\$' or dollar is to Australian currency;
- (r) **(time)**: a reference to time is a reference to Australian Western Standard Time;
- (s) **(form)**: writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions and communication by email;
- (t) **(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;
- (u) **(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;
- (v) **(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;
- (w) **(may)**: the term 'may', when used in the context of a power or right exercisable by the State or the State Representative, means that the State or the State Representative (as the case may be) can exercise that right or power in its absolute and unfettered discretion and the State or the State Representative (as applicable) has no obligation to the Operator to do so;
- (x) **(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; and
- (y) **(writing)**: references to a notice, request, Claim, consent, approval, record or report means that the notice, request, Claim, consent, approval, record or report must be in writing unless otherwise agreed by the parties or expressly stated in this Agreement.

1.3 Related matters

- (a) **(Provisions limiting or excluding Liability)**: Any provision of this Agreement which seeks either expressly or by implication to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.
- (b) **(Cost of performing obligations)**: Each party must perform its obligations in accordance with this Agreement at its own cost and will not be entitled to make any Claim in relation to payment for the performance of its obligations, unless expressly provided in Clause 24, Clause 25, Schedule 9 (Payment Schedule) or otherwise in this Agreement.
- (c) **(Operator's obligations)**: In complying with or accepting any obligation or risk in accordance with this Agreement, the Operator must procure that, to the extent applicable, each Operator Associate is required to comply with or accept the relevant obligation or risk and not cause the Operator to breach its obligations in accordance with this Agreement.

- (d) **(Business Day):** If the day on or by which any thing is to be done in accordance with this Agreement is not a Business Day, that thing must be done on the next Business Day.
- (e) **(Discretion):** Any consent or approval in accordance with this Agreement from the State or the State Representative may be given or withheld, or may be given subject to such conditions (other than the payment of money), as the State or a State Representative (in its absolute discretion) thinks fit, unless this Agreement provides otherwise.
- (f) **(Agreement composition):**
 - (i) This Agreement comprises:
 - (A) Clauses 1 to 43; and
 - (B) Schedule 1 (Contract Particulars) to Schedule 24 (Aboriginal Engagement Strategy), Attachment 2 (Site Plans) and Attachment 3 (Bid Model).
 - (ii) The Operator agrees:
 - (A) to the extent that a Plan seeks to impose any obligations on the State, such obligations will not be legally binding on the State unless a corresponding obligation (and not merely a cross reference) is expressly imposed on the State or a State Associate in a Clause or a Schedule, and then subject to Clause 1.3(f)(ii)(B); and
 - (B) the Operator is not entitled to make any Claim against the State for any Liabilities incurred by the Operator in connection with a breach of an obligation imposed on the State in a Plan unless such Liabilities are incurred by the Operator as a consequence of a breach by the State of a corresponding obligation (and not merely a cross reference) imposed on the State or a State Associate in a Clause or a Schedule.
- (g) **(Order of precedence):** The following order of precedence applies in the event of any inconsistency, ambiguity or discrepancy between the various documents comprising this Agreement:
 - (i) Clauses 1 to 43, Schedule 15 (Operational Interface Agreement), Schedule 7 (Pre-Operational Services Specifications), Schedule 8 (Services Specifications) and Schedule 9 (Payment Schedule);
 - (ii) the remaining Schedules; and
 - (iii) Attachment 2 (Site Plans) and Attachment 3 (Bid Model),

except to the extent that any part of the various documents listed above impose a greater or higher requirement, standard, quality, level of service, quantum or scope than any other part of the documents listed above, in which case, that greater or higher requirement, standard, quality, level of service, quantum or scope prevails.
- (h) **(Ambiguous terms):**
 - (i) If either party identifies any inconsistency, ambiguity or discrepancy within or between any of the documents or categories of documents identified in Clause 1.3(g), then that party must notify the other party of the inconsistency, ambiguity or discrepancy as soon as possible and in no case later than 5 Business Days after becoming aware of the inconsistency, ambiguity or discrepancy.
 - (ii) If the Operator issues a notice in accordance with Clause 1.3(h)(i), it must not take any further action in connection with the ambiguity, discrepancy or inconsistency until a direction is issued by the State in accordance with Clause 1.3(h)(iii) or if no direction is issued, 5 Business Days has elapsed.

- (iii) Within 5 Business Days of receipt of a notice in accordance with Clause 1.3(h)(i), the State will direct the Operator as to how to resolve any ambiguity, discrepancy or inconsistency the subject of the notice in accordance with:
 - (A) the order of precedence in Clause 1.3(g); or
 - (B) if the relevant inconsistency, ambiguity or discrepancy cannot be resolved in accordance with Clause 1.3(h)(iii)(A):
 - (1) in accordance with any process for resolving such inconsistencies, ambiguities and discrepancies contained in the relevant document; or
 - (2) otherwise as determined by the State acting reasonably.
- (iv) The Operator must comply with any direction issued by the State in accordance with this Clause 1.3(h) unless it disputes either the meaning or direction in accordance with Clause 34.

1.4 Authorities

- (a) The Operator acknowledges and agrees that:
 - (i) there are Authorities with jurisdiction over the Services and parts of the Site;
 - (ii) such Authorities may, from time to time and at any time, exercise their statutory functions and powers including by amending or introducing new State Policies in such a way that may disrupt, interfere with or otherwise affect the Services and parts of the Site; and
 - (iii) except as otherwise expressly provided in this Agreement, including under Clause 1.4(b), the Operator bears the full risk of all occurrences of the kind referred to in Clause 1.4(a)(ii) and will not be entitled to make any Claim against the State in connection with such occurrences.
- (b) The actions of the Authority of the kind referred to in Clause 1.4(a)(ii) will not give rise to an entitlement for the State to terminate this Agreement if such action causes any interruption to the Services. Any costs incurred as a result of such action by an Authority described in this Clause 1.4(b) will be Operating Costs. Notwithstanding the remainder of this Clause 1.4(b), if the action of the Authority was in response to an act or omission of the Operator or an Operator Associate which is a Tortious Act or Omission or a breach of a Project Document by the Operator or an Operator Associate (including an Immediate Termination Event), the State may continue to exercise any of its rights under a State Project Document or at Law in respect of that act or omission, including issuing a Performance Improvement Notice, a Default Notice or terminating this Agreement.

1.5 Changes to indices

- (a) This Clause 1.5 sets out the rules that apply to all amounts in this Agreement that are required to be adjusted in accordance with the CPI or WPI.
- (b) If there is:
 - (i) a substantial change in the coverage or calculation of the CPI or WPI; or
 - (ii) the CPI or WPI ceases to be published quarterly,
 the parties must agree:
 - (iii) whether the CPI or WPI (as the case may be) remains appropriate as a general indicator of the rate of price change for the relevant goods and services; and

- (iv) if it is not, what other index should be used as a substitute index for the purpose of this Agreement.
- (c) If the parties are unable to reach an agreement in accordance with Clause 1.5(b) above within 20 Business Days, the parties must request that the President of the Institute of Actuaries (or the President's nominee) determine the matter set out in Clause 1.5(b) and that determination will be final and binding on the parties.
- (d) If there is a change in the reference base of the CPI or WPI from that applying at the Effective Date and the Australian Bureau of Statistics:
 - (i) provides a conversion factor, that conversion factor must be applied to calculate revised figures for the purpose of the defined term's use in this Agreement, in terms of the new reference base; or
 - (ii) does not provide a conversion factor, the parties must request the President of the Institute of Actuaries (or the President's nominee) to calculate a revised index for the purposes of the defined term's use in this Agreement, and that calculation is final and binds the parties.
- (e) If the CPI or WPI ceases to be published and the Australian Bureau of Statistics:
 - (i) publishes another index which is:
 - (A) a replacement of the CPI or WPI (as the case may be); and
 - (B) linked to the CPI or WPI (as the case may be) prior to its cessation,

the defined term must be re-calculated to the same reference base as the replacement;
 - (ii) does not publish another index which is linked to the CPI or WPI (as the case may be), the parties must request the President of the Institute of Actuaries (or the President's nominee) to calculate a revised index for the purposes of the defined term's use in this Agreement, and that calculation is final and binds the parties; or
 - (iii) does not publish another index in place of the CPI or WPI (as the case may be), the parties must request the President of the Institute of Actuaries (or the President's nominee) to determine an appropriate index which is a general indicator of the rate of price change for the relevant goods and services for the purposes of the defined term's use in this Agreement, and that determination is final and binds the parties.

1.6 Open book basis of Agreement

- (a) Subject to Clause 1.7 and Clause 37(c) and without limiting any other Clause of this Agreement, the State has the right to request that the Operator make available to the State any information, Records and other documentation in whatever form which relate to this Agreement or the Services on an open book basis.
- (b) For the purposes of this Clause 1.6, 'open book basis' includes the Operator providing to the State any information, Records and other documentation in a timely, clear and transparent manner which allows the State to properly understand the information, Records and other documentation and making available appropriately qualified personnel to explain the information, Records and other documentation or answer any questions the State may have in respect of the information, Records and other documentation.
- (c) Without limiting Clause 1.6(a), the parties acknowledge and agree that, notwithstanding any provision of this Agreement to the contrary:
 - (i) the powers and responsibilities of the Auditor General for the State of Western Australia under the *Financial Management Act 2006* (WA) and the *Auditor General Act 2006* (WA) (or any substituted legislation) are not

- limited or affected by the terms of this Agreement and each party submits to those powers and responsibilities;
- (ii) the Project and the Project Documents may be the subject of an audit by the Auditor General pursuant to the *Auditor General Act 2006* (WA) or the *Financial Management Act 2006* (WA); and
- (iii) without limiting Clause 1.6(c)(i), the Operator covenants with the State that it will cooperate and comply with any directions of the Auditor General given to the State or any other party in relation to any audit referred to in Clause 1.6(c)(ii).

1.7 Access to records

- (a) Notwithstanding any other provision of this Agreement (other than Clause 1.7(b)), the Operator is not required to provide the State with:
 - (i) reports or communications prepared for internal management, internal audit, credit and executive group or board reports of any person other than the Operator;
 - (ii) any documents or communications where the Operator has contractual or statutory confidentiality obligations to third parties (other than Operator Associates) that are unable to be waived and are unable to be excluded, other than in relation to Subcontracts;
 - (iii) employment contracts and employment files, unless specific waivers have been obtained from the relevant employee, other than as required to substantiate Claims, including for Operating Costs or Pre-Operational Phase Costs;
 - (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 Operator's internal costs structures and treatment of non-project related overheads, but only to the extent that those cost structures are not related to the Operator's obligations or claims for Operating Costs or Pre-Operational Phase Costs.
- (b) Nothing in Clause 1.7(a) prevents:
 - (i) the Auditor-General or the Ombudsman from having access to the records described in Clause 1.7(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); or
 - (ii) the State from having access to the information contained in the materials described in Clause 1.7(a)(i), Clause 1.7(a)(ii) or Clause 1.7(a)(v) to the extent that information is required by the State:
 - (A) under Clause 1.6(c), Clause 37(f) or Clause 37(g);
 - (B) to verify Total Revenue, Operating Costs or any other payment to be made described in Schedule 9 (Payment Schedule); or
 - (C) to comply with its obligations at Law,

and provided that the State cannot obtain the relevant information from other documents that it has been provided with.

1.8 Condition of the Stadium and Sports Precinct

- (a) The Operator acknowledges and agrees that:
 - (i) subject to Clause 1.8(b), it has reviewed the Project Agreement and the Project Brief, and satisfied itself that the Stadium and Sports Precinct will,

- if constructed in accordance with the Project Agreement and the Project Brief, be adequate and suitable for the performance of the Services under this Agreement; and
 - (ii) the State will have no liability to the Operator arising wholly or partially from the Stadium and Sports Precinct not meeting any requirements of the Operator in relation to the performance of the Services, other than for Operating Costs which are incurred as a consequence of such failure, in accordance with Clause 4.10.
- (b) The Operator acknowledges that the State does not warrant or give or make any guarantee or any representation:
 - (i) about the accuracy or adequacy of any information or data available or provided to the Operator in relation to the Project, other than:
 - (A) the extent and boundaries of the Site (as amended from time to time and notified to the Operator) are the Site as it exists from time to time; and
 - (B) the Project Brief which is provided by the State to the Operator from time to time is the Project Brief for the purpose of the State Project Documents; or
 - (ii) that the Stadium and the Sports Precinct will be constructed to meet the requirements of the Project Agreement, including the absence (or otherwise) of any defects.
- (c) The Operator is deemed to have satisfied itself as at the date of this Agreement as to the extent and nature of the work, equipment and materials necessary for performance of the Services.
- (d) As at the date of this Agreement, the Operator is deemed to have obtained for itself and is satisfied that it has all necessary information as to risks, contingencies and other circumstances which may influence or affect the Services or the cost to the Operator of performing the Services.

1.9 State review, consents and approvals

- (a) The State may notify the Operator in writing from time to time of activities or classes of activities which are stated in this Agreement as requiring the State's review, approval or consent but which are temporarily exempt from the requirement for review, approval or consent, together with the guidelines (if any) which are to be followed by the Operator with respect to those activities or classes of activities.
- (b) Following a notice given under Clause 1.9(a) and until the State notifies the Operator in writing otherwise, the relevant activity or class of activity does not require the State's review, consent or approval under this Agreement as long as the notified guidelines (if any) are also complied with.
- (c) If the State is required to review any matter or notify of its consent or approval under this Agreement, the State must undertake the review or notify whether its review, consent or approval is given under this Agreement in a timely manner. This Clause 1.9(c) does not reduce any minimum time periods for the State to undertake the review or to notify of its consent or approval that are set out in this Agreement. The Operator may request the State, in writing, for a review to be undertaken, an approval or a consent to be given in a shorter period of time if the matter is urgent and the State will use its reasonable endeavours to comply with that request.

2 CONDITIONS PRECEDENT

2.1 Commencement

- (a) Subject to Clause 2.1(b), this Agreement will not commence unless and until each of the Conditions Precedent have been satisfied or waived in accordance with Clause 2.3 or Clause 2.4.
- (b) The following Clauses of this Agreement commence on the date of this Agreement:
 - (i) Clause 1 (Definitions and interpretation);
 - (ii) this Clause 2 (Conditions Precedent);
 - (iii) Clause 4.8 (Indemnities);
 - (iv) Clause 5.2 (State Representative);
 - (v) Clause 5.4 (Operator Representative);
 - (vi) Clause 6 (Security);
 - (vii) Clause 26.5 (Indemnity for Operator breach);
 - (viii) Clause 26.6 (Property damage and third party liability indemnity);
 - (ix) Clause 27.1 (General insurance requirements);
 - (x) Clause 27.2 (Terms of Insurances);
 - (xi) Clause 27.5 (Evidence of Insurance);
 - (xii) Clause 28 (Compliance with Laws);
 - (xiii) Clause 29 (Representations and warranties);
 - (xiv) Clause 30 (Default);
 - (xv) Clause 34 (Dispute resolution);
 - (xvi) Clause 35 (Assignment and ownership);
 - (xvii) Clause 38 (Confidentiality);
 - (xviii) Clause 40 (Notices); and
 - (xix) Clause 42 (General).

2.2 Conditions Precedent

The Conditions Precedent are as follows:

- (a) **(Counterparty Details)**: duly completed Counterparty Details are provided to the State;
- (b) **(counterparts)**: original counterparts of the Deed of Accession, the Parent Guarantee, the Subcontractor Deeds of Novation for Subcontractors who have been engaged, the Operational Interface Agreement and certified copies of all other Project Documents (other than the State Project Documents and any Key Subcontracts that are not required to be engaged at the commencement of this Agreement) are all duly executed by all parties other than by the State;
- (c) **(Performance Bond)**: the Pre-Operational Performance Bond, valid and enforceable by the State and otherwise meeting the requirements of this Agreement, including Clause 6.2 and Clause 6.4, is provided to the State;
- (d) **(Copies of Insurances or other evidence)**: copies of the Insurances required to be effected and maintained are provided to the State, as required by Clause 27.5;
- (e) **(Certificates)**: a certificate from an insurance broker as to the currency of all Insurances required to be effected and maintained in accordance with this Agreement (whether the State is required to be an insured party or not), and such

evidence as is necessary to demonstrate the compliance of each such policy with the requirements of this Agreement; and

- (f) **(Plans):** the Pre-Operational Plans (other than the State Operational Commissioning Plan) and any related sub-plans, each of which meets the requirements set out in Clause 14 and Part F of Schedule 7 (Pre-Operational Services Specifications), are complete and comply with the requirements of this Agreement including Part F of Schedule 7 (Pre-Operational Services Specifications).

2.3 Satisfaction of Conditions Precedent

- (a) The Operator must:
 - (i) satisfy each Condition Precedent by 2pm on the date that is 20 Business Days after the date of this Agreement, or such other date as the parties may agree; and
 - (ii) notify the State as each Condition Precedent is satisfied.
- (b) When the last of the Conditions Precedent to be satisfied or waived has been satisfied or waived, the State must confirm in writing that all of the Conditions Precedent have been satisfied or waived and the date upon which the last of the Conditions Precedent was satisfied or waived.

2.4 Waiver of Conditions Precedent

A Condition Precedent may only be waived by the State giving a written notice of the waiver to the Operator.

2.5 Failure to satisfy Conditions Precedent

- (a) If a Condition Precedent has not been satisfied or waived by the date and time specified in Clause 2.3, the State may terminate this Agreement upon giving not less than 5 Business Days' notice in writing to the Operator.
- (b) If this Agreement is terminated in accordance with Clause 2.5(a) then:
 - (i) each of the other Project Documents that have been executed will be taken to have been terminated at the time this Agreement is terminated; and
 - (ii) the Operator will not be entitled to bring any Claim against the State or a State Associate arising out of or in connection with:
 - (A) the failure of the Conditions Precedent to be satisfied;
 - (B) the termination of this Agreement; or
 - (C) the Services or the State Project Documents,
 except for any Claim arising prior to the Expiry Date in connection with the Clauses identified in Clause 2.1(b).

3 TERM

3.1 Commencement date

Subject to Clause 2.1, this Agreement commences on the Effective Date.

3.2 Expiry Date

This Agreement ends upon the expiry of the Initial Term or the Further Term, if extended in accordance with Clause 3.3, unless this Agreement is terminated earlier in accordance with

its terms, in which case this Agreement ends on the date of such earlier termination (**Expiry Date**).

3.3 Notice of extension

- (a) The State may, at any time no later than 9 Months prior to the expiry of the Initial Term, give the Operator written notice that the State requires the Operator to continue to provide the Services and operate the Stadium and Sports Precinct for the Further Term, in accordance with this Agreement.
- (b) If the State issues a notice to the Operator under Clause 3.3(a), the Operator must continue to provide the Services and operate the Stadium and Sports Precinct for the Further Term on the terms set out in this Agreement, except that this Clause 3.3 is deleted and the parties may amend the Service Standards by agreement in order to address any poor performance by the Operator against the Service Standards.

4 APPOINTMENT OF OPERATOR AS AGENT AND GENERAL OBLIGATIONS

4.1 Appointment of Operator as agent

- (a) Except as set out in Clause 4.1(c):
 - (i) the State appoints the Operator to perform the Services as agent of the State; and
 - (ii) the appointment of the Operator as agent is limited to performing the Services,
 in accordance with this Agreement for the Term.
- (b) The Operator accepts the appointment in accordance with the terms of this Agreement.
- (c) When:
 - (i) undertaking its obligations under Clause 9.3 or discharging its obligations under Safety Laws (including providing the Safety Management Services (which are the Services of that name described in Schedule 8 (Services Specifications) to the extent that those Services overlap with the obligations under Clause 9.3 or the Operator discharging its obligations under Safety Laws); or
 - (ii) engaging or managing Subcontractors, including complying with its obligations under Clause 5.5,
 the Operator is not acting in its capacity as agent for the State.
- (d) When acting as the agent of the State, the Operator must at all times act within the limits of its authority as set out in this Agreement.
- (e) The Operator's appointment and authority to act as agent for the State is limited to the matters expressly referred to in Clause 4.1(a) and the Operator must not act as or represent itself to be the servant or agent of the State beyond the scope of its appointment as agent.

4.2 Overriding obligations of the Operator

- (a) The Operator must perform the Services, including:
 - (i) so that the Service Standards are met; and
 - (ii) in accordance with Best Operating Practices and otherwise in accordance with the State Project Documents.

- (b) The Operator must, in performing the Services, comply with its obligations under the Operational Interface Agreement.
- (c) The Operator must in performing its functions as agent for the State at all times act in good faith and in the best interests of the State and undertake and discharge its obligations under this Agreement honestly and professionally.
- (d) Without limiting Clause 4.2(a) or its obligations under Clause 38:
 - (i) the Operator must not and must procure that the Operator Associates and the Operator's Related Bodies Corporate do not, except as required under the terms of this Agreement use or disclose any information in relation to the Services, Stadium or Sports Precinct to allow any benefit to accrue to the Operator or an Operator Associate to the exclusion of the State either during or after the Term, or such that there is a conflict between the duties of the Operator to the State and the Operator's, Operator Associates' or the Operator's Related Bodies' Corporate other activities which are not related to the Project or this Agreement; and
 - (ii) the Operator must ensure that it and the Operator Associates do not otherwise act in any way so as to create a conflict of interest with its obligations under this Agreement.
- (e) Neither the State Project Documents nor the relationships created by them, are intended to create, and will not be construed as creating, any partnership or joint venture as between the parties.
- (f) The Operator has been incorporated for the sole purpose of performing the Services. From the Effective Date and until the Expiry Date, except with the prior written consent of the State, the Operator must not conduct any business or undertaking other than the Services.

4.3 Restrictions on the Operator

- (a) Except as otherwise specified under this Agreement or with the State's prior written consent, the Operator must not, and must ensure that the Operator Associates do not:
 - (i) borrow or raise money on the State's credit or in the name of the State or the Stadium and Sports Precinct;
 - (ii) create or cause the creation of any Encumbrance in respect of the Stadium, the Sports Precinct, the Site or any other asset of the State that is located on the Site (other than an asset which is described in Clause 4.3(a)(iii));
 - (iii) create or allow to exist any Encumbrance in respect of any Operator FF&E or Hired Equipment other than a Permitted Encumbrance;
 - (iv) lend money in the name of the State or the Stadium and Sports Precinct;
 - (v) *[Not disclosed]*
 - (vi) issue, sell or purchase any negotiable instrument (other than cheques issued in the ordinary course of business) or give any guarantees or indemnities in the State's name; or
 - (vii) institute and prosecute a legal proceeding or settle, compromise, release or take any steps in any legal proceeding or suit as agent for the State.
- (b) The Operator is not, in respect of any Claim by the Operator (or an Operator Associate) against the State or on any other basis, entitled to any Encumbrance arising by operation of Law, over any personal property of the State or State Associates, except for a Permitted Encumbrance in the circumstances described in Clause 4.3(a)(iii) or a right of set off in the circumstances described in Clause 42.2.

4.4 The Operator takes all risks

Except as otherwise expressly provided in the State Project Documents, the Operator accepts all risks in connection with performing the Services.

4.5 Mitigation by the Operator

- (a) In this Clause 4.5, '**Relevant Relief Event**' means the occurrence of any event which entitles the Operator to:
 - (i) compensation or any additional Operating Costs not already included in the approved Budget or MYR Budget (as the case may be), set out in the current Operator Business Plan;
 - (ii) relief from performance of any of its obligations in any State Project Document, including under Clause 20.3; or
 - (iii) bring any other Claim against the State.
- (b) If a Relevant Relief Event occurs, the Operator must:
 - (i) use its reasonable endeavours to mitigate the effects of the Relevant Relief Event, including taking any action in accordance with Clause 4.10 and Clause 19.6; and
 - (ii) for this purpose, comply with all reasonable directions of the State concerning the Relevant Relief Event and its consequences.
- (c) Notwithstanding any other Clause in this Agreement, the State's Liability in connection with Relevant Relief Events will be reduced to the extent the Operator fails to comply with its obligations set out in Clause 4.5(b).

4.6 No limitation on obligations

- (a) The State owes no duty of care to the Operator to:
 - (i) review any Deliverable submitted by the Operator; or
 - (ii) inspect or review the Services,
 for errors or omissions or compliance with the State Project Documents, any Law or Authorisation.
- (b) Any:
 - (i) review of, or comments upon (including an approval or consent given in accordance with Schedule 2 (Review Procedures)) by the State, or failure by the State to review, or comment upon, any Deliverable submitted by the Operator, or any other direction, act or omission of the State in connection with any Deliverable;
 - (ii) inspection or review of the Services by (or on behalf of) the State;
 - (iii) failure by (or on behalf of) the State to detect any non-compliance by the Operator with its obligations under the State Project Documents, including where any failure arises from any negligence on the part of the State; or
 - (iv) Deliverable prepared by the Operator,
 will not:
 - (v) relieve the Operator from, or alter or affect, its liabilities, obligations or responsibilities whether under the State Project Documents or otherwise according to Law, except that an alteration in an Approved Document which:

- (A) arises from a review by the State of the Approved Document as described in Clause 4.6(b)(i); and
 - (B) supplements but does not amend the Operator's obligations under a State Project Document in a manner which is consistent with the Operator's obligations under the State Project Documents and at Law,

is permitted to supplement, but not amend, the Operator's obligations under the State Project Documents; or
 - (vi) prejudice the State's rights against the Operator whether under the State Project Documents or otherwise according to Law,
- and any review of, or comments upon (including an approval or consent given in accordance with Schedule 2 (Review Procedures)) by the State, or failure by the State to review, or comment upon, any Deliverable submitted by the Operator, or any other direction, act or omission of the State in connection with any Deliverable will not:
- (vii) constitute any representation that the Deliverable complies with the State Project Documents;
 - (viii) affect the time for performance of the State's obligations in accordance with the State Project Documents; or
 - (ix) be evidence that any Services have been or will be undertaken or performed in accordance with the State Project Documents.
- (c) Notwithstanding Clause 4.6(b)(v) and Clause 4.6(b)(vi), if the State gives notice in accordance with Clause 1.9 that certain activities temporarily do not require the State's review, approval or consent, the State's right to review, approve or consent is suspended in accordance with Clause 1.9 and the State cannot rely on Clause 4.6(b)(v) and Clause 4.6(b)(vi) to allege that the Operator has breached its obligation to have the activities or documents reviewed, approved or consented to by the State for the period of the suspension.
- (d) If:
- (i) the State reviews, comments upon, or gives notice in connection with, (including an approval or consent given in accordance with Schedule 2 (Review Procedures)) any Deliverable submitted by the Operator, or there is any other direction, act or omission by the State in connection with any Deliverable (**State Comment**); and
 - (ii) the Operator considers (acting reasonably) that the State Comment results in a change in, or is inconsistent with, the Operator's obligations under a State Project Document or at Law which does not otherwise constitute a Modification (**Change in Obligations**),
- the Operator must within 5 Business Days of receipt of the State Comment, give notice to the State that it considers there is a Change in Obligations, together with its reasons.
- (e) Within 5 Business Days of the State receiving any notice from the Operator in accordance with Clause 4.6(d), the State must:
- (i) confirm that the State Comment does result in a Change in Obligations in which case the parties will proceed to amend this Agreement and the Operator will not be in breach of this Agreement as a result of complying with the State Comment;
 - (ii) withdraw the relevant State Comment, in which case the Operator is not required to comply with the State Comment and is not entitled to make any Claim against the State or any State Associate in connection with the State Comment;

- (iii) amend the relevant State Comment in a manner that does not result in a Change in Obligations, in which case the Operator must comply with the amended State Comment and is not entitled to make any Claim against the State or any State Associate in connection with the State Comment and the Operator will not be in breach of this Agreement as a result of complying with the amended State Comment; or
 - (iv) inform the Operator that, in the State's view, the State Comment does not result in a Change in Obligations.
- (f) If the Operator disputes the State's view notified in accordance with Clause 4.6(e)(iv) or the State does not take an election in accordance with Clause 4.6(e)(ii) or 4.6(e)(iii), the Operator must continue to perform the Services in accordance with the relevant Deliverable, including the State Comment, but may refer the matter for resolution in accordance with Clause 34. Following the resolution of the dispute, the State must take one of the actions described in Clause 4.6(e). If the Operator refers the matter for resolution in accordance with Clause 34, the Operator will not be in breach of this Agreement, including after resolution of the dispute, by reason of its performance of the Services in accordance with, or in compliance with, a State Comment for the period that the dispute is being resolved.
- (g) The Operator agrees that it will not be entitled to make any Claim against the State whether in accordance with this Agreement or at Law for any Liabilities incurred by the Operator in connection with any review, comment or failure to comment on, or acceptance, approval, endorsement or rejection of, a Deliverable, other than in the circumstances set out in this Clause 4.6.

4.7 [Not disclosed]

4.8 [Not disclosed]

4.9 Interface

The Operator acknowledges that:

- (a) it has been provided with a redacted copy of the Project Agreement; and
- (b) [Not disclosed]

4.10 [Not disclosed]

4.11 Requests for consent by Project Co

- (a) From time to time Project Co will seek the Operator's approval, consent or permission (including in writing) to undertake certain activities in accordance with the Project Agreement, including under Schedule 14 (Payment Schedule) of the Project Agreement and the DBFM Services Specifications.
- (b) Without limiting the Operational Interface Agreement, if Project Co seeks the Operator's approval, consent or permission in the circumstances described in Clause 4.11(a), the Operator must not unreasonably withhold or delay that approval, consent or permission.

4.12 Termination of the DBFM Services

- (a) If the State terminates the Project Agreement, from the date of termination of the Project Agreement the State agrees to:

- (i) if termination occurs before the Date of Commercial Acceptance, complete, or procure the completion of, the construction of the Stadium and Sports Precinct in accordance with the Project Agreement;
 - (ii) perform services of a substantially similar nature to the DBFM Services;
 - (iii) perform any obligations which Project Co had under the Operational Interface Agreement to the extent necessary for the Operator to comply with its obligations under Clause 4.12(b); and
 - (iv) comply with all applicable Laws (including applicable Safety Laws) in carrying out its obligations under Clause 4.12(a)(i) and Clause 4.12(a)(iii),

until a replacement contractor is appointed by the State to perform services of a substantially similar nature to the DBFM Services.
- (b) If the Project Agreement is terminated in the circumstances described in Clause 4.12(a), the Operator must, with respect to the State, continue to comply with any obligations it had to Project Co under the Operational Interface Agreement (as though the State was Project Co), until such time as a new operational interface agreement is entered into with the replacement contractor appointed by the State to perform services which are substantially similar to the DBFM Services.
- (c) If Clause 4.12(a) applies, the Operator:
 - (i) acknowledges that the State will perform services which are substantially similar to the DBFM Services but which may not be identical to the DBFM Services performed by Project Co; and
 - (ii) must use its reasonable endeavours to perform the Services in a manner which adapts to the performance by the State of services which are substantially similar to the DBFM Services.
- (d) Provided that the Operator has used its reasonable endeavours to adapt to the performance of the services by the State, to the extent the Operator is prevented from performing the Services due to the State performing services which are substantially similar to the DBFM Services but are not to the standard contractually required of Project Co as at the date of termination of the Project Agreement:
 - (i) the Operator will not be in breach of this Agreement if it performs the Services in a manner not otherwise permitted by this Agreement in order to adapt to the State's provision of the DBFM Services; and
 - (ii) subject to the Operator having complied with Clause 4.12(c)(ii), the State is not entitled to terminate this Agreement as a result of the Operator failing to perform those Services.
- (e) To the extent that the Operator or an Operator Associate suffers or incurs any additional costs complying with its obligations under Clause 4.12(c)(ii), those costs will be Operating Costs.

4.13 Annual review of Services delivery

- (a) On or around each anniversary of the date of this Agreement, the parties shall review and discuss the processes set out in this Agreement in order to determine whether any amendments can be made to this Agreement or the other State Project Documents that has the potential to:
 - (i) improve the performance, amenity or availability of the Stadium or the Sports Precinct to host Events;
 - (ii) improve co-ordination with Project Co;
 - (iii) minimise the day to day administrative burden of the Operator or the State in complying with the terms of this Agreement; or
 - (iv) facilitate the Operator to more effectively provide the Services.

- (b) At least 10 Business Days before the annual review set out in Clause 4.13(a), above, the State or the Operator may provide to the other party a list of suggested process changes that achieve any of the objects set out in Clauses 4.13(a)(i) to 4.13(a)(iv).
- (c) If, following the discussions set out in Clause 4.13(a), the parties identify and agree upon any such process improvements, the parties may agree to amend the terms of this Agreement to reflect that process improvement.
- (d) If the parties cannot agree how to amend this Agreement in accordance with Clause 4.13(c), the unamended Agreement will continue to apply.

4.14 **[Not disclosed]**

5 **CONTRACT ADMINISTRATION**

5.1 **Parties' representatives**

The parties may exercise any of their rights or perform any of their obligations in accordance with this Agreement through their representatives appointed in accordance with this Agreement.

5.2 **State Representative**

- (a) **(Appointment):** The State Representative is the person set out in Schedule 1 (Contract Particulars) or such other person as may be appointed from time to time to replace that person in accordance with this Clause 5.2.
- (b) **(Directions):** The State Representative may administer this Agreement as the State's delegate and:
 - (i) give directions and notices to be given by the State; and
 - (ii) receive all notices and documents to be received by the State, in connection with this Agreement.
- (c) **(Agent):** The State Representative will carry out his or her powers, authority and functions as the agent of the State.
- (d) **(Compliance):** Without limiting its rights and obligations in accordance with this Agreement, the Operator must comply with any direction by the State Representative given or purported to be given in accordance with this Agreement and, subject to Clause 23.4, any direction given by the State Representative which may give rise to a Modification or entitle the Operator to relief in accordance with the terms of this Agreement.
- (e) **(Oral directions):** The State Representative may give a direction orally but must as soon as practicable confirm that direction in writing.
- (f) **(Directions from other people):** The Operator must not accept or act upon directions in connection with the Services from an employee or agent of the State other than the State Representative or a delegate of the State Representative appointed in accordance with Clause 5.3 acting in accordance with this Agreement and, in the case of a delegate appointed under Clause 5.3, acting within the scope of the delegation notified under Clause 5.3.
- (g) **(Vary or terminate delegation):** The State may vary or terminate any delegated power or authority of the State Representative but must promptly notify the Operator of any such variation or termination.
- (h) **(Replacement):** The State may at any time replace a State Representative, in which event the State will appoint another person as the State Representative and notify the Operator of that appointment.

5.3 Further State delegations

- (a) The State Representative may at any time delegate the exercise of any of his or her powers or authorities to another person and may terminate or vary that delegation.
- (b) In connection with any delegation in accordance with Clause 5.3(a), the State Representative will promptly notify the Operator of the identity of each delegate, the powers and authority delegated (including any conditions applying to the delegated power) and of any termination or variation to that delegation.
- (c) Any direction given by a State delegate in accordance with his or her delegation in accordance with the powers and authorities delegated to it under this Clause 5.3 will be deemed to be a direction of the State Representative.

5.4 Operator Representative

- (a) **(Appointment):** The Operator Representative is the person set out in Schedule 1 (Contract Particulars) or such other person as may be appointed from time to time to replace that person in accordance with this Clause 5.4.
- (b) **(Contact):** The Operator Representative must act as the principal point of contact between the Operator and the State and the Operator must ensure that the Operator Representative is available to the State as and when required during the Term.
- (c) **(Presence):** The Operator must ensure that the Operator Representative is present at the Site at such times as are necessary to ensure that the Operator is complying with its obligations in accordance with this Agreement and upon reasonable request by the State Representative.
- (d) **(Directions):** A direction is given to the Operator if it is given to the Operator Representative.
- (e) **(Replacement):** The Operator may only replace the Operator Representative if any such replacement has the prior written approval of the State (which must not be unreasonably withheld) and if the replacement meets the requirements for the Operator Representative in this Agreement.
- (f) **(Employee of the Operator):** The Operator Representative must be an officer or employee of the Operator or a Related Body Corporate of the Operator.
- (g) **(Authority and skills):** The Operator must ensure that, at all times during his or her appointment, the Operator Representative has:
 - (i) the authority to perform his or her role and duties and discharge his or her obligations in accordance with Clause 5.4(h) and elsewhere in this Agreement; and
 - (ii) a detailed knowledge of the Services and sufficient experience and skills to undertake the role of the Operator Representative.
- (h) **(Duties of the Operator Representative):** The Operator must ensure that the Operator Representative performs the duties of the Operator Representative in accordance with this Agreement, including to:
 - (i) **(spokesperson):** act as the spokesperson for the Operator;
 - (ii) **(co-operation):** ensure the ongoing co-operation with the State and Project Co in the provision of the Services;
 - (iii) **(management):** understand, co-ordinate and manage all phases of the Services from the date of this Agreement until the Expiry Date;
 - (iv) **(liaison):** liaise and generally deal with stakeholders;

- (v) **(manage)**: represent the views of the Operator and manage and co-ordinate issues with any Operator Associate or Event Party prior to presentation to the State; and
- (vi) **(presence)**: ensure a strong presence and consistent project management role for the Operator in the provision of the Services.
- (i) **(Delegate)**: From time to time, the Operator may nominate a delegate of the Operator Representative, who shall have the same rights and authority as the Operator Representative to act on his or her behalf, during periods of leave or other absence of the Operator Representative, provided that:
 - (i) the Operator Representative gives prior notice to the State of the period (including any variation to the period) of such delegation; and
 - (ii) the identity of the delegate has the prior written approval of the State (which must not be unreasonably withheld).
- (j) During the notified period of delegation, the delegate is taken to be the Operator Representative for the purpose of this Agreement.

5.5 Subcontracting

- (a) **(General)**: The Operator must not, and must ensure that each Subcontractor does not, enter into, or permit the entry of, any Subcontract or contract for supplies unless the proposed counterparty is an experienced, creditworthy, reputable and competent party which holds any necessary registrations or licences and which will have sufficient resources to perform the works or the services that are the subject of the proposed Subcontract or contract for supplies.
- (b) **(Other contracts)**: The Operator must not without the State's prior approval enter into any contracts or agreements for the provision of the Services or supplies or the management or operation of the Stadium and Sports Precinct or any part of the Stadium and Sports Precinct, including any Subcontract, the term of which extends beyond or which will involve obligations or expenditures which extend beyond the expiry of the Initial Term, or the Further Term if Clause 3.3 applies.
- (c) **(Catering Services)**: The Operator must not subcontract the Catering Services without the prior written consent of the State. If the State consents to the subcontracting of the Catering Services, the Subcontractor providing the Catering Services will be a Key Subcontractor and Clause 5.7 applies to the selection of the Key Subcontractor.
- (d) **(Deed of novation)**: If any Subcontract or any contract or agreement in respect of the Services or supplies or the management or operation of the Stadium and Sports Precinct referred to in Clause 5.5(b) extends beyond the date described in Clause 5.5(b) or will involve obligations or expenditures which extend beyond that date, the State may require the Operator to procure from that counterparty an executed deed of novation in the form of Schedule 11 (Subcontractor Deed of Novation).
- (e) **(Liability for Subcontractors)**: The Operator:
 - (i) is not relieved from any of its obligations or Liabilities in accordance with this Agreement as a result of subcontracting any of those obligations or Liabilities;
 - (ii) remains responsible for the performance of all Subcontractors (including all officers, employees, subcontractors and agents of any Subcontractor) and agrees that a breach by a Subcontractor or a failure by a Subcontractor to comply with the obligations of the Operator in accordance with this Agreement is a breach or failure of the Operator; and
 - (iii) is entirely responsible for all Liabilities suffered or incurred by the State in connection with any acts, omissions, defaults, negligence or termination

of any Subcontractors (and those of the officers, employees, subcontractors and agents of any Subcontractors), except to the extent and only to that extent that such Liabilities are caused or contributed to by a Tortious Act or Omission or breach of a State Project Document by the State.

5.6 Competence

- (a) If the State notifies the Operator of any person employed or engaged in or performing the Services, including providing supplies to the Stadium or Sports Precinct, who in the State's reasonable opinion, is incompetent, negligent, dishonest or guilty of misconduct, then the Operator must promptly:
 - (i) remove the person or ensure that such person is promptly removed from performing or assisting with the performance of the Services;
 - (ii) replace the person or ensure that such person is promptly replaced; and
 - (iii) ensure that the person is not again employed or engaged in performing or assisting with the performance of the Services.
- (b) The Operator must ensure that all Operator Associates hold appropriate qualifications and have received appropriate training for their intended duties and must provide evidence of such qualifications and training to the State as reasonably requested.

5.7 Key Personnel and Key Subcontractors

- (a) The Operator must:
 - (i) employ the Key Personnel (or, where stated in Schedule 1 (Contract Particulars), ensure that the relevant Related Body Corporate of the Operator employs the Key Personnel); and
 - (ii) engage Key Subcontractors,
 in the relevant roles and functions stated in Schedule 1 (Contract Particulars).
- (b) If the name of a Key Subcontractor has not been included in Schedule 1 (Contract Particulars), prior to the Key Subcontractor role being tendered or otherwise procured by the Operator, the Operator must provide the State with a list of proposed contractors that it is considering procuring or inviting to tender for that role.
- (c) The State may, acting reasonably but without any obligation to give reasons and within 5 Business Days of receipt of a list from the Operator under Clause 5.7(b), provide the Operator with comments in respect of contractors on the list provided by the Operator under Clause 5.7(b). If the State provides comments under this Clause 5.7(c), the Operator must have regard to those comments when procuring those contractors or inviting the contractors to tender for that role.
- (d) The Operator must procure from each Key Subcontractor listed in Schedule 1 (Contract Particulars) an executed deed of novation in the form of Schedule 11 (Subcontractor Deed of Novation) at the same time as it enters into the relevant Key Subcontract. If the State determines that any other Subcontractor is a Key Subcontractor, the Operator must procure from that Subcontractor an executed deed of novation in the form of Schedule 11 (Subcontractor Deed of Novation).
- (e) Subject to the State's rights as set out in Clause 5.6, the Operator must not replace (or allow any Related Body Corporate to replace) the Key Personnel in their roles, replace a Key Subcontractor or rescind, novate or assign any Key Subcontract without the State's prior approval in accordance with Clause 5.7(f).
- (f) If the Operator or the relevant Related Body Corporate seeks to replace a Key Subcontractor or a member of Key Personnel, the State shall not unreasonably withhold or delay its approval of a proposed replacement if:

- (i) in connection with the Key Subcontractor to be replaced:
 - (A) the Key Subcontractor has suffered an Insolvency Event;
 - (B) there has been a Change in Control of the Key Subcontractor and the replacement of the Key Subcontractor is for the purpose of remedying such breach; or
 - (C) the Key Subcontractor has breached the terms and conditions of the relevant Key Subcontract,
 and the Operator has:
 - (D) demonstrated that the proposed replacement Key Subcontractor is appropriately technically qualified, has adequate experience (technical or otherwise, as the role requires) in relation to the proposed role, has sufficient financial standing and is of good repute; and
 - (E) procured from the proposed replacement Key Subcontractor, an executed deed of novation in the form of Schedule 11 (Subcontractor Deed of Novation); and
- (ii) in connection with the Key Personnel to be replaced:
 - (A) the member of Key Personnel has resigned from his or her employment or has terminated his or her engagement with the Operator or the relevant Related Body Corporate of the Operator;
 - (B) the member of Key Personnel has died;
 - (C) the member of Key Personnel has become incapable of performing his or her duties due to injury or illness; or
 - (D) the member of Key Personnel has committed a breach of any express or implied term of his or her contract of employment or independent contract which would warrant termination of his or her employment or engagement,
 and the Operator has demonstrated that the proposed replacement person is appropriately technically qualified, has adequate experience (technical or otherwise, as the role requires) in relation to the proposed role and is of good repute.

5.8 Key Subcontractors

- (a) The Operator must seek the State's prior approval (which will not be unreasonably withheld) to the terms of any Key Subcontract.
- (b) The Operator must not, at any time, amend the terms of any Key Subcontract in a way in which a Liability or material cost could accrue to the State, a State Associate or the Operating Account without the State's prior consent (which will not be unreasonably withheld).

5.9 Requirements for subcontracting

- (a) The Operator must not, and must ensure that each Subcontractor does not, engage or permit the engagement of any Subcontractor, or enter into or permit the entry into of any Subcontract, unless:
 - (i) if the State requires Probity Investigations to be carried out, the State's probity requirements as described in Clauses 36.1 to 36.7 are satisfied;
 - (ii) in connection with a Key Subcontractor, the Subcontract contains provisions giving effect to the exercise by the State of:

- (A) its rights and protections under and contains all relevant provisions prescribed by (if applicable), Clauses 5.5, 5.6, 9.6, 22, 27, 29, 30, 31.1, 35, 36, 38, 39 and 42.1 to 42.6; and
 - (B) its rights to take an assignment of any performance bond in accordance with its terms; and
- (iii) in connection with Subcontracts, ensure compliance by the Subcontractors with Clauses 5.5, 5.6, 9.6, 22, 27, 29, 30, 31.1, 35, 36, 38, 39 and 42.1 to 42.6.
- (b) Without limiting Clause 5.9(a), where the Operator has a financial or non-financial relationship with, including where the Operator is a Related Body Corporate of:
 - (i) a Key User or Hirer or a potential Key User or Hirer, or
 - (ii) other service providers or material suppliers who are proposed to become a Subcontractor in respect of the Stadium or Sports Precinct,
 the Operator must declare any such relationship and establish a process to the reasonable satisfaction of the State that manages all potential conflict of interest issues. An entity with which the Operator has a relationship may be awarded any work in relation to the Stadium, but such appointment must be upon reasonable commercial terms and approved by the State.

6 [NOT DISCLOSED]

7 THE SITE

7.1 Access arrangements prior to Commercial Acceptance

- (a) Prior to the Date of Technical Completion, the Operator must:
 - (i) notify the State and seek approval from Project Co prior to the Operator, Operator Associates or Event Parties accessing the Site; and
 - (ii) not enter the Site without Project Co's prior approval.
- (b) Without limiting the Operator's access rights during the State Access Period, at all times prior to the Date of Commercial Acceptance:
 - (i) the Operator must ensure that the Operator Associates and Event Parties are fully informed and inducted in respect of Project Co's health, safety, security and site rules, including the Site Access and Interface Protocols, and any instructions given by Project Co when the Operator is on the Site; and
 - (ii) the Operator must comply, and ensure that the Operator Associates comply with the rules and instructions referred to in Clause 7.1(b)(i).
- (c) The Operator must take all reasonably practicable steps to ensure that Event Parties comply with the rules and instructions referred to in Clause 7.1(b)(i).
- (d) Without limiting Clause 7.1(b) and the Site Access and Interface Protocols, to the extent the Operator Associates and Event Parties are required to attend the Operator's temporary offices on the Site prior to the Date of Commercial Acceptance, those Operator Associates and Event Parties are entitled to access the Site at any time solely for the purpose of accessing the Operator's temporary offices.
- (e) When accessing the Site in accordance with Clause 7.1(b) or Clause 7.1(d), the Operator must not, and must ensure that the Operator Associates do not, cause any interference, hindrance, loss or delay to Project Co in the performance of its obligations under the Project Agreement.

7.2 [Not disclosed]

7.3 Grant of Operating Phase Licence

- (a) **(Operating Phase Licence term):** Subject to Commercial Acceptance having occurred, the State will procure the grant of the Operating Phase Licence to the Operator:
 - (i) for a term which will:
 - (A) commence on the Operational Commencement Date; and
 - (B) end on the Expiry Date; and
 - (ii) be on the terms and conditions set out in Schedule 14 (Operating Phase Licence).
- (b) **(Delivery of Operating Phase Licence):** Not later than 1 Month prior to the expected Date of Commercial Acceptance, the Operator must prepare and deliver to the State for review, 3 counterparts of the Operating Phase Licence which:
 - (i) are in the form contained in Schedule 14 (Operating Phase Licence);
 - (ii) include as an annexure, the Site Plans for the Stadium and Sports Precinct; and
 - (iii) are:
 - (A) executed by the Operator; and
 - (B) complete, except for those matters that the State is authorised to complete in accordance with Clause 7.3(c).
- (c) **(Authority to complete):** The Operator authorises the State to complete the Operating Phase Licence by inserting:
 - (i) the commencement date of the Operating Phase Licence, being the Operational Commencement Date; and
 - (ii) any other particulars necessary to complete the Operating Phase Licence.
- (d) **(Execution):** The State will complete the counterparts of the Operating Phase Licence delivered by the Operator, execute each counterpart and return one of the completed and executed counterparts to the Operator.
- (e) **(Operating Phase Licence binding):** The State and the Operator will be bound by the terms and conditions of the Operating Phase Licence from the Operational Commencement Date whether or not the relevant licence has been executed by the State and the Operator.
- (f) **(Adequate access):** The Operator accepts all risks in connection with the adequacy of access to the Site during the Operating Phase.

7.4 Permitted use

The Operator must not use or permit the use of the Site for any purpose other than as permitted in accordance with this Agreement, the Operational Interface Agreement or the Operating Phase Licence.

7.5 Other activities

The Operator acknowledges that it is aware that and has taken into consideration that:

- (a) the Site is adjacent to the Golf Club House Lease;
- (b) occupiers of land in the vicinity of the Site may host entertainment and promotional events or activities in competition with the Stadium and Sports Precinct;

- (c) land in the vicinity of the Site may undergo development, including the former “southern nine” at the former Burswood Park Golf Course;
- (d) roads in the vicinity of the Site may be temporarily closed during periods when certain events or activities occur and for the purpose of carrying out maintenance and repair; and
- (e) Project Co is entitled to and may develop Commercial Opportunities in the Stadium and Sports Precinct within the designated commercial areas set out in the Site Plans.

8 SITE CONDITIONS

8.1 Condition of land

Except as expressly provided in this Agreement, the State makes no representation and gives no warranty to the Operator in connection with:

- (a) the Site, except its extent and boundaries as notified to the Operator for the purposes of this Agreement; and
- (b) any Land Conditions.

8.2 Environment

- (a) The Operator must:
 - (i) in performing the Services, seek to minimise any environmental impact;
 - (ii) obtain and maintain (and where necessary, renew) in the name of the Operator, the State Associates or the State (as directed by the State) any Environmental Authorisations required in respect of the Services;
 - (iii) in performing the Services, comply with and ensure that Operator Associates comply with all Environmental Laws, Environmental Authorisations and the Environmental Management Strategy Documents;
 - (iv) take all reasonably practicable steps to ensure that Event Parties comply with all Environmental Laws, Environmental Authorisations and the Environmental Management Strategy Documents;
 - (v) notify the State of any Environmental Complaint received or any Environmental Event occurring in connection with the Services, as soon as practicable and, in any event, within 24 hours; and
 - (vi) comply with any direction from the State in connection with any Environmental Complaint received or any Environmental Event occurring during the Operating Phase or in connection with the Services prior to the Date of Commercial Acceptance.
- (b) Except as set out in Clause 8.2(c), the Operator must comply with the State’s direction under Clause 8.2(a)(vi) and the requirements of any Government Agency in respect of an Environmental Complaint or Environmental Event at its own cost. The cost of compliance will be an Operating Cost, except to the extent, and only to that extent, that the Environmental Complaint or Environmental Event is caused by a wrongful act or omission of the Operator or an Operator Associate in which case this will be at the Operator’s own cost.
- (c) If an Environmental Complaint or Environmental Event occurs in relation to a Major Event, then to the extent the State or a third party has stepped in to operate the Stadium during the Major Event Period in accordance with Clause 20.3 and the Environmental Complaint or Environmental Event is not caused by a wrongful act or omission of the Operator or an Operator Associate, the requirement to deal with the Environmental Complaint or Environmental Event is an Adverse Event and Clause 22 applies.

8.3 Utilities

- (a) During the Operating Phase, the State, after consultation with the Operator, will enter into all agreements with Utility Companies for the supply of Utilities to the Site and the Operator must do everything reasonably directed by the State from time to time to enable the State to enter into those agreements.
- (b) The Operator must:
 - (i) as agent for the State pay for all Utilities consumed or used from the Date of Commercial Acceptance, in accordance with the agreements entered into by the State with the Utility Companies (which costs will be an Operating Cost);
 - (ii) use its reasonable endeavours to pass through the cost of all Utilities consumed or used in relation to Events or Functions to Key Users or Hirers (as the case may be); and
 - (iii) use the Utilities provided by the State:
 - (A) efficiently; and
 - (B) solely for the provision of the Services and the DBFM Services,
 and otherwise comply with its obligations with respect to the management of Utilities set out in Section C.6 of Schedule 8 (Services Specifications).
- (c) The Operator must:
 - (i) (**notice**): notify the State and Project Co at least 14 days before any connection, disconnection or interference with existing Utility Infrastructure by, or on behalf of, the Operator, or of which it is notified by a Utility Company, unless the Operator does not receive prior notice from a Utility Company, in which case, notify the State and the Operator immediately after the connection, disconnection or interference, and liaise with the State and Project Co as to how best to manage the disconnection or interference taking into account the nature and requirements of the Site; and
 - (ii) (**indemnity**): indemnify the State against any Claim or Liability incurred in connection with any damage or disruption to any Utility Infrastructure resulting from a Tortious Act or Omission or breach of a Project Document by the Operator or any Operator Associate.

8.4 Heritage Claims

- (a) As between the State and the Operator, the State is responsible for responding to any Heritage Claim in connection with any part of the Site.
- (b) If there is a Heritage Claim in connection with the Site or any part of it, then the Operator must after becoming aware of the Heritage Claim:
 - (i) continue to perform its obligations in accordance with this Agreement, except to the extent otherwise:
 - (A) directed by the State;
 - (B) ordered by a court or tribunal; or
 - (C) required by Law; and
 - (ii) provide all reasonable assistance required by the State or State Associates in dealing with the Heritage Claim (at the State's cost).

8.5 Artefacts

- (a) Any Artefacts discovered during the Term on or under the surface of the Site are the absolute property of the State.
- (b) If during the Term an Artefact is discovered on or under the surface of the Site or any part of it, then the Operator must after becoming aware of the discovery:
 - (i) immediately notify the State of that discovery;
 - (ii) take every reasonable precaution to prevent the Artefact from being damaged or removed until appropriate arrangements for dealing with, or removing, the Artefact has been made;
 - (iii) continue to perform its obligations in accordance with this Agreement, except to the extent otherwise:
 - (A) directed by the State;
 - (B) ordered by a court or tribunal; or
 - (C) required by Law; and
 - (iv) comply with any direction of the State or State Associates in connection with any Artefact (at the State's cost).

8.6 General Indigenous obligations

The Operator must perform the Services in accordance with the Aboriginal Engagement Strategy.

9 ADDITIONAL PROVISIONS APPLYING TO THE SITE

9.1 Signage

The Operator must not, during the Term, erect or permit to be erected or displayed on the Site, Stadium or Sports Precinct, any signs (including digital or virtual) or content except for those:

- (a) required by Law; or
 - (b) provided for in Schedule 8 (Services Specifications),
- unless otherwise approved by the State.

9.2 Industrial issues

- (a) The Operator is solely responsible for the management of all industrial matters in connection with performing the Services including the conduct of all proceedings, conferences, negotiations and dealings with unions and union representatives.
- (b) The Operator must observe the requirements of all relevant industrial awards and workplace agreements (including any Industrial Award, Agreement or Order) and must immediately notify the State if a strike or any other form of industrial unrest affecting the Stadium, the Sports Precinct or the Services occurs, is threatened or is reasonably anticipated and provide full details if requested to do so by the State.

9.3 **[Not disclosed]**

9.4 Safety incident reports

- (a) The Operator must:
 - (i) in connection with incidents that occur during the course of the Services or at the Site, comply with all relevant Safety Laws requiring an employer,

- a person with management or control of the Site or otherwise applicable to the role of the Operator under this Agreement, to provide notification of an incident;
 - (ii) notify the State immediately (and, in any case, within 24 hours) of any accident, incident which is notifiable under Safety Laws, injury or property damage which:
 - (A) occurs during the performance of the Services;
 - (B) is associated with the Services; or
 - (C) occurs at the Site;
 - (iii) within 2 Business Days of any such incident described in Clause 9.4(a)(ii), provide a written report to the State giving complete details of the incident, including the results of investigations into its cause and any recommendations or strategies for preventing a recurrence, including the implementation of suitable control measures and remedial action as required; and
 - (iv) if the State requests, prepare and provide the State with a written report detailing the ways in which the Operator complies with applicable Safety Laws and which contains such other work health and safety information in relation to the Services and the Site as the State may reasonably require.
- (b) The State may, at any time and from time to time, perform an audit of Records and inspect the Site to identify whether the Operator has breached Clause 9.2, Clause 9.3 or this Clause 9.4.

9.5 **[Not disclosed]**

9.6 **State's right to enter and inspect**

- (a) **(Right of entry):** From the Operational Commencement Date, the State or any nominee of the State may inspect, or require the Operator to inspect or test, any part of the Services, Stadium or Sports Precinct upon giving reasonable notice to the Operator.
- (b) **(Operator to assist):** If requested by the State, the Operator must assist the State to exercise its right to inspect the Services, Stadium or Sports Precinct.
- (c) **(Costs of inspection):** Subject to Clause 9.6(d), the State will bear its own costs of any inspection conducted in accordance with Clause 9.6(a).
- (d) **(Operator must bear costs):** To the extent that the inspection or testing reveals any defect or non-conformance in the Services arising out of a Tortious Act or Omission or breach of a Project Document by the Operator or an Operator Associate, the Operator must bear the costs of the inspection, which costs are not Operating Costs and the costs incurred by the State will be a debt due and payable by the Operator to the State.

9.7 **Defects**

If a defect in the Stadium or Sports Precinct affects the performance of the Operator's obligations under this Agreement, in consultation with the State, the Operator must take all reasonably practicable steps to perform the Operator's obligations to achieve the same outcome as is required under this Agreement or, if it is not possible to deliver the same outcome, an outcome which is as near as possible to the outcome that is required under this Agreement.

10 FF&E AND HIRED EQUIPMENT

10.1 Selection and procurement of FF&E and Hired Equipment

- (a) The Operator must:
 - (i) provide Project Co with input in relation to Group 1 FF&E and Group 2 FF&E in accordance with the requirements of Schedule 7 (Pre-Operational Services Specifications);
 - (ii) subject to the remainder of this Clause 10.1 and the FF&E Budget, purchase the items of Group 4 FF&E as agent for the State so as to ensure that the Group 4 FF&E is commissioned by the Date for Commercial Acceptance;
 - (iii) lease the Hired Equipment as agent for the State so as to ensure that the Hired Equipment is commissioned by the Date for Commercial Acceptance where applicable;
 - (iv) ensure that all warranties associated with that Group 4 FF&E purchased by the Operator are in the name of the State;
 - (v) provide Project Co with a notice of the intended date and time of delivery of any Group 4 FF&E that it procures; and
 - (vi) ensure that the procured Group 4 FF&E is free from any Defects.
- (b) The Operator must:
 - (i) ensure that the relevant lease or rental of Hired Equipment is an operating lease or rental agreement and not a finance lease;
 - (ii) ensure that each lease or rental agreement for the Hired Equipment includes provisions for the maintenance of the relevant Hired Equipment in accordance with Best Operating Practice;
 - (iii) obtain the prior written consent of the State to the terms of each lease; and
 - (iv) comply with the terms of each lease and not do anything to breach the terms of each lease.
- (c) Subject to Clause 10.10(c) and the remainder of this paragraph, the Operator may change items of Group 4 FF&E. If the Operator:
 - (i) wants to substitute an item of Group 4 FF&E on the FF&E List with a like item of Group 4 FF&E and that like item has a purchase price which exceeds the purchase price of the original item by more than \$10,000;
 - (ii) wants to add an item of Group 4 FF&E to the FF&E List that is not already on the FF&E List that is:
 - (A) not a substitute or a replacement of an item on the FF&E List; and
 - (B) has a value over \$10,000;
 - (iii) wants to remove an item of Group 4 FF&E from the FF&E List that has a purchase price over \$10,000;
 - (iv) needs any additional or substitute items of Group 4 FF&E in order to integrate and/or interface with the DBFM Works or any Group 1 FF&E, Group 2 FF&E or Group 3 FF&E;
 - (v) wants to add or substitute any items of Group 4 FF&E which are to be located in areas of the Stadium or Sports Precinct which the public do not access and the purchase of which may have an adverse effect on the

reputation or public perception of the State or the Stadium or Sports Precinct; or

- (vi) wants to change an item of Group 4 FF&E to Hired Equipment, the Operator must obtain the State's prior written approval before making any amendment to the FF&E List or the Hired Equipment List, or acquiring the relevant Group 4 FF&E. The Operator's request for approval must describe the financial implications of the change.
- (d) The cost of the procurement activities to obtain the Group 4 FF&E is a Pre-Operational Phase Cost. Without limiting Clause 10.9(c), the actual purchase price and the cost to install and integrate the Group 4 FF&E which is purchased for the State will be paid in accordance with Clause 10.10 and is not a Pre-Operational Phase Cost. The costs (including any rental fee) for the Hired Equipment is a Pre-Operational Phase Cost to the extent it is incurred in the Pre-Operational Phase and is an Operating Cost to the extent it is incurred in the Operating Phase.

10.2 Installation and commissioning of State FF&E

- (a) The Operator must install or locate (as applicable depending on whether the State FF&E is loose or fixed) all items of State FF&E and Hired Equipment into the Stadium and Sports Precinct:
 - (i) in accordance with the State Operational Commissioning Plan;
 - (ii) to the extent that the State Operational Commissioning Plan does not identify locations for the placement of loose items of State FF&E, in accordance with the State Representative's directions;
 - (iii) in accordance with Good Industry Practice; and
 - (iv) in accordance with any manufacturer's instructions or guidelines,
 to ensure the Operator Completion Items are completed by the Date for Commercial Acceptance or such later date as permitted under Clause 12.3(b).
- (b) The Operator must:
 - (i) do all things necessary to manage the delivery of any Group 4 FF&E and Hired Equipment that it has procured in accordance with Clause 10.1(a)(ii) or 10.1(a)(iii), including the access of Operator Associates to the Site in accordance with Clause 7.1; and
 - (ii) upon notification by the State of the relevant date of delivery, accept delivery of all Group 3 FF&E that the State has procured and assume responsibility of that Group 3 FF&E from the time and point of delivery.
- (c) The Operator must commission and undertake all tests of State FF&E in accordance with the State Operational Commissioning Plan.
- (d) Any damage to the DBFM Works or the Stadium arising from the Operator's failure to comply with Clause 10.2(a) or Clause 10.2(b) must be remedied at the Operator's cost, which costs do not constitute an Operating Cost.

10.3 FFP warranty

The Operator must:

- (a) to the extent that it is required to procure any Group 4 FF&E or Hired Equipment, ensure that those items of Group 4 FF&E and Hired Equipment are Fit For Purpose at the Date of Commercial Acceptance; and
- (b) from the Date of Commercial Acceptance, ensure that all items of Operator FF&E and Hired Equipment continue to be Fit For Purpose at all times throughout the Term by reference to the standards existing at the Date of Commercial Acceptance.

10.4 Maintenance and replacement of FF&E during Operating Phase

- (a) The Operator must maintain, repair and replace all Operator FF&E until the Expiry Date in accordance with the remainder of this Clause 10.4, Schedule 8 (Services Specifications), including Section C.2 of Schedule 8 (Services Specifications), and the Operator's Plans, including the Maintenance Plan.
- (b) If, during the Operating Phase, the State requires the Operator to procure or replace any Operator FF&E otherwise than because of a failure of the Operator to comply with its obligations, the cost will constitute a Pass Through Cost from the State to the Operator.
- (c) The Operator must enforce all warranties that are available to the State associated with the Operator FF&E to the extent these warranties are made available to the Operator for the purpose of performing its obligations in respect of the Operator FF&E.
- (d) If the Operator is required to replace Operator FF&E, it must do so using FF&E that:
 - (i) has the same standard relative to the market for that Operator FF&E at the time of replacement, as the Operator FF&E being replaced had relative to the market at the time that the Operator FF&E was purchased;
 - (ii) has at least the same levels of quality and is as technically up to date as that which would be used in accordance with Best Operating Practices;
 - (iii) has a design life equal to or greater than that of the relevant item of Operator FF&E being replaced; and
 - (iv) does not materially increase maintenance costs to Project Co, or any other costs payable by the State (and in relation to Operator FF&E, if alternative Operator FF&E on comparable terms is readily available and would not have had such an effect),

in each case to the extent of what is reasonably commercially available in the market at the time the Operator is required to replace Operator FF&E.
- (e) The Operator must:
 - (i) ensure all items of Operator FF&E are securely stored to prevent unauthorised access;
 - (ii) undertake at least one audit of all Operator FF&E every 6 Months during the Term to record the existence and state of repair of Operator FF&E; and
 - (iii) maintain records of Operator FF&E, and make such records available to the State and Project Co on request.
- (f) The Operator's obligation under Clause 10.4(a) includes rectifying all Defects by:
 - (i) notifying the State of Defects which become apparent or which ought to have become apparent as part of its operation of the Stadium and Sports Precinct in accordance with this Agreement;
 - (ii) managing and enforcing the State's warranties as they apply to the Defects (including Project Co's obligations under the Project Agreement); and
 - (iii) where there are no applicable warranties and where Clause 10.4(h) does not apply, subject to the Operator obtaining the State's prior approval of the cost to rectify the relevant Defect, managing the rectification of all Defects by either undertaking the rectification work itself or engaging a Subcontractor to undertake the rectification work in accordance with Clause 5.5,

and the cost of rectification will be an Operating Cost included in the Budget or the MYR Budget (as the case may be).

- (g) If the Operator incurs costs in excess of the costs set out in the Budget or the MYR Budget (as the case may be) in complying with Clause 10.4(f), to the extent that the relevant Defect is not caused or contributed to by a Tortious Act or Omission or breach of a Project Document by the Operator or an Operator Associate and the Operator has consulted and obtained the State's prior approval to incur those costs, the additional costs will be a Pass Through Cost payable by the State to the Operator.
- (h) If there is an Urgent Defect, the Operator may carry out emergency rectification of the Defect without obtaining the State's prior approval of the cost of rectification in accordance with Clause 10.4(f)(iii), provided that:
 - (i) it notifies Project Co and the State as soon as possible of the need for the emergency rectification (and no more than 60 minutes after it becomes aware of the Urgent Defect);
 - (ii) as soon as practicable, it notifies Project Co and the State of the duration of the emergency rectification that is necessary to Make Safe the Urgent Defect and the access that the Operator must require to Make Safe the Urgent Defect; and
 - (iii) it promptly delivers to the State an itemised statement of the rectification costs,
 and the rectification costs will be a Pass Through Cost payable by the State to the Operator except to the extent, and only to that extent, that the relevant Urgent Defect is caused or contributed to by a Tortious Act or Omission or breach of a Project Document by the Operator or an Operator Associate.
- (i) When undertaking rectification of an Urgent Defect, the Operator must take all reasonably practicable steps to minimise the duration of the rectification that is necessary to Make Safe the Urgent Defect and its effect on any Event, Function or Permitted Training and the performance of Project Co's obligations under the Project Agreement.
- (j) If the Operator fails to use Best Operating Practices when replacing Operator FF&E in accordance with Clause 10.4(d) and as a result there is a material increase in maintenance costs to Project Co or the State, the increased maintenance cost is a debt due and payable to the State by the Operator.

10.5 Services Equipment

The Operator must:

- (a) provide all Services Equipment;
- (b) ensure all Services Equipment meets the relevant standards set out in this Agreement;
- (c) maintain the Services Equipment in such a manner to ensure that the health and safety of Stadium Users is not adversely affected; and
- (d) store all Services Equipment in a clean and tidy manner, to avoid disruption, in areas agreed by the State and restrict access to such areas.

10.6 Asset Register

- (a) The Operator must prepare and at all times maintain an up to date register of Operator FF&E in the form specified by the State, which includes the following information:

- (i) the date of purchase or lease, the actual purchase price or rental fee and those things included in the purchase price or rental fee for Operator FF&E procured by the Operator (if any);
 - (ii) the warranty terms and expiration date;
 - (iii) whether the item is Group 2 FF&E, Group 3 FF&E or Group 4 FF&E;
 - (iv) whether the item is loose or fixed Operator FF&E;
 - (v) for fixed Operator FF&E:
 - (A) the current location within the Stadium and Sports Precinct as applicable; and
 - (B) details, including date and time, of any relocation within the Stadium and Sports Precinct;
 - (vi) for loose Operator FF&E:
 - (A) the initially located (or installed) location within the Stadium and Sports Precinct as applicable; and
 - (B) the current location within the Stadium and Sports Precinct as applicable;
 - (vii) details of maintenance of each item of Operator FF&E;
 - (viii) details of the expected life of each item of Operator FF&E, including details of age, condition, recommended replacement date and other relevant depreciation information; and
 - (ix) details regarding any disposal of relevant Operator FF&E, including reference to any replacement Operator FF&E.
- (b) The Operator must provide Project Co with the information referred to in Clause 10.6(a) on a Quarterly basis for inclusion in the Asset Register.
 - (c) The Operator must notify Project Co if the Operator or an Operator Associate relocates any loose Group 1 FF&E or Group 2 FF&E within the Stadium, Sports Precinct or the Pedestrian Underpass, and provide details of the date and time of that relocation for inclusion in the Asset Register.
 - (d) The Operator may access the Asset Register, and any Records in relation to audits undertaken in accordance with the Project Agreement, upon request to Project Co.

10.7 Consumables inventory

- (a) The Operator must prepare and at all times maintain at the Stadium and Sports Precinct an up-to-date and detailed inventory of all Consumables in the Stadium and Sports Precinct.
- (b) The Operator must make that inventory available to the State on request and in the format reasonably required by the State from time to time.

10.8 FF&E Account

- (a) The Operator must, within 10 Business Days of the Effective Date:
 - (i) establish an FF&E Account with any of Westpac Banking Corporation, ANZ Bank, National Australia Bank, the Commonwealth Bank of Australia or any of their wholly owned subsidiaries or with any other reputable bank with a branch in Perth, Western Australia approved by the State;
 - (ii) ensure that the State is named as an authorised signatory for the FF&E Account; and

- (iii) provide the State with the details of the FF&E Account within 2 Business Days of that account being established in accordance with this Clause 10.8(a).
- (b) The Operator and the State must at all times do all things necessary to ensure that the FF&E Account is operated in accordance with this Clause 10.8.
- (c) Funds in the FF&E Account must not be mingled with the Operator's or the State's other funds including the Pre-Operational Account or the Operating Account.
- (d) The Operator must not grant or cause to be incurred any Encumbrance in respect of the funds held in the FF&E Account except under the standard terms of the relevant bank account or as approved by the State.
- (e) Subject to Clause 10.10 and the exercise of any step-in rights, the State will not withdraw any funds from the FF&E Account, or otherwise with the agreement of the Operator.

10.9 Funding for the FF&E Account

- (a) Subject to Clause 10.9(c), the State will transfer amounts into the FF&E Account in accordance with the Group 4 FF&E cash flows set out in the Pre-Operational Procurement Management Plan as amended by the relevant Monthly Pre-Operational Performance Report.
- (b) If, 7 Business Days before the end of a Month, there is a shortfall between the actual FF&E Account balance for the end of the Month and the FF&E cash flows set out in the Pre-Operational Procurement Management Plan as amended by the relevant Monthly Pre-Operational Performance Report, for the next 3 Months, the Operator will notify the State. Subject to Clause 10.9(c), the State will transfer an amount to the FF&E Account, reasonably determined by it, so that there are funds for the next 3 Months for the procurement of Group 4 FF&E.
- (c) The State will have no obligation to deposit any funds into the FF&E Account in excess of the FF&E Budget.

10.10 [Not Disclosed]

11 PRE-OPERATIONAL SERVICES AND COMMISSIONING

11.1 State Operational Commissioning Plan

- (a) The State must ensure that a copy of the Commercial Acceptance Plan is provided to the Operator as soon as reasonably practicable.
- (b) The Operator must submit to the State for review and approval in accordance with Schedule 2 (Review Procedures), a draft State Operational Commissioning Plan no later than 2 Months after it receives the Commercial Acceptance Plan, which draft must:
 - (i) be based on the framework plan set out in Attachment 1 (Operator's Plans) (**Draft SOCP**); and
 - (ii) take account of events or circumstances which will, or may, affect the manner in which the Operator performs the State Operational Commissioning Services.
- (c) If the Operator has received the Commercial Acceptance Plan more than 5 Months prior to the Date for Technical Completion, the Operator must submit to the State for review and approval in accordance with Schedule 2 (Review Procedures) a complete draft of the State Operational Commissioning Plan 3 months prior to the Date for Technical Completion which must contain any further changes to the construction or commissioning works proposed to be performed by the Operator.

- (d) The Operator must incorporate any further comments provided by the State up until 10 Business Days prior to the Date for Technical Completion.

11.2 State Access Period

- (a) For a period of 90 consecutive and uninterrupted days, commencing from the Date of Technical Completion the Operator will be provided with priority access in accordance with this Clause 11.2 to the Stadium and Sports Precinct to carry out and complete State Operational Commissioning Services (**State Access Period**).
- (b) The Operator must ensure that the State Operational Commissioning Services including Test Events are conducted at the times set out in the State Operational Commissioning Plan. The Operator must not conduct any Test Events during the last two weeks of the State Access Period.
- (c) During the State Access Period, the Operator acknowledges that Project Co will be undertaking its commissioning activities. However, the State will use its reasonable endeavours to ensure that Project Co will vacate any area that the Operator reasonably requires to undertake the Operator's commissioning activities during the State Access Period provided that requirement is set out in the State Operational Commissioning Plan.

11.3 State Operational Commissioning Services

- (a) (**Conduct**): In consideration for payment of the Pre-Operational Base Management Fee and the Pre-Operational Phase Costs, each in accordance with Schedule 9 (Payment Schedule), the Operator must:
 - (i) perform the Pre-Operational Services in accordance with Schedule 7 (Pre-Operational Services Specifications) and the Pre-Operational Plans;
 - (ii) conduct State Operational Commissioning Services in accordance with the State Operational Commissioning Plan and the Commercial Acceptance Plan and otherwise comply with those Plans;
 - (iii) manage the participation of any Event Parties in the Pre-Operational Services, including the State Operational Commissioning Services, as required under the State Operational Commissioning Plan and the Commercial Acceptance Plan; and
 - (iv) deliver the Pre-Operational Services in accordance with the Pre-Operational Services Program and complete the Pre-Operational Services, including the State Operational Commissioning Services, by the Date for Commercial Acceptance or such later date as permitted under Clause 12.3(b).
- (b) (**Defects**):
 - (i) To the extent that a defect in the Stadium or Sports Precinct is due to a Tortious Act or Omission or breach of a Project Document by the Operator or an Operator Associate arising out of construction or commissioning works or activities carried out by the Operator or an Operator Associate during the State Access Period, rectification of the defect will be at the Operator's cost. The State may request Project Co to rectify the defect and, in that case, the amount charged by Project Co to the State for rectifying the defect will be a debt due and payable by the Operator to the State.
 - (ii) If, during the State Access Period or at any other time prior to Commercial Acceptance, the DBFM Works are damaged due to a Tortious Act or Omission or breach of a Project Document by the Operator or an Operator Associate, rectification of the damage will be at the Operator's cost. The State may request Project Co to rectify the defect and, in that case, the amount charged by Project Co to the State

- for rectifying the defect will be a debt due and payable by the Operator to the State.
- (iii) If a defect in the Stadium or Sports Precinct arises or damage to the DBFM Works occurs during the State Access Period, to the extent that it is caused or contributed to by the Operator or an Operator Associate otherwise than in the circumstances described in Clause 11.3(b)(i) or Clause 11.3(b)(ii), the cost of rectifying the defect or damage will be an Operating Cost which will be accounted for in the first quarter of the Operating Phase.
 - (iv) If a defect in the Stadium or Sports Precinct arises or damage to the DBFM Works occurs during the State Access Period, to the extent that it is caused or contributed to by an Event Party, Clause 19.6 applies in respect of the Event Party Loss.
- (c) **(Reasonable assistance):** The State must use reasonable endeavours to ensure that Project Co provides:
- (i) all reasonable assistance to the Operator in carrying out the State Operational Commissioning Services, including accommodating requests for rescheduling of Project Co's commissioning activities to the extent that it does not have a material adverse effect on Project Co (including that it will not delay Commercial Acceptance);
 - (ii) upon request by the Operator, such information as is required by the Operator to carry out the State Operational Commissioning Services, including all operation manuals, instructions and design documentation reasonably required by the Operator to operate the Stadium and Sports Precinct and to achieve the requirements contained in Schedule 8 (Services Specification); and
 - (iii) an up to date Asset Register in accordance with the requirements of the Project Agreement.
- (d) **(Evidence of preparation):** 3 Months before the Date for Commercial Acceptance, upon request by the State, the Operator must provide the State with such evidence as is necessary to demonstrate that it will be in a position to commence provision of the Services from the day after the Date of Commercial Acceptance, including that it:
- (i) has allocated such resources and staff as is necessary to enable the due and proper performance of the Services from the day after the Date of Commercial Acceptance;
 - (ii) has obtained, or will be able to obtain, all Liquor Licences required in relation to the Stadium and Sports Precinct;
 - (iii) has obtained, or will be able to obtain, by the Date for Commercial Acceptance and maintain all Authorisations which it is necessary to have for the provision of the Services and the operation of the Stadium and Sports Precinct; and
 - (iv) will have completed all activities in the State Operational Commissioning Plan (prepared in accordance with Clause 11.1).
- (e) **(Commercial Acceptance Tests):**
- (i) The Operator acknowledges that, under the Project Agreement, Project Co will carry out Commercial Acceptance Tests at the dates set out in the Commercial Acceptance Plan and must notify the Operator of any changes to the date upon which a Commercial Acceptance Test will be performed.
 - (ii) The Operator may, at its discretion, observe any Commercial Acceptance Tests carried out by Project Co.

12 TIME

12.1 Notification of dates

Subject to Clause 12.5, the State must notify the Operator of the Date of Technical Completion and the Date of Commercial Acceptance.

12.2 Completion

The Operator must complete the Pre-Operational Services including the State Operational Commissioning Services, including successfully completing all Operator Completion Items, on or before the Date for Commercial Acceptance or such later date as permitted under Clause 12.3(b).

12.3 Extension of time

- (a) If Project Co is granted an extension of time to the Date for Commercial Acceptance under the Project Agreement, the State will notify the Operator. Other than to the extent caused or contributed to by an act or omission of the Operator or an Operator Associate and without limiting Clause 12.3(b), the Operator's responsibility to complete the Pre-Operational Services and any Operator Completion Items will be extended by the same period to the extent that the Operator can demonstrate that it is delayed as a result of Project Co being delayed.
- (b) If the Date of Technical Completion occurs after the Date for Technical Completion and the Date for Commercial Acceptance will occur before the expiry of the State Access Period, the obligation to complete the Pre-Operational Services and the Operator Completion Items by the Date for Commercial Acceptance will be varied so that the obligation to complete the Pre-Operational Services and the Operator Completion Items occurs no earlier than the end of the State Access Period, other than and only to the extent that the delay to achieving Technical Completion was contributed to by an act or omission of the Operator or an Operator Associate. The Operator will use its reasonable endeavours to complete the Pre-Operational Services before the end of the State Access Period if this Clause permits the State Access Period to end after the Date for Commercial Acceptance, but is not in breach of this Agreement if it fails to do so.
- (c) To the extent that Clause 12.3(b) permits the State Access Period to extend beyond the Date for Commercial Acceptance:
 - (i) the Operator will not be liable for the payment of liquidated damages in accordance with Clause 12.7; and
 - (ii) the process set out in Clause 12.6 will not apply,
 for the period of time between the Date for Commercial Acceptance and the end of the State Access Period.
- (d) An extension of time is the Operator's sole remedy for delay.

12.4 Unilateral extensions

- (a) Subject to Clause 12.4(b), the State may, by notice to the Operator, unilaterally extend any Date for Completion where the State considers that any act or omission of the State or a State Associate will, or is likely to, delay the Date for Completion.
- (b) The State is not required to exercise the State's discretion in accordance with Clause 12.4(a) for the benefit of the Operator or at all.
- (c) The exercise or failure to exercise the State's discretion in accordance with this Clause 12.4 is not capable of being the subject of a Dispute in accordance with Clause 34 or otherwise subject to review.

12.5 Acceleration

- (a) The Operator acknowledges that under the Project Agreement:
 - (i) the State may direct Project Co to accelerate the DBFM Works;
 - (ii) Project Co may achieve Commercial Acceptance prior to the Date for Commercial Acceptance; or
 - (iii) Project Co may achieve Technical Completion prior to the Date for Technical Completion.
- (b) If the State:
 - (i) directs Project Co to accelerate the DBFM Works in accordance with the Project Agreement;
 - (ii) considers, acting reasonably, that Project Co is likely to achieve Commercial Acceptance prior to the Date for Commercial Acceptance; or
 - (iii) considers, acting reasonably, that Project Co is likely to achieve Technical Completion prior to the Date for Technical Completion,

then with the Operator's consent, which cannot be unreasonably withheld, the relevant dates for completion of the Operator Completion Items will be revised to reflect the:

 - (iv) Date for Technical Completion determined in accordance with the Project Agreement or the anticipated Date of Technical Completion if earlier than the Date for Technical Completion; or
 - (v) Date for Commercial Acceptance determined in accordance with the Project Agreement or the anticipated Date of Commercial Acceptance if earlier than the Date for Commercial Acceptance.
- (c) Provided that the accelerated date proposed for the Date for Technical Completion is no earlier than 1 July 2017, the Operator must not withhold its consent to the acceleration if the State gives the Operator no less than 6 Months' notice of a revised Date for Technical Completion or Date for Commercial Acceptance and if the State Access Period is not reduced to less than 90 consecutive and uninterrupted days as described in Clause 11.2.

12.6 Operator delay in completing Operator Completion Items

- (a) If the State considers (acting reasonably) that the Operator will not, or is not likely to, complete the Operator Completion Items such that the Operational Commencement Date can occur on the Date for Commercial Acceptance (or such other date as the Operator is given to complete the Operator Completion Items under Clause 12.3 or Clause 12.5) the State may notify the Operator and within 2 Business Days the Operator must meet with the State to present its reasons for the delay and its proposal setting out how the Operator will complete the Operator Completion Items so as to ensure the Operator Completion Items are successfully completed by the Date for Commercial Acceptance (or such earlier date as may be required in order that Project Co can achieve Commercial Acceptance by the Date for Commercial Acceptance).
- (b) Within 2 Business Days of the meeting between the Operator and the State held in accordance with Clause 12.6(a), the State will (acting reasonably) notify the Operator that it will either:
 - (i) without limiting Clause 12.7, elect to let the Operator complete that Operator Completion Item in accordance with the proposal put forward by the Operator under Clause 12.6(a); or
 - (ii) elect to perform those Operator Completion Items or have all or any part of those Operator Completion Items performed by the State or a nominee of the State, in which case they will cease from that time to be Operator

Completion Item obligations of the Operator (provided that the cessation of such obligation does not relieve the Operator from its obligations under Clauses 12.6(c) to 12.6(g)).

- (c) If the State elects to perform those Operator Completion Items or have all or any part of those Operator Completion Items performed by the State or a nominee of the State, the Operator must provide all reasonable assistance to the State or the nominee, including providing any access (and licence) to documents or software required to enable the State or the State's nominee to carry out the relevant Operator Completion Item.
- (d) The Operator is not entitled to claim the Pre-Operational Base Management Fee or the Pre-Operational Phase Costs Incentive Fee which relates to any Operator Completion Item which the State performs itself or procures the State's nominee to perform in accordance with Clause 12.6(b)(ii). The parties agree that the Pre-Operational Base Management Fee and the Pre-Operational Phase Costs Incentive Fee apportioned equally across all of the Operator Completion Items.
- (e) The State may claim as Pre-Operational Phase Costs its costs of performing, or procuring the performance of, an Operator Completion Item in accordance with Clause 12.6(b)(ii) with the amount claimed by the State for the relevant Operator Completion Item to be capped at the amount that would have been claimed by the Operator for completing the Operator Completion Item less any amount that was claimed by the Operator as a Pre-Operational Phase Cost, and may include those Pre-Operational Phase Costs on a Payment Statement.
- (f) Where the Pre-Operational Phase Costs are inadequate or insufficient to reimburse the State for its costs of performing, or procuring the performance of, an Operator Completion Item pursuant to Clause 12.6(e) and to the extent that the State's election was due to the Operator's Tortious Act or Omission or breach of a Project Document, the Operator will be liable to the State and must indemnify the State for the outstanding balance of the State's costs as a debt due and payable by the Operator to the State on demand.
- (g) As between the State and the Operator, if the State or a nominee of the State undertakes the completion of the Operator Completion Items in accordance with Clause 12.6(b)(ii), the Operator is not entitled to make any Claim against the State or the State's nominee arising out of or relating to their performance of the Operator Completion Items.

12.7 Liquidated damages

- (a) *[Not disclosed]*
- (b) If, after the Operator has paid or the State has deducted liquidated damages under Clause 12.7(a), the Date of Commercial Acceptance is extended, the State will repay to the Operator any liquidated damages paid or deducted in respect of the period to and including the new Date of Commercial Acceptance. The State will make any payment to the Operator under this Clause 12.7(b) within 20 Business Days of the relevant extension.
- (c) **(Genuine pre-estimate):**
 - (i) The Operator acknowledges and agrees that the State will incur loss if the Operator has not successfully completed the Operator Completion Items by the Date of Commercial Acceptance.
 - (ii) The parties agree that the Liquidated Damages Amount:
 - (A) is a fair, reasonable and genuine pre-estimate of the loss which the State is likely to incur if the Operator has not successfully completed the Operator Completion Items by the Date of Commercial Acceptance; and

- (B) does not constitute a penalty.
- (iii) The Operator agrees that it will not assert or seek to assert in any proceedings pursuant to Clause 34, court, arbitration or other proceedings that the liquidated damages constitutes a penalty or that this Clause 12.7 or the Operator's obligations pursuant to this Clause 12.7 is void or unenforceable (whether in whole or in part).
- (d) **(When liquidated damages are payable):** Any liquated damages payable by the Operator will be moneys due and payable on demand.
- (e) **(General damages if liquidated damages are unenforceable):** Notwithstanding Clause 12.7(c), if the liquidated damages provided for in this Clause 12.7 are found to be a penalty or if this Clause 12.7 or the Operator's obligation pursuant to this Clause 12.7 is found to be void or unenforceable for any reason (whether in whole or in part), the Operator will be liable to pay unliquidated damages at Law for the breach for which liquidated damages would have been payable had the relevant liquidated damages, obligation or this Clause 12.7 not been a penalty or not been void or unenforceable.

12.8 Other delay to Commercial Acceptance

The Operator acknowledges that in accordance with the Operational Interface Agreement:

- (a) Project Co will give the Operator written notice, at the same time as it gives notice to the State, of any planned or anticipated delay to the Date of Commercial Acceptance; and
- (b) the Operator has no claim against Project Co or the State (other than continuing to claim Operating Costs in accordance with this Agreement) for any such delay and must adjust the State Operational Commissioning Plan so that it remains consistent with the timing and other matters in the Commercial Acceptance Plan.

13 TRAINING AND INDUCTION

13.1 Stadium Personnel Induction and Training Program

- (a) During the Commissioning Period and Operating Phase, Project Co will provide induction and training for the Operator and Operator Associates nominated by the State in accordance with the Stadium Personnel Induction and Training Program.
- (b) The Operator must ensure that any Operator Associates nominated by the State to attend the Stadium Personnel Induction and Training Program, attend the relevant induction and training including any updated induction and training if the Stadium Personnel Induction and Training Program is amended.

13.2 Operator Induction and Training Program

The Operator must:

- (a) provide induction and training to any Operator Associate involved in the performance of the Services who is unable to receive induction and training from Project Co in accordance with Clause 13.1(a) prior to performing Services, as appropriate for the role and function of the Operator Associate;
- (b) ensure that all Operator Associates undertake and successfully complete induction and training in accordance with the Operator Induction and Training Program prior to performing Services at the Stadium or Sports Precinct (or both);
- (c) provide training to all Project Co Associates involved in the performance of the DBFM Services in accordance with the Operator Induction and Training Program at least annually; and

- (d) notify the State Representative and Project Co upon each Operator Associate's and Project Co Associate's completion of the Operator Induction and Training Program.

14 PLANS

- (a) **(Acknowledgement):** The Operator acknowledges that the draft plans in Attachment 1 (Operator's Plans) are not in final form.
- (b) **(Timetable):** The timetable for developing and finalising the draft plans in Attachment 1 (Operator's Plans) is as follows:
 - (i) the State Operational Commissioning Plan, as specified in Clause 11.1;
 - (ii) the Operator Business Plan, as specified in Clause 15; and
 - (iii) all Plans related to the Operating Phase, as an Operator Completion Item and then in accordance with Part F of Schedule 8 (Services Specifications).
- (c) Once a draft Plan has been submitted to the State in accordance with the relevant Clause of this Agreement, including under Schedule 2 (Review Procedures) and the State has notified the Operator that no further revisions are required, the draft Plan will become the Plan to be complied with for the purposes of this Agreement.
- (d) **(Additional information):** The Operator must provide any additional information in relation to the Plans reasonably requested in writing by the State.
- (e) **(Review):** The Operator must review and, where required following that review, update the Plans:
 - (i) at the times set out in this Agreement;
 - (ii) as necessary to reflect any changes to the nature, understanding or status of the Services; and
 - (iii) at any time if reasonably requested by the State to do so.
- (f) **(General requirements):** The Operator must ensure that the Plans:
 - (i) without limiting Clause 14(e), are prepared and updated in accordance with, and are of a quality consistent with, Good Industry Practice;
 - (ii) are aligned and are consistent with this Agreement;
 - (iii) meet the requirements set out in Part F of Schedule 8 (Services Specifications) and Part F of Schedule 7 (Pre-Operation Services Specification);
 - (iv) are aligned and consistent with each other and with the relevant draft plan in Attachment 1 (Operator's Plans) and any subsequent version of the relevant Plan that has been approved by the State; and
 - (v) contain complete and accurate information in respect of the Services, including providing a detailed description of how the Operator intends to carry out the Services.
- (g) **(Government Agency approval):** If a Plan is required to be approved by a Government Agency, the Operator must ensure that it has obtained that approval prior to submitting the relevant Plan to the State for review. The Operator must comply with all requirements of a Government Agency in respect of regular updates of a Plan.
- (h) **(Delivery):** The Operator must perform the Services in accordance with the Plans.
- (i) **(Compliance):** Without limiting Clause 4.6 and subject to Clause 14(j), the Operator must comply with the then current version of each Plan (but only to the extent such Plan is not inconsistent with Schedule 8 (Services Specifications)).

- (j) **(Inconsistency):** If the then current version of a Plan is inconsistent with Schedule 8 (Services Specifications), the Operator must notify the State and Clause 1.3(h) applies.
- (k) **(Deemed replacement of Plans):** The Plans set out in Attachment 1 (Operator's Plans) are deemed to be replaced with the then current version of each Plan once it has been through the relevant process prescribed in Schedule 2 (Review Procedures) and finalised as described in Clause 14(c) or otherwise approved in accordance with this Agreement.

15 OPERATOR BUSINESS PLAN

15.1 Operator Business Plan

- (a) The Operator acknowledges that the Operator Business Plan in Attachment 1 (Operator's Plans) is not in final form.
- (b) No later than six Months before the Date for Commercial Acceptance, the Operator must prepare and submit to the State for review and approval in accordance with Schedule 2 (Review Procedures), an Operator Business Plan for each Financial Year of the Initial Term (or part thereof) which must be consistent with Clause 15.2 and based on the framework plan set out in Attachment 1 (Operator's Plans).
- (c) If this Agreement is extended for the Further Term, the Operator must prepare a new Operator Business Plan for each Financial Year of the Further Term six Months prior to the fifth anniversary of the date referred to in Clause 15.1(b), which must be submitted to the State for review and approval in accordance with Schedule 2 (Review Procedures). The first year of the new Operator Business Plan must be consistent with the Operator Business Plan submitted under Clause 15.3(a) for the first year of the Further Term.

15.2 Contents of Operator Business Plan

The Operator Business Plan must contain the following:

- (a) a description of the Operator's planned activities for each Financial Year of the Initial Term or the Further Term (as the case may be) such that there is always at least a 3 year plan. In the last two years of the Initial Term, the Operator should assume that the Further Term will be granted for the purpose of preparing a 3 year plan;
- (b) a business plan and strategy for the forthcoming Financial Year and a discussion of long term objectives with emphasis on new business initiatives and industry developments;
- (c) budgets by Month for the forthcoming Financial Year containing, as a minimum:
 - (i) a detailed profit and loss statement;
 - (ii) balance sheet;
 - (iii) cashflow projection prepared in a manner consistent with Accounting Standards or such other method of accounting approved by the State;
 - (iv) the forecast Quarterly Service Payment for each Quarter of that Financial Year (divided into the component parts detailed in Annexure B to Schedule 9 (Payment Schedule));
 - (v) a detailed breakdown of the budgeted Operating Costs including separately identifying any head office costs which are approved as Operating Costs;
 - (vi) the forecast Total Revenue for that Financial Year including a detailed breakdown per Event; and

- (vii) the forecast Gross Operating Profit for each Quarter of the Financial Year,
(the **Budget**);
- (d) discussion and analysis of the forthcoming Financial Year's forecast operating conditions and the Budget;
- (e) particulars of bookings contained in the Bookings Schedule, other contracted Events and Functions or Major Events notified to the Operator by the State in accordance with Clause 20.1, commitments, deposits taken, expressions of interest to make future bookings or commitments together with the Operator's assessment of the likelihood of those expressions of interest being exercised for the next 5 years;
- (f) a narrative description and budget of the proposal for the marketing and promotion of the Stadium and Sports Precinct during the forthcoming Financial Year and the cost of each component of each proposal together with a full analysis of the proposals;
- (g) a forecast Budget for the next 3 Financial Years including a narrative description and assumptions in support of the forecast;
- (h) a staffing plan which includes a representation of the organisational structure of the Operator with a description of each employee position and the estimated costs associated with that position;
- (i) any proposals for significant changes to the manner of operations of the Stadium and Sports Precinct, including, without limiting the generality of the above, significant new Subcontracts or the termination of existing arrangements;
- (j) proposed national and international travel, accommodation and entertainment expenditure;
- (k) the KPIs and any relevant information relating to the calculation of KPIs for each Financial Year during the Term;
- (l) the Operator's proposed pricing for Hirers at the Stadium and Sports Precinct;
- (m) detailed recommendations for the renewal or replacement of any Operator FF&E to the extent necessary to support the operational requirements of the Stadium and Sports Precinct and to maintain the Stadium and Sports Precinct in a competitive position with new or contemporary event facilities both nationally and globally; and
- (n) the method of monitoring and reporting of the Operator's delivery of the Services and performance against the KPIs, which as a minimum must include the methods set out in Part E of Schedule 8 (Service Specifications).

15.3 Updates to the Operator Business Plan

- (a) By 1 April in each year of the Initial Term and the Further Term (other than the last year of the Further Term) and at any other time reasonably requested by the State, the Operator must submit to the State an updated Operator Business Plan for review and approval in accordance with Schedule 2 (Review Procedures), that:
 - (i) has been revised to include the information available to the Operator as at the date of its delivery to the State as well as the detailed information for the forthcoming Financial Year described in Clause 15.2, including any events or circumstances which will, or may, affect the manner in which the Operator performs the Services;
 - (ii) in relation to the information required under Clause 15.2(d), contains a comparison between that information and the current Financial Year's forecast performance, explaining the reasons for variances;

- (iii) contains a statement of the other differences between the updated Operator Business Plan and the immediately preceding Operator Business Plan, together with an explanation of the reasons for variances;
 - (iv) is in substantially the same format as the previous Operator Business Plan; and
 - (v) is otherwise developed and presented in such form and contains such information as the State may from time to time require.
- (b) In addition to meeting the requirements of Clause 15.3(a), for the Operator Business Plan submitted for the final Financial Year of the Initial Term, the Operator must also include such detail as it is able for the first Financial Year of the Further Term in respect of the items in Clause 15.2(a) to 15.2(m) (inclusive).
- (c) The Operator must provide any additional information (including any additional documents) in relation to the Operator Business Plan reasonably requested in writing by the State.
- (d) Notwithstanding Clause 15.4(c), the Operator must notify the State as soon as reasonably practicable, and in any event in the next Monthly Performance Report, if the business outlook or prospective financial results of the Operator are likely to be materially different from those specified in the Operator Business Plan or if an event described in Clause 15.4(d) or Clause 15.4(e) is likely to occur, and whether the matter notified can be remedied by making adjustments to the existing Budget or the MYR Budget.
- (e) The Operator must attend such meetings and make such presentations as the State requests in connection with any Operator Business Plan.
- (f) Without limiting Clause 15.3(a), if there is an Operating Loss for two successive Quarters during a Financial Year, the State may require the Operator to meet with it to discuss actions or processes to be undertaken by the Operator in order to increase the Gross Operating Profit for the remaining two Quarters of the Financial Year such that there are no further Operating Losses or otherwise mitigate the extent of any Operating Losses.
- (g) Without limiting Clause 15.3(a) and Clause 15.4(c), from time to time, the State may reasonably require the Operator to produce and submit to the State an updated Operator Business Plan which includes steps relating to:
 - (i) timetable development;
 - (ii) improvements in the operation of the Stadium and Sports Precinct;
 - (iii) improvements in the quality or efficiency of performance of the Services; or
 - (iv) increasing the Gross Operating Profit in accordance with discussions between the State and the Operator under Clause 15.3(f).
- (h) The Operator is not entitled to undertake any business activities or pursue any new business opportunities in respect of the Stadium and Sports Precinct which are not included in the Operator Business Plan without the prior written consent of the State. However, if opportunities become available, the Operator must bring them to the attention of the State for the parties to consider. If the State consents to the Operator pursuing any such new opportunity, the new opportunity will be reflected in the Monthly Performance Report and included in the next revision of the Operator Business Plan.

15.4 Budget Management

- (a) On or before 1 December 2018 and by each subsequent 1 December in each Financial Year of the Initial Term and the Further Term, the Operator must conduct a mid-year review of the Budget for the current Financial Year, and submit to the State an updated version of the Budget (**MYR Budget**), for review and approval by

the State in accordance with Schedule 2 (Review Procedures). The MYR Budget must comply with the requirements set out in Clause 15.2(c). Without limiting the remainder of this Clause 15.4, the MYR Budget must incorporate revised revenue and Operating Costs projected for the remainder of the Financial Year in accordance with this Agreement.

- (b) Once approved by the State, the Operator must comply with the MYR Budget, forming part of the Operator Business Plan for the remainder of the current Financial Year.
- (c) The Operator must at all times track the Operator's financial performance (including Operating Costs, Total Revenue and Gross Operating Profit) against the Budget and the MYR Budget (as a reference) for the current Financial Year and, where relevant, the Budget in the Operator Business Plan for the forthcoming Financial Year. The Operator must include that information in each Monthly Performance Report and make it available to the State upon request.
- (d) If the Operator forecasts that the Gross Operating Profit for a Financial Year will be more than 10% less than the budgeted Gross Operating Profit, the Operator will provide the State with detailed commentary regarding the relevant variance to the Budget or MYR Budget (as the case may be) and provide the State with a plan to address the shortfall.
- (e) If the Operator forecasts that an Operating Cost line item in the Budget for a Financial Year will exceed the Operating Cost in the Budget or the MYR Budget for that item (as relevant) by 10% and \$10,000 (whichever is the greater), the Operator must notify the State. The Operator will:
 - (i) give the State commentary detailing the reasons for this overrun and the strategy of the Operator to minimise the cost overrun; and
 - (ii) discuss with the State any changes to that strategy the State (acting reasonably) suggests and take into account the State's comments and changes in further refining the strategy to address the overrun. If the Budget, the MYR Budget or the Monthly Performance Report show that there is, or may be, an Operating Loss, the Operator must incorporate any comments received from the State into the strategy.
- (f) Subject to complying with Clause 15.4(g), and the Operator complying with any other clause in this Agreement that states that the State's consent must be obtained before a cost can be an Operating Cost, if the Operator complies with Clause 15.4(e)(i) and Clause 15.4(e)(ii) above including implementing the strategy developed and refined in accordance with Clause 15.4(e)(ii), the costs incurred in excess of the budgeted Operating Costs will be recoverable by the Operator as Operating Costs in accordance with Schedule 9 (Payment Schedule).
- (g) If the Operating Cost referred to in Clause 15.4(e) is in respect of travel or entertainment costs, or head office costs of Related Bodies Corporate of the Operator, then the Operator must obtain the State's approval to the overrun before it is incurred in order to claim it as an Operating Cost.
- (h) If the Operator identifies an actual or prospective cost or Liability that is not an Operating Cost identified in the Budget or MYR Budget (as applicable), the Operator may request that the State consents to that cost or Liability becoming an Operating Cost. If the State agrees, that cost or Liability will be an Operating Cost. If the State does not consent, the cost or Liability will, if incurred, be for the Operator's account.
- (i) Without limiting Clause 15.3(h) or this Clause 15.4, if the Operator identifies an Event, Function or other activity of the Operator that is not included in the Budget or the MYR Budget, and that new Event, Function or other activity is reasonably projected to add to Gross Operating Profit and does not otherwise breach this Agreement, the costs incurred in respect of that Event, Function or other activity will be Operating Costs, except for Events in relation to which the Operator is the promoter, in which case the Operator must obtain the State's prior written consent

to that Event in accordance with Section B.4.3(c)(v) of Schedule 8 (Services Specification).

16 COMMUNICATIONS AND STAKEHOLDER MANAGEMENT

16.1 Reporting requirements

- (a) The Operator must, at the relevant times, provide the State with the following reports:
 - (i) each Month, the following Monthly reports:
 - (A) a report on the previous and upcoming Months' communication activities;
 - (B) a database summary that includes a record of all contacts, key issues and resolutions; and
 - (C) copies of all Communication Materials used; and
 - (ii) each Quarter, the following reports:
 - (A) the Monthly reports for each Month in that Quarter;
 - (B) a summary report of the previous and upcoming Quarters' communication activities; and
 - (C) a report on the Key Performance Indicators.
- (b) The reports referred to in Clauses 16.1(a)(i) and Clause 16.1(a)(ii) may be used by the State, Key Users and Hirers for their communications and promotional requirements.

16.2 General requirements

- (a) The Operator must:
 - (i) undertake communications and stakeholder management in accordance with the Communications and Marketing Plan;
 - (ii) cooperate and work collaboratively with Project Co and Project Co Associates in managing day-to-day communications relating to the DBFM Services and the Stadium or Sports Precinct (or both);
 - (iii) participate in regular consultative processes with user groups, as requested by the State, in order to establish and maintain productive and responsive relationships with Stadium Users and other stakeholders in relation to the Services; and
 - (iv) establish and maintain communication controls and coordination procedures between the State, Project Co, Subcontractors and any other parties relevant to the management of the Operator's obligations under this Agreement.
- (b) The Operator must comply with the requirements of, and ensure its communications and stakeholder management is consistent with, the State Stakeholder Management Plan.
- (c) The Operator must work closely with the State Representative to provide relevant background, supporting information and Communication Materials to the State in order to ensure that appropriate, timely and accurate information is available to inform and engage Project Stakeholders.
- (d) Unless otherwise agreed by the parties, all media enquiries received by the Operator must be referred to the State immediately and managed in accordance with Section B.1.3(e)(i) of Schedule 8 (Services Specifications), the State's instructions and all relevant State Policies.

16.3 Liaison

During the Operating Phase, the Operator must liaise (at least Monthly) with:

- (a) the State Representative, including in relation to undertaking, or preparing to undertake, action which may impact upon the performance of the Services or upon the comfort or wellbeing of Stadium Users (other than the State and State Associates); and
- (b) without limiting Clause 16.3(a), external advisers and Government Agencies as required by the State Representative from time to time, in connection with the Services provided.

17 OPERATIONS

17.1 Operation of the Stadium and Sports Precinct

In consideration of payment of the Annual Base Management Fee, Operating Costs and the Incentive Management Fee in accordance with Schedule 9 (Payment Schedule), the Operator must:

- (a) provide the Services from the Operational Commencement Date to the Expiry Date;
- (b) without limiting Clause 17.1(a), provide the Services at all times in accordance with, and duly and punctually perform its obligations arising in or under:
 - (i) Schedule 8 (Services Specifications);
 - (ii) Good Industry Practice, and in an appropriate, effective and efficient, dependable and cooperative manner;
 - (iii) all applicable Authorisations and Laws;
 - (iv) the Plans; and
 - (v) each other Project Document;
- (c) provide the Services and operate the Stadium and Sports Precinct in an efficient, professional and diligent manner to achieve the Operational Objectives;
- (d) allocate such resources and staff as is necessary to enable the due and proper performance of this Agreement;
- (e) obtain and maintain all Authorisations which it is necessary to have for the provision of the Services and the operation of the Stadium and Sports Precinct;
- (f) conform to the Procurement Management Plan as approved by the State when entering into contracts for the supply of goods and services in connection with the operation of the Stadium and Sports Precinct; and
- (g) in a timely manner disclose to the State any transactions occurring between the Operator or an Operator Associate and a Subcontractor, Venue Partner or Project Co Associate.

17.2 Liquor Licence

The Operator must:

- (a) for and on behalf of the State, apply for and obtain the liquor licence(s) under the Liquor Act necessary for the Operator to comply with its obligations under this Agreement (**Liquor Licence**);
- (b) to the extent permitted by Law, ensure that the Liquor Licence relates solely to the Site, Stadium and Sports Precinct;
- (c) at all times, comply with the requirements of the Liquor Act and the Liquor Licence, including:

- (i) keeping any records required by the Liquor Act or the Liquor Licence;
 - (ii) paying any fees or other payments required to be paid by the Liquor Act or the Liquor Licence; and
 - (iii) complying with and not contravening any direction given or condition imposed by the Department of Racing, Gaming and Liquor and any other Authority;
- (d) without limiting this Clause 17.2, otherwise do all matters, acts and things necessary to ensure that, at all times, the Operator holds a licence, on behalf of the State, for the sale of liquor in respect of the Site, Stadium and Sports Precinct;
- (e) give written notice to the State of any notice, requisition, direction, summons or any other document whatsoever received by the Operator from the Department of Racing, Gaming and Liquor or any other Authority in connection with the provision of liquor at the Stadium and Sports Precinct or the Liquor Licence within one Business day of receiving such a notice; and
- (f) not (without the prior written consent of the State):
 - (i) transfer, assign or otherwise part with the possession of the Liquor Licence; or
 - (ii) alter or vary the terms of the Liquor Licence.

17.3 Promotion

- (a) The Operator must:
 - (i) do all things that are reasonably within the Operator's control to promote the Stadium and Sports Precinct to the public, including participating in or contributing to such marketing campaigns or research in relation to the Stadium and Sports Precinct as required by the State from time to time;
 - (ii) without limiting this Clause 17.3(a), promote the Stadium and Sports Precinct in accordance with the then current Operator Business Plan;
 - (iii) liaise and cooperate with the State and other parties nominated by the State and assist the State in the promotion and development of the Stadium and Sports Precinct; and
 - (iv) subject to the approval of the State from time to time, become and remain members of any entity created to promote the Stadium and Sports Precinct and undertake all actions as a promoter in accordance with Schedule 8 (Services Specifications).
- (b) The Operator or an Operator Associate in its own right may perform the tasks of promoter or producer (or both) in respect of a specific Event if:
 - (i) the role of promoter or producer (or both) is consistent with the Operator Business Plan; and
 - (ii) the prior approval of the State has been obtained,
 and the Operator is not otherwise required to perform the role of promoter or producer.

17.4 Coordination of Events

The Operator must do all things necessary in respect of the hosting of Events and Functions, including:

- (a) organising and running the Event or Function including in accordance with the relevant Event Specific Management Plan for that Event;
- (b) providing details and specifications concerning the Stadium or Sports Precinct (or both if required) to Key Users, Hirers and promoters;

- (c) providing sufficient and appropriate personnel;
- (d) providing appropriate co-ordination of relevant people (including police, transport authorities, emergency services and local government); and
- (e) if the Event or Function properly requires that any of the Services are provided in an area surrounding or adjacent to the Site (for example, Parking and Traffic Management Services, Safety Management Services or Event Management Services (all as defined in Schedule 8 (Services Specifications))), liaising with the relevant Government Agency and neighbours to ensure that:
 - (i) the Operator has access to the area that it needs to provide the Services; or
 - (ii) the relevant Government Agency or neighbour provides services as required on that area.

17.5 Right of veto

- (a) The Operator must not (and must not permit its Subcontractors, Key Users or Hirers to) host any Event or Function at the Stadium or Sports Precinct which, in the State's opinion is or is likely to be offensive, illegal or detrimental to the reputation or public perception of the State of Western Australia or the Stadium or Sports Precinct.
- (b) The State may prohibit the hosting of an Event or Function at the Stadium or Sports Precinct which it reasonably considers is or is likely to be offensive, illegal or detrimental to the reputation or public perception of the State or the Stadium or Sports Precinct.

17.6 Provide merchandise

The Operator may:

- (a) sell or supply, or permit the sale or supply of, Event or Function related merchandise or retail items during that Event or Function (as the case may be); and
- (b) develop and sell a range of merchandise related to the Stadium and Sports Precinct (**Stadium Merchandise**),

in accordance with the Retail Management Plan.

17.7 Advertising

- (a) The Operator may sell advertising space and place advertisements on the Site, Stadium and Sports Precinct in accordance with this Clause 17.7 and Schedule 8 (Services Specifications).
- (b) Any advertising at the Site, Stadium or Sports Precinct must:
 - (i) be in accordance with the relevant requirements under agreements entered into with Key Users;
 - (ii) comply with codes of conduct, codes of ethics and codes of advertising for the advertising industry prepared or adopted by the Advertising Standards Bureau of Australia, the Classification Board, the Australian Association of National Advertisers and the Outdoor Media Association;
 - (iii) not resemble or be capable of confusion with directional or informational signs either by shape, size or colour; and
 - (iv) not interfere with the performance of the Services.
- (c) If the State believes that any advertising does not comply with Clause 17.7(b), the State may require the Operator to remove such advertising from the Site, Stadium

or Sports Precinct (whichever relevant) at the Operator's cost, which cost is not an Operating Cost. The State may also require the Operator to remove advertising from the Site, Stadium or Sports Precinct (whichever relevant) which it believes should not be depicted because it is political, religious, racist, sexually explicit, offensive or other similar subject matter and the cost of physically removing the advertising will be an Operating Cost.

- (d) The parties agree that the proceeds of advertising conducted or sold by the Operator or received by the Operator under a User Agreement or Hirer Agreement will form part of Total Revenue and must be paid into the Operating Account.

17.8 Encourage good behaviour by Patrons

The Operator must take all reasonably practicable steps to encourage good behaviour by Patrons at all Events and Functions. This includes the Operator taking all reasonably practicable steps to ensure that no announcements are made, or signs or other things displayed, which are likely to incite or encourage violence, public drunkenness, threats, lewd behaviour, offensive language, or other undesirable behaviour by Patrons.

17.9 Prohibit dangerous things and activities

- (a) The Operator must not store or use and must not allow the storage or use of any inflammable, explosive or other dangerous goods in the Stadium or Sports Precinct other than in accordance with this Clause 17.9.
- (b) The Operator must not conduct any dangerous activity, Event or Function or allow a dangerous activity, Event or Function to occur or dangerous thing to be in the Stadium or Sports Precinct, without:
 - (i) the prior approval of the State; and
 - (ii) where relevant, an authorisation from an appropriate Government Agency (including any licences obtained in accordance with Clause 17.9(c)), which is duly complied with.
- (c) The Operator must apply for and obtain any licences required to be obtained under the *Dangerous Goods Safety Regulations 2007* (WA) necessary for the Operator to comply with its obligations under this Agreement. For the avoidance of doubt, this does not require the Operator to obtain any such licence where a relevant Event Party has obtained the licence required for any dangerous activity, Event or Function.
- (d) The Operator must, where appropriate, supply adequate health and safety information concerning any goods or substances it or any Operator Associate may use for the purpose of executing the Operator's obligations and must ensure that any such goods and substances will be safe when properly used, handled or stored including by making available Material Safety Data Sheets to all Operator Associates.
- (e) The Operator must, where appropriate, and in any event at the time required by this Agreement and the Plans and where no time is stated, in the Annual Report, keep the State regularly informed of all relevant information which becomes known to the Operator or the Operator Associates concerning the use, supply, handling, maintenance or storing of the goods or substances.
- (f) The Operator is responsible for the reporting of any reportable situations (as that term is defined in the *Dangerous Goods Safety Act 2004* (WA)) and for complying with all other obligations under the *Dangerous Goods Safety Act 2004* (WA) to the extent that it applies to the Operator's obligations. The Operator must give the State a copy of any notice that it gives under the *Dangerous Goods Safety Act 2004* (WA). The State is entitled to rely on the Operator complying with this Clause 17.9 in the event that a reportable situation (as that term is defined in the *Dangerous Goods Safety Act 2004* (WA)) occurs.

- (g) The Operator must take all actions that are reasonably practicable to minimise risk to people, property and Environment from the storing, handling or transportation of dangerous goods (as that term is defined in the *Dangerous Goods Safety Act 2004* (WA)).
- (h) For the avoidance of doubt, this Clause 17.9 does not prohibit:
 - (i) the storing of cleaning fluids, fuels and other Consumables necessary for the performance of the Services where they are stored in accordance with proper safety procedures and any specific requirements of a Law; or
 - (ii) an Event or Function where the risk of injury is limited to Performers knowingly engaging in a stunt, act or other inherently dangerous act, where the stunt, or act involves risks to those Performers which are usual or acceptable in venues similar to the Stadium and Sports Precinct,
 subject to the Operator complying with the requirements set out in paragraph (b) (other than (b)(i)) to (g) (inclusive) of this Clause 17.9.

17.10 Emergency management

- (a) If the Operator believes that an emergency or disaster has occurred or is likely to occur it must:
 - (i) do all things necessary to comply with the Plan called the Emergency Management Plan; and
 - (ii) monitor and inform the State Representative of the emergency.
- (b) Without limiting its obligation in respect of the Plan called the Emergency Management Plan, the Operator must participate willingly in, and contribute to, emergency and counter disaster planning, implementation measures, simulated disasters and other training exercises and related activities as reasonably determined from time to time by the State or otherwise required to be complied with by the State (including the *Emergency Management Act 2005* (WA) or any other Law) (**Emergency Measures**).
- (c) If an emergency or disaster occurs the Operator must fulfil the roles allocated to it set out in the State emergency services plan adopted or approved by the State, including any emergency services plan adopted or approved pursuant to the *Emergency Management Act 2005* (WA) or any other Law (**Emergency Services Plan**).
- (d) The Operator must use its reasonable endeavours to comply with the obligations set out in Clauses 17.10(a) to 17.10(c) (inclusive) notwithstanding that it may otherwise be prevented or released from its obligation to do so by the fact that the emergency or disaster the subject of the Emergency Measures or Emergency Services Plan also constitutes a Force Majeure Event.
- (e) To the extent that the Operator's compliance with the Emergency Measures or Emergency Services Plan requires the Operator to perform services which are substantially in the nature of the Services, then the Operator will be entitled to reimbursement for the extra cost of performing those services as an Operating Cost, to the extent only that the Operator is not otherwise entitled to compensation or payment for those services as a result of an Adverse Event.

17.11 Prohibit noxious or illegal uses

- (a) The Operator must use its reasonable endeavours to not permit any activity which is anti-social, immoral, offensive, undesirable or illegal (or which the State notifies the Operator it considers contravenes this Clause) to be committed at or during any Event or Function or otherwise in the Stadium or Sports Precinct, to the extent the Operator could reasonably be expected to have prevented or stopped such an activity, having regard to the nature of events normally presented in public assembly venues.

- (b) Subject to the Operator complying with all Authorisations in relation to the performance of the Services and the Plans, this clause does not prohibit Events or Functions which generate a normal amount of vehicular or pedestrian traffic congestion in and around the Stadium, or normal levels of amplified sound or crowd noise when compared with like Events or Functions.

18 STATE REVIEW OF THE OPERATOR'S PERFORMANCE

18.1 General rights

- (a) **(Review):** The State will from time to time during the Term review the Operator's performance in accordance with this Agreement (including the Key Performance Indicators) and prepare a performance report in accordance with the State's requirements for reviewing the performance of contractors engaged by the State.
- (b) **(Performance report):** The State may provide the performance report to any Government Agency.
- (c) **(Liaise with the Operator):** In reviewing and reporting on the Operator's performance, the State will:
 - (i) liaise with the Operator;
 - (ii) notify the Operator of the form of the performance report including the criteria against which the Operator's performance will be assessed;
 - (iii) provide any other information or guidelines to the Operator relevant to the performance review and the preparation of the performance report; and
 - (iv) provide the proposed performance report to the Operator for its review.
- (d) **(Reasonable assistance):** The Operator:
 - (i) must provide all assistance reasonably required by the State in conducting a performance review and preparing a performance report in accordance with this Clause 18; and
 - (ii) may provide comments to the State on the proposed performance report.
- (e) **(Comments):** The State will:
 - (i) include any comments provided by the Operator in the completed performance report; or
 - (ii) respond to the Operator in connection with any comments the Operator has on the proposed performance report.

18.2 Performance Monitoring Program

The Operator must:

- (a) monitor its own performance in accordance with the Performance Monitoring Program and the Plan known as the Performance Monitoring Plan;
- (b) subject to Clause 18.2(c), conduct annual audits of its performance of the Services, and provide the outcome of such audits to the State;
- (c) provide the State with a minimum of 5 Business Days' written notice prior to undertaking the annual audits, and must only undertake such audits during business hours and otherwise at a time which does not interfere with the performance of the Services; and
- (d) without limiting any other Clause of this Agreement, provide the State with access to the Stadium and the Sports Precinct and all Records and such other information required by the State to enable the State, from time to time, to conduct its own audit of the Operator's performance of the Services.

19 EVENT PARTIES

19.1 [Not Disclosed]

19.2 [Not Disclosed]

19.3 Hirers

- (a) Within 90 days of the date of this Agreement, the Operator must provide the State with a draft template hirer agreement for each of an Event and a Function, for review and approval in accordance with Schedule 2 (Review Procedures). The draft template hirer agreements must be substantially in the form submitted by the Operator in its response to the RFP, amended for consistency with this Agreement. The Operator must seek the State's prior written consent to all Hirer Agreements for an Event or Function until the relevant template hirer agreement has been approved.
- (b) Once approved for use by the State, the template hirer agreements submitted by the Operator in accordance with Clause 19.3(a) will become the Standard Hirer Agreement for an Event or a Function, as relevant, for the purposes of this Agreement.
- (c) The terms of the Standard Hirer Agreement may be amended by agreement in writing between the State and the Operator.
- (d) Subject to Clause 19.3(e), the Operator must, as the agent of the State, enter into arrangements with each Hirer on the terms of the Standard Hirer Agreement for an Event or a Function, as relevant, and in accordance with the Operational Interface Agreement, tailored by the Operator to reflect the commercial terms negotiated for the Event or Function in accordance with Good Industry Practice. The parties acknowledge that the Operator is entitled to negotiate the commercial rights distribution in relation to each Hirer Agreement on a case by case basis.
- (e) [Not Disclosed]
- (f) The State may (acting reasonably) review a proposed Hirer Agreement prior to execution, and require the Operator to incorporate amendments to the proposed Hirer Agreements. If the proposed Hirer will not accept the amendments required by the State, the parties must discuss how to proceed.
- (g) The Operator must not at any time after execution of a Hirer Agreement:
 - (i) make any amendment to a Key Term of any Hirer Agreement or to any provision that the State required to be inserted under Clause 19.3(f) ; or
 - (ii) introduce a limit of liability or any clause that places additional liability on the State, into the Hirer Agreement,
 without the State's prior written consent (which will not be unreasonably withheld).
- (h) [Not Disclosed]
- (i) [Not Disclosed]
- (j) The Operator must manage each Hirer Agreement in accordance with Clause 19.5 and otherwise in accordance with this Agreement and the Operational Interface Agreement with respect to Hirer arrangements including by using Good Industry Practice.

19.4 Venue Partners

- (a) The Operator must seek the State's prior written approval in relation to the identity of a proposed Venue Partners if the proposed Venue Partners will promote an

- association with the Stadium or Sports Precinct or will be granted commercial rights in relation to Pourage.
- (b) Prior to entering into any Venue Partner Agreement, the parties must agree the terms to be included in the Venue Partner Agreement.
 - (c) The Operator must not:
 - (i) make any amendment to a Key Term of any Venue Partner Agreement or proposed Venue Partner Agreement; or
 - (ii) introduce a limit of liability or any clause that places additional liability on the State, into the Venue Partner Agreement or proposed Venue Partner Agreement,
 without the State's prior written consent (which will not be unreasonably withheld).
 - (d) *[Not Disclosed]*
 - (e) *[Not Disclosed]*
 - (f) The State may (acting reasonably) review a proposed Venue Partner Agreement prior to execution, and require the Operator to incorporate amendments to the proposed Venue Partner Agreement. If the proposed Venue Partner will not accept the amendments required by the State, the parties must discuss how to proceed.

19.5 Management of Event Parties

- (a) As part of the Services and acting as the agent of the State, the Operator must at all times:
 - (i) manage Event Parties, including taking all reasonably practicable steps to ensure that Event Parties do not cause the Operator to be in breach of this Agreement; and
 - (ii) manage and enforce compliance by Event Parties with their agreements (as applicable).
- (b) The Operator must ensure, unless otherwise consented to by the State, that all agreements with Event Parties, including User Agreements and Hirer Agreements:
 - (i) are consistent with, and will not cause a breach of this Agreement; and
 - (ii) include provisions which will allow the immediate recovery of any Liabilities caused by an Event Party, including rights of indemnity against the Event Party, retaining settlement funds and seeking set-off rights,
 to the extent applicable to the relevant Event Party as reasonably determined by the Operator having regard to Good Industry Practice.
- (c) Without limiting Clause 19.5(b), the Operator must also ensure that Key Users and Hirers of the Stadium are required to pay for the repair of damage resulting from the relevant Event Parties' use or occupation of the Stadium or Sports Precinct (including as a result of Patron damage) in the relevant User Agreement or Hirer Agreement, including by ensuring that there is the ability to deduct costs arising out of repair of damage by Event Parties from the Holding Account prior to the Event Settlement Date under a User Agreement or Hirer Agreement.
- (d) The Operator must ensure that all User Agreements and Hirers Agreements give effect to the exercise by the State of the State's rights and protections under Clauses 20, 22, 31.1, 36, 38 and 39 of this Agreement.
- (e) *[Not Disclosed]*

19.6 [Not Disclosed]

19.7 [Not Disclosed]

19.8 Stadium memberships

- (a) The Operator must seek the State's prior written approval in relation to any proposal for or in relation to memberships of the Stadium, which approval may be withheld by the State in its absolute discretion or given subject to conditions.
- (b) If the State approves the Operator's proposal in relation to memberships of the Stadium in accordance with Clause 19.8(a), the Operator must implement the proposal as approved by the State.

20 MAJOR EVENTS

20.1 Notification of Major Event

- (a) Notwithstanding any other provision of this Agreement, the State may issue a written notice to the Operator no later than 12 Months before a proposed Major Event notifying the Operator that it requires the Stadium and Sports Precinct in order to host the Major Event.
- (b) In the notification provided by the State to the Operator under Clause 20.1(a), the State must set out:
 - (i) the details of the relevant Major Event;
 - (ii) the proposed duration of the Major Event including any bump-in and bump-out (**Major Event Period**); and
 - (iii) whether:
 - (A) the State or a third party will step-in and operate the Stadium and Sports Precinct for that Major Event;
 - (B) the State or a third party will step-in and operate the Stadium and Sports Precinct for that Major Event but the Operator is required to provide some services or assistance to the State for the Major Event; or
 - (C) the State requires the Operator to operate the Stadium and Sports Precinct for the Major Event.
- (c) When notification of a Major Event is provided to the Operator in accordance with Clause 20.1(a), the Operator must take that Major Event into account when preparing the Bookings Schedule and the Operator Business Plan and associated Budget for the Financial Year in which the Major Event will be held, including any compensation payable to Key Users under User Agreements as a result of the Major Event which will be reimbursed by the State to the Operator as a Pass Through Cost.

20.2 Major Event Ready

- (a) At least 5 Business Days, or such other period as otherwise directed by the State, prior to the start of the Major Event Period regardless of whether the Stadium and Sports Precinct are being operated by the State, a third party (including with the Operator's assistance) or by the Operator for the Major Event, the Operator must ensure the Stadium and Sport Precinct is Major Event Ready including ensuring:
 - (i) the removal of all signage, branding and theming; and
 - (ii) unless otherwise directed by the State, the suspension of all:
 - (A) User Agreements and Hirer Agreements;

- (B) Stadium memberships;
- (C) catering, pourage and other supply rights;
- (D) ticketing services; and
- (E) annual premium product arrangements,

and the costs incurred by the Operator to comply with this Clause 20.2(a) will be a Pass Through Cost payable by the State to the Operator.

- (b) The Operator must ensure that each Subcontract, User Agreement and to the extent applicable, Hirer Agreement contains provisions regarding the suspension of the relevant Subcontract, User Agreement, Venue Partner Agreement and, to the extent applicable, Hirer Agreement during a Major Event Period.

20.3 State or third party step-in for Major Event

- (a) If the State or a third party will step-in and operate the Stadium and Sports Precinct for a Major Event, except as required by the State under Clause 20.3(c):
 - (i) the Operator must vacate the Stadium and Sports Precinct, including by removing equipment and signage (including so as to ensure the Stadium is Major Event Ready in accordance with Clause 20.2), as required by the State or the third party in preparation for the Major Event; and
 - (ii) the Services will be suspended and for the period that the State or the third party steps in and operates the Stadium and Sports Precinct in accordance with this Clause 20.3,

and the Term of this Agreement will be extended by the same time period as the Major Event Period.

- (b) Notwithstanding that a Major Event is not a Step-In Event, the State or the relevant third party has the right to step-in to host a Major Event, and will exercise its right to step-in and operate the Stadium and Sports Precinct in accordance with Clause 31, as if that step-in right arose under Clause 31.1. The payment regime in Schedule 9 (Payment Schedule) is suspended for the duration of the step-in and:
 - (i) the thresholds set out in Table 1 in Section 1.3.3 of Part B of Schedule 9 (Payment Schedule) are adjusted to remove the period of step-in;
 - (ii) the Budget or the MYR Budget (as the case may be) is adjusted to remove the period of step-in;
 - (iii) all other calculations of payment for the period not part of the step-in will be done without reference to the step-in period; and
 - (iv) the State will be liable to compensate the Operator for costs actually and necessarily incurred by the Operator in respect of activities ordinarily performed to deliver the Services but which were not deployed by reason of the Major Event, for example permanent Operator employees already engaged who are not involved in operating the Stadium and Sports Precinct during the Major Event. Without limiting Clause 4.5, the Operator must not enter into any contracts which will incur such costs during the Major Event Period after it has been informed of the Major Event without the prior written consent of the State.
- (c) If the State requires, the Operator must provide to the State or the third party all staff, assistance, facilities and services that would be available to any other Hirer of the Stadium and Sports Precinct under normal commercial terms in comparison with any other Event.
- (d) The extension of the Term described in Clause 20.3(a) and the amounts payable by the State described in Clause 20.3(b) are the only compensation that the

Operator is entitled to for the Services being suspended in accordance with this Clause 20.

20.4 Operator runs Major Event

If the State requires the Operator to operate the Stadium and Sports Precinct for the Major Event:

- (a) the Operator must cooperate with the State to execute relevant agreements, including a hiring agreement or similar, in relation to the conduct of that Major Event which agreement must be on the usual terms without any unreasonable uplift to costs or fees and comply with the requirements of Clause 20.2; and
- (b) the payment regime in Schedule 9 (Payment Schedule) may be suspended, in the State's discretion, for the duration of the step-in and, if the payment regime is suspended:
 - (i) the thresholds set out in Table 1 in Section 1.3.3 of Part B of Schedule 9 (Payment Schedule) are adjusted to remove the period of step-in;
 - (ii) the Budget or the MYR Budget (as the case may be) is adjusted to remove the period of step-in and to reflect the costs contained in the Hirer Agreement; and
 - (iii) all other calculations of payment for the period not part of the step-in will be done without reference to the step-in period; and
 - (iv) the Operator's fee for operating the Stadium and Sports Precinct for the Major Event will be agreed as part of the hiring agreement (or similar) to be executed by the Operator in accordance with Clause 20.4(a).

20.5 Unplanned Major Event

If the State notifies the Operator that it requires the Stadium and Sports Precinct in order to host a Major Event and the State has not provided the Operator with the required period of notice in accordance with Clause 20.1 and the relevant Major Event is not taken into account in the current Operator Business Plan, the Major Event will be treated as a Modification proposed by the State for the purposes of Clause 23.1 and the Operator must submit a Modification Quote in accordance with Clause 23.1(b) which, in addition to the information required under that Clause, must include:

- (a) if the State or a third party will step-in and operate the Stadium and Sports Precinct for that Major Event, an estimate of costs that are likely to be incurred and the amount of the Operator's share of Gross Operating Profit that will be lost as a result of the Major Event; and
- (b) the amount of compensation payable to:
 - (i) Key Users under User Agreements in relation to the hosting of a Major Event at the Stadium and Sports Precinct; or
 - (ii) Hirers under Hiring Agreements to the extent the Operator is required to cancel an Event or Function as a result of the Major Event.

21 AUDIT COMMITTEE

- (a) The Operator must form an Audit Committee no later than 3 Months after the Effective Date to monitor and review the financial operations and procedures of the Stadium and Sports Precinct.
- (b) The Operator must nominate two members of the Audit Committee and the State may nominate a further two members of the Audit Committee. The auditor appointed by the Operator may nominate one further member of the Audit Committee as an ex-officio member. The Audit Committee will be chaired by one of the nominees of the Operator.

- (c) The Audit Committee must meet:
 - (i) at least once in the first Financial Year; and
 - (ii) at least twice in each following Financial Year.
- (d) The Operator must provide the Audit Committee with all material, which is necessary to enable the Audit Committee to review the financial operations of the Stadium and Sports Precinct.
- (e) The Operator must comply with the reasonable recommendations of the Audit Committee with respect to the reporting and financial systems for the operation of the Stadium and Sports Precinct (except to the extent that it would be unlawful or a breach of this Agreement to do so).
- (f) This Clause does not limit any of the State's audit or inspection rights under this Agreement.

22 ADVERSE EVENTS

22.1 Adverse Events

- (a) If, after the Operational Commencement Date the Operator believes an Adverse Event has occurred which has prevented or delayed, or will prevent or delay, the performance of the Services, then the Operator must notify the State of the existence of the Adverse Event as soon as possible and in any event within 48 hours of becoming aware of the circumstances that it believes is an Adverse Event.
- (b) Within 5 Business Days of the date of the notice issued by the Operator in accordance with Clause 22.1(a), the parties must meet in order to discuss whether:
 - (i) the Operator is prevented from performing all or part of the Services, in which case Clause 22.2 applies; or
 - (ii) the Services may still be performed by incurring additional costs, in which case Clause 22.3 applies.
- (c) The existence of an Adverse Event, and any relief or additional costs granted under this Clause 22, do not limit the Operator's obligations under Clause 19.6 or Clause 4.10 to pursue any available actions against an Event Party or Project Co respectively.

22.2 [Not disclosed]

22.3 Services performed at additional cost

- (a) Subject to Clause 22.3(c), to the extent that the Operator incurs additional costs as a direct result of the Adverse Event subject to the State giving its prior written consent to the costs being incurred, those additional costs will be Operating Costs.
- (b) Without limiting the Operator's obligations under Clause 22.4, the Operator must take all reasonably practicable steps to minimise any additional costs incurred in relation to the performance of the Services.
- (c) The costs recoverable by the Operator under Clause 22.3(a) are reduced to the extent and only to the extent that a Tortious Act or Omission or breach of a Project Document by the Operator or any Operator Associate caused or contributed to the Adverse Event, the Operator being unable to perform its obligations under this Agreement, or additional costs being incurred as described in Clause 22.3(a).

22.4 Obligation to mitigate

If the Operator fails to comply with its obligation to mitigate the effect of the Adverse Event and otherwise comply with Clause 4.5, that is a breach of this Agreement which, for the

avoidance of doubt, is not excused by Clause 22.2 for consequences which flow from that failure.

23 MODIFICATIONS

23.1 Modifications proposed by the State

- (a) **(Directing a Modification):** At any time, the State may direct the Operator to perform a proposed Modification, in which case, the Operator must submit a quote for the proposed Modification (**Modification Quote**), including any calculations, evidence of costs and any amendments required to the Project Documents or other specific information that the State requires the Operator to include in its Modification Quote (**Modification Price Request**).
- (b) **(Submission of Modification Quote):** The Operator must submit a Modification Quote to the State within 20 Business Days of receipt of each Modification Price Request, or at such other later time as may be agreed by the State (acting reasonably). The Modification Quote must include particulars of:
 - (i) how the proposed Modification will affect the Budget or the MYR Budget (as the case may be) for the relevant Financial Years;
 - (ii) whether the proposed Modification will or is predicted to lead to an increase or decrease in Gross Operating Profit;
 - (iii) whether any increase or decrease is required to the thresholds set out in Table 1 in Section 1.3.3 of Part B of Schedule 9 (Payment Schedule) in order to retain the same commercial arrangements as prior to the Modification; and
 - (iv) the effect (if any) of the proposed Modification on the Operator's obligations under this Agreement, including if the Modification is proposed prior to the Date for Commercial Acceptance, the adjustment (if any) to dates in the State Operational Commissioning Plan, having regard to any delay which will be caused by the Modification.
- (c) **(State response to Modification Quote):** Within 20 Business Days (or such longer period as the State reasonably requires, given the size and complexity of the proposed Modification) after receiving a Modification Quote, the State must:
 - (i) issue a Modification Order to the Operator directing the Operator to carry out the proposed Modification (**Modification Order**) on the terms set out in the Modification Quote;
 - (ii) notify the Operator that it does not agree with the Modification Quote, in which case Clause 23.1(f) applies;
 - (iii) notify the Operator that it wishes to negotiate the contents of the Modification Quote, and if the parties agree on the contents of the Modification Quote, the State will issue a Modification Order on the terms agreed between the parties;
 - (iv) notify the Operator that it requires more information in respect of the Modification Quote in which case the timing in Clause 23.1(b) applies again in respect of when that further information is to be provided;
 - (v) notify the Operator that it does not wish to proceed with the proposed Modification;
 - (vi) notify the Operator that it does not wish to proceed with the proposed Modification and notify the Operator that it will itself, or will procure a third party to, undertake the proposed Modification; or
 - (vii) require the Operator to undertake a tender process in connection with the proposed Modification.

- (d) **(Operator to implement Modification):** If the State issues a Modification Order to the Operator in accordance with Clause 23.1(c)(i) or Clause 23.1(c)(iii), the Operator must perform the Modification in accordance with the Modification Order.
- (e) **(Not to proceed until Modification Order issued):** The Operator must not perform any work or services, and will not be entitled to make any Claim against the State or any State Associate, in respect of a proposed Modification, until the State has issued a Modification Order and approved the Modification Quote in respect of that Modification in accordance with Clause 23.1(c)(i).
- (f) **(Failure to agree):** If the State informs the Operator that it does not agree with the Modification Quote in accordance with Clause 23.1(c)(ii) and the parties are unable to agree on the terms for the proposed Modification within 5 Business Days of the State's notice in accordance with Clause 23.1(c)(ii), and:
 - (i) the terms that the parties are unable to agree relate to the amount payable for the proposed Modification, the amount for the proposed Modification will be determined by the Independent Expert and, the State may at its election:
 - (A) issue a Modification Order on the terms of the Modification Quote as varied by the Independent Expert; or
 - (B) inform the Operator that it does not wish to proceed with the proposed Modification; or
 - (ii) the terms that the parties are unable to agree do not relate to the amount payable for the proposed Modification, the State may issue a Modification Order on terms determined by the State acting reasonably. Upon receiving the Modification Order, the Operator must promptly either:
 - (A) implement the Modification in accordance with the Modification Order; or
 - (B) refer the matter to dispute resolution in accordance with Clause 34.
 - (iii) Following the outcome of the dispute resolution process, if the outcome of the dispute resolution process was that the Modification Order should be varied, the State may, at its election:
 - (A) issue a Modification Order on the terms of the Modification Quote as varied by the outcome of the dispute resolution process, in which case, the Operator must implement the Modification in accordance with the Modification Order; or
 - (B) inform the Operator that it does not wish to proceed with the Modification.

The outcome of the dispute resolution under this Clause must also take into account the effect of the time taken for the Dispute to be resolved on the Modification Quote.
- (g) **(Adjustment for Modification):** If the Operator implements a Modification in accordance with a Modification Order this Agreement is amended in the manner set out in the Modification Order (if required), including any amendment to the State Project Documents.

23.2 Modifications proposed by the Operator

- (a) The Operator may, for its convenience, request the State to direct a Modification by submitting a notice to the State which contains details of the proposed Modification and satisfies the requirements of Clause 23.1(a) and Clause 23.1(b).
- (b) The State may, in writing, direct the Operator to perform the Modification in accordance with the Operator's notice by issuing a Modification Order.

- (c) The Operator is not relieved from performing or observing its obligations in accordance with this Agreement as a result of the failure by the State to issue a Modification Order in connection with a Modification requested by the Operator.

23.3 Operator Modification consented to by State

If the State issues a Modification Order in accordance with Clause 23.2:

- (a) the Operator will, subject to complying with any conditions in the Modification Order, perform the Modification proposed by the Operator and any increase to the Budget or the MYR Budget (as the case may be) as a result of the Modification will be in accordance with the Modification Quote accepted by the State in accordance with Clause 23.1(c); or
- (b) if the State does not agree to adjust the Budget or the MYR Budget (as the case may be) in accordance with Clause 23.1(c), if agreed by the State, the Operator may perform the Modification proposed by the Operator at its own cost and will not be entitled to make any Claim against the State or any State Associate in connection with any Modification proposed by the Operator.

23.4 Direction giving rise to a Modification

- (a) **(Direction):** If the Operator believes any direction given by the State (other than a Modification Order) constitutes or involves Modification, the Operator must:
 - (i) within 5 Business Days of receiving the direction, give notice to the State that it considers the direction constitutes or involves a Modification; and
 - (ii) within 10 Business Days of giving the notice in accordance with Clause 23.4(a)(i), submit a Claim to the State which must include:
 - (A) detailed particulars concerning the direction upon which the Claim is based and the reason why the Operator believes it constitutes a Modification;
 - (B) the Operator's fixed price quote for the cost of implementing the direction as a Modification, which quote must meet the requirements set out in Clause 23.1(a) and Clause 23.1(b); and
 - (C) the impact on the ability of the Operator to comply with its obligations under the Project Documents and any amendments required to the Project Documents to overcome those impacts.
- (b) **(Condition precedent):** The Operator's compliance with Clause 23.4(a) is a condition precedent to the Operator's entitlement to be paid for a direction which the Operator believes to be a Modification.
- (c) **(Confirmation):** Within 5 Business Days of the State receiving any notice from the Operator in accordance with Clause 23.4(a), the State must:
 - (i) confirm that the direction is in fact a Modification by issuing a Modification Order (in which case the quote referred to in Clause 23.4(a) will be the Modification Quote for the purposes of Clause 23.1(b));
 - (ii) vary the direction and confirm that the varied direction is a Modification by issuing a Modification Order;
 - (iii) withdraw the direction, in which case the Operator must not comply with the direction and is not entitled to make any Claim against the State or any State Associate in connection with the direction; or
 - (iv) inform the Operator that, in the State's view, the direction is not a Modification.
- (d) **(Dispute):** If the Operator disputes the State's view notified in accordance with Clause 23.4(c)(iv) or the State does not issue a direction in accordance with

Clause 23.4(c), the Operator must continue to perform the Services (including, subject to Clause 23.4(e), the works or services the subject matter of any direction) but may refer the matter for resolution in accordance with Clause 34.

- (e) **(No commencement):** The Operator must not commence any work or services the subject of a direction which it believes constitutes a Modification until the State has acted in accordance with Clause 23.4(c)(i) or Clause 23.4(c)(ii).

24 PAYMENTS DURING PRE-OPERATIONAL PHASE

24.1 Bank accounts during Pre-Operational Phase

- (a) The Operator must, within 10 Business Days of Effective Date:
 - (i) establish a Pre-Operational Account with any of Westpac Banking Corporation, ANZ Bank, National Australia Bank, the Commonwealth Bank of Australia or any of their wholly owned subsidiaries or with any other reputable bank with a branch in Perth, Western Australia approved by the State;
 - (ii) ensure that the State is named as an authorised signatory for the Pre-Operational Account; and
 - (iii) provide the State with the details of the Pre-Operational Account within 2 Business Days of that account being established in accordance with this Clause 24.1(a).
- (b) The Operator and the State must at all times do all things necessary to ensure that the Pre-Operational Account is operated in accordance with this Clause 24.
- (c) The Operator must deposit, as soon as reasonably possible, any insurance proceeds received by the Operator or an Operator Associate in the Pre-Operational Phase into the Operating Account.
- (d) Funds in the Pre-Operational Account must not be mingled with the Operator's or the State's other funds.
- (e) The Operator must not grant or cause to be incurred any Encumbrance in respect of the funds held in the Pre-Operational Account except under the standard terms of the relevant bank account or as approved by the State.
- (f) Subject to Clause 24.3 and the exercise of any step-in rights, the State will not withdraw any funds from the Pre-Operational Account except in payment of amounts properly payable to it under this Agreement which the Operator has not transferred by the due date, or otherwise with the agreement of the Operator.

24.2 [Not disclosed]

24.3 [Not disclosed]

25 PAYMENTS DURING OPERATING PHASE

25.1 [Not disclosed]

25.2 [Not disclosed]

25.3 The State to provide sufficient funds

- (a) If, at any time, the Operating Account contains less than the equivalent of two Months of cash flow as set out in the Budget, the MYR Budget or the Monthly Performance Report (as the case may be), having regard to Total Revenue that has and will be received by the Operator and the reasonable forecast Operating Costs for those Months, the Operator may notify the State in writing that it requires

a payment of funds to ensure the uninterrupted and efficient performance of the Services and the amount of the payment that the Operator considers that it requires.

- (b) The State must, within 5 Business Days of receipt of notice from the Operator in accordance with Clause 25.3(a), pay funds into the Operating Account such that the Operating Account contains the equivalent of two Months of cash flow as set out in the Budget, the MYR Budget or the Monthly Performance Report (as the case may be), having regard to Total Revenue that has and will be received by the Operator and the reasonable forecast Operating Costs for those Months, to ensure the uninterrupted and efficient performance of the Services (**Working Capital**).
- (c) After consultation with the Operator, the State may request, and the Operator must pay to the State all or part of Working Capital previously paid by the State in accordance with Clause 25.3(b) from funds held in the Operating Account if there are funds in that Operating Account which are in the State's reasonable opinion not required (in the near future) for the performance of the Services having regard to the level of Working Capital required to be held in the Operating Account from time to time as described in Clause 25.3(b).
- (d) For the avoidance of doubt, injections of Working Capital are not part of Total Revenue and recoupment or withdrawals of Working Capital do not constitute Operating Costs and are therefore excluded from the Gross Operating Profit calculation.

25.4 [Not disclosed]

25.5 [Not disclosed]

25.6 [Not disclosed]

25.7 [Not disclosed]

25.8 **Dispute**

Any Dispute in connection with:

- (a) the Quarterly Service Payment;
 - (b) the Budget or the MYR Budget;
 - (c) the amount of any Performance Failure Abatement;
 - (d) any amount that is payable, or paid, by the State under Clause 25.3(b); or
 - (e) the State's entitlement to repayment of Working Capital under Clause 25.3(c),
- will be determined in accordance with Clause 34.

26 RISK AND LIABILITY

26.1 [Not Disclosed]

26.2 **Minimise damage to and misuse of the Stadium and Sports Precinct**

- (a) The Operator must, and must ensure that the Operator Associates take all reasonably practicable steps to take care of the Stadium and the Sports Precinct and not cause the Stadium or Sports Precinct to be damaged or misused. This includes the Operator ensuring that no electrical system, air-conditioning system, electronic device, catering equipment, floor, rigging points or other thing is used contrary to or overloaded beyond the specifications for which it was designed.
- (b) The Operator must manage the Event Parties so that they do not overload, abuse, vandalise or otherwise damage or misuse the Stadium or Sports Precinct. If the

Operator has taken all reasonably practicable steps to manage the Event Parties and an Event Party does overload, abuse, vandalise or otherwise damage or misuse the Stadium or Sports Precinct, the Operator is not in breach of its obligation in this Clause 26.2(b) and Clause 19.6 applies.

26.3 **[Not disclosed]**

26.4 **Damage to third party property**

- (a) The Operator must avoid interference with, or obstruction or damage to, any property in the vicinity of the Site arising out of or in connection with performing the Services.
- (b) If any loss of, or damage to, any real or personal property of third parties occurs as a result of a Tortious Act or Omission or breach of a Project Document by the Operator or an Operator Associate, the Operator must at the State's election:
 - (i) promptly repair such loss or damage; and
 - (ii) compensate the affected person for that loss or damage at its own cost (if the Operator has a legal liability to do so and as agreed with the affected person or otherwise determined),

and, in all other circumstances, if the State requests the Operator to arrange for the repair of the loss or damage, the costs of repair will be Operating Costs. If the costs are incurred prior to the Operational Commencement Date, the costs will be Operating Costs which are accounted for in the first quarter in the Operating Phase.

26.5 **Indemnity for Operator breach**

The Operator indemnifies:

- (a) the State; and
- (b) any State Associates;

(**Indemnified Persons**), against any Claim or Liability incurred by the Indemnified Persons in connection with any Tortious Act or Omission or breach of a Project Document by the Operator or any Operator Associate arising out of or in connection with:

- (c) the Services; or
- (d) the use or occupation of the Site by the Operator or any Operator Associate,

to the extent and only to the extent that the Claim or Liability does not arise or is not contributed to by the Tortious Act or Omission or breach of a State Project Document by the Indemnified Person.

26.6 **Property damage and third party liability indemnity**

The Operator indemnifies the Indemnified Persons against:

- (a) any loss of or damage to property of the Indemnified Persons (other than the Stadium or the Sports Precinct (as applicable) which is subject to the regime set out in Clauses 26.1 to 26.4); and
- (b) any Liability incurred by the Indemnified Persons in connection with any loss of or damage to third party property or injury to, disease or death, of a person,

arising out of or in connection with:

- (c) the Services; or
- (d) the use or occupation of the Site by the Operator or any Operator Associate,

to the extent and only to the extent that the Claim or Liability does not arise or is not contributed to by a Tortious Act or Omission or breach of a State Project Document by the Indemnified Person.

26.7 State holds benefit of indemnities on trust

- (a) The State declares that it holds on trust for each of the Indemnified Persons the benefit of each indemnity and release given by the Operator under this Agreement, in favour of each Indemnified Person.
- (b) The Operator acknowledges the existence of such trusts and consents to:
 - (i) the State exercising rights in relation to, or otherwise enforcing, such indemnities and releases on behalf of the Indemnified Persons; and
 - (ii) the Indemnified Persons exercising rights in relation to, or otherwise enforcing, the indemnities and releases.
- (c) The State and the Operator agree that the consent of the Indemnified Persons will not be required for any amendment to, or waiver of, rights in accordance with a State Project Document.

26.8 Time for enforcement

It is not necessary for the State to incur any expense or make any payment before enforcing a right of indemnity in accordance with this Agreement.

26.9 Application of Civil Liability Act

- (a) **(Interpretation):** In this Clause 26.9 only, '**Legislation**' means Part 1F of the *Civil Liability Act 2002* (WA) and any equivalent statutory provision in any other state or territory.
- (b) **(Legislation excluded):** The operation of the Legislation is excluded in relation to all and any rights, obligations and Liabilities arising out of or in connection with this Agreement (including performing the Services) whether such rights, obligations or Liabilities are sought to be enforced as a breach of contract or Claim in tort (including negligence), in equity or otherwise at Law.
- (c) **(Agreement specifies Liabilities):** Without limiting the generality of Clause 26.9(b), it is further agreed that the rights, obligations and Liabilities of the parties (including those relating to proportionate liability) are as stated in this Agreement and not otherwise, whether such rights, obligations and Liabilities are sought to be enforced as a breach of contract or Claim in tort (including negligence), in equity or otherwise at Law.
- (d) **(Subcontracts):** The Operator must:
 - (i) include a term in each Subcontract that excludes the application of the Legislation in relation to all and any rights, obligations or Liabilities of either party in accordance with each Subcontract, whether such rights, obligations or Liabilities are sought to be enforced as a breach of contract or a Claim in tort (including negligence), in equity or otherwise at Law; and
 - (ii) require each Subcontractor to include, in any further contract that it enters into with a third party for the performance of the Services a term that excludes the application of the Legislation in relation to all and any rights, obligations or Liabilities of either party in accordance with each further contract whether such rights, obligations or Liabilities are sought to be enforced as a breach of contract or a Claim in tort (including negligence), in equity or otherwise at Law.

- (e) **(Insurance):** The Operator must ensure that all Insurances required by this Agreement which cover third party Liability (other than compulsory third party motor vehicle and workers' compensation insurances):
 - (i) cover the Operator for potential Liability to the State assumed by reason of the exclusion of the Legislation; and
 - (ii) do not exclude cover for any potential Liability the Operator may have to the State in accordance with, or by reason of, this Agreement.

26.10 [Not disclosed]

26.11 [Not disclosed]

26.12 Review of State's liability limit and Operator's Liability Limit

If the State elects to extend this Agreement for the Further Term in accordance with Clause 3.3 and if the amount of Operating Costs incurred in the last Financial Year of the Initial Term is greater than the amount of Operating Costs incurred in the first year of the Initial Term, then if directed by the State, the quantum of the Operator's Liability Limit and State's Liability Limit will each be increased in the same proportion as the increase in Operating Cost from the first year of the Initial Term as against the last year of the Initial Term.

26.13 Indirect or Consequential Loss

- (a) Despite any other provision of this Agreement, neither the State nor any State Associate has any Liability to the Operator or any Operator Associates, nor is the Operator or any Operator Associate entitled to make any Claim against the State or any State Associate, in respect of any Indirect or Consequential Loss suffered, incurred or sustained by the Operator or any Operator Associate arising out of or in connection with this Agreement.
- (b) Despite any other provision of this Agreement, neither the Operator nor any Operator Associate has any Liability to the State or any State Associates, nor is the State or any State Associate entitled to make any Claim against the Operator or any Operator Associate, in respect of any Indirect or Consequential Loss suffered, incurred or sustained by the State or any State Associate arising out of or in connection with this Agreement.
- (c) **(Trust – State Associates):**
 - (i) The State declares that it holds on trust for each of the State Associates, the benefit of the Indirect or Consequential Loss exclusion in Clause 26.13(a) given by the Operator under this Agreement in favour of each State Associate.
 - (ii) The Operator acknowledges the existence of such trusts and consents to:
 - (A) the State exercising rights in relation to, or otherwise enforcing, the Indirect or Consequential Loss exclusion in Clause 26.13(a) on behalf of the State Associates; and
 - (B) the State Associates exercising rights in relation to, or otherwise enforcing the Indirect or Consequential Loss exclusion in Clause 26.13(a).
 - (iii) The State and the Operator agree that the consent of the State Associates will not be required for any amendment to, or waiver of, rights in accordance with this Agreement.
- (d) **(Trust – Operator Associates):**
 - (i) The Operator declares that it holds on trust for each of the Operator Associates, the benefit of the Indirect or Consequential Loss exclusion in

Clause 26.13(b) given by the State under this Agreement in favour of each Operator Associate.

- (ii) The State acknowledges the existence of such trusts and consents to:
 - (A) the Operator exercising rights in relation to, or otherwise enforcing, the Indirect or Consequential Loss exclusion in Clause 26.13(b) on behalf of the Operator Associates; and
 - (B) the Operator Associates exercising rights in relation to, or otherwise enforcing the Indirect or Consequential Loss exclusion in Clause 26.13(b).
- (iii) the State and the Operator agree that the consent of the Operator Associates will not be required for any amendment to, or waiver of, rights in accordance with this Agreement.

26.14 No limitation on the Operator's liability at Law

Subject to Clause 26.10 and Clause 26.13, where the extent of the Operator's liability to the State under this Agreement is specifically prescribed, including in relation to liability for Tortious Acts or Omissions or breach of a Project Document, this does not otherwise limit the State's rights at Law to bring a Claim against the Operator in connection with the Services or a Project Document or otherwise, including a Claim arising out of any equitable cause of action.

27 INSURANCE

27.1 General insurance requirements

- (a) The Operator must effect and maintain, or cause to be effected and maintained, each of the Insurances:
 - (i) stated in Schedule 4 (Insurance); and
 - (ii) as a prudent operator would obtain and maintain for the operation and maintenance of facilities of a similar nature to the Stadium and Sports Precinct and when performing services of a similar nature to the Services.
- (b) The Operator must:
 - (i) **(Reputable Insurers):** ensure that all Insurances are effected and maintained with Reputable Insurers;
 - (ii) **(deductibles):** pay all deductibles payable in connection with any of the Insurances including if the claim is made by the State or any entity referred to in Clause 27.1(b)(xii) insured under the insurance (which cost is an Operating Cost), except to the extent, and only to that extent, that the insured risk for which the deductible is to be paid has occurred as a consequence of any breach of a Project Document by the State or the Operator or any Tortious Act or Omission by the State or the relevant entity referred to in Clause 27.1(b)(xii), the Operator or an Operator Associate, in which case the responsible party must pay the amount of the deductible, which cost is not an Operating Cost;
 - (iii) **(premiums):** punctually pay all premiums and other amounts payable in connection with the Insurances effected by it or Project Co in circumstances contemplated in clause 14.9 of the Operational Interface Agreement (which costs will be an Operating Cost other than for premiums in relation to global insurance policies or to the extent and only to the extent that the increase in premium is due to the Tortious Act or Omission or breach of a Project Document by the Operator or an

- Operator Associate), and give the State copies of receipts for payment of premiums if and when requested by the State;
- (iv) **(no alteration)**: other than in relation to renewal of Insurances (in which case the Operator must comply with Clause 27.5) or endorsements not related to the Services, not alter, extend or discontinue or cancel any of the Insurances, or allow any of the Insurances to lapse, without the prior approval of the State;
 - (v) **(do not prejudice)**: not do or permit, or omit to do, anything which prejudices any of the Insurances;
 - (vi) **(rectify)**: promptly rectify anything which might, if not rectified, prejudice any of the Insurances;
 - (vii) **(fully disclose)**: fully and promptly disclose all material information to all relevant insurers (and any persons acting on their behalf) relating to the Insurances (whether held solely or jointly with others) in all respects;
 - (viii) **(comply)**: comply at all times with the terms of each of the Insurances;
 - (ix) **(do everything to enable State recovery)**: do everything reasonably required by the State or any entity referred to in Clause 27.1(b)(xii) in whose name an insurance policy is effected and maintained to enable the relevant entity (as applicable) to claim and to collect or recover, money due in accordance with or in connection with any insurance policy;
 - (x) **(indemnities secondary)**: ensure that the terms of the Insurances do not require the State or any entity referred to in Clause 27.1(b)(xii) to exhaust any indemnities referred to in this Agreement as a condition precedent to the insurer considering or responding to any claim;
 - (xi) **(notify of any occurrence)**: promptly notify the State of any occurrence that may give rise to a claim, or any claim made, under any of the Insurances;
 - (xii) **(references to State)**: if the State is insured, or cover is extended to the State ensure that the insurance policy (other than a workers' compensation insurance policy) expressly names the State of Western Australia, the Western Australian Sports Centre Trust, trading as VenuesWest and any entity, department, Government Agency or instrumentality of the State of Western Australia, and any Minister, whether body corporate or otherwise, and their respective employees, officers agents contractors and consultants; and
 - (xiii) **(reinstatement)**: promptly reinstate any insurance required by this Agreement if it lapses or if cover is exhausted.

27.2 Terms of Insurances

The Operator must ensure that each of the Insurances it is responsible for effecting and maintaining, or causing to be effected and maintained, in accordance with this Agreement (other than compulsory third party motor vehicle and workers' compensation insurances):

- (a) contains terms, if relevant and to the extent permitted by Law, to the effect that:
 - (i) the insurer will not impute to any insured party any knowledge or intention or a state of mind possessed or allegedly possessed by any other insured party;
 - (ii) in the case of Insurances in accordance with which the State is also entitled to cover, any breach of the conditions of the Insurances by an insured other than the State, must not in any way prejudice or diminish any rights which the State has under the Insurances;
 - (iii) in the case of Insurances in accordance with which the State is also entitled to cover, the relevant Insurance is primary with respect to the

- interest of the State, and any other insurance or self-insurance arrangements maintained by the State is excess to, and not contributory with, that Insurance;
- (iv) in the case of Insurances in accordance with which the State is also entitled to cover, a notice of claim given to the insurer by an insured other than the State, will be accepted by the insurer as notice of claim given also by the State;
 - (v) in the case of Insurances in accordance with which the State is also entitled to cover, the insurer agrees that the interests of the insured include the undertaking of the Services and waives any rights of subrogation which it may have against any insured party;
 - (vi) in the case of liability insurances, the insurer agrees to treat each insured as a separate insured party as though a separate contract of insurance had been entered into with each of the insured parties, without increasing the deductibles or increasing the overall limit of indemnity;
 - (vii) the insurer agrees that no reduction in limits or coverage affecting the Project or the Stadium and the Sports Precinct will be made during the period of insurance, except under the circumstances and to the extent permitted by the *Insurance Contracts Act 1984* (Cth) and with not less than 30 days' prior notification to the State; and
 - (viii) if not included on the list of insurers maintained by the Australian Prudential Regulation Authority which are authorised to conduct new or renewal insurance business in Australia, the Insurances are governed by the Laws of Western Australia and the insurers submit 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 Insurances 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 an inconvenient forum; and
- (b) take proper account of the nature and objectives of the Project and the Stadium and the Sports Precinct, the responsibilities and entitlements of the various insureds in connection with this Agreement and are on terms otherwise acceptable to the State (whose acceptance will not unreasonably be withheld).

27.3 Additional Insurance

- (a) If the State at any time reasonably requires the Operator to:
 - (i) arrange insurance against a risk not specifically provided for or contemplated in accordance with Schedule 4 (Insurance); or
 - (ii) increase the extent of, or change the terms of, an existing Insurance from that set out in Schedule 4 (Insurance),
 it may notify the Operator and require that the Operator give effect to its requirements.
- (b) The Operator must promptly inform the State of the amount of any additional premium payable in giving effect to the requirement of the State in accordance with Clause 27.3(a) before it implements the requirement, and the State will advise the Operator whether it still requires the Operator to give effect to that requirement.
- (c) The cost of any additional premiums paid on any additional, increased or varied Insurances required by the State in accordance with Clause 27.3(b) will be an Operating Cost.

27.4 Insurances primary

- (a) The Insurances are primary and not secondary to the indemnities referred to in this Agreement.
- (b) The State is not obliged to make a claim or institute proceedings against any insurer under the Insurances before enforcing any of its rights or remedies under the indemnities referred to in this Agreement or generally.
- (c) The Operator is not relieved from, and remains fully responsible for, its obligations in accordance with this Agreement regardless of whether the Insurances respond or fail to respond to any claim and regardless of the reason why any of the Insurances respond or fail to respond.

27.5 Evidence of Insurance

The Operator must give the State copies of all policies, certificates of currency, renewal certificates and endorsement slips evidencing the Insurances are effected and maintained:

- (a) as soon as it receives them from the insurer of the relevant Insurance; and
- (b) whenever reasonably requested by the State.

27.6 Failure to produce proof of Insurance terms

- (a) If, after being requested in writing by the State to do so, the Operator fails to produce evidence of compliance with its insurance obligations in accordance with Clause 27.5 to the satisfaction and approval of the State, the State may:
 - (i) effect and maintain the Insurances and pay the premiums and the relevant amount will be a Pre-Operational Phase Cost or an Operating Cost (whether incurred in the Pre-Operational Phase or Operating Phase, as the case may be) which the State may include in a Payment Statement;
 - (ii) exercise its rights under Clause 30;
 - (iii) suspend the whole or part of the Services until evidence of Insurances required by this Agreement is produced to the State, and the Operator must bear any cost it incurs as a result of the suspension; or
 - (iv) refuse payment of any moneys due to the Operator until evidence of Insurances required by Clause 27.5 is produced to the State.
- (b) Any costs incurred by the State in connection with performing any part of the Services suspended in accordance with Clause 27.6(a)(iii) are Pre-Operational Phase Costs or Operating Costs (whether incurred in the Pre-Operational Phase or Operating Phase, as the case may be) which the State may include in a Payment Statement.
- (c) The rights given to the State by this Clause 27.6 are in addition to any other rights the State may have.

27.7 Insurance claim

- (a) If, and to the extent that, the Operator may be insured against loss that occurs in respect of an event, occurrence or circumstance, the Operator must (unless the State assumes joint or sole responsibility in making the claim) promptly make and pursue a claim against the relevant insurer in respect of that event, occurrence or circumstance, except in circumstances where the value of the claim would not exceed the deductible payable for making the claim.
- (b) The Insurance claim must be properly prepared by the Operator in the manner and time required by the relevant insurer and Insurance.

27.8 Subcontractor Insurance

- (a) If the Operator subcontracts any part of the Services, then the Operator must ensure that its Subcontractors are insured as required by this Agreement, as appropriate (including as to amounts of insurance and type of insurance) given the nature of work or services to be performed by them, as if they were the Operator.
- (b) When determining whether its Subcontractors have appropriate Insurances in accordance with Clause 27.8(a), the Operator must have regard to the insurance cover its Subcontractors have under the insurance described in Schedule 4 (Insurance).
- (c) If the Operator fails to ensure that its Subcontractors are insured in accordance with Clause 27.8(a), the State may:
 - (i) exercise its rights under Clause 30;
 - (ii) suspend the whole or part of the Services until evidence of Insurances required by this Agreement is produced to the State and the Operator must bear any cost it incurs as a result of the suspension; or
 - (iii) refuse payment of any moneys due to the Operator until evidence of Insurances required by Clause 27.5 is produced to the State.
- (d) Any costs incurred by the State in connection with performing any part of the Services suspended in accordance with Clause 27.8(c)(ii) are Pre-Operational Phase Costs or Operating Costs (whether incurred in the Pre-Operational Phase or Operating Phase, as the case may be) which the State may include in a Payment Statement.
- (e) The rights given to the State by this Clause 27.8 are in addition to any other rights the State may have.
- (f) The State is entitled to, but has no obligation to, satisfy itself as to the Operator's compliance with this Clause 27.8.

27.9 Key User and Hirer Insurance

Without limiting Clause 19.3(d), the Operator must ensure that Key Users and Hirers effect and maintain appropriate insurances (including as to amounts of insurance and type of insurance) having regard to the nature of the Events or Functions that the Key User or Hirers will be hosting at the Stadium or Sports Precinct.

28 COMPLIANCE WITH LAWS

28.1 Authorisations

The Operator must obtain and maintain (and where necessary, renew) in the name of the Operator, the State Associates or the State (as directed by the State) (as relevant), all Authorisations in connection with the performance of the Services (including all conditions of such Authorisations).

28.2 Compliance with Laws and Authorisations

- (a) The Operator must:
 - (i) comply with;
 - (ii) ensure that the Operator Associates comply with;
 - (iii) whilst an Event Party is on the Site, take all reasonably practicable steps to manage that Event Party's compliance with; and
 - (iv) ensure that all elements of the Services comply with,

- all applicable Laws, Authorisations (including all conditions of such Authorisations) and State Policies.
- (b) The Operator must:
 - (i) give all notices and pay all fees and other amounts required to be paid in connection with performing the Services, unless those fees or other amounts are subject to a substantiated dispute on reasonable grounds and the non-payment will not disrupt delivery of the Services, the DBFM Service or the operation of the Stadium; and
 - (ii) give the State copies of all documents (including Authorisations and other notices) issued to it in connection with the Services by any Authority, other than routine invoices and routine correspondence or as otherwise notified by the State in writing.
 - (c) The Operator must provide all information and assistance reasonably required by the State in order for the State to discharge any obligation it has in accordance with any Law or Authorisation in connection with the Services.
 - (d) The Operator may request any information or assistance reasonably required from Project Co in order for the Operator to discharge any obligation it has in accordance with any Law, Authorisation or State Policy in connection with the Services and the State will use its reasonable endeavours to procure Project Co to provide the relevant information or assistance.

28.3 Privacy

- (a) Without limiting Clause 28.2, the Operator must comply with:
 - (i) its obligations (if any) under, or arising pursuant to, the *Privacy Act 1988* (Cth) to the extent relevant to this Agreement;
 - (ii) any directions made by a Privacy Commissioner relevant to this Agreement; and
 - (iii) any other reasonable direction relating to privacy which is given by the State.
- (b) If the Operator is exempt from compliance with the *Privacy Act 1988* (Cth), and if the Operator is not subject to an approved privacy code, the Operator must comply with the National Privacy Principles and, when enacted, the Australian Privacy Principles, set out in the *Privacy Act 1988* (Cth) as if it were required to comply with that legislation.

28.4 Enforcement Claims

- (a) In respect of any prosecution, infringement notice, fines, penalties or any other notices or enforcement actions resulting from a breach of any Law or Authorisation (**Enforcement Claim**), the State may:
 - (i) defend any Enforcement Claim in such a manner as it may deem appropriate; or
 - (ii) direct the Operator to defend the Enforcement Claim.
- (b) The Operator must, if directed by the State in accordance with Clause 28.4(a)(ii):
 - (i) conduct the defence of any proceedings relating to the Enforcement Claim diligently using competent counsel and in such a way as not to bring the reputation of the State into disrepute, provided that the State may not claim that the Operator's actions bring the reputation of the State into disrepute if the State has directed the Operator to take those specific actions;

- (ii) consult with the State and keep the State informed of all material matters relating to the Enforcement Claim;
- (iii) provide any information requested by the State in relation to the proceedings;
- (iv) obtain the State's prior written approval (which must not be unreasonably withheld) before any settlement or compromise is made in respect of the Enforcement Claim and which settlement or compromise must have regard to the State's interests; and
- (v) comply at all times with any reasonable direction given by the State in connection with the defence, settlement or compromise of the Enforcement Claim,

and the costs incurred in taking the steps to conduct the defence of any proceedings relating to the Enforcement Claim consistent with the State's reasonable requirements are Operating Costs except to the extent, and only to that extent, that the Enforcement Claim arose due to the Tortious Act or Omission or breach of a Project Document by the Operator or an Operator Associate.

29 REPRESENTATIONS AND WARRANTIES

29.1 Corporate representations

The Operator represents and warrants that:

- (a) **(Project Documents)**: the execution, delivery and performance of the Project Documents to which it is a party does not violate any Law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
- (b) **(valid and legally binding)**: each Project Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
- (c) **(not trustee)**: it is not the trustee or Responsible Entity (as that term is defined in the Corporations Act) of any trust, nor does it hold any property subject to or impressed by any trust;
- (d) **(no material financial change)**: there has been no material change in the financial condition of the Operator or its Related Bodies Corporate (since the submission of its tender in relation to the Services) which would prejudice the ability of the Operator to perform its obligations in accordance with the Project Documents; and
- (e) **(Records)**: all Records are true, complete and correct.

29.2 Operator's representations

The Operator represents and warrants that:

- (a) **(informed itself)**: it has informed itself as to the nature of the Services;
- (b) **(assessed risks)**: it has assessed the risks which it is assuming in accordance with the State Project Documents;
- (c) **(Land Conditions)**: it has examined the Site and its surroundings and has done everything possible to inform itself sufficiently as to access to those areas and the Land Conditions which may affect performance of the Services;
- (d) **(own investigations)**: it enters into this Agreement based on its own investigations, interpretations, deductions, information and determinations;
- (e) **(resources and expertise)**: it has the resources, expertise and know-how required to perform the obligations imposed on the Operator in accordance with this Agreement including to perform the Services in accordance with this Agreement;
- (f) **(access and availability of know-how and expertise)**: it owns, employs and/or has full legal access (with no legal impediments) to all of the know-how and

expertise it represented it could provide to the Project as set out in the tender submitted in response to the RFP;

- (g) **(utilisation of resources and expertise)**: without limiting Clause 29.2(e), it has access to, and will utilise to the full extent reasonably required in the performance of the Services, the expertise and know-how which were referenced in the tender submitted in the response to the RFP; and
- (h) **(Lobbyist)**: any 'Lobbyist' (as that term is defined in Public Sector Commissioner's Circular 2009-13 'Contact with Lobbyists Code and the Register of Lobbyists' which can be found at: <http://www.publicsector.wa.gov.au/document/public-sector-commissioners-circular-2009-13-contact-lobbyists-code-and-register-lobbyists>) that it or any Operator Associate have employed, engaged or otherwise involved, directly or indirectly, in connection with this Agreement, is duly registered as a 'Lobbyist' in terms of that Public Sector Commissioner's Circular and has fully complied with its obligations under it.

29.3 Disclosed Information

- (a) The Operator agrees that prior to the date of this Agreement it has done everything that would be expected of a prudent, competent and experienced contractor and service provider in assessing the risks that it is assuming in accordance with this Agreement.
- (b) Without limiting Section 1.10 of Part B of Schedule 9 (Payment Schedule), the Operator represents and warrants that it did not rely upon any Disclosed Information or any other information or the adequacy, accuracy, suitability or completeness of the Disclosed Information or any other information for the purposes of entering into this Agreement and the other State Project Documents.
- (c) The Operator agrees that:
 - (i) **(no representation)**: neither the State nor any State Associate has made or makes any representation, or gives any warranty or guarantee in connection with any information, data and documents (including the Project Information and other Disclosed Information) obtained by the State from investigations carried out by the State or on its behalf by independent consultants;
 - (ii) **(information only)**: the Disclosed Information is provided by the State for information purposes only except that, without limiting Clause 4.6, a Modification Order, direction, consent or approval given by the State Representative in accordance with this Agreement can be relied on as being a Modification Order, direction, consent or approval (as the case may be);
 - (iii) **(other information)**: there may be other information which the State or a State Associate is aware of or has in its possession which may be relevant to the rights and obligations of the parties in accordance with this Agreement which may not have been provided to the Operator or to which no reference has been made;
 - (iv) **(intellectual property)**: all Intellectual Property Rights in the Disclosed Information remain the property of the State;
 - (v) **(no offer)**: the Disclosed Information does not form part of this Agreement or constitute an invitation, offer or recommendation by, or on behalf of, the State; and
 - (vi) **(third parties)**: if the Disclosed Information was prepared by third parties, the State is a mere conduit in connection with the information contained in that Disclosed Information.
- (d) The Operator will not make any Claim against the State for any Liabilities incurred or suffered by the Operator or any Operator Associate in connection with:

- (i) any inadequacy, inaccuracy or incompleteness in any of the Disclosed Information;
- (ii) the provision of, or the purported reliance upon, or use of, the Disclosed Information by the Operator or any Operator Associate; or
- (iii) a failure by the State or State Associate to provide any other information, data or documents to the Operator.

29.4 Repetition of representations and warranties

Each representation and warranty:

- (a) in this Agreement is made on the date of this Agreement; and
- (b) in Clauses 29.1, 29.2(e), 29.2(f) and 29.2(g) will be deemed to be repeated each day from the date of this Agreement until the Expiry Date, with reference to the facts and circumstances then subsisting.

29.5 Reliance on representations and warranties

The Operator agrees that the State has relied on the representations and warranties of the Operator set out in this Agreement in entering into this Agreement.

30 DEFAULT

30.1 Notice of Operator default

- (a) The Operator must:
 - (i) promptly notify the State upon the occurrence of an Event of Default; and
 - (ii) immediately take steps to commence the remedy of and mitigate the effects of the Event of Default.
- (b) If an Event of Default occurs, the State may give the Operator a notice (**Default Notice**) which contains:
 - (i) details of the Event of Default;
 - (ii) if the Event of Default is capable of being remedied, a date by which the Operator must remedy the Event of Default; and
 - (iii) if the Event of Default is not capable of being remedied:
 - (A) a date by which the Operator must comply with any reasonable requirements of the State in connection with that Event of Default including to overcome the effect of the Event of Default if it is reasonably practicable to do so; or
 - (B) if the State has no reasonable requirements in relation to that Event of Default, a statement to that effect.

30.2 The Operator to comply with Default Notice and provide remedy program

If the State gives a Default Notice to the Operator, then:

- (a) the Operator must comply with the Default Notice within the relevant period specified in the Default Notice; and
- (b) unless the relevant Event of Default is a failure to pay money:
 - (i) the Operator must, within 5 Business Days of receiving a Default Notice, give the State a program to either remedy the Event of Default or comply with any reasonable requirements of the State in accordance with the terms of the Default Notice which will specify steps to address the

- underlying cause of the Event of Default and to avoid similar Events of Default occurring in the future;
- (ii) the parties must consult to develop and agree the remedy program as soon as reasonably practicable following the State's receipt of the remedy program, and in any event within 10 Business Days of the State's receipt of the remedy program;
- (iii) if the parties have not agreed a remedy program within 15 Business Days of the State's receipt of the remedy program, the State must determine (acting reasonably) the remedy program that will apply; and
- (iv) following agreement or determination of the remedy program, the Operator must implement and comply with the remedy program.

30.3 Requests for extensions to remedy period

If the Operator considers, in good faith, that the time stated in a Default Notice given by the State under Clause 30.1 is not reasonable, it must immediately notify the State of that belief, the reasons for that belief and the time which it believes is reasonably required to remedy the Event of Default or comply with any reasonable requirements of the State. The State may then, acting reasonably, extend the time stated in the Default Notice to remedy the Event of Default.

30.4 When extensions to be given

- (a) Subject to Clause 30.4(b), if the Operator has been diligently pursuing:
 - (i) the remediation of the Event of Default; or
 - (ii) compliance with any reasonable requirements of the State in connection with an Event of Default that is not capable of remedy,

and considers, in good faith, that it needs an extension of time to remedy the Event of Default, then it must immediately notify the State of that belief, the reasons for that belief and the time which it now believes is reasonably required to remedy the Event of Default or comply with any reasonable requirements of the State. Provided that the Operator is continuing to diligently pursue the remedy or compliance with the State's reasonable requirements, then the time stated in the Default Notice or any extension of that time granted by the State in accordance with Clause 30.3 will be extended by such period as the State determines is reasonably required to enable the Operator to either remedy the Event of Default or comply with any reasonable requirements of the State.
- (b) Unless otherwise agreed with the State, the Operator is only entitled to one extension of the time specified in the Default Notice or any extension of that time granted by the State in accordance with Clause 30.3, in accordance with Clause 30.4(a) in connection with the same Event of Default.

30.5 Disputes

If the Operator considers that the time stated in the Default Notice (including any extension) given by the State in accordance with this Clause 30 is not reasonable or there is a failure to agree a remedy program as required by Clause 30.2(b), it:

- (a) may (provided that it is and has either been diligently pursuing the remediation of the Event of Default or compliance with any reasonable requirements of the State) refer the matter for resolution in accordance with Clause 34; and
- (b) must, whilst the matter is being determined, continue to diligently pursue either the remediation of the Event of Default or compliance with any reasonable requirements of the State.

30.6 Failure to remedy

- (a) Without limiting the State's rights under Clause 32.3, if:
- (i) the Operator fails to remedy an Event of Default within the period set out in the Default Notice (as extended, if at all, in accordance with Clause 30.4); or
 - (ii) an Event of Default is not capable of remedy and the Operator fails to diligently comply with any reasonable requirements of the State to overcome the consequences of the Event of Default within the time stated in the Default Notice given by the State in accordance with Clause 30.1 (as extended in accordance with Clause 30.4),
- including because of a failure to agree a remedy program, the State may, or may engage a third party to:
- (iii) remedy the Event of Default on behalf of the Operator; or
 - (iv) take any actions the State considers necessary to overcome the consequences of the Event of Default,
- and the cost of any actions taken by, or on behalf of, the State in accordance with this Clause 30.6 will be a debt due and payable by the Operator to the State.
- (b) In exercising the rights referred to in this Clause 30.6, the State must use reasonable endeavours to undertake any actions in accordance with Good Industry Practice (taking into account the nature of the works required and the timeframes available to the State to perform such works).

30.7 **[Not Disclosed]**

31 STEP-IN BY THE STATE

31.1 Right of step-in

If:

- (a) an Immediate Termination Event occurs or is reasonably likely (in the reasonable opinion of the State) to occur;
- (b) an Event of Default has occurred (in the reasonable opinion of the State);
- (c) the State is required by Law to act to discharge a statutory power or duty; or
- (d) a Force Majeure Event occurs or is reasonably likely (in the reasonable opinion of the State) to occur,

during the Operating Phase (each a **Step-in Event**), the State or a nominee of the State may elect to immediately:

- (e) temporarily assume total or partial management and control of the whole or any part of the Services, the Stadium or the Sports Precinct; and
- (f) take such other steps as are necessary in the reasonable opinion of the State to deliver the Services and minimise the effect of the Step-in Event.

31.2 Suspension of the Operator's obligations

If the State has exercised its step-in rights in accordance with Clause 31.1, the Operator's obligations in accordance with the State Project Documents will be suspended for the affected period but only to the extent necessary to enable the State to exercise those step-in rights.

31.3 [Not disclosed]**31.4 Operator to assist the State**

The Operator must provide the State with all necessary assistance in a timely manner to enable it to exercise its step-in rights in accordance with Clause 31.1 effectively and expeditiously and, without limitation, the Operator must:

- (a) provide the State access at all times to the Stadium and Sports Precinct, and the State may take possession and control of the Stadium and Sports Precinct and any plant and equipment on the Stadium and Sports Precinct and utilise them, to the extent that the State reasonably considers necessary for the proper exercise of the State's step-in rights under this Clause 31;
- (b) provide, and the State may take possession and control of any documents, information, and materials in the possession or control of the Operator or which are kept at the Stadium and Sports Precinct, that the State reasonably considers necessary for the proper exercise of the State's step-in rights under this Clause 31;
- (c) to the extent required by the State, enforce or make available to the State or its nominees all rights and benefits of the Operator under the Project Documents or any Subcontract. The State will use reasonable endeavours to comply with the obligations of the Operator under such contracts but is not liable to the Operator for any failure to comply;
- (d) provide all reasonable assistance to the State or its nominees to take possession and control of the Stadium and Sports Precinct and any equipment and supplies, and to operate the Stadium and Sports Precinct, and otherwise in the exercise of the State's step-in rights under this Clause 31; and
- (e) to the extent required by the State, provide the State access to and use of the Operator's information systems which are used directly or indirectly in relation to the provision of the Services until such time as the State has deployed its own replacement information systems.

31.5 Acknowledgments

The Operator agrees that the State will have no liability to the Operator, and the Operator will not be entitled to make any Claim against the State in connection with the exercise by the State of its rights in accordance with Clause 31.1 except:

- (a) if the State has acted fraudulently, in bad faith or with gross negligence; or
- (b) to the extent that this Agreement expressly provides otherwise.

31.6 Power of attorney

The Operator irrevocably:

- (a) appoints the State, and the State's nominees from time to time, jointly and severally as the Operator's attorney with full power and authority to exercise the State's rights in accordance with this Clause 31; and
- (b) agrees to ratify and confirm whatever action is taken by the attorney appointed by the Operator.

31.7 Cessation of step-in rights

- (a) The State may, at any time, cease to exercise its rights in accordance with this Clause 31 on 5 Business Days' notice to the Operator.
- (b) The State must cease to exercise its step-in rights on 5 Business Days' notice to the Operator where the State has exercised its rights in accordance with Clause 31.1 and the basis for exercising that right no longer exists.

- (c) If the State has ceased to exercise its step-in rights in accordance with this Clause 31, the Operator must immediately recommence performing any obligations suspended due to the exercise of such step-in rights.

32 TERMINATION

32.1 [Not disclosed]

32.2 Termination for Force Majeure

- (a) If a Force Majeure Termination Event occurs, the State may terminate this Agreement by giving notice to the Operator.
- (b) The termination of this Agreement for a Force Majeure Termination Event will take effect upon the date stated in the notice given in accordance with Clause 32.2(a).

32.3 Termination for Event of Default

- (a) The State may terminate this Agreement by giving the Operator a notice if any of the following events occur:
 - (i) the Operator fails to remedy an Event of Default within the period set out in the Default Notice (as extended, if at all, in accordance with Clause 30.4); and
 - (ii) if an Event of Default is not capable of remedy, the Operator fails to diligently comply with any reasonable requirements of the State to overcome the consequences of the Event of Default within the time period stated in the Default Notice (as extended, if at all, in accordance with Clause 30.4).
- (b) Termination of this Agreement for an Event of Default will take effect upon the date stated in the notice given by the State in accordance with Clause 32.3(a).
- (c) If this Agreement is terminated in accordance with this Clause 32.3, the State may deduct amounts owing by the Operator to the State from the Performance Bond prior to releasing the Performance Bond.

32.4 Termination for Immediate Termination Event

- (a) The State may terminate this Agreement immediately by notice in writing to the Operator and without granting the Operator any cure period if an Immediate Termination Event occurs.
- (b) Termination of this Agreement for an Immediate Termination Event will take effect upon the date stated in the notice given by the State to the Operator in accordance with Clause 32.4(a).
- (c) If this Agreement is terminated in accordance with this Clause 32.4, the State may deduct amounts owing by the Operator to the State from the Performance Bond prior to releasing the Performance Bond.

32.5 Consequences of termination

- (a) The Operator acknowledges and agrees that, except as set out in Clause 32.1, Clause 32.5(b) or Clause 33.3, it is not entitled to make any Claim against the State in relation to termination of this Agreement in accordance with this Clause 32.
- (b) Clause 32.5(a) does not operate to prevent the Operator from making a Claim against the State for wrongful termination of this Agreement by the State, any claim by a third party against the Operator arising out of the wrongful termination by the State or any claim unrelated to the termination arising prior to the termination.

- (c) If the State terminates this Agreement under Clause 32.3 or Clause 32.4, the parties will have the same rights, remedies and liabilities as if the Operator repudiated this Agreement and the State elected to treat this Agreement to be at an end and recover damages.

33 OPERATOR OBLIGATIONS UPON EXPIRY

33.1 Obligations prior to expiry

The Operator must provide the State with access to the Bookings Schedule from the date that is 6 Months prior to the expiry of the Initial Term or the Further Term if Clause 3.3 applies, unless this Agreement is terminated earlier in accordance with Clauses 32.1, 32.2(a), 32.3(a) or 32.4(a), in which case, the Operator must provide the State access upon receipt of notice of termination.

33.2 Transition out

Upon notice of the Expiry Date, the Operator must:

- (a) **(conditions)**: handover the Stadium, Sports Precinct and the Site (including all rights, title and interest in it) to the State or its nominee, free from any Encumbrances other than Permitted Handover Encumbrances;
- (b) **(transfer)**: transfer to the State or its nominee, free from any Encumbrances other than Permitted Handover Encumbrances, all rights, title and interest in any Operator FF&E procured by the Operator (to the extent that they have not already been transferred), as is required to allow the State or its nominee to operate (in the manner set out in the Project Brief), maintain and repair the Stadium and Sports Precinct to the standards required in accordance with this Agreement;
- (c) **(manuals)**: deliver to the State or its nominee all manuals, Records, Plans, the Bookings Schedule and other information under the control of the Operator, including its Subcontractors, which are relevant to the operation of the Stadium and Sports Precinct (as applicable);
- (d) **(novation)**: procure the novation or, failing this, the assignment to the State or its nominee of:
 - (i) such contracts for works or services to which the Operator or an Operator Associate is a party, as they relate to the Services, the Stadium or the Sports Precinct (or any combination of them), as the State may nominate; and
 - (ii) any leases, subleases and licences to which the Operator or an Operator Associate is a party as relates to the Services, as the State may nominate;
- (e) **(Intellectual Property Rights)**: grant or procure the grant to the State or its nominee the Project IP (to the extent that it has not already been transferred to the State) and the licence to the Operator's Background IP;
- (f) **(Authorisations)**: do all acts and things necessary to enable the State (or its nominee) to have obtained all Authorisations which are required for the performance of the Services in the Stadium and Sports Precinct;
- (g) **(Liquor Licence)**: on demand, sign all documents and do all other things necessary to assist the State (or such other person nominated by the State) to obtain a replacement Liquor Licence;
- (h) **(personnel)**: provide the State with access to the Operator Associates that the State reasonably requires in order to exercise its rights under this Agreement;
- (i) **(Operating Account and Holding Account)**: ensure that:

- (i) after the final Event Settlement Date and payment of amounts owing to Key Users or Hirers, all amounts remaining in the Holding Account are transferred to the Operating Account; and
- (ii) after the finalisation of the last Reconciliation Payment Claim, including distribution of amounts from the Operating Account in accordance with that Reconciliation Payment Claim, all remaining amounts in the Operating Account are paid to the State;
- (j) **(operations)**: do all other acts and things requested by the State to enable the State (or its nominee) to be in a position to perform the Services at the standards stated in this Agreement, with minimum disruption; and
- (k) **(Trading Name)**: transfer the registration of the Trading Name to the State or its nominee.

33.3 Transition costs

- (a) If the Operator is required to perform the obligations in accordance with this Clause 33 due to:
 - (i) the expiry of the Initial Term or the Further Term if Clause 3.3 applies, then the cost of complying with the obligations required under this Clause 33 is an Operating Cost and must be included in the Budget for the relevant Financial Year to the extent not already included;
 - (ii) termination of this Agreement in accordance with Clauses 32.1 or Clause 32.2(a), then the costs incurred by the Operator to perform the obligations under this Clause 33 will be Operating Costs; or
 - (iii) termination of this Agreement in accordance with Clause 32.3(a) or Clause 32.4(a), then the Operator must bear any cost it incurs as a result of complying with this Clause 33, which costs will not be Operating Costs.
- (b) If this Agreement is terminated in accordance with Clause 32.1, in addition to the costs of complying with its obligations under this Clause 33, the Operator is entitled to claim as Operating Costs:
 - (i) any accrued entitlements and any redundancy payment it is required to pay an employee employed by the Operator at the Stadium in accordance with the provisions of the *Fair Work Act 2009* (Cth) arising from the termination of that employee's employment and any accrued entitlements and any redundancy payment in excess of the requirements of the *Fair Work Act 2009* (Cth) provided that the Operator obtained the prior approval of the State to those entitlements; and
 - (ii) its actual unavoidable break costs incurred in accordance with each Subcontract in respect of the Stadium that the State does not elect to take a novation of and which are required to be terminated as a result of the termination by the State and if the termination is at the end of the Initial Term or the Further Term, provided that the Operator obtained the approval of the State to those break costs.
- (c) If and to the extent that the Operator fails to comply with its obligations under this Clause 33, the State will be entitled to perform itself, or procure the performance of, those obligations and:
 - (i) except as set out in Clause 33.3(c)(ii), any costs incurred by the State in connection with performing itself, or procuring the performance of, the Operator's obligations under this Clause 33, are Operating Costs which the State may include in a Payment Statement; and
 - (ii) if this Agreement is being terminated in accordance with Clause 32.3(a) or 32.4(a), the costs reasonably incurred by the State in connection with taking any action to perform or procure the performance of the obligations

under this Clause 33 will be recoverable from the Operator as a debt due and payable against the Operator to the State.

33.4 Power of attorney

The Operator irrevocably appoints the State and its nominees as notified from time to time, jointly and severally as the Operator's attorney with full power and authority to carry out the Operator's obligations in accordance with this Clause 33 to the extent that the Operator fails to comply with its obligations under this Clause 33.

33.5 Assistance

The Operator will use its reasonable endeavours to assist the State in the exercise of the State's rights in accordance with this Clause 33.

34 DISPUTE RESOLUTION

34.1 Disputes

- (a) Subject to Clause 34.7, if a dispute arises between the parties in connection with any fact, matter or thing in connection with this Agreement (**Dispute**), including any dispute in connection with a determination of the Independent Certifier, the Dispute will be resolved in accordance with this Clause 34.
- (b) If there is a Dispute, then a party must deliver to the other party a notice of dispute which sets out the party's contentions, including any relevant legal basis of Claim (**Notice of Dispute**).
- (c) Despite the existence of a Dispute, or the referral of the Dispute for resolution in accordance with this Clause 34, each party must continue to comply with its obligations in accordance with this Agreement.
- (d) Subject to Clause 34.6, compliance with this Clause 34 will be a condition precedent to commencing litigation.

34.2 Consideration by Contract Management Team

If a Notice of Dispute has been delivered in accordance with Clause 34.1(b), the Contract Management Team must, within 10 Business Days of the delivery of the Notice of Dispute, meet, give due consideration to the submissions by the parties in connection with the Dispute and attempt in good faith to assist the parties to resolve the Dispute.

34.3 Independent Expert

- (a) (**Referral to Independent Expert**): Disputes that:
 - (i) arise between the parties in connection with:
 - (A) the calculation of the Quarterly Services Payment, Gross Operating Profit, any amount that is payable, or paid, by the State under Clause 25.3(b) or the State's entitlement to the repayment of Working Capital under Clause 25.3(c);
 - (B) Performance Failure Abatement; or
 - (C) any dispute between the Operator and a Key User or Hirer which is also referred to an Independent Expert under the relevant User Agreement or Hirer Agreement; or
 - (ii) the State determines, at its discretion, will be referred to an Independent Expert,

- will be referred to an Independent Expert for resolution in accordance with this Agreement.
- (b) **(Appointment):** If a Dispute is to be referred to an Independent Expert under Clause 34.3(a), then Clause 34.2 will not apply and within 5 Business Days of the delivery of the Notice of Dispute in accordance with Clause 34.1(b) the parties must agree on an Independent Expert to determine the Dispute.
 - (c) **(Independent Expert):** For the purpose of Clause 34.3(b), unless the Dispute is in connection with a determination by the Independent Certifier, the parties may appoint the Independent Certifier, or some other person, to act as the Independent Expert.
 - (d) **(Failure to agree on Independent Expert):** If the parties fail to agree on the Independent Expert within the time referred to in Clause 34.3(b) then:
 - (i) an Independent Expert will be nominated by the chair of the Venue Management Association (Asia & Pacific) Limited having regard to any Independent Experts proposed by the parties as notified in writing to the Chair and to the other party (which in the case of each party, must not exceed 2 proposed Independent Experts); or
 - (ii) if there is no governing body for the technical or professional discipline the subject of the relevant Dispute, an Independent Expert will be nominated by the President or Chair (as applicable) of the Resolution Institute in Australia (or its successor), having regard to any Independent Experts proposed by the parties as notified in writing to the President or Chair (as applicable) and to the other party (which in the case of each party, must not exceed 2 proposed Independent Experts).
 - (e) **(Agreement):** The agreed or nominated Independent Expert must execute an agreement with the parties within 10 Business Days after the agreement on, or nomination of, the Independent Expert in accordance with Clauses 34.3(b), 34.3(c) or 34.3(d) (as applicable).
 - (f) **(Confidentiality of determination):** The parties must procure that the agreement referred to in Clause 34.3(e) contains a condition that the Independent Expert keeps confidential all information in connection with a determination.
 - (g) **(Referral):** If the Independent Expert so agreed or nominated executes an agreement in accordance with Clause 34.3(e), then the Dispute must be referred to that Independent Expert for determination.
 - (h) **(New independent expert):** If the Independent Expert agreed or nominated does not, or either party does not, execute an agreement in accordance with Clause 34.3(e), then the parties must agree or nominate another independent expert in accordance with this Clause 34.3 (but the parties will only have the opportunity to agree or nominate one further Independent Expert after the initial Independent Expert).
 - (i) **(Basis for determination):** The Independent Expert will make its determination based upon:
 - (i) the Notice of Dispute;
 - (ii) submissions provided by the parties which, unless the Independent Expert extends the time for delivery, must be delivered within 5 Business Days of the Independent Expert signing the agreement referred to in Clause 34.3(e); and
 - (iii) any further information provided by the parties in accordance with any request by the Independent Expert for further submissions, documents or information from either or both parties.
 - (j) **(Conference):** After the Dispute has been referred to the Independent Expert, the Independent Expert may call and conduct a conference, or any number of conferences, as the Independent Expert sees fit, between the parties, but will give

the parties reasonable notice of the matters to be addressed at any such conference.

- (k) **(Representation):** The parties may be legally represented at any such conference.
- (l) **(Privacy):** All conferences will be held in private, except to the extent that representatives of the Key Subcontractors will be permitted to attend on reasonable notice, where the Dispute may impact on their rights or liabilities under their Subcontracts and subject to those Key Subcontractors executing a confidentiality undertaking in favour of the State on terms approved by the State.
- (m) **(Visit):** The Independent Expert may visit the Site, the Stadium or the Sports Precinct (as applicable), and the parties will facilitate the Independent Expert's access to any of those areas.
- (n) **(Timing):** The Independent Expert must make a determination in connection with the Dispute by the earliest of:
 - (i) within 10 Business Days after completion of the last of the steps set out in Clauses 34.3(a) to 34.3(m); or
 - (ii) within 30 Business Days after receipt of submissions in accordance with Clause 34.3(i)(ii).
- (o) **(Not arbitrator):** The Independent Expert will act as an expert and not an arbitrator and may make a decision from his or her own knowledge and expertise.
- (p) **(Final and binding):** The determination of the Independent Expert will be final and binding on the parties, unless within 15 Business Days of the determination, a party notifies the other party that it intends to commence litigation to challenge the determination.
- (q) **(Mistake):** The Independent Expert may correct the determination made by it by notice to the parties where the determination contains:
 - (i) a clerical mistake or an error arising from an accidental slip or omission; or
 - (ii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter.
- (r) **(Costs):** The cost of the Independent Expert will be borne equally by each of the parties to the Dispute unless the determination is made against the party who issued the Notice of Dispute, in which case the Independent Expert may determine that that party will bear all or a greater proportion of the Independent Expert's costs in connection with that Dispute.

34.4 Mediation

- (a) If the Dispute referred to in Clause 34.1 is not referred to an Independent Expert under Clause 34.3(a) the parties must submit the Dispute to mediation in accordance with the Mediation Rules of the Resolution Institute in Australia (or its successor) as applicable at the date of the Dispute.
- (b) The mediator will be:
 - (i) a retired judge of the High Court of Australia or the Supreme Court of a State or Territory of Australia; or
 - (ii) a dispute resolution practitioner with legal qualifications and at least 20 years' experience in the legal profession,

as agreed between the parties to the Dispute or, failing agreement within 14 days, a mediator satisfying the requirements of Clauses 34.4(b)(i) or 34.4(b)(ii) will be appointed by the President or Chair (as applicable) of the Resolution Institute in Australia (or its successor) within 14 days of being requested to do so.

- (c) Any mediation meetings and proceedings under this Clause 34.4 must be held in Perth, Western Australia.
- (d) The costs of the mediation process under this Clause 34.4 will be shared equally between the parties to the Dispute, which for the avoidance of doubt, does not include the costs incurred by each party associated with preparing for and attending mediation, including the costs of any legal representatives.

34.5 Arbitration

- (a) If:
 - (i) a Notice of Dispute has been delivered in accordance with Clause 34.1(b) and;
 - (ii) the Dispute remains unresolved (whether in whole or in part):
 - (A) within 20 Business Days (or any other period agreed to in writing between the parties) after the appointment of a mediator under Clause 34.4; or
 - (B) within 40 Business Days (or any other period agreed to in writing between the parties) after the referral of the Dispute to an Independent Expert under Clause 34.3(a),

either party may by written notice to the other party refer the Dispute to arbitration (**Arbitration Notice**).
- (b) Where a Dispute is referred to arbitration in accordance with Clause 34.5(a):
 - (i) there must be a single arbitrator;
 - (ii) the arbitrator must be a retired judge of the Supreme Court of a State or Territory of Australia, the Federal Court of Australia or the High Court of Australia agreed by the parties. However, if the parties fail to agree the arbitrator within 10 Business Days after the relevant Arbitration Notice was delivered, the arbitrator will be the person nominated, at the request of either party, by the President or Chair (as applicable) of the Resolution Institute in Australia (or its successor) or his or her nominee, having regard to the requirement that the arbitrator must be a retired judge as described.
- (c) an arbitrator must:
 - (i) be impartial, suitable and competent;
 - (ii) not be an employee or ex employee of a party or of an entity related to a party; and
 - (iii) not be connected with the performance of the agreement;
- (d) the language of the arbitration will be English;
- (e) the parties to the arbitration are entitled to legal representation;
- (f) the arbitrator will be bound by the rules of evidence in the conduct of the arbitration proceedings;
- (g) except as required by Law, all arbitration proceedings and related documents and communications shall be private and confidential as between the parties to the arbitration; and
- (h) the seat of the arbitration is, and all conferences and hearings must be held in, Perth Western Australia.

34.6 Proceedings for urgent relief

Nothing in this Clause 34 prevents court proceedings being issued for urgent relief (including urgent injunctive relief).

34.7 Disputes involving Project Co

If a dispute arises between the Operator and Project Co or the State, the Operator and Project Co, the dispute resolution process set out in the Operational Interface Agreement will apply in place of the dispute resolution process contained in this Clause 34.

34.8 Unavailability or conflict of interest

If a Chair of a body referred to in Clause 34.3, Clause 34.4 or Clause 34.5 is unavailable to make the required nomination or has a conflict of interest in respect of the Dispute, the Chair may nominate another person of equivalent standing who is available and does not have a conflict of interest to make the nomination.

35 ASSIGNMENT AND OWNERSHIP**35.1 Assignment by the Operator**

Except as expressly permitted in accordance with this Agreement, the Operator must not assign, mortgage, novate, charge or otherwise encumber the Project Documents, without the prior consent of the State and on such terms and conditions as are determined by the State.

35.2 Restrictions on sale, lease and parting with possession

Except for Permitted Encumbrances the Operator must not lease, license, transfer, sell, dispose of, part with possession of, or otherwise deal with, the whole or any part of the Site, the Stadium or the Sports Precinct or any other asset of the State or a State Associate, except as expressly permitted in accordance with this Agreement or as otherwise consented to by the State.

35.3 Assignment by the State

- (a) Subject to Clause 35.3(b), the State must not sell, transfer or assign or otherwise dispose of its interest in the State Project Documents without the prior consent of the Operator.
- (b) The consent of the Operator is not required in accordance with Clause 35.3(a) if:
 - (i) it has been provided with details of the proposed transferee and the terms and conditions of the proposed transfer;
 - (ii) the proposed transferee is a Government Agency (including any Minister) which is an agent of, or the obligations of which are supported by, the State of Western Australia; and
 - (iii) the proposed transferee has agreed to be bound by the relevant State Project Documents.

35.4 Change in Control

- (a) **(Prohibition):** Except in relation to a Change in Control described in Clause 35.4(b), the Operator must ensure that there is no Change in Control of the Operator or the Manager, or a Change of Manager, without the prior consent of the State.
- (b) **(Exceptions):** A Change in Control described below, will not be prohibited by paragraph (a) above:

- (i) **(Diversified Infrastructure Trust):**
 - (A) a Change in Control resulting from the transfer of units or other ownership interests in the Diversified Infrastructure Trust;
 - (B) a Change in Control of the responsible entity or trustee of the Diversified Infrastructure Trust; or
 - (C) a change to the entity who is the responsible entity or trustee of the Diversified Infrastructure Trust; or
 - (ii) **(Existing shareholder)** an increase or decrease in the shareholding in the Operator or the Manager (as the case may be) held by an entity that has previously sought and obtained consent from the State to a Change in Control in relation to the Operator or the Manager (as the case may be) provided that, the Operator provides an undertaking to the State that there has been no material deterioration to the financial or operating position or reputation of that entity since the previous consent was obtained from the State,
- provided, in the case of Clauses 35.4(b)(i)(B), 35.4(b)(i)(C) and 35.4(b)(ii), the Operator notifies the State as soon as reasonably practicable upon becoming aware of the occurrence of the Change in Control.
- (c) **(Notice):** Any request seeking the consent of the State to a Change in Control or a Change of Manager must include:
 - (i) the identity and address of each proposed new owner of shares or units that would lead to a Change in Control or Change of Manager;
 - (ii) the extent and nature of the proposed Change in Control or Change of Manager; and
 - (iii) all other information necessary for the State to determine:
 - (A) whether to consent to the Change in Control of the Operator or the Manager, or Change of Manager, as the case may be; or
 - (B) the Probity Investigations (if any) the State wants to undertake.
 - (d) **(State response):** The State must, within 10 Business Days of receiving a request in accordance with Clause 35.4(c), notify the Operator whether:
 - (i) the State consents to the proposed Change in Control of the Operator or the Manager, or Change of Manager, as the case may be;
 - (ii) the State wishes to conduct a Probity Investigation; or
 - (iii) the State does not consent to the proposed Change in Control of the Operator or the Manager, or Change Manager, as the case may be (and the reasons for this).
 - (e) *[Not Disclosed]*

36 PROBITY

36.1 Notice of Probity Event

The Operator must give notice to the State immediately upon becoming aware that a Probity Event has occurred or is likely to occur.

36.2 Meeting

Upon receipt of a notice in accordance with Clause 36.1, or otherwise upon the occurrence of, or the State considering that there is the likely occurrence of, a Probity Event:

- (a) the State and the Operator must meet within 10 Business Days to agree to a course of action that will remedy the Probity Event or prevent the Probity Event from occurring (including conducting a Probity Investigation); and
- (b) the Operator must take all necessary steps in accordance with any agreement in accordance with Clause 36.2(a) to remedy the Probity Event.

36.3 Failure to agree

If the State and the Operator fail to meet or agree to a course of action in accordance with Clause 36.2, the Operator must take any action required by the State to remedy the Probity Event (including conducting a Probity Investigation).

36.4 Consents required for Probity Investigation

The Operator must procure all relevant consents from any persons in connection with which the State requires Probity Investigations to be conducted.

36.5 Costs of Probity Investigation

The Operator must bear the costs reasonably incurred by the Operator and the State in carrying out the Probity Investigation, which costs do not constitute Operating Costs, unless:

- (a) it is found as a result of such Probity Investigation that there is no Probity Event; or
- (b) the Probity Event relates to a Key User, a Hirer or a Venue Partner and not to the Operator or a Related Person,

in which case such costs will be treated as Operating Costs or, if the cost is incurred during the Pre-Operational Phase, a Pre-Operational Phase Cost.

36.6 Key Users, Hirers and Venue Partners and Probity Events

The Operator must take all reasonably practicable steps to ensure that agreements with Key Users, Hirers and Venue Partners reflect that the following principles will apply in the case of certain Probity Events:

- (a) if certain Probity Events occur in relation to the Key User, Hirer or Venue Partner or if other acts or omissions of the Key User, Hirer or Venue Partner cause a Probity Event, the State will work together with the Key User, Hirer or Venue Partner to develop a strategy to protect the reputation of the Stadium and Sports Precinct, the Operator and the State;
- (b) if the strategy mentioned in Clause 36.6(a) includes the suspension of the rights of a Key User, Hirer or Venue Partner, the suspension will continue for as long as the relevant Probity Event subsists or its effect continues;
- (c) during the suspension the State may require the Key User, Hirer or Venue Partner to cease exercising some or all of their rights without any right to compensation;
- (d) the State and the Operator will work with the Key User, Hirer or Venue Partner to plan the transition back (upon lifting of suspension);
- (e) the Probity Event would be, in the reasonable opinion of the State, any event or thing that, where the association with the Key User, Hirer or Venue Partner has or will have a material adverse effect on the goodwill or reputation of the Stadium and Sports Precinct, the Operator and State or otherwise attract undesirable focus and attention on, or damage to, or nuisance at, the Stadium or Sports Precinct; and
- (f) no compensation will be payable to the Key User, Hirer or Venue Partner in the event of a suspension in accordance with these principles.

36.7 No appointment without consent

The Operator must not appoint any Operator Associate to a role in connection with the Services if the State forms the view, acting reasonably, that such an appointment will lead to a Probity Event.

37 PROJECT INFORMATION

- (a) **(Make available to State):** The Operator must, upon receipt of a request from the State, make the Records available to the State within 2 Business Days of receiving the State's request.
- (b) **(Financial information):** To the extent the Records comprise financial information, the Operator must prepare all Records in accordance with established accounting practices and procedures.
- (c) **(Legal professional privilege):** The requirement in Clause 37(a) does not apply to Records which are the subject of legal professional privilege.
- (d) **(Audit):** The State and any auditor appointed by the State may audit any Records requested by the State and the Operator must provide all reasonable assistance to facilitate such audit.
- (e) **(Accounts audit):** The Operator must have its accounts relating to the performance of the Services audited.
- (f) **(Audited financial statements):** As soon as practicable (and in any event not later than 90 days) after the close of each Financial Year, the Operator must give to the State certified copies of the audited statements of financial position and statement of financial performance of the Operator relating to the performance of the Services for the previous Financial Year
- (g) **(Cashflow and profit and loss statements):** If requested by the State, not later than 30 days after the end of each Quarter, the Operator must give to the State certified copies of the Operator's cash flow and profit and loss statements relating to the performance of the Services.
- (h) **(Maintenance of Records):** The Operator must:
 - (i) maintain all Records:
 - (A) for a period of not less than 7 years from the date that the Record was created; and
 - (B) in a manner which ensures the availability and continuous integrity of all Records; and
 - (ii) maintain all Records otherwise as required by the *State Records Act 2000* (WA) and all other applicable Laws or Quality Standards.
- (i) For the avoidance of doubt, the Operator's obligations under this Clause 37 only apply to Records and other information which relate to the performance of the Services.

38 CONFIDENTIALITY

38.1 Confidential Information

- (a) **(Confidentiality obligations):** The Operator must, and must ensure that each Operator Associate, keep confidential, subject to Clauses 38.1(b) and 38.1(c), the State Project Documents, all Records and all Disclosed Information (**Confidential Information**).
- (b) **(Permitted disclosure):** The Operator is not obliged to keep confidential any information:

- (i) which is in the public domain through no default of the Operator or an Operator Associate; or
- (ii) the disclosure of which is:
 - (A) required by Law, including in accordance with the *Freedom of Information Act 1992* (WA);
 - (B) required by a relevant stock exchange (in which event a copy of the disclosure must be given to the State at the same time);
 - (C) consented to by the State; or
 - (D) made to a court in the course of proceedings to which the Operator is a party.
- (c) **(Disclosure to Operator Associates):** Without limiting the Operator's obligations in accordance with Clause 38.1(a), and providing that the Operator ensures that the parties receiving the information comply with the obligations under Clause 38.1(a), the Operator may disclose Confidential Information to:
 - (i) any Operator Associate or VenuesLive Management Services Pty Ltd (ACN 612 296 312) of the Operator;
 - (ii) with the prior written approval of the State, to Associates of the Operator (other than VenuesLive Management Services Pty Ltd (ACN 612 296 312)); and
 - (iii) its professional advisors (including lawyers, accountants and auditors), subject to the Operator obtaining a signed confidentiality undertaking from those professional advisors which must be made available to the State upon request,

to the extent necessary for the purpose of performing the Services.
- (d) **(State disclosure of Confidential Information):** The State or the State of Western Australia may disclose the Confidential Information in any circumstances.
- (e) **(State may disclose):** In addition to the disclosure permitted in Clause 38.1(d) and Clause 38.1(g), the State or the State of Western Australia may at any time disclose the Commercial in Confidence Information:
 - (i) as authorised in writing by the Operator;
 - (ii) to any Minister;
 - (iii) in accordance with all Laws;
 - (iv) by the Minister for Sport and Recreation of Western Australia, the Premier of Western Australia, the Treasurer of Western Australia, the Minister for Finance of Western Australia, the Board of the State, the Department of Sport and Recreation (including the Director-General of the Department of Sport and Recreation), the Department of Treasury of Western Australia (including the Under Treasurer) or the Department of Finance (including the Director-General of the Department of Finance) in the performance of their functions or the discharge of their duties, including in responding to any questions, making a public statement, or releasing information in relation to a matter of public interest;
 - (v) to satisfy the requirements of parliamentary accountability or any other reporting or recognised public obligations of the State;
 - (vi) to the Western Australian Auditor-General for the purposes of satisfying their statutory duties; and
 - (vii) in accordance with the *Freedom of Information Act 1992* (WA), the *Ombudsman Act 1976* (Cth) or the *Parliamentary Commissioner Act 1971* (WA).

- (f) **(Limited disclosure):** In addition to the disclosure permitted in Clauses 38.1(d), 38.1(e) and 38.1(g) and subject to the State or the State of Western Australia using reasonable endeavours to inform the recipient that the relevant information is confidential, and marking the relevant information as confidential, the State or the State of Western Australia may at any time disclose the Commercial in Confidence Information to the extent reasonably necessary:
- (i) for the purpose of performing the State's obligations under this Agreement;
 - (ii) to satisfy the requirements of any Government Agency, administrative or judicial body or tribunal;
 - (iii) to advise or inform any State Associate or advisor to the State in relation to purposes connected to the Project;
 - (iv) to comply with the policies of the Western Australian government;
 - (v) to the extent the State believes it is necessary to disclose the information in a value for money analysis of the Project; and
 - (vi) to complete the annual reports to the Department of Sport and Recreation, the State, the Department of Treasury, the Department of Finance of Western Australia and any other Government Agency to which this Agreement has been assigned in accordance with Clause 35.3(b).
- (g) **(Other permitted disclosure):** Subject to the State redacting the Commercial in Confidence Information, the contents of the State Project Documents, the User Agreements, the Venue Partner Agreements and any Hirer Agreement and any other document in connection with the Services which is authored, executed or authorised by the State or a Government Agency may be disclosed by the State or a State Associate, including to be published on any Western Australian government internet website or provided to any Government Agency for the purposes of another State project.

38.2 Public announcements

- (a) The Operator must not, and must ensure that Operator Associates do not, without the prior approval of the State:
- (i) use this Agreement, any Hirer Agreement, any User Agreement, any Venue Partner Agreement, the Project Trade Marks or the name or logo of any person specified in this Agreement, the State of Western Australia or any other Government Agency;
 - (ii) refer to the Operator's, any Operator Associate's or any Event Party's association with the State or any Government Agency which results from this Agreement; or
 - (iii) make any statement concerning this Agreement, the State or the Services,
- in any publication, public statement or announcement, advertisement or media release without the State's consent, except as otherwise provided in Schedule 8 (Services Specifications) and the Communications and Marketing Plan. The Operator's obligation under this Clause extends to managing the Event Parties such that they have an obligation not to engage in any of the activities referred to in this Clause.
- (b) Subject to Clause 38.1, the State may use this Agreement and the Operator's name and logo in connection with this Agreement as the State reasonably requires, provided that the State acknowledges the role of the Operator to the extent that is reasonable in the circumstances.

38.3 Media releases

- (a) Except as otherwise provided in Schedule 8 (Services Specifications), the Communications and Marketing Plan and the Precinct Activation Plan, the Operator must, and must ensure that Operator Associates:
 - (i) obtain the State's prior written consent to:
 - (A) issue any information, document or article in connection with this Agreement, the Stadium, Sports Precinct or the Services for publication in any media; or
 - (B) nominate this Agreement, the Operator or the Services for any award;
 - (ii) give due recognition to the State and any State Associates where the State consents to a matter specified in Clause 38.3(a)(i); and
 - (iii) refer all enquiries from any media concerning this Agreement to the State, and thereafter, as soon as practicable provide to the State details of all enquiries, and any material or information released by the Operator or, an Operator Associate, following the State's consent.
- (b) The Operator will use its reasonable endeavours to ensure that the Event Parties have an obligation not to engage in any of the activities referred to in this Clause.

38.4 No Association

The Operator must not, and must ensure that Operator Associates do not:

- (a) use the State's name nor the name of any State Associate, nor the State's logo or the Project Trade Marks, nor attempt to obtain a benefit from the image or reputation of the State or any of the State Associates in any way; or
- (b) hold out to any third party that the Operator or any Operator Associate or any Event Party has an association or connection with the State or any State Associates other than the Operator's engagement under this Agreement,

without obtaining the State's prior written consent (which may be granted or refused at the sole discretion of the State). The Operator will use its reasonable endeavours to ensure that the Event Parties have an obligation not to engage in any of the activities referred to in this Clause.

39 INTELLECTUAL PROPERTY

39.1 Operator's Background IP

- (a) Subject to the terms and conditions of this Clause 39, the Operator's Background IP remains vested in the Operator (or third party licensor as applicable).
- (b) Subject to Clause 39.1(c) and Clause 39.1(d), the Operator grants to the State:
 - (i) a non-exclusive, royalty-free, non-transferable licence to use the Operator's Background IP for the duration of the Term; and
 - (ii) a non-exclusive, perpetual, royalty-free, irrevocable, non-transferable licence (with the right to assign and to sub-licence and permit further sub-licences) to use the Project IP referred to in Clause 39.9(e),
to use, operate, monitor, repair, enhance, modify, alter or otherwise deal in any way with the Services, the Stadium, the Sports Precinct and the Contract Material;
 - (iii) to perform the Services;
 - (iv) for any purpose in connection with the Services and associated with the further development of improvements on or in the vicinity of the Site; and

- (v) to exercise the rights referred to in Clause 39.1(b)(iii) and Clause 39.1(b)(iv) with other Intellectual Property Rights the State may own or otherwise be entitled to exercise.
- (c) To the extent that the subject matter to which the Operator's Background IP attaches or protects is commercially available off-the-shelf third party software, the Operator must, if requested by the State, and at the State's cost:
 - (i) if the Operator is legally able to do so, licence that software to the State and the State Associates on the terms of the licence granted to the Operator by the third party licensor; or
 - (ii) if the Operator is not legally able to licence that software to the State or State Associates without the consent of the licensor, at the State's request use all reasonable endeavours to procure the consent of the licensor to grant such a licence to the State and the State Associates.
- (d) If the Operator is, or reasonably considers it will be, after having used its reasonable endeavours, unable to grant to the State the rights required in accordance with Clause 39.1(c), it must promptly notify the State of that failure and the State and the Operator will negotiate in good faith with respect to the Operator obtaining for the State's benefit, such rights or arrangements as the State reasonably requires. If the Operator and the State are unable to obtain such rights for the State, the Operator will continue to work with the State in order to allow the State to use or take full benefit of the third party software.

39.2 State's Background IP

- (a) The State's Background IP remains vested in the State or the relevant State Associate (as applicable).
- (b) The State grants to the Operator a non-exclusive, royalty-free, revocable, non-transferable licence (including a right to sub-licence on such conditions that the State reasonably requires from time to time) to use the State's Background IP to the extent required to perform the Operator's obligations under this Agreement.
- (c) If the licence of the State's Background IP set out in Clause 39.2(b) is revoked by the State (excluding revocation due to a breach by the Operator of the licence) and the licence is required by the Operator to perform the Operator's obligations under this Agreement, the State will promptly procure a replacement licence at the State's cost.
- (d) If the licence of the State's Background IP set out in Clause 39.2(b) is revoked by the State due to a breach by the Operator of the licence, and the licence is required by the Operator to perform the Operator's obligations under this Agreement, the State will promptly provide information to the Operator to enable the Operator to procure a replacement licence at its own cost, which cost does not constitute an Operating Cost.

39.3 Project IP

- (a) Except for Project IP described in Clause 39.9(e) and Clause 39.9(c)(i), the Operator hereby assigns to the State all Project IP free of any Encumbrance or interest of any third party. The Operator acknowledges and agrees that this Clause 39.3(a) constitutes an assignment of copyright in the relevant Project IP for the purpose of section 196 of the *Copyright Act 1968* (Cth).
- (b) The State grants to the Operator a non-exclusive, royalty-free, non-transferable licence (including a right to sub-licence on such conditions that the State reasonably requires from time to time), which cannot be revoked prior to the Expiry Date, to use the Project IP to the extent required by the Operator to perform its obligations under this Agreement in accordance with the terms of this Agreement.
- (c) The Operator must:

- (i) notify the State if it becomes aware of or reasonably considers that any of the Project IP has commercial application or may be commercially exploited by the State; and
- (ii) give or procure all assistance reasonably requested by the State to protect, exploit and commercialise the relevant Project IP.

If the assistance requires the Operator to incur costs which are not otherwise reimbursed as Operating Costs, the cost of that assistance will be an Operating Cost.

39.4 Verification

- (a) The Operator must, if required by the State:
 - (i) verify the creation and ownership of all Project IP including by communicating, disclosing or making available for inspection, examination and copying all information, data, documents, records and materials reasonably required by the State for verification, audit, project management and operational purposes;
 - (ii) do all things necessary to give effect to the assignment of Project IP on the terms contained in Clauses 39.3(a), 39.9(b) and 39.9(d); and
 - (iii) do all things necessary to sub-licence or ensure the grant of a licence of the Project IP described in Clause 39.9(e) to the State.
- (b) If the obligations under this Clause 39.4 require the Operator to incur costs which are not otherwise reimbursed as Operating Costs, the cost of complying with those obligations will be an Operating Cost.

39.5 Operator's warranties

The Operator warrants that:

- (a) the Operator owns or is entitled to use the Operator's Background IP in the performance of the Services;
- (b) the Operator's Background IP and the validity and subsistence of the Operator's or third party's (as the case may be) right, title and interest to the relevant the Operator's Background IP are not the subject of any pending or threatened challenge or Claim (including for opposition, cancellation, verification or rectification) and there are no matters or facts which might give rise to such challenge or Claim;
- (c) other than in respect of Operator Background IP that the Operator has informed the State is subject to Clause 39.1(c)(ii), the Operator is able to grant the licence to the Operator's Background IP as described in Clause 39.1(b) or Clause 39.1(c), whichever applies;
- (d) other than in respect of Intellectual Property Rights described in Clause 39.9(c)(i), the Operator has obtained all authorisations and consents required so that Project IP can be assigned to the State, as described in Clause 39.3(a) or licensed to the State, as described in Clause 39.9(e) whichever applies;
- (e) use by the State, any State Associate or by another person at the direction or with the permission of the State, of the Operator's Background IP or Project IP in accordance with this Agreement will not infringe the Intellectual Property Rights of any third party or breach any Law; and
- (f) subject to Clause 39.1(c), neither the State nor any State Associate or any other person acting at the direction or with the permission of the State, is liable to pay any third party any licence or other fee in respect of the use of the Operator's Background IP or the Project IP.

39.6 Non-infringement

- (a) The Operator must perform the Services, and otherwise perform its obligations and exercise its rights under this Agreement, in a manner that does not infringe or misappropriate any Intellectual Property Rights of any person.
- (b) Without limiting Clause 39.6(a), if the Operator becomes aware that there is, or will be, or is likely to be an infringement or misappropriation of any Intellectual Property Rights of any person arising out of this Agreement, including by reason of the performance of the Services, the Operator must use its reasonable endeavours to, at the State's direction:
 - (i) procure any necessary rights or licences; or
 - (ii) replace or modify any infringing resource, service or work,
 in each case in a manner acceptable to the State, such that the quality, performance or usefulness of the relevant resource, service or works is not degraded and the infringement or alleged infringement ceases. Any costs incurred acting at the State's direction will be Operating Costs except to the extent, and only to that extent, that they arise due to the Tortious Act or Omission or breach of a Project Document by the Operator or an Operator Associate.

39.7 Indemnity

- (a) The Operator indemnifies each Indemnified Person against any Liability suffered or incurred by the Indemnified Person arising out of or in connection with, any Claim brought or made by any third party that the use of any Project IP, Operator's Background IP or Subcontractor's Background IP by the Operator or by the State pursuant to the licences granted under or assignment pursuant to this Agreement infringes the Intellectual Property Rights, Moral Rights or any other rights of any person (**Third Party IP Claim**), which indemnity is reduced to the extent that the relevant Claim is caused or contributed to by the use of the State's Background IP by the Operator in accordance with the terms of the licence of the Intellectual Property Rights.
- (b) The State may:
 - (i) defend any Third Party IP Claim, at the Operator's reasonable expense, in such a manner as it may deem appropriate; or
 - (ii) direct the Operator to defend the Third Party IP Claim.
- (c) The Operator must, if directed by the State in accordance with Clause 39.7(b)(ii):
 - (i) conduct the defence of any proceedings relating to the Third Party IP Claim diligently using competent counsel and in such a way as not to bring the reputation of the State into disrepute provided that the State may not claim that the Operator's actions bring the State into disrepute if the State has directed the Operator to take those specific actions;
 - (ii) consult with the State and keep the State informed of all material matters relating to the Third Party IP Claim;
 - (iii) provide any information requested by the State in relation to the proceedings;
 - (iv) obtain the State's prior written approval (which must not be unreasonably withheld) before any settlement is made in respect of the Third Party IP Claim and which settlement must have regard to the State's interests; and
 - (v) comply at all times with any reasonable direction given by the State in connection with the defence or settlement of the Third Party IP Claim.

- (d) The indemnity in Clause 39.7(a), the obligations in Clause 39.7(b) and Clause 39.7(c) and the warranties in Clause 39.5 will not apply to the extent that the Third Party IP Claim arises from:
- (i) any combination, operation or use of any relevant Operator's Background IP or Project IP in conjunction with any items not supplied by the Operator, recommended by the Operator in writing or sourced by the Operator;
 - (ii) any modification, update or development carried out by or for the State to any the Operator's Background IP or Project IP (to the extent that Project IP is licensed to the State) where such modification, update or development was not authorised or approved by the Operator in writing;
 - (iii) the State or its sublicensees or permitted users failing to use the Operator's Background IP or the Project IP (to the extent that the Project IP is licensed to the State) in accordance with this Agreement; or
 - (iv) subject to the Operator or its Subcontractors giving prior notice of the potential infringement of which the Operator or its Subcontractors is aware or should reasonably have been aware, compliance with the requirements or instructions of the State by the Operator or its Subcontractors where it is not reasonably possible to comply with such requirements or instructions without causing such infringement.
- (e) References to the Operator in Clause 39.7(d) includes any Operator Associate.

39.8 Moral Rights

- (a) The Operator must procure from all authors and holders of Moral Rights in the Operator's Background IP and the Project IP an unconditional, irrevocable consent in writing authorising the State (and its successors in title, and licensees and persons authorised by the State, its successors in title or licensees) to:
- (i) use any or all of the Operator's Background IP or the Project IP without attribution of the author;
 - (ii) subject any or all of the Operator's Background IP or the Project IP to derogatory treatment; and
 - (iii) falsely attribute the authorship of any or all of the Operator's Background IP or the Project IP.
- (b) The State may notify the Operator at any time that it requires a further written unconditional and irrevocable consent from an author or holder of Moral Rights in any or all of the Operator's Background IP or the Project IP for specific acts or omissions by the State in relation to that subject matter the Operator must use its reasonable endeavours to procure and promptly provide such consent to the State.
- (c) On the performance of the Services, the Operator warrants that it has obtained all the written consents needed to allow the State to perform the acts and omissions specified in Clause 39.8(a) from the relevant authors and other holders of Moral Rights.
- (d) On request from the State, the Operator must immediately provide the State with copies of the consents referred to in Clause 39.8(a).

39.9 Subcontracts

- (a) Except to the extent Clause 39.9(c) applies, the Operator must take all reasonably practicable steps to ensure that each Subcontract contains conditions that:
- (i) the Subcontractor:
 - (A) grants to the Operator an irrevocable, transferable, non-exclusive, worldwide royalty free licence (with the right to assign

- and to sub-license and permit further sub-licenses including to the Operator for the purpose of performing the Services) to use and reproduce all Subcontractor's Background IP to the extent necessary to enable the Operator to perform the Services;
- (B) grants to the State an irrevocable, non-exclusive, transferable, worldwide royalty free licence (with the right to assign and to sub-licence and permit further sub-licensees including to the Operator for the purpose of performing the Services) to use and reproduce all Subcontractor's Background IP to the extent necessary to enable the State or the Operator and any person claiming through them to use the product of the work or services performed under the Subcontract, including to exercise all or any Intellectual Property Rights assigned to the Operator under Clause 39.9(b) or Clause 39.9(d); and
 - (C) must procure from each person involved in the performance of the works or services under the Subcontract, an unconditional, irrevocable written consent to the State and the Operator and any person claiming through them doing anything that would otherwise infringe any of their Moral Rights in the product of work or services performed by such person for the purpose of the Subcontract;
- (ii) the works or services to be executed under the Subcontract must be performed, where the Subcontractor is a natural person, only by the Subcontractor or persons who are employees of the Subcontractor acting within the terms of their employment or, where the Subcontractor is a body corporate, only by persons who are employees of the Subcontractor acting within the terms of their employment; and
 - (iii) the Subcontractor must do all things necessary to enable the Operator to verify the creation and ownership of all Intellectual Property Rights created or coming into existence under the Subcontract whether before or after the date of the Subcontract (including communicate, disclose or make available for inspection, examination and copying all information, data, documents, records and materials reasonably required by the Operator for verification, audit, project management and operational purposes) and to perfect the vesting of such rights in the Operator (including executing any transfer or other document).
- (b) Subject to Clause 39.9(c), the Operator must use its reasonable endeavours to ensure that each Key Subcontract contains conditions that the Key Subcontractor assigns to the Operator free of any interest of any third party, by way of absolute assignment of future rights and separately upon them coming into existence, all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the Key Subcontract or the provision of any of the services or work to be performed under the Key Subcontract, whether before or after the date of the Key Subcontract, with the intent that such rights will, by virtue solely of the Key Subcontract, vest in the Operator immediately upon their creation.
 - (c) In relation to the Key Subcontractor providing the Ticketing Services (the **Ticketing Services Provider**):
 - (i) the assignment of the Intellectual Property Rights referred to in Clause 39.9(b) is not required to cover Intellectual Property Rights that specifically relate to technical aspects of the Ticketing Services Provider's technology and systems; and
 - (ii) the Operator must ensure that the Key Subcontract entered into with the Ticketing Services Provider contains conditions that any data collected from the delivery of the Ticketing Services is provided in a form which can be read, modified and manipulated independently of the Ticketing

Services Provider, such as an MS Excel, .csv or similar format, including by the State and after the Expiry Date.

- (d) The Operator must take all reasonably practicable steps to ensure, and procure that the relevant Operator Associate ensures, that each Subcontract that is not with a Key Subcontractor contains conditions that the Subcontractor assigns to the Operator free of any interest of any third party, by way of absolute assignment of future rights and separately upon them coming into existence, all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the Subcontract or the provision of any of the DBFM Services or work to be performed under the Subcontract, whether before or after the date of the Subcontract, with the intent that such rights will, by virtue solely of the Subcontract, vest in the Operator immediately upon their creation.
- (e) If the Operator is not able to include, or cannot procure that the relevant Operator Associate include, the conditions in Clause 39.9(d), the Operator must ensure, or procure that the relevant Operator Associate ensures that the Subcontract contains conditions granting to the Operator a licence of the Project IP and that the Operator can licence that Project IP to the State on the terms contained in Clause 39.1(b). If the Subcontractor acts inconsistently with the licence to be granted under this Clause 39.9(e), at any time, the Operator must take all steps necessary to enforce the terms of the licence, for the benefit of the State, at the Operator's cost, which cost does not constitute an Operating Cost.
- (f) If the Operator is not able to include, or cannot procure that the relevant Operator Associate include, the conditions in Clause 39.9(a) or Clause 39.9(b) in a Subcontract, the Operator is not excused from the performance of its obligations under this Clause 39 or otherwise under this Agreement.

39.10 Venue Data

- (a) The State owns the Venue Data.
- (b) Subject to any restrictions or other requirements in a Hirer Agreement or User Agreement and the Operator's other obligations under this Agreement, the State grants to the Operator a non-exclusive, revocable, royalty-free, non-transferable licence on such conditions that the State reasonably requires from time to time to use the Venue Data to the extent required by the Operator to perform the Services.
- (c) The Operator may only sub-license the right to use the Venue Data to an Event Partner if approved by the State Representative and such approval may be given subject to conditions.
- (d) The Operator must ensure that all use of Venue Data is in accordance with the Technology Management Plan, the Operator's obligations with respect to privacy under Clause 28.3 and the Operator's other obligations under this Agreement and any Hirer Agreement or User Agreement.
- (e) Subject to Clause 39.10(b), the Operator must not commercialise the Venue Data or provide Venue Data to any other person without the prior written consent of the State Representative which may be withheld in its absolute discretion or given subject to conditions.

39.11 Project Identity

The Operator acknowledges and agrees that:

- (a) its use of the Project Trade Marks or Project Identity must only be in the form consented to by the State and otherwise in accordance with the Style Guide as notified to the Operator from time to time;
- (b) it must ensure that it and the Operator Associates do not use the Project Trade Marks or Project Identity otherwise than in accordance with the Style Guide or as

consented to by the State, and must take all reasonably practicable steps to ensure that the Event Parties do not use the Project Trade Marks or Project Identity otherwise than in accordance with the Style Guide or as consented to by the State; and

- (c) the State may:
 - (i) use the Project Trade Marks and Project Identity as the State reasonably requires; and
 - (ii) without limiting Clause 39.1(b), use the Operator's names and logos, with the agreement of the Operator.

39.12 Trading Name

- (a) The State will apply to transfer the registration of the Trading Name to the Operator prior to the Effective Date, and the Operator must promptly do everything reasonably practicable to complete the transfer.
- (b) The Operator must, at all times in carrying out the Services, trade only under the Trading Name.
- (c) The Operator must renew and maintain the registration of the Trading Name as a registered business name with the relevant Government Agency, so that the Trading Name is at all times registered for the duration of the Term.
- (d) The State may, in its discretion from time to time, direct the Operator to change the Trading Name.
- (e) If the State directs a change to the Trading Name under Clause 39.12(d), the Operator must:
 - (i) immediately register the relevant name as a business name with the relevant Government Agency; or
 - (ii) promptly do all things necessary to effect a transfer of the relevant registered business name to the Operator,
 and, from the time directed by the State, trade under the new Trading Name in accordance with Clause 39.12(b).
- (f) Following any change to the Trading Name under this Clause 39.12, the Operator must promptly transfer the registration of the old Trading Name to the State.
- (g) The Operator must at all times, with respect to the Trading Name, comply with the *Business Names Registration Act 2011* (Cth) and any other applicable Law relating to the use of business or trading names.
- (h) Except as set out in Clauses 39.2 and 39.3, the Operator acknowledges that it has no entitlement to any Intellectual Property Rights in respect of the Trading Name.
- (i) The Operator must promptly forward to the State any correspondence with respect to the use of the Trading Name from a Government Agency or other third party.

40 NOTICES

40.1 General Notices

- (a) **(Form of Notices):** Each communication (including each notice, consent, approval, request and demand) in accordance with or in connection with, this Agreement (in this Clause 40.1, '**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):** Notwithstanding Clause 42.3, all Notices must be:
- (i) delivered or posted by prepaid post to the address; or
 - (ii) sent by email in the form of a .pdf file letter (or such other form agreed by the State) to the email address, (except where a Notice relates to:
 - (A) a Claim in respect of a Dispute;
 - (B) an Event of Default; or
 - (C) an Immediate Termination Event,
 which in each case must be delivered in accordance with Clause 40.1(b)(i)),

of the addressee set out in Schedule 1 (Contract Particulars) (or as otherwise notified by that party to each other party from time to time).
- (c) **(Date of receipt):** Subject to Clause 40.1(d), a Notice is taken to be received by the addressee:
- (i) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
 - (ii) in the case of email, at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party sending the email from the recipient stated in Schedule 1 (Contract Particulars); and
 - (iii) in the case of delivery by hand, on delivery.
- (d) **(Next Business Day):** If the communication is taken to be received on a day which is not a Business Day or after 5.00pm, it is taken to be received at 9.00am on the next Business Day.
- (e) **(Notices sent by email):** In connection with communications sent by email:
- (i) only the letter in .pdf format attached to the email and any attachments to such letter which are referred to in the letter, will form part of the communication in accordance with this Clause 40.1. Any text in the body of the email or the subject line will not form part of the communication; and
 - (ii) the Operator must ensure that, in connection with any communications in accordance with or in connection with this Agreement:
 - (A) its firewall or mail server (or both) (as applicable):
 - (1) allows messages of up to 14 MB to be received;
 - (2) does not trap any messages in the spam filter which have been sent from any State domain; and
 - (3) automatically sends a receipt notification to the sender upon receipt of a message; and
 - (B) its systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.

40.2 [Not Disclosed]**40.3 Continuing events**

If the events upon which the Claim in accordance with Clause 40.2(a)(ii) is based or the consequences of the events are continuing, the Operator must continue to give information required by Clause 40.2(a)(ii) every 20 Business Days after the Claim in accordance with Clause 40.2(a)(ii) was submitted, until 21 Business Days after the events or consequences have ceased.

40.4 Operator and Project Co Notices

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

41 TAXES**41.1 GST**

- (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 41.1:
 - (i) words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
 - (ii) **'GST Law'** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); 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 on behalf of the State.
- (d) **(Additional amount):** Unless otherwise expressly stated, and except in connection with a supply to which Clause 41.1(e) applies, all prices or other sums payable or consideration to be provided in accordance with this Agreement are exclusive of GST.
- (e) **(Non-Monetary Consideration):** Subject to Clause 41.1(j), if some or all of the consideration for a taxable supply made by a party in connection with this Agreement is not expressed as an amount of money **(Non-Monetary Consideration)** and also constitutes a taxable supply by the recipient, the parties agree that:
 - (i) the Non-Monetary Consideration is GST inclusive and will not be increased on account of GST under Clause 41.1(f);
 - (ii) the Operator will, after consultation with and the approval of the State (such approval not to be unreasonably withheld or delayed), instruct at its own cost, a suitably qualified professional valuer to determine the GST inclusive market value of any Non-Monetary Consideration provided by the supplier and the recipient; and

- (iii) the Operator will notify the State of the amount determined by the valuer within 15 days of the end of the Month in which this Agreement is entered or 15 days of the end of the Month in which the value is able to be determined (if it cannot be determined as at the date of this Agreement).
- (f) **(Payment of GST):**
 - (i) Subject to Clause 41.1(e)(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 41.1(f)(i) in addition to and at the same time that the consideration for the supply is to be provided in accordance with this Agreement.
- (g) **(Gross-up of Non-Monetary Consideration Supplies):** If, at any time a Supplier has a GST liability for a tax period in connection with a taxable supply to which Clause 41.1(e) applies (**Non-Monetary Consideration Supplies**) that, due to a difference in value between the Non-Monetary Consideration and the Non-Monetary Consideration Supplies, exceeds the input tax credit to which the supplier is entitled in respect of its acquisition of the recipient's taxable supplies which represented the Non-Monetary Consideration (**Acquisition**) for that tax period (the excess being the **Shortfall**):
 - (i) the recipient must pay to the Supplier an amount equal to the Shortfall plus GST within 5 Business Days of being requested in writing by the Supplier to do so; and
 - (ii) the parties will do all things required, including issuing new invoices and adjustments notes (if necessary) to give effect to this Clause 41.1(g).
- (h) **(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 41.1(f) or Clause 41.1(g).
 - (ii) In the case of a supply to which Clause 41.1(e) applies, the Supplier must issue a tax invoice or adjustment note within 5 days after the time it is required to obtain the valuation referred to in Clause 41.1(e)(ii).
 - (iii) The recipient can withhold payment of any amount payable in accordance with this Clause 41.1 until the Supplier provides a tax invoice or an adjustment note, as appropriate.
- (i) **(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 41.1 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.
- (j) **(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 connection with 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.

41.2 General liability for Taxes

As between the State and the Operator the Operator bears the risk of, and must pay, all Taxes incurred or imposed in connection with:

- (a) the execution, stamping, delivery and performance of any Project Document and each transaction effected or made in accordance with or in connection with it;
 - (b) any amendment to, or any consent, approval, waiver, release, surrender or discharge of, or in accordance with, any Project Document; and
 - (c) the Services,
- except as provided in Clause 41.1.

42 GENERAL

42.1 Interest

- (a) If a party fails to pay any amount payable by that party to the other party within the time required in accordance with this Agreement, then it must pay interest on that amount in accordance with Clause 42.1(b).
- (b) Interest is:
 - (i) payable from the due date until payment is made before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the money payable becomes merged;
 - (ii) calculated on daily balances at the Default Rate; and
 - (iii) capitalised Monthly.
- (c) The amount calculated in accordance with Clause 42.1(b) will be a party's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.
- (d) If funds are available in the Pre-Operational Account or the Operating Account (as the case may be) to meet the State's obligation to pay the Operator and the Operator is entitled under this Agreement to withdraw those funds, the State is deemed to have discharged its obligation to pay the Operator. Interest does not accrue and cannot be set off on those amounts on the basis that they are owing to the Operator but the Operator has not withdrawn them from the Pre-Operational Account or the Operating Account (as the case may be).

42.2 Set off

- (a) Without limiting or affecting a party's rights in accordance with any other provision of this Agreement or at Law, a party may deduct from any monies due and payable to the other party in accordance with this Agreement any amount due and payable by one party to the other (whether in accordance with or relating to this Agreement or any other State Project Documents).
- (b) Each party must make all payments to the other without deduction or withholding for or on account of any present or future Tax, unless the parties are compelled by Law to make such a deduction or withholding.
- (c) If the Operator is compelled by Law to make a deduction or withholding, it must:
 - (i) remit the deducted or withheld amount to the relevant Authority within the time required by Law; and
 - (ii) provide to the State all information and documentation relating to that deduction or withholding, including any information or documentation required to obtain a credit for or repayment of the deducted or withheld amount from an Authority.

42.3 Online contract management

- (a) If the State establishes an online contract administration system for this Agreement or the Project, the State may direct the Operator to submit all documentation created in accordance with this Agreement in accordance with such system.
- (b) The Operator must comply with any direction given by the State in accordance with Clause 42.3(a).

42.4 Relationship of the parties

No duty of good faith is implied on the State in connection with its relationship with the Operator.

42.5 State's rights, duties, powers and functions

- (a) **(State's own interests):** Unless this Agreement expressly provides otherwise, nothing in this Agreement gives rise to any duty on the part of the State to consider interests other than its own interests when exercising any of its rights or performing any of its obligations in accordance with the State Project Documents.
- (b) **(State's powers, functions or duties):** Notwithstanding anything contained or implied in this Agreement to the contrary, the parties expressly agree that the State is not obliged to exercise a power, function or duty which is granted to or within the responsibility of any other Government Agency, or to influence, over-ride or direct any Government Agency in the proper exercise and performance of its legal duties and functions.
- (c) **(No fettering):** Nothing contained in this Agreement or contemplated by this Agreement has the effect of constraining the State or placing any fetter on the State's discretion to exercise or not to exercise any of its statutory rights, duties, powers or functions.
- (d) **(No Claim):** Subject to Clause 42.5(e), the Operator will not be entitled to make any Claim against the State or the State of Western Australia under the Project Documents for any Liability relating to any exercise or failure of the State or the State of Western Australia to exercise its statutory rights or duties.
- (e) **(Liability for breach):** Clauses 42.5(a) to 42.5(d) (inclusive) do not limit any Liability of the State which the State would have had to the Operator in accordance with any State Project Document as a result of a breach by the State of a term of any State Project Document but for Clauses 42.5(a) to 42.5(d) (inclusive).

42.6 Reasonable endeavours

- (a) If there is any statement in this Agreement that the State will use 'reasonable endeavours' in relation to an outcome it means that:
 - (i) the State will take steps to bring about the relevant outcome so far as it is reasonably able to do so having regard to its resources and other responsibilities;
 - (ii) the State cannot guarantee the relevant outcome; and
 - (iii) the State, by undertaking to exercise reasonable endeavours, is not required to:
 - (A) act contrary to its own interests;
 - (B) interfere with or influence the exercise of any statutory power or discretion by any body, including a Government Agency; or
 - (C) act in any other way that the State regards as not in the public interest.

- (b) If there is any statement in this Agreement that the Operator will use 'reasonable endeavours' in relation to an outcome it means that:
 - (i) the Operator will take steps to bring about the relevant outcome so far as it is reasonably able to do so having regard to its resources and other responsibilities, including by acting in accordance with Good Industry Practice; and
 - (ii) the Operator cannot guarantee the relevant outcome.

42.7 Reasonably practicable

Except when used in Clauses 9.3 and Clause 17.9(g) which are phrases used in legislation, if there is any statement in this Agreement that a party will take 'all reasonably practicable steps' or 'all steps reasonably practicable' in relation to an outcome it means that the party will take all reasonable steps or actions to bring about the relevant outcome, including acting in accordance with Good Industry Practice.

42.8 Entire agreement

The State Project Documents constitute the entire agreement and understanding between the parties and supersede 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.

42.9 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.

42.10 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.

42.11 Waiver and estoppel

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

42.12 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.

42.13 Amendments to Project Documents

- (a) This Agreement may only be varied by a deed executed by or on behalf of each party.
- (b) Subject to Clause 42.13(c) and except as expressly set out in this Agreement, the Operator may not at any time after receipt by the Operator of a Default Notice:
 - (i) make or permit any amendment to, replacement of or waiver of a provision of;
 - (ii) terminate, surrender, rescind or accept repudiation of;
 - (iii) permit the novation, assignment or substitution of any counterparty's rights, obligation or interest in; or
 - (iv) enter into any agreement or arrangement which affects the operation or interpretation of,
 any Project Document without the State's prior consent (which in connection with the Project Documents to which the State is not a party, will not be unreasonably withheld).
- (c) This Clause 42.13 does not apply to a transaction of the type referred to in Clause 35.4 which is to be dealt with in accordance with that Clause.

42.14 Joint and several liability

If the Operator consists of more than one person, then the rights and obligations of the Operator in accordance with this Agreement are joint and several as between those persons.

42.15 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.

42.16 Clauses to survive termination

- (a) All provisions of this Agreement which expressly or by implication from their nature are intended to survive termination, completion or expiration of this Agreement will survive such termination, completion or expiration, including any provision which is in connection with:
 - (i) the parties' rights to set off and to recover money;
 - (ii) finalisation of payment or a Claim to either party upon or after the Expiry Date;
 - (iii) confidentiality or privacy;
 - (iv) Intellectual Property Rights;
 - (v) any obligation to make any Records available to the State;
 - (vi) any indemnity, Performance Bond or other financial security given in accordance with this Agreement; or

- (vii) any right or obligation arising on termination of this Agreement.
- (b) Nothing in this Clause 42.16 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.

42.17 Costs and expenses

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

42.18 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.

43 PERSONAL PROPERTY SECURITIES ACT

43.1 State's Personal Property

For the purposes of this Clause 43, '**State Personal Property**' means all personal property the subject of a Security Interest granted by the Operator in favour of the State under this Agreement.

43.2 Further assurance

- (a) If the State determines that this Agreement (or a transaction in connection with it) is or contains a Security Interest for the purposes of the PPS Law, the Operator agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the State asks and considers necessary for the purposes of:
 - (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
 - (ii) enabling the State to apply for any registration, complete any financing statement or give any notification, in connection with the Security Interest so that the State has the priority required by it; or
 - (iii) enabling the State to exercise rights in connection with the Security Interest.
- (b) The Operator agrees to cause any financing statements required pursuant to Clause 43.2(a)(i) to be registered in accordance with the PPS Law and, in any event, at such times as may be directed by the State to maintain the priority required by the State.
- (c) If the Operator's obligations under this Clause 43.2 (other than obligations which are connected to or immediately follow the execution of this Agreement) require the Operator to incur costs which are not otherwise reimbursed as Operating Costs, those costs which are reasonably and necessarily incurred will be paid by the State to the Operator.

43.3 No requirement for PPSA notices

The State need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given and cannot be excluded.

43.4 Priority of State's interest

Nothing in this Agreement will be taken or construed as an agreement or consent by the State to:

- (a) subordinate the State's interest in State Personal Property (or any part thereof) to any other Encumbrance or interest affecting State Personal Property at any time; or
- (b) delay the time when a Security Interest created or provided for under this Agreement attaches to the relevant collateral.

43.5 Notices to be given to the State

The Operator must notify the State in writing as soon as the Operator becomes aware of any of the following:

- (a) if any personal property which does not form part of State Personal Property becomes an accession to State Personal Property and is subject to a Security Interest in favour of a third party that has attached at the time it becomes an accession;
- (b) if any State Personal Property is located or situated outside Australia; and
- (c) upon request by the State, of the present location or situation of any State Personal Property.

43.6 Negative undertakings

The Operator must not:

- (a) create any Security Interest or lien over any State Personal Property whatsoever (other than Security Interests granted in favour of the State under this Agreement);
- (b) sell, lease or dispose of its interest in or control or use of any State Personal Property;
- (c) give possession of State Personal Property to another person other than the State or where the State expressly authorises it to do so where permitted under the Project Documents;
- (d) permit any State Personal Property to become an accession to or commingled with any asset that is not part of the Stadium or Sports Precinct;
- (e) change its name without first notifying the State of the new name not less than 15 Business Days before the change takes effect;
- (f) relocate its principal place of business outside Australia or change its place of registration or incorporation;
- (g) move any State Personal Property outside Australia; or
- (h) allow any other person to acquire control of any personal property forming part of State Personal Property at any time or where permitted under the Project Documents.

43.7 Assistance with registration

- (a) The Operator must provide all necessary information and take all necessary action and execute all necessary documents as reasonably take or requested by the State to enable the State to perfect, within the time limit specified in the PPSA, any

Security Interest created or provided for by this Agreement in relation to any personal property including any Security Interest granted temporary perfection under the PPSA at any time.

- (b) The Operator must promptly provide all necessary information and take all necessary action (including obtaining any consent or agreement or giving any notice) to enable the State to register fully valid and effective financing statements or financing change statements with respect to any Security Interest held or intended to be held by the State under this Agreement at any time.

43.8 State's interest remains unaffected

The State's interest in State Personal Property is not affected by anything which, but for this provision might have that effect, including any failure to perfect or to continuously perfect (within the meaning of the PPSA) the Security Interest in relation to any personal property forming part of State Personal Property at any time.

43.9 Costs and expenses relating to PPSA and registration

Except as set out in Clause 43.2(c), each party agrees that it will pay its own costs (which costs do not constitute an Operating Cost) in connection with anything either party is required to do under this Clause 43.

43.10 Confidentiality for the purposes of the PPSA

- (a) Notwithstanding Clause 38.1, neither the State nor the Operator will disclose information of the kind mentioned in section 275(1) of the PPSA in response to a request under section 275(1) of the PPSA and the Operator will not authorise, and will ensure that no other party authorises, the disclosure of such information.
- (b) Clause 43.10(a) does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

43.11 Severability of provisions

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

Execution page

Executed as an agreement

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

*sign
here*



Authorised Representative

*print
name*

Richard Muirhead

*sign
here*



Authorised Representative

*print
name*

David Etherton

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

Signature of Director

Daryl Robert Kerry

Signature of Company Secretary

Stephen Campbell Heytman

Schedule 1 - Contract Particulars

Schedule 2 - Review Procedures

Schedule 3 - Operator Management

Schedule 4 - Insurance

Schedule 5 - [*Not Disclosed*]

Schedule 6 - [*Not Disclosed*]

Schedule 7 - Pre-Operational Services Specifications

Schedule 8 - Services Specifications

Schedule 9 - [*Not Disclosed*]

Schedule 10 - [Not Used]

Schedule 11 - Subcontractor Deed of Novation

Schedule 12 - [*Not Disclosed*]

Schedule 13 - FF&E List

Schedule 14 - Operating Phase Licence

Schedule 15 - Operational Interface Agreement

Schedule 16 - *[Not Disclosed]*

Schedule 17 - *[Not disclosed]*

Schedule 18 - [Not Used]

Schedule 19 - Project Stakeholders

- (a) Department of Sport and Recreation
- (b) Department of Treasury
- (c) Public Transport Authority
- (d) Tourism WA
- (e) Main Roads Western Australia
- (f) Burswood Park Board
- (g) Department of Planning (General)
- (h) Department of Planning (Burswood District Structure Plan)
- (i) Department of Lands
- (j) Department of Transport
- (k) Department of Water
- (l) WA Planning Commission
- (m) Department of Aboriginal Affairs
- (n) Swan River Trust
- (o) AFL
- (p) WCE
- (q) FFC
- (r) WA Football Commission
- (s) WACA
- (t) CA
- (u) Perth Glory Football Club
- (v) Football West
- (w) Football Federation of Australia
- (x) Rugby WA
- (y) Australian Rugby Union
- (z) WA Rugby League
- (aa) National Rugby League
- (bb) Crown
- (cc) Town of Victoria Park
- (dd) City of Perth
- (ee) City of Belmont
- (ff) Tennis West
- (gg) Perth Convention Bureau
- (hh) Perth Racing / WA Turf Club
- (ii) South West Aboriginal Land and Sea Council
- (jj) Water Corporation
- (kk) Western Power

- (ll) Department of Environment Regulation
- (mm) Environmental Protection Authority
- (nn) Metropolitan Redevelopment Authority
- (oo) Mirvac
- (pp) Golden Group
- (qq) Trinity College
- (rr) Burswood Residents Association
- (ss) Burswood Peninsula Residents (Town of Vic Park)
- (tt) East Perth Residents (City of Perth)
- (uu) East Perth Community Safety Group (City of Perth)
- (vv) East Perth Working Group – Bridge and Parking
- (ww) Burswood Water Sports Centre Users & WA Water Sports Association
- (xx) Burswood Park Users
- (yy) Events Industry Association
- (zz) Supporters and members of the sporting clubs listed in this schedule
- (aaa) Adjacent land owners, local residents, local businesses and institutions
- (bbb) general public
- (ccc) Media (local, state, national)
- (ddd) any other stakeholders and interest groups nominated by the State from time to time

Schedule 20 - Independent Certifier Agreement

Schedule 21 - Environmental Management Strategy Documents

Schedule 22 - State Stakeholder Management Plan

Schedule 23 – State Policies

- (a) *Buy Local Policy*, including the January 2016, January 2015, July 2013 and December 2009 Addenda <http://www.ssc.wa.gov.au/policies02.asp?id=19>
- (b) The *State Supply Commission Policies*:
 - (i) *Value for Money*;
 - (ii) *Probity and Accountability*;
 - (iii) *Open and Effective Competition*; and
 - (iv) *Sustainable Procurement*
- (c) Australia and New Zealand Government Procurement Agreement
- (d) Australia – United States Free Trade Agreement
- (e) Australia – Chile Free Trade Agreement
- (f) Korea – Australia Free Trade Agreement
- (g) Japan – Australia Economic Partnership Agreement
- (h) Project Co's Spectrum Frequency Management Policy

Schedule 24 - Aboriginal Engagement Strategy

Attachment 1 – Not disclosed

Attachment 2 – Site Plans

Attachment 3 – Not disclosed