

The new Perth Stadium Project

Finance Side Deed

PROJECT NUMBER: SP0793712

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

and

Minister for Works
(**Minister for Works**)

and

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

and

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

and

Westadium Partners Pty Ltd
(**Finance Co**)

and

National Australia Bank Limited in its capacity as Security Trustee of the
Security Trust
(**Security Trustee**)

and

National Australia Bank Limited in its capacity as Senior Agent under the
Facility Agreement
(**Senior Agent**)

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Finance Side Deed

This deed is made on [insert date]

between

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

and

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

and

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

and

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

and

National Australia Bank Limited (ACN 004 044 937) in its capacity as the Security Trustee of the Security Trust (**Security Trustee**)

and

National Australia Bank Limited (ACN 004 044 937) in its capacity as Senior Agent under the Facility Agreement (**Senior Agent**)

and

Westadium Partners Pty Ltd (ACN 162 441 018) (**Finance Co**)

and the parties agree as follows:

Recitals

- A. The background to the DBFM Project is set out in the Agreement.
- B. In accordance with the Financing Documents, financial accommodation is to be provided for the purpose of enabling Project Co to perform and comply with its obligations under the Agreement.
- C. It is a condition of the financial accommodation that Project Co grants to the Security Trustee, Encumbrances over each Project Entity's rights, title and interests in the DBFM Project.
- D. This deed recognises the Encumbrances held by the State and the Security Trustee in connection with the DBFM Project.

Operative Provisions

1 DEFINITIONS AND INTERPRETATION

1.1 General

In this deed, unless the context otherwise requires, or where defined in Clause 1.2, capitalised terms in this deed have the meaning given to them in Clause 1.1 of the Agreement.

1.2 Definitions

In this deed:

Term	Meaning
<i>Account Bank</i>	has the meaning given to it in Clause 6.5.
<i>Agreement</i>	means the document entitled "The new Perth Stadium DBFM Project Design, Build, Finance and Maintain (DBFM) Project"

Term	Meaning
	Agreement” between the State and Project Co executed on or about the date of this deed.
<i>Amendment</i>	has the meaning given to it in Clause 10.1(a).
<i>Beneficiaries</i>	means the beneficiaries from time to time under the Security Trust Deed.
<i>Collateral Security</i>	any present or future Encumbrance, guarantee or other document or agreement created or entered into by a Project Entity or any other person as security for, or to credit enhance, the payment of any secured moneys under the Financing Documents.
<i>Confidential Information</i>	has the meaning given to it in Clause 12.1(a).
<i>Consent Deed</i>	means each consent deed referred to in the definition of Financing Documents.
<i>Construction Facility</i>	has the meaning given to it in the Financing Documents.
<i>Contract Sum</i>	means the amounts payable by Project Co to the Builder under the D&C Subcontract in respect of the DBFM Works.
<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>Enforcing Party</i>	means the Security Trustee and any agent, attorney, trustee, receiver, receiver and manager, administrator, liquidator or provisional liquidator appointed in accordance with any Security and includes a mortgagee in possession.
<i>Equity Interest</i>	means the securities issued by, or other ownership interests in, a Project Entity.
<i>Finance Default</i>	means: <ul style="list-style-type: none"> (a) any event of default (however described) in the Financing Documents; or (b) any event which entitles a Finance Party to cease to make available financial accommodation in connection with a Project Entity’s Financial Indebtedness (other than voluntary cancellation of financial accommodation by a Project Entity which the directors of that Project Entity determine is surplus to the requirements of the Project Entities to deliver the DBFM Project in full compliance with the State Project Documents).
<i>Finance Party</i>	means the Security Trustee, the Senior Agent, each Financier and each other Beneficiary.

Term	Meaning
<i>Financiers' Certifier</i>	means the entity appointed as the Financiers' Certifier in accordance with the Financiers' Certifier Agreement.
<i>Financiers' Certifier Agreement</i>	means the document entitled "The new Perth Stadium Project Financiers' Certifier Agreement" between Project Co, the Security Trustee and the Financiers' Certifier, dated on or about Financial Close.
<i>Financiers' Cure Program</i>	means the cure program developed under Clause 5.3(c) or determined under Clause 5.3(d), as amended from time to time in accordance with this deed.
<i>Financiers' Securities</i>	means: <ul style="list-style-type: none"> (a) the General Security Deed (as defined in the Facility Agreement); (b) the Featherweight Security Agreement (as defined in the Facility Agreement); and (c) any Collateral Security.
<i>Fit and Proper Person</i>	means a person in respect of whom the State would not be entitled to reasonably withhold its consent to such person acquiring Control of a Project Entity, in accordance with Clause 46.6 of the Agreement.
<i>Intercompany Loan Agreement A</i>	means the loan agreement entered into or to be entered into between Finance Co as lender and Project Co as borrower.
<i>Intercompany Loan Agreement B</i>	means the loan agreement entered into or to be entered into between Project Co as lender and Finance Co as borrower.
<i>PA Default Event</i>	means: <ul style="list-style-type: none"> (a) an Immediate Termination Event under the Agreement; or (b) an Event of Default under the Agreement to which Clause 44.3 of the Agreement applies.
<i>PPSA</i>	means the <i>Personal Properties Securities Act 2009</i> (Cth).
<i>Permitted Amendment</i>	has the meaning given to it in Clause 10.1(c).
<i>Project Account</i>	means the "Project Accounts" as defined in the Facility Agreement and any other account of a Project Entity with a Finance Party.
<i>Project Entity</i>	means each of: <ul style="list-style-type: none"> (a) Project Co; and (b) Finance Co, or either one of them, as the context requires.
<i>Project Entity's Rights</i>	means a Project Entity's rights under the Project Documents.

Term	Meaning
<i>Receipt</i>	has the meaning given to it in Clause 3.6.
<i>Representatives</i>	has the meaning given to it in Clause 5.4(c)(i).
<i>Securities</i>	means: (a) the General Security Agreement; and (b) the Financiers' Securities, and " Security " means each or any one of them (as applicable).
<i>Security Interest</i>	has the meaning given to the term in section 12 of the PPSA.
<i>Secured Property</i>	means the property the subject of the Financiers' Securities.
<i>Security Trust</i>	means the security trust established under the Security Trust Deed.
<i>State</i>	means: (a) during the D&C Phase, the Minister for Works, the Governance Agency and the State of Western Australia; and (b) during the Operating Phase, the Governance Agency and the State of Western Australia.
<i>State Priority Moneys</i>	means all amounts: (a) owed to the State under: (i) Clause 40.8 of the Agreement; (ii) Clause 43.6 of the Agreement (being only such amounts which are not recoverable by deduction against the Monthly Service Payments); and (iii) Clause 5.4 of the Builder Side Deed; and (iv) Clause 5.4 of the FM Subcontractor Side Deed; and (b) incurred by the State in exercising its rights under Clause 4.1 of the Builder Side Deed and Clause 4.1 of the FM Subcontractor Side Deed.
<i>Termination Payment Date</i>	means the date on which the State pays the Termination Amount under Clause 44.5 of the Agreement.

1.3 Interpretation

In this deed unless the context otherwise requires:

- (a) **(persons)**: references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), a trust, a trustee or a partnership;
- (b) **(includes)**: the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) **(or)**: the meaning of "or" will be that of the inclusive "or", that is meaning one, some or all of a number of possibilities;
- (d) **(party)**: a reference to a "party" is to a party to this deed;

-
- (e) **(other persons)**: a reference to any party or person includes each of their legal representatives, trustees, executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (f) **(Authority)**: a reference to any Authority, Utility Company, institute, association or body is:
- (i) if that Authority, Utility Company, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, Utility Company, institute, association or body are transferred to another organisation, a reference to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as applicable; and
 - (ii) if that Authority, Utility Company, institute, association or body ceases to exist, a reference to the organisation which serves substantially the same purposes or objectives as that Authority, Utility Company, institute, association or body;
- (g) **(this deed)**: a reference to this deed or to any other deed, agreement, document, circular, policy or instrument includes a reference to this deed or such other deed, agreement, document, circular, policy or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (h) **(legislation)**: a reference to any legislation or to any section or provision of it includes any amendment to or re-enactment of, or any statutory provision substituted for, that legislation, section or provision;
- (i) **(rights)**: a reference to a right includes any benefit, remedy, discretion, authority or power;
- (j) **(singular)**: words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (k) **(headings)**: headings are for convenience only and do not affect the interpretation of this deed;
- (l) **(Clauses)**: a reference to:
- (i) a Clause or a Schedule is a reference to a Clause or Schedule of this deed unless otherwise stated; and
 - (ii) a paragraph is a reference to a paragraph in the Clause in which the reference appears;
- (m) **(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;
- (n) **(\$)**: a reference to "\$" is to Australian currency;
- (o) **(time)**: a reference to time is a reference to Australian Western Standard Time;
- (p) **(form)**: writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions and communication by email;
- (q) **(construction)**: no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this deed or any part;
- (r) **(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;
- (s) **(remedy)**: the use of the word "remedy" or any form of it in this deed means that the event to be remedied must be cured or its effects overcome;
- (t) **(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 a Project Entity or the Security Trustee to do so;

- (u) **(no double counting)**: if this deed requires calculation of an amount payable to a party there should be no double counting in calculating that amount;
- (v) **(writing)**: references to a notice, request, Claim, consent, approval, record or report means that the notice, request, Claim, consent, approval, record or report must be in writing unless otherwise agreed by the parties or expressly stated in this deed; and
- (w) **(PPSA)**: each of the terms “financing statement” and “financing change statement” have the meanings given to them in the PPSA.

1.4 Related matters

- (a) **(Provisions limiting or excluding Liability)**: Any provision of this deed which seeks either expressly or by implication to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.
- (b) **(Security Trustee obligations)**: In complying with any obligation under this deed, the Security Trustee must use reasonable endeavours to ensure that, to the extent applicable, each Finance Party complies with the relevant obligation and does not cause the Security Trustee to breach its obligations under this deed.
- (c) **(Business Day)**: If the day on or by which any thing is to be done in accordance with this deed is not a Business Day, that thing must be done on the next Business Day.
- (d) **(Discretion)**: Any consent or approval in accordance with this deed from the State or a 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 deed provides otherwise.

1.5 Security Trustee limitation of liability

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

out of any assets of the Security Trustee other than Security Trust assets.

- (c) Clauses 1.5(a) and 1.5(b) apply despite any other provision in this deed but do not apply with respect to any liability of the Security Trustee to another party (including for negligence) to the extent that the Security Trustee has no right or power to have Security Trust assets applied towards satisfaction of that liability, or its right or power to do so is subject to a deduction, reduction, limit or requirement to make good, in either case because the Security Trustee's behaviour was beyond power or improper in relation to the Security Trust.
- (d) The limitation in Clause 1.5(b)(i) is to be disregarded for the purposes (but only for the purposes) of the rights and remedies described in Clause 1.5(b)(ii), and interpreting this deed and any security for it, including determining the following:
 - (i) whether amounts are to be regarded as payable (and for this purpose damages or other amounts will be regarded as a payable if they would have been owed had a suit or action barred under paragraph 1.5(b)(ii) been brought);
 - (ii) the calculation of amounts owing; or
 - (iii) whether a breach or default has occurred,
 but any resulting liability will be subject to the limitations in this Clause 1.5.

1.6 Liability must be limited and must be indemnified

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

- (a) the Security Trustee's liability is limited in a manner which is consistent with Clause 1.5;
- (b) the Security Trustee is indemnified (or otherwise put in funds) to its reasonable satisfaction against any liability or loss arising from, and any costs, charges and expenses (including those incurred in connection with advisers) properly incurred in connection with, doing or not doing that thing; and
- (c) it has received the relevant instructions from the relevant Beneficiaries.

1.7 Order of precedence

To the extent of any inconsistency, ambiguity or discrepancy between this deed and any other State Project Document, this deed prevails.

1.8 Project Documents

The Security Trustee agrees that it has received a copy of the Project Documents.

1.9 Financing Documents

Each Project Entity represents and agrees that:

- (a) before the date of this deed, it has fully disclosed to the State the terms of the Financing Documents; and
- (b) those Financing Documents (together with the Equity Documents, Intercompany Loan Agreement A and Intercompany Loan Agreement B) are, on the date of this deed, the only documents governing or creating each Project Entity's Financial Indebtedness.

1.10 Assumptions

- (a) Each other party to this deed may assume that each of the Security Trustee and the Senior Agent has been duly appointed, that its appointment has not been terminated or suspended (or the terms of its appointment materially amended) and that it is authorised to give any instruction, notice, consent or direction which it purports to give in accordance with this deed.
- (b) Any proposal to be made or notice to be given or communication to be made to a Financier may be made to the Security Trustee (or as it may direct).

1.11 Continuance of rights

- (a) This deed does not affect the liabilities, rights, powers or remedies of a party in accordance with any other Project Document, except to the extent expressly provided in this deed.
- (b) The failure by a party (other than a Project Entity) to comply with the provisions of this deed does not affect the Liability of any Project Entity under any other Project Document.

1.12 State Project Documents

The State acknowledges and agrees that, subject to the terms of this deed, while the Security Trustee is taking any step to enforce the Financiers' Securities and during the appointment of an Enforcing Party by the Security Trustee, the State will continue to observe the terms of, and (except as expressly limited by this deed) exercise its rights in accordance with, the State Project Documents.

1.13 Open book basis of Agreement not applicable to Financing Documents

The State acknowledges and agrees that, other than as required by the express terms of this deed and Clause 37 of the Agreement, a Finance Party is not required to disclose information, records or other documentation or correspondence relating to the Financing Documents under Clause 1.6 of the Agreement.

1.14 Representations and warranties

Each party represents and warrants to each other party that:

- (a) it has power to enter into this deed and perform its obligations in accordance with or as contemplated by this deed and all necessary action has been taken to authorise its execution, delivery and performance;
- (b) this deed constitutes its valid and binding obligations enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject to the availability of equitable remedies; and
- (c) the execution by it of, the performance by it of its obligations in accordance with, and the compliance by it with the provisions of, this deed does not and will not contravene any Law to which it is subject.

1.15 Conditions Precedent

The satisfaction or waiver of the Conditions Precedent under the Agreement is a condition precedent to the coming into operation of this deed (other than this Clause 1.15).

2 CONSENT TO SECURITIES**2.1 Consent by the State**

- (a) The State consents to the Financiers' Securities and the Security Interests created thereunder.
- (b) The State agrees that the Encumbrances created under the Financiers' Securities are Encumbrances permitted by a Project Document for the purpose of the General Security Agreement and the Agreement.
- (c) The State agrees that, following enforcement of the Financiers' Securities, an Enforcing Party may, but is not obliged to, exercise all or any of the powers conferred under or in connection with the Financiers' Securities.
- (d) The State agrees that without limiting the liability of each Project Entity (who continues to be responsible for the performance of its obligations under the Project Documents), neither the Security Trustee nor any other representative will be liable, or taken to have assumed liability, for any obligations of a Project Entity under the Project Documents by reason only of the enforcement of any rights under the Financiers' Securities, the appointment of any Enforcing Party or, other than and to the extent confirmed in writing by the Security Trustee only, the exercise by any Enforcing Party of any of a Project Entity's rights or powers under the Project Documents.

2.2 Consent by Security Trustee

- (a) The Security Trustee consents to the General Security Agreement.

- (b) The Security Trustee agrees that the General Security Agreement is a permitted Security Interest for the purposes of the Financing Documents and the Agreement.

2.3 Nature of consents

Neither the State, nor the Security Trustee by the consents given in Clauses 2.1 and 2.2, respectively have:

- (a) approved the terms of any document;
- (b) agreed, affirmed, represented or warranted the validity or enforceability or binding nature of any document; or
- (c) consented to any document granting or creating any interest in any right, title or property other than as set out in this deed (including Clauses 2.1 and 2.2).

3 ORDER OF PRIORITIES

3.1 Priority of handover obligations

Subject to Clause 9.2(b), each Project Entity and the Security Trustee agrees that the State's rights under Clause 31 of the Agreement have priority over any rights granted to the Security Trustee.

3.2 Priority of Securities

The parties agree that the order of priority of payment between the Financiers' Securities and the General Security Agreement is:

- (a) **(State Priority Moneys)**: firstly, the General Security Agreement for all State Priority Moneys due and payable at that time;
- (b) **(Debt)**: secondly, the Financiers' Securities for the aggregate of:
- (i) Debt; and
- (ii) amounts other than Debt (including amounts payable under any hedging or swap arrangements relevant to the DBFM Project and enforcement costs) due and payable by a Project Entity (but without double counting) because of a breach of a Financing Document at that time;
- (c) **(General Security Agreement)**: thirdly, the General Security Agreement for any amounts secured by them at that time, other than the State Priority Moneys paid in accordance with Clause 3.2(a); and
- (d) **(Financiers' Securities)**: fourthly, the Financiers' Securities for any amount secured by them at that time other than those to which Clause 3.2(b) applies,

and that any money received pursuant to the enforcement of any Security will be applied by them in the above order of priority. The provisions of this Clause 3.2 apply notwithstanding:

- (e) **(other terms)**: anything contained in the Financing Documents or the General Security Agreement;
- (f) **(dates of execution)**: the date or order of execution or registration of any of the Securities or any financing statement or financing change statement;
- (g) **(order or moneys)**: the order in which any moneys may be or may have been advanced or deemed to be or have been advanced or become or became payable or secured under the respective Securities;
- (h) **(payment or repayment)**: the payment or repayment in whole or in part from time to time of the money secured by the Financiers' Securities or the General Security Agreement;
- (i) **(fluctuations in secured amounts)**: any fluctuation in the amount secured by the Financiers' Securities or the General Security Agreement from time to time;
- (j) **(acts and omissions)**: the respective dates on which anything is done or omitted to be done under or in connection with the Financiers' Securities or the General Security Agreement;
- (k) **(payment dues)**: the moneys secured by the Financiers' Securities or the General Security Agreement being contingently payable or not due for payment; or
- (l) **(contrary Law)**: any rule of Law to the contrary.

3.3 Application of payments

For the purposes of giving effect to the agreed order of priority under Clause 3.2, the parties agree that any moneys received by the State, the Security Trustee or an Enforcing Party on enforcement of any of the Securities will be applied in the following order of priority:

- (a) firstly, *pari passu* towards the reasonable costs, charges and expenses of the State, the Security Trustee or any Enforcing Party appointed under the Securities incurred in the enforcement of a Security;
- (b) secondly, towards the remuneration of an Enforcing Party;
- (c) thirdly, towards the remuneration of the Security Trustee;
- (d) fourthly, to the State and the Security Trustee in accordance with the priorities set out in Clause 3.2; and
- (e) fifthly, any surplus amount is to be paid to an account in the name of Project Co with any bank nominated by Project Co. That surplus will not carry interest while held by the State, the Security Trustee or an Enforcing Party.

3.4 Contingent liabilities

If the Securities secure contingent Liabilities to the State or the Security Trustee then, until the State or the Security Trustee is satisfied that the contingent Liability has been extinguished, the State or the Security Trustee may retain from the proceeds of a realisation of their respective Security an amount consistent with the order and amount of priority established under Clause 3.2 which they reasonably estimate to be the amount of the contingent Liability.

3.5 Enforcement by the State

- (a) **(No enforcement without consent):** Subject to Clause 3.5(c), until all amounts secured by the Financiers' Securities have been repaid in full or until termination of the Agreement (whichever is earlier):
 - (i) the State will not take any action in or towards exercising any right, power or remedy in accordance with the General Security Agreement without the Security Trustee's consent (which consent must not be unreasonably withheld); and
 - (ii) must not petition for (or vote in favour of any resolution for) or initiate or support or take steps with a view to any insolvency, liquidation, reorganisation, administration, or dissolution proceedings or any voluntary arrangement or assignment for the benefit of creditors or the termination or dissolution of any Project Entity without first obtaining the consent of the Security Trustee.
- (b) **(Priority of enforcement action):** Subject to Clause 3.5(c):
 - (i) any enforcement action under the Financiers' Securities by the Security Trustee or an Enforcing Party appointed by a Finance Party will take precedence over any enforcement action by the State or an Enforcing Party appointed under the General Security Agreement; and
 - (ii) if an Enforcing Party is appointed in connection with any property in accordance with the Financiers' Securities, the Enforcing Party may upon notice to the State, assume possession and control of that property from any Enforcing Party in possession and control of that property in accordance with any General Security Agreement and the General Security Agreement will not preclude or restrict the free dealing with the property by such an Enforcing Party, notwithstanding the security created by or any provision of any General Security Agreement to the contrary.
- (c) **(State's superior rights under Project Documents):** Clauses 3.5(a) and 3.5(b) do not:
 - (i) prevent the State from exercising its rights at any time in accordance with the General Security Agreement to the extent necessary to allow the State to exercise its rights and give effect to Project Co's obligations in accordance with Clause 31 of the Agreement;
 - (ii) affect the State's right to set-off under Clause 54.2 of the Agreement;

- (iii) prevent the State from enforcing the General Security Agreement upon the appointment of an administrator to a Project Entity by any person in accordance with Part 5.3A of the Corporations Act before or during the decision period (as defined in Section 9 of the Corporations Act) if at the time of enforcement by the State the Security Trustee is enforcing its Claim over the whole or substantially the whole of that Project Entity's property (and to the extent that the State is entitled to exercise its rights under this Clause 3.5(c), the State agrees that it will instruct an Enforcing Party to comply with Clause 3.5(b));
 - (iv) limit the rights of the State in connection with any third party; or
 - (v) prevent the State from exercising its rights under the General Security Agreement at any time during which the State is entitled to terminate the Agreement under this deed.
- (d) **(Security Trustee appointed Enforcing Party to co-operate):** Without limiting Clause 3.5(c), if the State appoints an Enforcing Party in the circumstances referred to in Clause 3.5(c)(i), then the Security Trustee must procure that any Enforcing Party appointed by the Security Trustee will promptly and fully co-operate with the Enforcing Party appointed by the State to the extent that the State reasonably requires and not do anything to prevent or hinder the Enforcing Party appointed by the State.
- (e) **(Status of General Security Agreement):** Nothing in this Clause 3.5 affects a Project Entity's obligation to comply in all respects with the General Security Agreement and other State Project Documents.

3.6 Receipts

If a party receives any payment in cash or in kind or recovers any amount (including by way of set-off or combination of accounts) in relation to the DBFM Project (**Receipt**) which is:

- (a) not a payment required under any Project Document (provided that a payment required to be made following enforcement of any of the Securities is not considered to be a required payment for the purpose of Clause 3.5); or
- (b) a required payment but is not made in the manner and to the person prescribed in the relevant Project Document,

and a Security is enforced, then that party must apply the amount of the Receipt to the other party for distribution under Clauses 3.2 and 3.3.

3.7 Priority for all moneys

Subject to Clause 3.5(c), the order and amount of priority established under this Clause 3 applies to all amounts received or realised by way of set-off by the State or the Security Trustee on a realisation of the Securities.

3.8 Marshalling of securities

Neither the State nor the Security Trustee is obliged to marshal in favour of the other. If any of the Securities becomes enforceable, each of the State and the Security Trustee in its absolute discretion may determine the extent (if any) to which it will have recourse to the Securities.

4 [NOT USED]

5 PA DEFAULT EVENTS

5.1 Notice of PA Default Events

Without limiting the rights of the State under any State Project Document, the State will give the Security Trustee a copy of any notice given by the State to Project Co in connection with a PA Default Event at or about the same time as the notice is given to Project Co.

5.2 Information to Security Trustee

If the PA Default Event is capable of cure in accordance with the Agreement:

- (a) without limiting any other obligations of a Project Entity under any Financing Document, Project Co must keep the Security Trustee informed of all measures taken or intended to be taken by each Project Entity to remedy the PA Default Event; and

- (b) the State must, upon notice from the Security Trustee, provide to the Security Trustee copies of all material correspondence and documents issued by the State to Project Co in connection with the PA Default Event.

5.3 Security Trustee's right to remedy

- (a) The Security Trustee may (but is not obliged to), upon notice to the State, take steps to remedy or procure the remedy of a PA Default Event and to develop a remedy program in connection with the PA Default Event in accordance with this Clause 5.3 (**Financiers' Cure Program**).
- (b) The right to develop a Financiers' Cure Program is in addition to Project Co's right to remedy a PA Default Event in accordance with the Agreement (to the extent that the PA Default Event is capable of cure). The remedy of a PA Default Event effected by the Security Trustee or an Enforcing Party will (as between Project Co and the State) be effective as a remedy of the relevant PA Default Event by Project Co.
- (c) If the Security Trustee gives a notice to the State in accordance with Clause 5.3(a), the State and the Security Trustee must meet as soon as reasonably practicable to agree:
- (i) the steps to be undertaken by the Security Trustee or an Enforcing Party to remedy the PA Default Event and the date upon which the Security Trustee or an Enforcing Party will commence to implement the Financiers' Cure Program; and
 - (ii) a date by which the PA Default Event must be remedied (which date must be consistent with the Security Trustee or an Enforcing Party diligently pursuing the Financiers' Cure Program).
- (d) If the Security Trustee and the State fail to agree on a Financiers' Cure Program, then any party may refer the matter for resolution by expert determination in accordance with Clause 14. The program agreed or determined in accordance with Clause 14 will be the Financiers' Cure Program.
- (e) If a PA Default Event occurs the State must, to the extent reasonably requested by the Security Trustee or an Enforcing Party promptly provide the Security Trustee or an Enforcing Party with:
- (i) reasonable assistance to allow the Security Trustee and any such Enforcing Party all necessary access to the Site subject to the Project Documents; and
 - (ii) all material information in its possession relevant to the PA Default Event.
- (f) If one or more further PA Default Events occur after the Security Trustee gives a notice to the State in accordance with Clause 5.3(a), the Security Trustee must take immediate steps to develop a Financiers' Cure Program in accordance with this Clause 5.3 for those PA Default Events.
- (g) Without limiting any rights the Security Trustee can exercise in accordance with this Clause 5.3 or Clause 6.1, but subject to the acknowledgements in Clause 9.1, the Security Trustee agrees that neither it nor any Enforcing Party will in any way interfere with the performance of the D&C Subcontract or the FM Subcontract without obtaining the State's prior written consent, unless such action is permitted by the terms of the D&C Subcontract or the FM Subcontract (as applicable) or in accordance with the terms of the D&C Consent Deed or the FM Subcontractor Consent Deed.

5.4 Information

- (a) (**Obligations of Security Trustee**): From the date that a Financiers' Cure Program is agreed under Clause 5.3(c) or determined under Clause 5.3(d), the Security Trustee must, when requested to do so, update the State of the actions taken by the Security Trustee or an Enforcing Party in implementing the Financiers' Cure Program and the progress of the remedy of the PA Default Event in accordance with the Financiers' Cure Program.
- (b) (**When extensions to be given**): If the Security Trustee or an Enforcing Party:

- (i) reasonably considers that the date specified for the remedy of a PA Default Event in accordance with the Financiers' Cure Program (including any extension to that date previously granted under this Clause 5.4) is no longer appropriate; and
- (ii) is and has been diligently pursuing the remedy of the PA Default Event by complying with the Financiers' Cure Program,

then, subject to Clause 5.4(g), the date specified in the Financiers' Cure Program for the remedy of the PA Default Event (including any extension to that date arising under this Clause 5.4) will be extended by such period as the State determines is reasonably required to enable the Security Trustee or an Enforcing Party to remedy the PA Default Event (or, in circumstances of delay caused by an Extension Event or Intervening Event, the period of delay caused by such event).

- (c) **(Negotiation)**: If the Security Trustee reasonably considers that the extension determined by the State under Clause 5.4(b) is not sufficient:
 - (i) the Security Trustee may notify the State that it does not agree with the extension and the senior representatives of the State and the Security Trustee or their nominees (**Representatives**) must meet and use reasonable endeavours to resolve the dispute within 10 Business Days of receipt by the State of the notice from the Security Trustee; and
 - (ii) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each party and be binding on the parties.
- (d) **(Dispute resolution)**: If a dispute referred to in Clause 5.3(d) remains unresolved after the expiration of the period for negotiation, the Security Trustee:
 - (i) may (provided that the Security Trustee or an Enforcing Party has been diligently pursuing the Financiers' Cure Program) refer the matter for resolution by expert determination in accordance with Clause 14; and
 - (ii) whilst the matter is being determined, must continue to diligently pursue or procure that an Enforcing Party continues to procure the Financiers' Cure Program,

and, subject to Clause 5.4(g), the State must not terminate the Agreement until such dispute is resolved.
- (e) **(Suspension of Financiers' Cure Program)**: If the Security Trustee or an Enforcing Party takes any action under a Financiers' Security, on and from the date on which the State exercises its rights under Clause 31 of the Agreement, the obligation on the Security Trustee or an Enforcing Party to comply with a Financiers' Cure Program will be suspended to the extent that the exercise by the State of its step-in rights prevents the Financiers' Cure Program from being performed.
- (f) **(Diligent Pursuit)**: For the purposes of this deed, in assessing what can be achieved by diligent pursuit and in assessing whether there has been a failure to diligently pursue the Financiers' Cure Program, regard must be had to the time necessary to enforce the D&C Subcontract or the FM Subcontract or to engage a substitute Builder or FM Subcontractor or Builder Guarantor or FM Subcontractor Guarantor, if to do so would be consistent with the required steps and actions being diligently pursued, recognising that the Security Trustee is not a builder, operator or a facilities management subcontractor (as applicable).
- (g) **(Maximum remedy period)**: The maximum period of time which the Security Trustee or an Enforcing Party (or both) may be given to remedy a PA Default Event will be 12 Months from the date of the notice given by the State to the Security Trustee in connection with the PA Default Event under Clause 5.3(a), or as the State may otherwise agree.
- (h) **(Extension in Particular Circumstances)**: If an Enforcing Party has been unable to achieve an assignment, transfer or other disposal of the Secured Property:
 - (i) because the State has withheld consent to an assignment, transfer or other disposal of the Secured Property in breach of its obligations under Clause 6.7(a); or

- (ii) because of a Compensable Extension Event or Intervening Event (other than a Force Majeure Event),

then the State will not refuse to grant a further extension to the maximum remedy period set out in Clause 5.4(g) to the Enforcing Party but only for a period which is necessary to overcome the delays caused by those events which prevented the assignment, transfer or other disposal from being achieved.

5.5 Restrictions on termination

The State must not terminate the Agreement unless the State has given the Security Trustee a copy of the notice in connection with the PA Default Event in accordance with Clause 5.1 and:

- (a) the Security Trustee:
 - (i) has not responded to the notice within 15 Business Days of receipt; or
 - (ii) has notified the State that it does not intend to remedy the PA Default Event; or
- (b) the Security Trustee notifies the State of its intention to develop a Financiers' Cure Program within 15 Business Days of receipt of the State's notice in connection with the PA Default Event in accordance with Clause 5.1 and:
 - (i) the PA Default Event has not been remedied by the earlier of:
 - (A) the date stated in the Financiers' Cure Program for the remedy of the PA Default Event (as may be varied from time to time in accordance with Clause 5.4); and
 - (B) the date which is 12 Months from the date of the notice given by the State to the Security Trustee in connection with the PA Default Event under Clause 5.3(a) (or any longer period under Clause 5.4(h)); or
 - (ii) the Security Trustee or an Enforcing Party is not diligently pursuing or has not diligently pursued the remedy of the PA Default Event including by implementing the Financiers' Cure Program (if one has been agreed or determined),

provided however, that the State may not terminate the Agreement due to a failure to which Clause 5.5(b)(ii) applies, unless it has given the Security Trustee notice of the failure and such failure has not been remedied within 20 Business Days of receipt of such notice by the Security Trustee.

5.6 No State liability

The State will not be liable to the Security Trustee or any Enforcing Party for any Claims or Liabilities incurred or sustained by the Security Trustee or that Enforcing Party in exercising any of its powers under or in connection with Clauses 5.3 or 5.4.

6 ENFORCEMENT BY SECURITY TRUSTEE

6.1 Enforcement

Without limiting the actions which the Security Trustee may be entitled to take in connection with a PA Default Event (whether under the Financing Documents or otherwise), the Security Trustee and any Enforcing Party appointed under the Financiers' Securities may:

- (a) exercise any Project Entity's rights;
- (b) engage another person to exercise any Project Entity's rights; and
- (c) assign, novate, transfer or otherwise dispose of any Project Entity's rights in whole or in part,

subject to, in all cases, the terms of the Financing Documents, this deed and the rights and duties of the Security Trustee and an Enforcing Party in accordance with the Financiers' Securities and at Law.

6.2 No Liability

- (a) Without limiting the Liability of any Project Entity (which continues to be responsible for the performance of its obligations under the Project Documents),

the Finance Parties and any Enforcing Party will not be liable for any obligation or Liability of any Project Entity under the Project Documents by reason only of the Financing Documents or the exercise of any of their rights, powers or remedies under the Financing Documents.

- (b) All money paid by the Finance Parties or an Enforcing Party and all acts, matters or things done or effected by them which would satisfy the obligations of a Project Entity under the Project Documents will be effective, as between the State and that Project Entity to fully satisfy and discharge the obligations of that Project Entity in connection with which such payment has been made or act, matter or thing has been done.

6.3 Restriction on set-off

- (a) Without limiting the operation of Clause 3 but subject to Clause 6.3(b), the Security Trustee agrees on its own behalf that it will not exercise:
- (i) any right of set-off or combination of accounts in connection with the Project Accounts; or
 - (ii) any other right in connection with any of those accounts,
- the effect of exercise of which would be to apply money standing to the credit of the account in a way inconsistent with Clause 40 (Insurance) of the Agreement and Clause 8.
- (b) The rights set out in Clauses 6.3(a)(i) and 6.3(a)(ii) may be exercised:
- (i) if the Agreement has been terminated or the State has given a termination notice and is immediately entitled to terminate the Agreement under the Agreement or this deed; or
 - (ii) to reduce Debt and any other amounts payable under the Financing Documents if an Enforcing Party has been appointed to a Project Entity.

6.4 Security Trustee not to hinder

The Security Trustee must not knowingly exercise (and must procure that any Enforcing Party appointed under the Financiers' Securities will not knowingly exercise) any rights in a manner which interferes with, or restricts in any way, the proper and lawful exercise by the State of the State's rights under Clause 31 or Clause 54.2 of the Agreement, the General Security Agreement, the Builder Side Deed, the FM Subcontractor Side Deed, this deed or any other side document entered into by the State in connection with the DBFM Project.

6.5 Third party account bank

Each Project Entity must ensure that a Project Account is not held with a party (**Account Bank**) other than the Security Trustee unless a Project Entity first procures that the Account Bank undertakes to the State to be bound by Clause 6.3 in the same terms as the Security Trustee.

6.6 Replacement of Builder or FM Subcontractor

- (a) If the Security Trustee or Project Co proposes to remedy a PA Default Event or a Finance Default by appointing a new contractor to replace the Builder or the FM Subcontractor, or by novating the D&C Subcontract or the FM Subcontract (and other relevant Project Documents) to a replacement contractor, then the party seeking the appointment or novation must first obtain the State's prior written consent which consent must not be unreasonably withheld or delayed if the State is satisfied that the matters stated in Clause 6.6(b) are satisfied.
- (b) The State will give its consent under Clause 6.6(a) if the State (acting reasonably) is satisfied that:
- (i) **(details):** Project Co or the Security Trustee has provided the State with details of the proposed replacement contractor and the terms and conditions on which the proposed replacement contractor is to be engaged;
 - (ii) **(compliance with Agreement):** if the proposed replacement contractor were appointed, that the appointment and the replacement contractor would enable Project Co to comply with the Agreement in all respects;

- (iii) **(terms and conditions)**: except as otherwise agreed by the State, the proposed terms and conditions of the replacement contractor's engagement are not materially less onerous on the contractor than those that apply to the current contractor (or, if there is no current contractor, the former contractor prior to its termination) and include a requirement to perform such of the obligations of the current contractor (or, if there is no current contractor, the former contractor prior to its termination) under the relevant Project Documents which remain unsatisfied;
- (iv) **(costs and expenses)**: a person other than the State bears all the State's reasonable costs and expenses (including legal costs and expenses) of and incidental to:
 - (A) any enquiries which the State may make for the purposes of determining whether to consent to the replacement contractor;
 - (B) the procurement of a replacement contractor; and
 - (C) the preparation, negotiation and execution of any relevant documentation and any stamp duty or similar charges in connection with such documentation.
- (c) Subject to Clause 6.6(d), to the extent that the appointment of a replacement contractor in accordance with this Clause 6 involves the novation of a Project Document:
 - (i) each of the State and the Security Trustee will release those Securities as it is necessary to release to facilitate the novation; and
 - (ii) each party to this deed and each other party to the Project Documents consents to that novation,

but without prejudice to any accrued rights and Claims against the replaced contractor at the time of novation.
- (d) To the extent that the release of the Securities is necessary in accordance with Clause 6.6(c), each of the State and the Security Trustee is not obliged to release the Security unless the replacement contractor agrees that immediately following the novation of a Project Document to the replacement contractor, the Project Documents as novated become subject to a Security Interest in favour of the party who granted the release, on terms substantially similar to those of the released Security.

6.7 Disposal of a Project Entity's interest

- (a) If an Enforcing Party proposes to remedy a PA Default Event or a Finance Default by assigning, novating, transferring or otherwise disposing of a Project Entity's interest in, or obligations under the Project Documents in accordance with the Enforcing Party's rights or the Financiers' rights under the Financing Documents, the Security Trustee must first obtain the State's prior written consent, which consent must not be unreasonably withheld if the State is satisfied the matters set out in Clause 6.7(b) are satisfied.
- (b) Subject to Clause 6.8(c), the State must give its consent if:
 - (i) **(details)**: the State has been provided with details of the proposed purchaser and the terms and conditions of the proposed disposal;
 - (ii) **(permitted disposal)**:
 - (A) in relation to the disposal of an Equity Interest:
 - (1) the proposed assignment, transfer or disposal is permitted under Clause 46.6 of the Agreement;
 - (2) the State is not permitted to withhold consent to that assignment, transfer or disposal under Clause 46.6 of the Agreement; or
 - (3) the State (acting reasonably) is satisfied that the Equity Interest is being assigned, transferred or disposed of to a person who:

- a) is a Fit and Proper Person (and each person who Controls that person is a Fit and Proper Person); and
 - b) has the necessary financial capacity and contractual and financing arrangements with third parties to perform, or procure that the Project Entity performs, the Project Entity's obligations under the State Project Documents; and
- (B) in relation to the disposal by the Security Trustee or an Enforcing Party of any of a Project Entity's property to a person (other than the Security Trustee or its Enforcing Party), the State (acting reasonably) is satisfied that the property is being assigned, transferred or disposed of to a person who:
 - (1) is a Fit and Proper Person (and each person who Controls that person is a Fit and Proper Person);
 - (2) has assumed all of the Project Entity's obligations under the State Project Documents; and
 - (3) has the necessary financial and technical capacity, access to the DBFM Project assets and contractual and financing arrangements with third parties to perform the Project Entity's obligations under the State Project Documents;
- (iii) **(no adverse effect)**: the proposed disposal would not result in there being any adverse effect on the rights of, or increase in the Liabilities or obligations of, the State under the State Project Documents than if the Project Entity's property or the Equity Interests (as relevant) were not disposed of;
- (iv) **(terms and conditions)**: the proposed purchaser has agreed to be bound by the terms of the relevant Project Documents; and
- (v) **(costs and expenses)**: a person other than the State bears all the State's reasonable costs and expenses (including legal costs and expenses) of and incidental to:
 - (A) any enquiries which the State may make for the purposes of determining whether to consent to the disposal;
 - (B) the procurement of a purchaser; and
 - (C) the preparation, negotiation and execution of any relevant documentation and any stamp duty or similar charges in relation to such documentation.

6.8 Appointment of Enforcing Party

- (a) Without limiting any other rights of the Security Trustee:
 - (i) if the Security Trustee appoints an Enforcing Party to a Project Entity under the Financiers' Securities:
 - (A) that appointment will not constitute a PA Default Event; and
 - (B) in connection with the appointment of an Enforcing Party to that Project Entity, a PA Default Event will not be taken to subsist under paragraphs (c) (finance default) or (g) (Change in Control) of the definition of Event of Default or under paragraph (c) (Insolvency Event of a Project Entity) of the definition of Immediate Termination Event, but if and only for so long as the Enforcing Party has access to adequate financial resources to enable that Project Entity to fully comply with all of its obligations under the Project Documents as and when they arise; and
 - (ii) any:

- (A) enforcement action taken by the Security Trustee or an Enforcing Party (appointed under the Financiers' Securities) in accordance with Clause 6.1;
 - (B) replacement of a Builder or FM Subcontractor under Clause 6.6; or
 - (C) disposal of a Project Entity's interest in the Project Documents in accordance with Clause 6.7,
- will not, by itself, provide the State with the right to terminate any State Project Document.
- (b) Subject to Clause 6.8(c), the Security Trustee must not appoint an Enforcing Party under the Financiers' Securities unless the:
 - (i) proposed Enforcing Party is a Fit and Proper Person (and each person who Controls that person is a Fit and Proper Person) or is a registered liquidator in accordance with the guidelines issued from time to time by the Australian Securities and Investments Commission; and
 - (ii) appointment is otherwise in accordance with this deed.
 - (c) In circumstances where the Security Trustee must, as a result of the circumstances that exist at the relevant time, appoint an Enforcing Party without delay, the criteria in Clause 6.8(b) will not apply and instead the Security Trustee may appoint an Enforcing Party in accordance with the Financiers' Securities by providing notice of that appointment to the State and ensuring that the appointment is otherwise in accordance with this document. The notice provided to the State must also contain the Security Trustee's undertaking to submit to the following process:
 - (i) within 10 Business Days of giving the notice referred to in this Clause 6.8(c), the Security Trustee must demonstrate that the Enforcing Party meets the criteria set out in Clause 6.8(b); and
 - (ii) in circumstances where the Enforcing Party is not:
 - (A) a Fit and Proper Person (or a person who Controls that person is not a Fit and Proper Person); or
 - (B) a registered liquidator in accordance with the guidelines issued from time to time by the Australian Securities and Investments Commission,
 within a further 5 Business Days must remove the appointed Enforcing Party and appoint a replacement Enforcing Party that does meet the criteria set out in Clause 6.8(b).
 - (d) The Security Trustee will not, and will ensure that an Enforcing Party does not, exercise or purport to exercise any Project Entity's rights without first notifying the State.
 - (e) The Security Trustee must minimise, and must ensure that an Enforcing Party will minimise, any disruption that may result from it exercising any Project Entity's rights.

6.9 Documentation

- (a) If the State consents to the replacement of the Builder or the FM Subcontractor at the Security Trustee's request, or the disposal by an Enforcing Party of any Project Entity's interest in the Project Documents, under Clauses 6.6 or 6.7 respectively, the State, Security Trustee and the replacement contractor or purchaser (as applicable) will execute such documents as are reasonably necessary to give effect to the replacement, novation, assignment, transfer or disposal.
- (b) Where Clause 6.9(a) applies, the Security Trustee must procure the replacement contractor's compliance with Clause 6.9(a).

7 FINANCE DEFAULT

7.1 Notice of Finance Default

Promptly after the Security Trustee gives notice of a Finance Default to a Project Entity, the Security Trustee must provide notice to the State of the Finance Default which includes:

- (a) reasonable details of the Finance Default; and
- (b) whether the Security Trustee intends to exercise its enforcement rights under the Financing Documents, and if so, the proposed date for, and proposed method of, such exercise.

7.2 Notice of enforcement

- (a) If the Security Trustee:
 - (i) declares any moneys secured under the Financing Documents due and payable;
 - (ii) takes any action to enforce the Financiers' Securities (other than to appoint an Enforcing Party); or
 - (iii) recovers any moneys secured under the Financiers' Securities, it must promptly and within 10 Business Days give notice to the State.
- (b) The Security Trustee must not appoint an Enforcing Party unless the Security Trustee has provided to the State:
 - (i) not less than 24 hours' notice prior to the appointment if the Security Trustee is of the reasonable opinion that any delay in the appointment of an Enforcing Party would materially and adversely affect the Financiers; or
 - (ii) not less than 10 Business Days' notice prior to the appointment in all other cases.

7.3 Information to the State

Upon the occurrence of a Finance Default:

- (a) the Security Trustee must provide to the State copies of all correspondence and documents issued by the Security Trustee to a Consortium Entity in connection with the Finance Default;
- (b) if the Finance Default is capable of remedy, each Project Entity must keep the State informed of all measures taken or intended to be taken to remedy the Finance Default; and
- (c) whether or not the Finance Default is capable of remedy, each Project Entity or the Security Trustee must keep the State informed of all measures taken or intended to be taken in connection with the Finance Default (including details of any action taken by the Security Trustee to enforce the Financiers' Securities).

7.4 Payments by State

The parties acknowledge that the State is not liable for costs incurred by a party to this deed in attempting to remedy a Finance Default or in exercising any rights under the Financing Documents.

8 INSURANCE PROCEEDS

- (a) All insurance proceeds received by the Security Trustee or any Enforcing Party, which (were they to have been received by a Project Entity) would have been required to have been deposited into the Insurance Proceeds Account, must be deposited into the Insurance Proceeds Account.
- (b) The insurance proceeds deposited into the Insurance Proceeds Account must be applied in accordance with Clause 40.12(c) of the Agreement.
- (c) Project Co is permitted, and the Security Trustee will use reasonable endeavours to assist Project Co to take any action contemplated by Clause 40.12 of the Agreement.
- (d) Project Co and the Security Trustee must not make any payments from the Insurance Proceeds Account except as permitted under this deed.

8A CONSTRUCTION CONTRIBUTION**8A.1 Voluntary Prepayment of Construction Facility**

Prior to the Date of Commercial Acceptance, Project Co must ensure that Finance Co must not make, and the Senior Agent must not consent to Finance Co making, a voluntary prepayment of the Construction Facility, except with the prior consent of the State.

8A.2 Withdrawal from Construction Account and State Payment Account

- (a) Unless the State gives its prior consent to any amendment or waiver of such conditions, the Senior Agent must not consent to withdrawals, and Project Co must ensure that withdrawals are only made, from the State Payment Account and the Construction Account on the conditions set out in the Financing Documents having been satisfied.
- (b) The Senior Agent must not consent to an amendment to or waiver of a condition to withdrawal from the State Payment Account or the Construction Account without the prior consent of the State.
- (c) The State must not consent to an amendment to or waiver of a condition to payment of the State Capital Contribution from the State Payment Account without the prior consent of the Senior Agent.
- (d) The State will not unreasonably withhold or delay its consent under Clause 8A.2(a) or Clause 8A.2(b) if:
 - (i) the Senior Agent and Project Co have provided the State with such information as the State reasonably requires concerning the requested consent, including in the case of the Senior Agent, engaging in a good faith consultation with the State as to why the Beneficiaries propose to give their consent;
 - (ii) it obtains confirmation from the Senior Agent that the Senior Agent will agree to the proposed consent if the State will give its consent, together with any conditions in favour of both the State and the Senior Agent that will be imposed;
 - (iii) to the extent that the waiver or amendment relates to a failure to satisfy the Cost to Complete Test (as defined in the Financing Documents), in the reasonable opinion of the Senior Agent (acting on the instructions of the Majority Lenders (as defined in the Financing Documents)) either sufficient funding sources are nevertheless reasonably likely to be available to enable the DBFM Project to achieve Commercial Acceptance or that the shortfall is otherwise reasonably likely to be corrected prior to the Date of Commercial Acceptance. For clarity, nothing in this Clause 8A.2(d)(iii) obliges the State to agree to any Refinancing or increase in or extension of Financial Indebtedness for the purposes of the DBFM Project under the Financing Documents;
 - (iv) to the extent that the waiver or amendment relates to a default that would prevent drawdown under the Financing Documents, Project Co commits to, and the Senior Agent approves, arrangements to ensure that default is remedied or its consequences are overcome;
 - (v) amounts withdrawn from the Construction Account are not used directly or indirectly to pay or repay principal, fees, interest, charges or hedge break costs under the Financing Documents which are not provided for in the Base Case Financial Model (as that term is defined in the Financing Documents) unless a PA Default Event is subsisting; and
 - (vi) amounts are not withdrawn to pay any Distributions.
- (e) Subject to Clause 8A.2(f):
 - (i) the Senior Agent must not consent or permit any person from accessing the State Payment Account for any reason other than making payments to Project Co of the Contract Sum in accordance with this Clause 8A and the Financing Documents; and
 - (ii) Project Co must not use amounts withdrawn from the State Payment Account to, whether directly or indirectly, pay or repay principal, fees, interest, charges or hedge break costs under the Financing Documents.

- (f) On the Termination Payment Date, Project Co may withdraw, and the Senior Agent may consent to Project Co withdrawing, any amount from the State Payment Account to be used for any purpose.
- (g) The Senior Agent will not unreasonably withhold or delay its consent under Clause 8A.2(c) if:
- (i) the State and Project Co have provided the Senior Agent with such information as the Senior Agent reasonably requires concerning the requested consent, including in the case of the State, engaging in a good faith consultation with the Senior Agent as to why the State proposes to give its consent;
 - (ii) it obtains confirmation from the State that the State will agree to the proposed consent if the Senior Agent will give its consent, together with any conditions in favour of both the State and the Senior Agent that will be imposed;
 - (iii) to the extent that the waiver or amendment relates to a default under a Project Document that would prevent drawdown of the State Capital Contribution, Project Co commits to, and the State approves, arrangements to ensure that default is remedied or its consequences are overcome; and
 - (iv) amounts are not withdrawn for the purposes of paying anything other than the Contract Sum.

8A.3 Amendment to Construction Drawdown Schedule

The State and the Senior Agent agree that they will not agree to any amendment to the Construction Drawdown Schedule without the prior written consent of the other party.

9 RECOGNITION OF RIGHTS

9.1 Recognition of State's rights

- (a) Without limiting Clause 5.5, the Security Trustee acknowledges the rights of the State under:
- (i) the Agreement; and
 - (ii) the Builder Side Deed and the FM Subcontractor Side Deed,
- including to require an assignment of the D&C Subcontract or the FM Subcontract if it becomes entitled to terminate the Agreement.
- (b) Without limiting Clause 5.5, the Security Trustee will use reasonable endeavours to ensure that its rights under the Financing Documents are exercised in a way which facilitates the effective exercise by the State of the rights referred to in Clause 9.1(a). If and to the extent that the exercise of any such rights involves the assignment of the D&C Subcontract or the FM Subcontract by Project Co, the Security Trustee will release the D&C Subcontract or FM Subcontract (as applicable) from the Financiers' Securities to facilitate the assignment. Nothing in this Clause 9.1, the Builder Side Deed or the FM Subcontractor Side Deed requires the Security Trustee to release or forgo any rights or Claims against a Project Entity.
- (c) The State must not exercise its rights under Clause 4 of the Builder Side Deed or Clause 4 of the FM Subcontractor Side Deed to remedy a Default Event (as defined under the relevant side deed) unless:
- (i) in respect of the Builder's or FM Subcontractor's right to suspend, a Suspension Notice (as defined under the relevant side deed) has been given under Clause 4.3 of the Builder Side Deed or Clause 4.3 of the FM Subcontractor Side Deed (as applicable) and the State is not satisfied (acting reasonably and after consultation with the Security Trustee) that the Security Trustee or an Enforcing Party will remedy the Default Event before the date 5 Business Days before the expiry of the remedy period available to the State under Clause 4.3(a)(iv) of the Builder Side Deed or Clause 4.3(a)(iv) of the FM Subcontractor Side Deed; or

- (ii) in respect of the Builder's or FM Subcontractor's right to terminate, a State Cure Notice (as defined under the relevant side deed) has been given under Clause 4.2(c) of the Builder Side Deed or Clause 4.2(c) the FM Subcontractor Side Deed.

9.2 Release of Security

- (a) Subject to Clause 9.2(b), to the extent that a Project Entity is required to handover, surrender, transfer, pay or otherwise dispose of property (including rights to insurance proceeds) to the State or its nominee under the State Project Documents and that property is in whole or part the subject of any Security Interest in favour of the Security Trustee or any Finance Party (including any Security Interest under the Financiers' Securities), the Security Trustee will promptly ensure that the Security Interest is released in connection with that property and will do all things including registering documents as the State may reasonably require as may be necessary or desirable to give effect to that release but without prejudice to any accrued rights and Claims the Security Trustee may have against that Project Entity or continuing Security Interests not required by this Clause to be released.
- (b) Nothing in Clause 9.2(a) or Clause 6.4 requires the Security Trustee to release a Security Interest over the right of Project Co to be paid an amount in accordance with Clause 44.5 of the Agreement.

9.3 Recognition of Security Trustee rights

- (a) The State acknowledges the right of the Security Trustee under each Consent Deed (**Security Trustee Tripartite Rights**).
- (b) The State and the Security Trustee agree that if the Security Trustee exercises its rights to step-in under any applicable Consent Deed, the Security Trustee Tripartite Rights will take precedence over the rights of the State under the Builder Side Deed or FM Subcontractor Side Deed (as the case may be) and the State must not exercise its rights under the Builder Side Deed or FM Subcontractor Side Deed (as the case may be) in such a manner as to prevent or hinder the Security Trustee in its exercise of the Security Trustee Tripartite Rights but subject to the rights of the State under Clauses 3.2, 3.5(a)(i), 3.5(c), 3.5(d), 3.8, 5, 6, 7, 10 and 11 or any other provision of this deed. For the avoidance of doubt nothing in this Clause otherwise limits the State in performing or procuring the normal functioning of the Stadium and Sports Precinct.
- (c) The Security Trustee must keep the State informed of all measures taken and intended to be taken by it (or on its behalf) in exercising the Security Trustee Tripartite Rights.

10 UNDERTAKINGS

10.1 Amendments to Financing Documents

- (a) (**No amendments without consent**): Subject to Clause 10.1(c), the Security Trustee must not agree to or permit any variation, amendment, waiver or replacement (**Amendment**) of any Financing Document without the State's prior written consent which consent must not be unreasonably withheld.
- (b) (**Amendment not effective**): Each Project Entity and the Security Trustee agree as between themselves and for the benefit of the State, that no Amendment to a Financing Document will be effective as between the parties to that Financing Document unless that Amendment has been made in compliance with this Clause 10.1 (and that any agreement at any time between any of them which purports to limit the operation of Clause 10.1(a) including any provision that a Financing Document prevail over this deed, will be ineffective).
- (c) (**Permitted Amendment**): The prior consent of the State is not required for an Amendment where:
 - (i) (**replacement of Financier**): the Amendment is a novation, assignment or substitution of a Financier or any of the rights or obligations of a Financier if:
 - (A) the novatee, assignee or substitute is a Financier or has a long term credit rating of at least A- by Standard and Poor's

- (Australia) Pty Limited or A3 by Moody's Investor Services, Inc.; or
- (B) the Financier has fully funded its commitment under the Financing Documents;
- (ii) (**consent**): the State has consented to that Amendment as part of a Refinancing under Clause 37.1 of the Agreement;
- (iii) (**approved Modifications**): the Amendment solely gives effect to Project Co's obligation to proceed with a Modification in accordance with Clause 33 of the Agreement;
- (iv) (**Finance Default**): the Amendment is:
- (A) a waiver by the Security Trustee or Senior Agent of a breach or potential breach of a Financing Document or a Finance Default under a Financing Document;
- (B) required by the Finance Parties to avoid a breach of a Financing Document or a Finance Default under a Financing Document; or
- (C) the exercise of an express unilateral right of a Finance Party to make an amendment under a Financing Document;
- (v) (**novation or assignment**): the Amendment is a novation or assignment in accordance with Clause 11.1;
- (vi) (**derivative transaction**): the Amendment is an entry into any derivative transaction permitted by and in accordance with the Financing Documents; or
- (vii) (**Amendment**): the State's consent has already been obtained under the Agreement,
- (each a **Permitted Amendment**).
- (d) (**Notice of Permitted Amendment**): Project Co and the Security Trustee must:
- (i) give notice to the State of any Permitted Amendment within 5 Business Days after that Permitted Amendment is made, including details of the reasons for the Permitted Amendment and copies of any documents relevant to the Permitted Amendment; and
- (ii) provide any further information reasonably requested by the State regarding the Permitted Amendment within 10 Business Days of receipt of a request from the State.
- (e) (**Notice of intended Amendment (other than a Permitted Amendment)**): where the State's consent is required for an Amendment in accordance with Clause 10.1(a), the requesting party must provide the following information:
- (i) full details of:
- (A) the terms of the Amendment and the reasons for the Amendment;
- (B) the responses or anticipated response of any other party to the relevant documents regarding the Amendment;
- (C) the response or anticipated response of any assignee of, or person holding a Security Interest in, the documents relevant to the Amendment; and
- (D) the impact or potential impact of the Amendment on:
- (1) delivery of the DBFM Project by Project Co;
- (2) performance of a Project Entity's obligations under the Project Documents;
- (3) the financial structure or business of a Project Entity;
- (4) the State's interests in the Project Documents; and
- (5) equity return or Distributions; and

- (ii) copies of all contractual and security documentation relevant to the Amendment.
- (f) **(Consent):** The State must give notice to Project Co and the Security Trustee within 20 Business Days (or such longer period as the State reasonably requests given the nature of the Amendment) of receiving the notice in accordance with Clause 10.1(a) and which, where applicable, complies with Clause 10.1(e), that:
 - (i) it consents to the Amendment;
 - (ii) the Amendment is unacceptable to it and the reasons why the Amendment is unacceptable; or
 - (iii) it requires further information regarding the Amendment. If so, the other parties must provide the additional information sought by the State within a further period of 10 Business Days after which the State must respond in terms of Clauses 10.1(f)(i) and 10.1(f)(ii) and this Clause 10.1(f)(iii) within 10 Business Days of receipt of the additional information.
- (g) **(Clarification):** Without limiting Clauses 10.1(a) and 10.1(b), nothing in Clause 54.14 of the Agreement or this Clause 10.1 prevents or restricts any person exercising any rights they have under the Financing Documents.
- (h) **(Consequences of amending without consent):** If any Financing Document as originally executed and delivered by the parties thereto is varied or replaced without the State's prior written consent (but only to the extent that the State consent is required), then the State will only be liable under the Project Documents to the extent it would have been had there been no such variation or replacement to the Financing Document.

10.2 Amendments to Project Documents

- (a) While any Debt is outstanding, the State undertakes for the benefit of the Security Trustee that it will not make any material modification, variation or amendment to the terms of any State Project Document without the prior written consent of the Security Trustee, which consent must not be unreasonably withheld or delayed.
- (b) The State is not required to obtain the consent of the Security Trustee in accordance with Clause 10.2(a) in connection with any material modification, variation or amendment determined (including by an expert, arbitrator or judge) in accordance with Clause 45 of the Agreement or the equivalent dispute resolution provisions of another State Project Document.

11 ASSIGNMENT

11.1 No assignment without consent

Subject to Clause 11.2, no party may assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior written consent of each other party, which consent must not be unreasonably withheld. No party is entitled to withhold its consent to an assignment or transfer of this deed by the Security Trustee or the Senior Agent if:

- (a) it is related to all its right, title and interest in this deed and in the Financing Documents (in its capacity as Security Trustee or Senior Agent (as applicable));
- (b) it occurs consequent upon the implementation of provisions in a Financing Document providing for the replacement of the Security Trustee or Senior Agent (as applicable);
- (c) it relates to a replacement Security Trustee or Senior Agent (as applicable) which is a solvent and reputable financial institution or trustee corporation; and
- (d) the replacement Security Trustee or Senior Agent (as applicable) has executed an accession document in a form acceptable to the State in which it agrees to be bound by the provisions of this deed.

11.2 Assignment by the State

Nothing will prevent the assignment, novation or transfer by the State to an assignee, novatee or transferee of the State's rights and obligations under the Agreement made in accordance with Clause 46.4 of the Agreement, provided the proposed assignee, novatee or transferee agrees to execute a document in favour of the Security Trustee (in such form as

the Security Trustee reasonably requires) in accordance with which the assignee, novatee or transferee agrees to be bound by this deed as if it were the State.

12 CONFIDENTIALITY

12.1 Confidential Information

- (a) **(Confidentiality obligations):** The Security Trustee must and must ensure that each other Finance Party keep confidential, subject to Clauses 12.1(b) and 12.1(c), the State Project Documents, all Records and all Disclosed Information **(Confidential Information)**.
- (b) **(Permitted disclosure):** Neither the Security Trustee nor any Finance Party is obliged to keep confidential any information:
- (i) which is in the public domain through no default of any party or Finance Party;
 - (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;
 - (C) consented to by the State; or
 - (D) made to a court in the course of proceedings to which the disclosing person is a party; or
 - (iii) the disclosure of which is to any professional or other advisor consulted by it in relation to any of its rights or obligations under the Project Documents providing that it ensures that the recipients of information referred to in this Clause 12.1(b)(iii) comply with the obligations under Clause 12.1(a).
- (c) **(Disclosure to Finance Parties):** Without limiting the Security Trustee's obligations under Clause 12.1(a), and providing that the Security Trustee ensures that the Finance Parties comply with the obligations under Clause 12.1(a), the Security Trustee or a Finance Party may disclose Confidential Information to the Finance Parties or to any person referred to in Clause 10.1(c)(i)(A) to the extent necessary for the purpose of undertaking or considering participating in the financing of the DBFM Project.
- (d) **(No disclosure):** Subject to Clause 12.1(c) and Clause 12.1(f) the Security Trustee must not disclose any Confidential Information to any prospective financier or equity investor of the DBFM Project until, if required by the State, the State has carried out any Probity Investigations in connection with the relevant entities.
- (e) **(Probity Investigations):** Where Clause 12.1(c) does not apply:
- (i) the Security Trustee or Finance Party will notify the State of any prospective financier not referred to in Clause 10.1(c)(i)(A);
 - (ii) within 5 Business Days of receipt of a notification under Clause 12.1(e)(i), the State will advise the Security Trustee or the relevant Finance Party as to whether it will require Probity Investigations to be carried out in connection with the prospective financier; and
 - (iii) if:
 - (A) the State fails to respond to the Security Trustee or Finance Party in accordance with Clause 12.1(e)(ii);
 - (B) the State confirms to the Security Trustee or Finance Party in accordance with Clause 12.1(e)(ii) that no Probity Investigations are required to be carried out; or
 - (C) the State confirms to the Security Trustee or Finance Party in accordance with Clause 12.1(e)(ii) that Probity Investigations are required to be carried out and either:
 - (1) the Probity Investigations are not completed and notified to the Security Trustee or Finance Party within

5 Business Days of the State's notice given under Clause 12.1(e)(ii); or

- (2) the Probity Investigations are completed and the State notifies the Security Trustee or Finance Party within 5 Business Days of the State's notice given under Clause 12.1(e)(ii) that there are no probity issues,

the Security Trustee or Finance Party may disclose Confidential Information to the prospective financier.

- (f) **(State disclosure of Confidential Information):** The State may disclose Confidential Information as permitted by Clause 50.1 of the Agreement.

12.2 Public announcements

- (a) A Finance Party must not, without the prior approval of the State:
- (i) use this deed or the name or logo of any person specified in this deed, the State of Western Australia or any other Government Agency;
 - (ii) refer to the Finance Party's association with the State or any Government Agency which results from this deed; or
 - (iii) make any statement concerning this deed or the DBFM Project, in any publication, public statement or announcement, advertisement or media release.
- (b) Subject to Clause 12.1, the State may use this deed and the name and logo of a Finance Party in connection with this deed as the State reasonably requires, provided that the State acknowledges the role of the Finance Party to the extent that is reasonable in the circumstances.

12.3 Media releases

A Finance Party must:

- (a) obtain the State's prior written consent (which may be granted, refused or conditioned at the sole discretion of the State) to:
 - (i) issue any information, document or article in connection with this deed for publication in any media; or
 - (ii) nominate this deed for any award;
- (b) give due recognition to the State and any State Associates where the State consents to a matter specified in Clause 12.3(a); and
- (c) refer all enquiries from any media concerning this deed 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 Finance Party, following the State's consent.

12.4 No Association

A Finance Party must not:

- (a) use the State's name nor the name of any State Associate, nor the State's logo, 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 the Finance Party has an association or connection with the State or any State Associates other than Finance Party's engagement under this deed,

without obtaining the State's prior written consent (which may be granted or refused at the sole discretion of the State).

13 TERMINATION

- (a) This deed will terminate:
- (i) if the parties agree in writing; or
 - (ii) immediately upon payment of a Termination Amount and other amounts payable under Schedule 10 (Termination Payments) of the Agreement.

- (b) The termination of this deed does not affect the rights of any party which have accrued to that party before the date of termination or as a consequence of the termination of the Agreement.

14 DISPUTE RESOLUTION

If a matter is referred for determination in accordance with this Clause 14:

- (a) any dispute or difference of opinion arising between the parties in connection with that matter must be resolved in the same manner that disputes or differences of opinion are resolved when referred for expert determination under the Agreement; and
- (b) the provisions of Clause 45 of the Agreement are incorporated into this deed but as if
- (i) the only persons party to the Agreement, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute; and
 - (ii) the only matters for expert determination in accordance with those provisions are the matters referred for expert determination in accordance this deed.

15 GST

- (a) **(Application of Clause)**: This Clause 15 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 15:
- (i) words and expressions which are not defined in this deed but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
 - (i) GST Law has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
 - (ii) 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 deed. 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 15(e) applies, all prices or other sums payable or consideration to be provided in accordance with this deed are exclusive of GST.
- (e) **(Non-Monetary Consideration)**: Subject to Clause 15(j), if some or all of the consideration for a taxable supply made by a party in connection with this deed 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 15(f);
 - (ii) the Security Trustee 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 Security Trustee will notify the State of the amount determined by the valuer within 15 days of the end of the Month in which this deed 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 deed).

- (f) **(Payment of GST):**
- (i) If GST is payable on any supply made by a party (**Supplier**) under or in connection with this deed, 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 15(f)(i) in addition to and at the same time that the consideration for the supply is to be provided in accordance with this deed.
- (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 15(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 15(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 15(f).
 - (ii) The recipient can withhold payment of any amount payable in accordance with this Clause 15 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 deed, the amount payable by the recipient in accordance with this Clause 15 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 deed to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
- (i) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
 - (ii) if the payment or reimbursement is subject to GST, an amount equal to that GST.

16 NOTICES

16.1 General Notices

- (a) **(Form of notices):** Each communication (including each notice, consent, approval, request and demand) in accordance with or in connection with this deed (in this Clause 16, "**Notices**"):
- (i) must be in writing; and
 - (ii) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party.
- (b) **(Procedure for sending notices):** All Notices must be:
- (i) delivered or posted by prepaid post to the address; or
 - (ii) except where a Notice relates to Claims, defaults or termination, including Notice of PA Default Events and Notice of Finance Default (which in each case must be delivered in accordance with paragraph (i)), sent by email

in the form of a .pdf file letter (or such other form agreed by the State) to the email address,

of the addressee set out in Clause 16.2 (or as otherwise notified by that party to each other party from time to time).

- (c) **(Date of receipt):** Subject to Clause 16.1(d), a Notice is taken to be received by the addressee:
- (i) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
 - (ii) in the case of email, at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party sending the email from the recipient; 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 Notices sent by email:
- (i) only the letter in .pdf format attached to the email and any attachments to such letter which are referred to in the letter, will form part of the communication under this Clause 16. Any text in the body of the email or the subject line will not form part of the Notice; and
 - (ii) Finance Co and the Security Trustee must ensure that, in connection with any communications in accordance with or in connection with this deed:
 - (A) its firewall and/or mail server (as applicable):
 - (1) allows messages of up to 14 MB to be received;
 - (2) does not trap any messages in the spam filter which have been sent from any State domain; and
 - (3) automatically sends a receipt notification to the sender upon receipt of a message; and
 - (B) its systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.

16.2 Party details

[Not disclosed]

17 GENERAL

17.1 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 deed, then it must pay interest on that amount in accordance with Clause 17.1(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 17.1(b) will be a party's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

17.2 [Not used]**17.3 Relationship of the parties**

- (a) Except to the extent expressly provided by this deed, no duty of good faith is implied on the State in connection with its relationship with any of the parties.
- (b) Neither this deed nor the relationship created by it, is intended to create, and will not be construed as creating, any partnership or joint venture as between the parties.
- (c) Neither the Security Trustee nor the Finance Parties may act as or represent itself to be the servant or agent of the State.

17.4 State's rights, duties, powers and functions

- (a) **(State's own interests):** Unless this deed expressly provides otherwise, nothing in this deed gives rise to any duty on the part of the State to consider interests other than its own interests when exercising any of its rights or performing any of its obligations in accordance with this deed.
- (b) **(State's powers, functions or duties):** Notwithstanding anything contained or implied in this deed 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 Governmental Agency, or to influence, over-ride or direct any Governmental Agency in the proper exercise and performance of its legal duties and functions.
- (c) **(No fettering):** Nothing contained in or contemplated by this deed has the effect of constraining the State or placing any fetter on the State's discretion to exercise or not to exercise any of its statutory rights, duties, powers or functions.
- (d) **(No Claim):** Subject to Clause 17.4(e), neither the Project Entities, the Security Trustee or the Finance Parties will be entitled to make any Claim against the State under the Project Documents for any Liability in connection with any exercise or failure of the State to exercise its statutory rights or duties.
- (e) **(Liability for breach):** Clauses 17.4(a) to 17.4(d) do not limit any Liability of the State which the State would have had to any party under any State Project Document as a result of a breach by the State of a term of any State Project Document but for Clauses 17.4(a) to 17.4(d).

17.5 Reasonable endeavours

If there is any statement in this deed that the State will use "reasonable endeavours" in connection with an outcome it means that:

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

17.6 Entire agreement

The State Project Documents constitute the entire agreement and understanding between the parties in respect of its subject matter and supersedes any prior agreement (whether in writing or not), negotiations, discussions, understandings and agreements between the parties in connection with the subject matter of this deed.

17.7 Counterparts

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

17.8 Governing law

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

17.9 Waiver and estoppel

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

17.10 Variations and waivers

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

17.11 Amendments to this deed

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

17.12 Joint and several liability

- (a) The rights and obligations of the Project Entities under this deed are joint and several as between those persons.
- (b) If the Security Trustee or the Senior Agent consists of more than one person, then the rights and obligations of the Security Trustee or the Senior Agent (as applicable) in accordance with this deed are joint and several as between those persons.

17.13 Clauses to survive termination

- (a) All provisions of this deed which expressly or by implication from their nature are intended to survive termination, completion or expiration of this deed will survive such termination, completion or expiration, including any provision which is in connection with:
 - (i) the State's rights to set-off and to recover money;
 - (ii) confidentiality or privacy;
 - (iii) any obligation to make any Records available to the State;
 - (iv) any indemnity given under this deed; or
 - (v) any right or obligation arising on termination of this deed.
- (b) Nothing in this Clause 17.13 prevents any other provision of this deed, as a matter of interpretation, also surviving the termination of this deed.
- (c) No right or obligation of any party will merge on completion of any transaction under this deed. All rights and obligations under this deed survive the execution and delivery of any transfer or other agreement which implements any transaction under this deed.

17.14 Costs and expenses

Except as otherwise provided in this deed each party must:

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

17.15 Further acts and documents

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

17.16 Severability of provisions

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

Execution page

Executed as a deed

Signed, sealed and delivered by THE HONOURABLE COLIN JAMES BARNETT MLA **in his capacity as the** Premier of Western Australia, **on behalf of the State of Western Australia** in the presence of:

Signature of the Hon. Terrence Keith Waldron
MLA (witness)

The Hon. Colin James Barnett MLA

The Hon. Terrence Keith Waldron (witness)

SIGNED, SEALED AND DELIVERED BY THE HONOURABLE DR MIKE NAHAN MLA

Treasurer for the time being, acting under delegated authority pursuant to section 5A of the *Public Works Act 1902* (WA), in the presence of:

Hon. Dr Mike Nahan MLA

print name of witness _____

Witness sign here ► _____

Witness address _____

Witness occupation _____

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

sign here



Authorised Representative

print name

Graham Partridge

sign here



Authorised Representative

print name

David Etherton

Signed, sealed and delivered for and on behalf of **Westadium Project Co Pty Ltd ACN 169 900 547** in its personal capacity and as trustee for the **Westadium Project Unit Trust** by its attorney under a power of attorney dated 8 August 2014 in the presence of:

Signature of witness

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

Full name of witness

Full name of attorney

Signed, sealed and delivered for and on behalf of **Westadium Partners Pty Ltd ACN 162 441 018** by its attorney under a power of attorney dated 8 August 2014 in the presence of:

Signature of witness

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

Name of witness

Full name of attorney

Signed, sealed and delivered for and on behalf of **National Australia Bank Limited ACN 004 044 937** by its attorney under a power of attorney dated 1 March 2007 in the presence of:

Signature of witness

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

Name of witness

Full name of attorney

Signed, sealed and delivered for and on behalf of
National Australia Bank Limited ACN 004 044
937 by its attorney under a power of attorney dated
1 March 2007 in the presence of:

Signature of witness

Full name of witness

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

Full name of attorney