



The new Perth Stadium Project

FM Subcontractor 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
Westadium Project Unit Trust
(**Project Co**)

and

Brookfield Johnson Controls Pty Ltd
(**FM Subcontractor**)

and

Johnson Controls, Inc.
(**FM Subcontractor Guarantor**)

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FM Subcontractor 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 Westadium Project Unit Trust (ABN 27 901 829 646) (**Project Co**)

and

Brookfield Johnson Controls Pty Ltd (ACN 064 638 197) (**FM Subcontractor**)

and

Johnson Controls, Inc. (**FM Subcontractor Guarantor**)

and the parties agree as follows:

Recitals

- A. The background to the DBFM Project is set out in the Agreement.
- B. Project Co has, in accordance with the FM Subcontract, subcontracted its obligations to undertake certain of the Services to the FM Subcontractor.
- C. The FM Subcontractor Guarantor has, in accordance with the FM Guarantee, guaranteed to Project Co the performance of the FM Subcontractor's obligations in accordance with the FM Subcontract.
- D. The parties have agreed that upon termination by the State of the Agreement, the State will have the option of exercising certain rights in relation to the FM Subcontract and the FM Guarantee on the terms stated in this deed.

Operative Provisions

1 DEFINITIONS AND INTERPRETATION

1.1 General

- (a) 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.
- (b) The use of the word "remedy" or any form of that word in respect of a Default Event means that the Default Event must be remedied or its effects overcome.

1.2 Definitions

In this deed, unless the context indicates otherwise:

Term	Meaning
<i>Additional Obligor</i>	means an entity which is wholly owned by the State.
<i>Additional Obligor Step-in Notice</i>	means the notice given in accordance with Clause 5.1(a)(v).

Term	Meaning
<i>Additional Obligor Step-out Date</i>	is the date determined in accordance with Clause 5.3(d).
<i>Agreement</i>	means the document entitled "The new Perth Stadium DBFM Project Design, Build, Finance and Maintain (DBFM) Project Agreement" between the State and Project Co executed on or about the date of this deed.
<i>Assumption Date</i>	has the meaning given to it in Clause 5.3(a).
<i>Combined Work Spaces</i>	has the meaning given to it in Clause 3.3(d)(iii).
<i>Confidential Information</i>	has the meaning given to it in Clause 9.1(a).
<i>Default Event</i>	means: <ul style="list-style-type: none"> (a) any breach by Project Co of any of its obligations under the FM Subcontract; or (b) any other event or circumstance, which alone or with the giving of notice or passage of time or both, would entitle the FM Subcontractor to terminate, rescind, accept the repudiation of, or suspend any or all of the FM Subcontractor's obligations under, the FM Subcontract.
<i>Default Event Notice</i>	means a notice given in accordance with Clause 4.2(a).
<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>Financiers' Cure Program</i>	means the cure program developed under the Finance Side Deed in accordance with which the Security Trustee may remedy, or procure the remedy of, relevant default events.
<i>FM Consent Deed</i>	means the deed so entitled between Project Co, the FM Subcontractor and the Security Trustee in respect of the FM Subcontract.
<i>FM Guarantee</i>	means the guarantee of that name described in the FM Subcontract.
<i>FM Subcontract</i>	means the contract for the performance of all or part of the Services entered into, or to be entered into, between Project Co and the FM Subcontractor dated on or about the date of this deed.
<i>FM Obligations</i>	has the meaning given in the FM Subcontract.
<i>FM Subcontractor Associate</i>	means any: <ul style="list-style-type: none"> (a) Subcontractor of the FM Subcontractor; (b) officers, agents, advisers, consultants, contractors and employees of the FM Subcontractor; and (c) any visitor to the Site invited onto the Site by the FM Subcontractor

Term	Meaning
	or a FM Subcontractor Associate.
<i>New FM Guarantee</i>	has the meaning given to it in Clause 6.4(a)(i).
<i>Material Adverse Effect</i>	means a material adverse effect on: <ul style="list-style-type: none"> (a) the ability of Project Co or the FM Subcontractor to perform and observe its obligations under any Project Document to which it is a party; (b) the rights of the State under any Project Document, or the ability or capacity of the State to exercise its rights or perform its obligations under a Project Document; or (c) the performance of, or the cost of undertaking, the Stadium Activities.
<i>New FM Guarantee</i>	has the meaning given to it in Clause 6.4(a)(i).
<i>Notice Beneficiary</i>	has the meaning given to it in Section 4(a) of Schedule 1 (Default Event Notices).
<i>Novation Date</i>	means the Execution Date as defined in Schedule 25 (Subcontractor Deed of Novation) of the Agreement.
<i>Novation Notice</i>	has the meaning given to it in Clause 6.1(a).
<i>Operating Phase Performance Security</i>	means the performance bonds given under Clause 2A of the FM Subcontract.
<i>Power</i>	means any power, right, authority, discretion or remedy, whether express or implied.
<i>Project Co's Rights</i>	has the meaning given to it in Clause 5.3(b)(i)(A).
<i>Receiver</i>	means a receiver or receiver and manager appointed by the State in accordance with the General Security Agreement.
<i>Security Interest</i>	has the meaning given to it in section 12 of the PPSA.
<i>Separate Work Spaces</i>	has the meaning given to it in Clause 3.3(d)(ii).
<i>State</i>	means: <ul style="list-style-type: none"> (a) during the D&C Phase, the Minister for Works, the Governance Agency and the State of Western Australia; and (b) during the Operating Phase, the Governance Agency and the State of Western Australia.
<i>State Cure Notice</i>	means the notice given by the FM Subcontractor to the State in accordance with Clause 4.2(c).

Term	Meaning
<i>State Representative</i>	means the person referred to as such in Clause 2.1.
<i>Step-in Period</i>	means the period determined in accordance with Clause 5.1(c).
<i>Step-In Right</i>	has the meaning given to it in Clause 5.1(b).
<i>Subsidiary</i>	has the same meaning as “subsidiary” in the Corporations Act.
<i>Substitute Party</i>	has the meaning given to it in Clause 6.1(a).
<i>Suspension Notice</i>	has the meaning given to it in Clause 4.3(a)(iv).
<i>Third Parties</i>	has the meaning given to it in Clause 3.3(d)(i).

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) **(schedules)**: a reference to this deed includes all Schedules;
- (m) **(Clauses)**: a reference to:
- (i) a Clause or a Schedule is a reference to a Clause or Schedule of this deed unless otherwise stated;
 - (ii) a paragraph is a reference to a paragraph in the Clause in which the reference appears; and
 - (iii) a Section is a reference to a section of a Schedule;
- (n) **(defined meaning)**: where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (o) **(\$)**: a reference to "\$" is to Australian currency;
- (p) **(time)**: a reference to time is a reference to Australian Western Standard Time;
- (q) **(form)**: writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions and communication by email;
- (r) **(construction)**: no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this deed or any part;
- (s) **(information)**: a reference to "information" includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (t) **(remedy)**: the use of the word "remedy" or any form of it in this deed means that the event to be remedied must be cured or its effect overcome;
- (u) **(may)**: the term "may", when used in the context of a power or right exercisable by the State or the State Representative, means that the State or the State Representative (as the case may be) can exercise that right or power in its absolute and unfettered discretion and the State or the State Representative (as applicable) has no obligation to Project Co, the FM Subcontractor or the FM Subcontractor Guarantor to do so;
- (v) **(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; and
- (w) **(writing)**: references to a notice, request, Claim, consent, approval, record or report means that the notice, request, Claim, consent, approval, record or report must be in writing unless otherwise agreed by the parties or expressly stated in this deed.

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) **(Cost of performing obligations)**: Each party must perform its obligations in accordance with this deed at its own cost, unless expressly provided otherwise.
- (c) **(FM Subcontractor obligations)**: In complying with or accepting any obligation or risk in accordance with this deed, the FM Subcontractor must procure that, to the extent applicable, each FM Subcontractor's Associate is required to comply with or accept the relevant obligation or risk and not cause the FM Subcontractor to breach its obligations in accordance with this deed.
- (d) **(Business Day)**: If the day on or by which any thing is to be done in accordance with this deed is not a Business Day, that thing must be done on the next Business Day.
- (e) **(Discretion)**: A consent or approval in accordance with this deed from the State or the State Representative may be given or withheld, or may be given subject to such conditions (other than the payment of money), as the State or the State

Representative (in its absolute discretion) thinks fit, unless this deed states otherwise.

- (f) **(Deed composition):** This deed comprises:
 - (i) Clauses 1 to 15; and
 - (ii) Schedule 1 (Default Event Notices).

1.5 This deed prevails

To the extent of any inconsistency, ambiguity or discrepancy between this deed and the FM Subcontract, this deed prevails to the extent of that inconsistency.

1.6 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.
- (b) The failure by a party (other than Project Co) to comply with the provisions of this deed does not affect the Liability of Project Co in accordance with any other Project Document.

1.7 State Project Documents

The FM Subcontractor agrees that it has received a copy of the State Project Documents and has provided details of the terms and conditions contained in the State Project Documents to the FM Subcontractor Guarantor.

1.8 Commencement

The rights and obligations of the parties in accordance with this deed commence on the date that the FM Subcontract becomes unconditional and continues until the earlier of the date of termination of the Agreement and the date of termination of the FM Subcontract.

1.9 Representations by FM Subcontractor

The FM Subcontractor and the FM Subcontractor Guarantor each represent and agree that:

- (a) **(Project Documents):** it has power to execute, deliver and perform its obligations in accordance with each Project Document to which it is a party and all necessary corporate action has been taken to authorise it;
- (b) **(valid and legally binding):** each Project Document to which it is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
- (c) **(legality):** the execution, delivery and performance by it of its obligations in accordance with the Project Documents to which it is a party does not violate any Law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
- (d) **(status):** in respect of:
 - (i) the FM Subcontractor, it is a corporation limited by shares duly and validly incorporated and existing in accordance with the Corporations Act; and
 - (ii) the FM Subcontractor Guarantor, it is a corporation incorporated in Wisconsin, US, in accordance with the laws of its place of incorporation;
- (e) **(litigation):** in respect of the FM Subcontractor, no Claim against it is current or pending or (to its knowledge) is threatened, which will or is likely to have a material adverse effect upon the FM Subcontractor or the FM Subcontractor Guarantor or the FM Subcontractor or the FM Subcontractor Guarantor's ability to perform its financial and other obligations under the Project Documents to which it is a party;
- (f) **(solvency):** it is solvent and is able to pay its debts as and when they become due;
- (g) **(liquidation):** it is not:
 - (i) insolvent under administration or insolvent (each as defined in the Corporations Act); or
 - (ii) in liquidation, provisional liquidation, under administration to be wound up or had a Controller appointed to any of its property;

- (h) **(no misrepresentation)**: all the information which it provided or will provide to the State is or will be true and correct in all material respects at the date of this deed or of its later provision, and is not, by omission of information, or otherwise, misleading;
- (i) **(copies of documents)**: all copies or originals of documents or instruments provided by it to the State (or by it to Project Co) in connection with any Project Document to which it is a party are or will be, at the date of this deed or of their later provision, true copies or originals (as applicable) of the documents or instruments which they purport or have been represented to be;
- (j) **(no trustee)**: it is not acting and will not act at any time during the Term as a trustee or an agent in connection with the DBFM Project;
- (k) **(accounts)**:
- (i) in respect of the FM Subcontractor:
- (A) its most recent consolidated and unconsolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of its and its subsidiaries' (as defined in the Corporations Act) **(Subsidiaries)** state of affairs as at the date to which they relate and the results of its and its Subsidiaries' operations for the accounting period ended on such date;
- (B) there has been no material change in its or its Subsidiaries' state of affairs since such date; and
- (C) such accounts have been prepared in accordance with the Corporations Act and accounting principles and practices generally accepted in Australia consistently applied, except to the extent of departures from such principles and practices disclosed in such accounts;
- (ii) in respect of the FM Subcontractor Guarantor:
- (A) to the best knowledge of the FM Subcontractor Guarantor, having made due enquiry, its statement of accounts as reflected in its most recent Form 10K, its subsequent Form 10Q and any Form 8K filed with the United States Securities and Exchange Commission, gives a true and fair view of its and its subsidiaries' state of affairs as at the date to which they relate; and
- (B) such accounts have been prepared in accordance with accounting principles and practices generally accepted in the US and consistently applied, except to the extent of departures from such principles and practices disclosed in such accounts.
- (l) **(no default)**:
- (i) it is not in default of any Project Document to which it is a party; and
- (ii) nothing has occurred which would, with the giving of notice or lapse of time, constitute an event of default, cancellation, prepayment event (in accordance with a bona fide right to exercise prepayment) or similar event (whatever called) in accordance with any such Project Document, and which would have a Material Adverse Effect;
- (m) **(no undisclosed agreement)**: there are no documents or agreements in existence at the date of this deed and there will not be any documents or agreements in the future which have not been or will not be disclosed to the State which are material in the context of the Project Documents to which it is a party or, to the best of its knowledge and belief, the DBFM Project or which have the effect of varying any such Project Document and, in connection with such Project Documents to which the State is not a party, performance of which would have a Material Adverse Effect;
- (n) **(no immunity)**: in respect of:
- (i) the FM Subcontractor, neither it nor any of its assets enjoys any immunity from set-off, suit or execution; and

- (ii) the FM Subcontractor Guarantor, neither it nor any material part of its assets enjoys any immunity from set-off, suit or execution;
- (o) **(own investigations)**: in entering into the Project Documents to which it is a party it relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by the State or any State Associate, Project Co or any other person unless, in connection with Project Co or any person other than the State and the State Associates, expressly set out or permitted to do so in accordance with Project Documents to which it is a party; and
- (p) **(filings)**: in respect of the FM Subcontractor Guarantor, to the best knowledge of the FM Subcontractor Guarantor having made due enquiry, except as disclosed in the FM Subcontractor Guarantor's most recent Form 10K and its subsequent Form 10Q and any Form 8K filed with the United States Securities Exchange Commission, there are no actions, suits or proceedings pending (nor to the best knowledge of the FM Subcontractor Guarantor, after due inquiry, is there any pending investigation) against or involving the FM Subcontractor Guarantor at law or in equity or before or by any federal, provincial, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or before or by any arbitrator of any kind, which involve a reasonable possibility (so far as the FM Subcontractor Guarantor can foresee) of any material adverse change in the business, properties or financial condition of the FM Subcontractor Guarantor, and the FM Subcontractor Guarantor is not in default with respect to any judgment, order, writ, injunction, decree, rule or regulation of any court, arbitrator or federal, provincial, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which involves a reasonable possibility (so far as the FM Subcontractor Guarantor can foresee) of any material adverse change in the business, properties or financial condition of the FM Subcontractor Guarantor.

The FM Subcontractor, the FM Subcontractor Guarantor and Project Co acknowledge that the State has relied on the representations and warranties in this Clause 1.9 in entering into the State Project Documents.

2 DELEGATION

2.1 Parties' representatives

The parties may exercise their rights or perform their obligations in accordance with this deed through their representatives appointed in accordance with the Agreement or the FM Subcontract (as applicable).

2.2 Further State delegations

- (a) The State may at any time delegate the exercise of any power or authority of the State Representative in accordance with this deed to a person other than the then appointed State Representative and may terminate or vary that delegation.
- (b) In connection with any delegation in accordance with Clause 2.2(a), the State will promptly notify Project Co and the FM Subcontractor of the identity of each delegate, the powers and authority delegated (including any conditions applying to the delegated power) and of any termination or variation to that delegation.
- (c) Any direction given by a State delegate in accordance with its delegation in accordance with this Clause 2.2 will be deemed to be a direction of the State.

2.3 State Representative as Agent

The State Representative will carry out its powers, authority and functions in accordance with this Clause 2, as the agent of the State.

2.4 Notice of State Representative or delegation

- (a) Project Co and the FM Subcontractor may, at any time, request that the State notify Project Co or the FM Subcontractor (as applicable) as to:
 - (i) the identity and address of the State Representative or delegate to whom powers or functions or responsibilities of the State under this deed are delegated under Clause 2.2; and
 - (ii) any changes in the identity and address of the State Representative or delegated representative.

- (b) Project Co and the FM Subcontractor are entitled to rely upon a notice given by the State in accordance with Clause 2.4(a) unless and until given notice of revocation of that delegation or appointment.

3 ACKNOWLEDGEMENTS

3.1 Consent to General Security Agreement

The FM Subcontractor and the FM Subcontractor Guarantor:

- (a) **(grant of security)**: consent to the grant of an Encumbrance in the form of the General Security Agreement in favour of the State over all assets and undertakings of Project Co including Project Co's right, title and interest under the FM Subcontract and the FM Guarantee and the assignment of Project Co's right title and interest in the FM Subcontract and the FM Guarantee to the State by way of security;
- (b) **(acknowledgement of rights)**: acknowledge, the rights created in accordance with the General Security Agreement including the appointment by Project Co of the State as attorney of Project Co to do, perform and exercise all things, acts and rights in accordance with the FM Subcontract on behalf of and for the account of Project Co;
- (c) **(no Liabilities)**: agree that nothing in the General Security Agreement will cause the State to assume any Liabilities in accordance with the FM Subcontract or the FM Guarantee except as contemplated by Clause 10;
- (d) **(no Default Event)**: acknowledge and agree that the:
- (i) General Security Agreement does not; and
 - (ii) the exercise by the State of its rights in accordance with the General Security Agreement will not,
- constitute a Default Event; and
- (e) **(notice of any other assignment)**: confirm that, with the exception of the Encumbrances created in accordance with the Financing Documents or as otherwise notified to the State, the FM Subcontractor has not received notice of any other Encumbrance or assignment by Project Co of any right, title, interest in or benefit of Project Co under the FM Subcontract.

3.2 FM Subcontractor Guarantor Acknowledgement

The FM Subcontractor Guarantor agrees that the grant of the General Security Agreement does not, and the exercise by the State of its rights in accordance with the General Security Agreement or this deed will not, give rise to any rights by the FM Subcontractor Guarantor to revoke or terminate the FM Guarantee.

3.3 Acknowledgement of State's rights

- (a) **(State's rights)**: The FM Subcontractor acknowledges:
- (i) the State's rights and Project Co's obligations in accordance with Clause 5.10 (Subcontracting), Clause 5.11 (Competence), Clause 7.7 (Main Contractor Appointment for Operational Phase), Clause 10.3 (Occupational health, safety and rehabilitation prior to the Date of Commercial Acceptance), Clause 10.4 (Occupational, health safety and rehabilitation during Operating Phase), Clause 10.7 (State's right to enter, inspect and test), Clause 16 (Scheduled and Unscheduled State Works), Clause 29 (Intervening Events), Clause 31 (Handover), Clause 40 (Insurance), Clause 42 (Representations and Warranties), Clause 43 (Default), Clause 44 (Termination), Clause 46 (Assignment and ownership), Clauses 47.5 (Notice of Probity Event) to 47.10 (No Appointment without consent), Clause 50.1 (Confidential Information), Clause 51 (Intellectual Property) and Clauses 53.1 (Interest) to 53.8 (Reasonable Endeavours) of the Agreement; and
 - (ii) that it has been provided with a copy of the Clauses referred to in Clause 3.3(a)(i).
- (b) **(Additional Clauses)**: To the extent that the FM Subcontractor or FM Subcontractor Guarantor require:

- (i) additional Clauses in order to interpret the Clauses referred to in Clause 3.3(a)(i); or
- (ii) a copy of any definition of a capitalised term in this deed which has the meaning given in Clause 1.1 of the Agreement,

then the FM Subcontractor may request these additional Clauses, or definitions (as applicable) from the State, which request may not be unreasonably denied by the State.

- (c) **(Main Contractor Appointment):** The FM Subcontractor acknowledges and agrees that it will do or cause to be done 'construction work' (as that term is defined in the OHS Laws) forming a part of the FM Obligations undertaken or performed by the FM Subcontractor:
 - (i) from the Operational Commencement Date, the State appoints and engages the FM Subcontractor as the Main Contractor for 'construction work' (as that term is defined in the OHS Laws) forming a part of the FM Obligations undertaken or performed by or on behalf of the FM Subcontractor and all areas where that work is performed and the FM Subcontractor:
 - (A) acknowledges that it is appointed and engaged as the Main Contractor for all 'construction work' (as that term is defined in the OHS Laws) forming a part of the FM Obligations undertaken or performed by or on behalf of the FM Subcontractor and the areas where that work is performed; and
 - (B) will perform the duties of a Main Contractor, and comply with the requirements applicable to a Main Contractor, under OHS Laws;
 - (ii) the State authorises the FM Contractor to have control over the areas where 'construction work' (as that term is defined in the OHS Laws) forming a part of the FM Obligations undertaken or performed by or on behalf of the FM Subcontractor is performed, to the extent necessary to allow it to perform the duties of the Main Contractor. The FM Contractor will immediately notify the State in writing if it believes such authorisation is not sufficient; and
 - (iii) if the appointment and engagement of the FM Contractor as the Main Contractor in accordance with Clause 3.3(c)(i) is in any way defective the FM Contractor will perform the duties of a Main Contractor, and comply with the requirements applicable to a Main Contractor as if it had been validly appointed and engaged as the Main Contractor, under OHS Laws until the Expiry Date.
- (d) **(Multiple contractors):** The State, Project Co and the FM Subcontractor acknowledge and agree that during the Operating Phase:
 - (i) the State, Project Co, the Builder and the FM Subcontractor (**Third Parties**) may carry out, or cause to be carried out, works, whether simultaneously or at different times, in the same or different areas;
 - (ii) if the area where 'construction work' (as that term is defined in the OHS Laws) forming a part of the works they are carrying out, or causing to be carried out, is performed is physically separate and clearly demarcated from any other area in which any other works are being performed (**Separate Works Spaces**) so as to make the Separate Works Spaces a separate 'construction site' (as that term is defined in the OHS Laws), then the Third Party (or another entity appointed by the State) will be the Main Contractor in respect of the Separate Work Space where that Third Party is performing 'construction work' (as that term is defined in the OHS Laws); and
 - (iii) if the area where 'construction work' (as that term is defined in the OHS Laws) forming a part of the works being performed is not physically separate and cannot be clearly demarcated from any other area in which works are being performed (**Combined Work Spaces**), provided that the FM Subcontractor is one of the Third Parties performing 'construction work' (as that term is defined in the OHS Laws), the State appoints and

engages the FM Subcontractor as the Main Contractor, pursuant to Clause 3.3(c), for all 'construction work' (as that term is defined in the OHS Laws) being performed by Third Parties in the Combined Work Spaces.

- (e) **(Facilitation of rights):** The FM Subcontractor must exercise its rights in accordance with the FM Subcontract in a way which facilitates the effective exercise by the State of the rights and protections referred to in the Clauses listed in Clause 3.3(a) and will on reasonable notice permit the relevant State Representative to have access to, and take copies of, the records, reports, documents and other papers to which the State is entitled to have access in connection with the State's rights referred to in Clause 3.3(a).
- (f) **(Subcontracting):** The FM Subcontractor will not subcontract any of its obligations under the FM Subcontract without ensuring that the Subcontract complies with Clause 5.14 of the Agreement.
- (g) **(Probity Investigations):** Without limiting the previous paragraphs, the FM Subcontractor acknowledges and agrees and the FM Subcontractor Guarantor acknowledges that:
 - (i) in accordance with Clause 5.14 and Clause 30.7 of the Agreement, the State may require Project Co to conduct Probity Investigations of a FM Subcontractor Associate;
 - (ii) the FM Subcontractor will consent to the undertaking of a Probity Investigation in connection with the FM Subcontractor or procure the consent of a FM Subcontractor Associate to a Probity Investigation;
 - (iii) the FM Subcontractor will not appoint and will ensure that no other person appoints a person to the position of a FM Subcontractor Associate following a Probity Investigation unless the prior consent of the State is obtained; and
 - (iv) the FM Subcontractor will remove any person from the position of a FM Subcontractor Associate if following the results of a Probity Investigation, the State considers that it is not appropriate for that person to continue to be a FM Subcontractor Associate.

3.4 Acknowledgement by Project Co

Project Co is bound by, and must cooperate in, the implementation of this deed in accordance with its terms. It acknowledges that this deed is intended to benefit only the FM Subcontractor and the State and does not in any way affect any obligation of Project Co under the FM Subcontract or under any other Project Document.

3.5 Undertakings of the FM Subcontractor

The FM Subcontractor undertakes to the State that it must:

- (a) **(proper performance):** duly and punctually perform all of its obligations under the FM Subcontract in accordance with the terms of the FM Subcontract;
- (b) **(notification of Default Event):** notify the State of any Default Event promptly after it gives notice of that Default Event in accordance with the FM Subcontract;
- (c) **(documents in relation to Default Event):** give the State a copy of all documents issued by the FM Subcontractor to Project Co in relation to a Default Event promptly after giving such documents to Project Co;
- (d) **(no amendment without consent):** not, without first obtaining the written consent of the State (other than to the extent it is obliged to do so by the Security Trustee under the FM Consent Deed in connection with the implementation of a Financiers' Cure Program under the Finance Side Deed):
 - (i) if approval is required under Clause 5.13(a) of the Agreement, make or permit any amendment or replacement of or addition to;
 - (ii) subject to Clauses 4.2, 4.3 and 4.4, terminate, surrender, rescind, suspend or accept repudiation of;
 - (iii) permit the novation, assignment or substitution of any party's rights, obligations or interest in; or

- (iv) allow any express waiver of its material rights and obligations in accordance with,
- the FM Subcontract, provided that the State will not withhold its consent to an amendment which corresponds to an amendment to which it has consented in accordance with the Agreement;
- (e) **(deed of accession)**: not novate, assign or substitute any of its rights, obligations or interest in the FM Subcontract without first procuring that the proposed novatee, assignee or substitute executes a deed in favour of the State (in form and substance approved by the State) in accordance with which the novatee, assignee or substitute agrees to accept and be bound by this deed as if it were the FM Subcontractor;
- (f) **(attend meetings and inspections)**: when reasonably requested by the State:
- (i) attend meetings with the State;
- (ii) provide the State with:
- (A) full access to the Operating Phase Site, the Stadium and Sports Precinct and any other place where any Services are being carried out or materials are being prepared or stored, to the extent provided in the Agreement; and
- (B) any other information, records or documents that the State reasonably requires in connection with undertaking the Services or compliance with the FM Subcontract; and
- (iii) permit the State or any nominee of the State to attend all tests and inspections to be carried out in connection with the Services in accordance with the terms of the FM Subcontract;
- (g) **(access to records)**: permit the State to inspect all documents of whatever nature prepared or kept by the FM Subcontractor in relation to the DBFM Project;
- (h) **(competent Subcontractors)**: not enter into, or permit the entry of, any Subcontract unless the proposed Subcontractor is an experienced, creditworthy, reputable and competent party which holds any necessary registrations or licences and which will have sufficient resources to perform the works of the services that are the subject of the proposed Subcontract;
- (i) **(requirements for Subcontracting)**: not engage, or permit the engagement, of any Subcontractor by the FM Subcontractor, or enter into or permit the entry into of any Subcontract by the FM Subcontractor, unless:
- (i) if the State requires Probity Investigations to be carried out, the State's probity requirements as described in Clauses 46.5 to 46.10 of the Agreement are satisfied; and
- (ii) the Subcontract contains provisions giving effect to the exercise by the State of its rights and protections under and contains all relevant provisions prescribed by (if applicable), Clause 5.10, 5.11, 10.3, 10.4, 10.7, 16, 29, 31, 40, 42, 43, 44, 46, 47.5 to 47.10, 50, 51 and 53.1 to 53.8 of the Agreement; and
- (j) **(compliance with Agreement)**: comply with the obligations of Project Co under the Agreement in respect of any Key Subcontractor if that Key Subcontractor is either engaged by the FM Subcontractor or by a Subcontractor of the FM Subcontractor.

3.6 Assignment of Operating Phase Performance Security

The parties acknowledge and agree that the Operating Phase Performance Security provided by the FM Subcontractor to Project Co pursuant to Clause 2A of the FM Subcontract may only be assigned, transferred or otherwise dealt with to the State or an Additional Obligor on the commencement of the Step-in Period (in the case of the State exercising its rights under Clause 5.1) or the Novation Date (in the case of the State exercising its rights under Clause 6.1).

4 RIGHT TO REMEDY BEFORE TERMINATION OF FM SUBCONTRACT

4.1 The State's right to remedy

- (a) The FM Subcontractor must give the State:
- (i) Default Event Notices; and
 - (ii) either:
 - (A) State Cure Notices; or
 - (B) Suspension Notices,
- as required by Clause 4.2 or Clause 4.3.
- (b) On receiving a State Cure Notice or a Suspension Notice, the State may (but is not obliged to) take steps to:
- (i) remedy, or procure the remedy of, the Default Event; or
 - (ii) if the Default Event is not capable of remedy, commence and continue to perform the obligations of Project Co in accordance with the FM Subcontract.

4.2 FM Subcontractor's right to terminate

The FM Subcontractor may only terminate, rescind, accept the repudiation of or (subject to Clause 4.3) suspend the performance of any or all of its obligations in accordance with the FM Subcontract if:

- (a) the FM Subcontractor has given a notice to the State that complies with the requirements of Schedule 1 (Default Event Notices) (**Default Event Notice**);
- (b) any period available to the Financiers (or the Security Trustee on their behalf) before the FM Subcontractor may terminate the FM Subcontract in accordance with the FM Consent Deed in respect of the Default Event has expired without a remedy being achieved in accordance with the FM Consent Deed;
- (c) the FM Subcontractor has given a notice (**State Cure Notice**) to the State confirming that the requirements of Clause 4.2(b) are satisfied; and
- (d) where:
 - (i) the Default Event is a payment default and the Default Event is not remedied within 10 Business Days of the date on which the State receives the State Cure Notice;
 - (ii) the Default Event is an insolvency of Project Co and the State has not taken steps to appoint a Receiver within 25 Business Days of receipt of the State Cure Notice; or
 - (iii) the State notifies the FM Subcontractor that it elects not to remedy the Default Event.

4.3 Early suspension of the Services

- (a) If:
- (i) the FM Subcontractor, but for the operation of this Clause 4.3, would have a right to suspend the Services in accordance with the FM Subcontract;
 - (ii) the FM Subcontractor has given a Default Event Notice to the State that complies with the requirements of Schedule 1 (Default Event Notices);
 - (iii) any remedy period available to the Financiers (or the Security Trustee on their behalf) before the FM Subcontractor may suspend the Services in accordance with the FM Consent Deed in respect of the Default Event has expired without a remedy being achieved in accordance with the FM Consent Deed;
 - (iv) the FM Subcontractor has given a notice (**Suspension Notice**) to the State confirming the requirements of Clause 4.3(a)(iii) are satisfied; and
 - (v) one of the following has occurred:
 - (A) either:

- (1) in the case of payment default, the Default Event is not remedied within 10 Business Days of the date on which the State receives the Suspension Notice; or
- (2) in the case of insolvency of Project Co, the State has not taken steps to appoint a Receiver within 5 Business Days of receipt of the State Cure Notice; or
- (B) the State notifies the FM Subcontractor that it elects not to remedy the Default Event,

then the FM Subcontractor may suspend the performance of the Services.

- (b) The FM Subcontractor agrees that payment by the State of the amounts referred to in Clause 4.2(d)(i) and Clause 4.3(a)(v)(A)(1) will, as between the State and the FM Subcontractor, fully discharge the State's Liability to pay such amounts.

4.4 FM Subcontractor's right to terminate or suspend without cause

If there is no Default Event subsisting, the FM Subcontractor may not suspend the performance of the Services in accordance with the FM Subcontract unless Project Co is entitled to suspend its corresponding obligations in connection with the Services under the Agreement and may not do so without the State's prior consent.

5 STEP-IN BY THE STATE

5.1 Step-in Right

- (a) Upon receipt of a State Cure Notice or Suspension Notice, and without limiting the rights of the Security Trustee under or as permitted by the Finance Side Deed, the State may:
 - (i) appoint a Receiver over Project Co, any or all of its assets (including the FM Subcontract), or any or all of the shares in Project Co;
 - (ii) itself enter into possession of any or all of the assets or any or all of the shares in Project Co;
 - (iii) pay to the FM Subcontractor any amounts stated in the relevant State Cure Notice or Suspension Notice;
 - (iv) take such other action as it is permitted by Law to undertake in accordance with the terms of the Project Documents; or
 - (v) by notice to the FM Subcontractor (**Additional Obligor Step-in Notice**), procure that an Additional Obligor assumes jointly and severally with Project Co all of Project Co's rights or obligations in accordance with the FM Subcontract.
- (b) Any action taken by the State in accordance with Clause 5.1(a) is an exercise of a "**Step-in Right**" for the purposes of this deed.
- (c) The "**Step-in Period**" is the period commencing on the date on which the FM Subcontractor receives notice of the exercise of any Step-in Right under Clause 5.1(a)(v) and ending on the earlier of:
 - (i) the Additional Obligor Step-Out Date if an Additional Obligor Step-in Notice has been given;
 - (ii) the date on which the FM Subcontractor terminates the FM Subcontract;
 - (iii) the date of any novation in accordance with Clause 6;
 - (iv) the date which the State has notified the FM Subcontractor that the State will cease to exercise its Step-in Rights; and
 - (v) any other date on which the State ceases to continue to exercise its Step-in Rights.
- (d) The FM Subcontractor agrees that the exercise by the State of a Step-in Right will not of itself contravene, or constitute a Default Event in accordance with the FM Subcontract or entitle the FM Subcontractor to exercise any right (including termination) in accordance with it.

5.2 Step-in by the State

- (a) Without limiting the rights of the Security Trustee under or as permitted by the Finance Side Deed, the State may at any time after the State has given a notice to the FM Subcontractor in accordance with Clause 5.1, exercise all or any of Project Co's rights and perform all or any of Project Co's obligations in accordance with the FM Subcontract, as if it were Project Co and to the exclusion of Project Co.
- (b) Project Co and the FM Subcontractor agree that, subject to Clause 5.3(b), neither the State nor any State Associate will have any Liability, nor will Project Co or the FM Subcontractor be entitled to make, continue or enforce any Claim against the State or a State Associate arising out of or in connection with the FM Subcontract or this deed by reason only of the State or any State Associate exercising any of Project Co's Powers, or forming any of Project Co's obligations in accordance with the FM Subcontract (as permitted by the Project Documents) other than, and then only to the extent of, Liability for fraudulent, reckless, malicious or unlawful acts or omissions of the State or any State Associates.

5.3 Step-in by an Additional Obligor

If an Additional Obligor is appointed in accordance with Clause 5.1(a)(v):

- (a) **(Assumption Date)**: the Additional Obligor will become a party to the FM Subcontract on the date on which the Additional Obligor Step-in Notice is given to the FM Subcontractor or such later date as the FM Subcontractor and the State may agree **(Assumption Date)**;
- (b) **(rights and obligations of Additional Obligor)**: during the Step-in Period:
 - (i) the Additional Obligor will be jointly and severally:
 - (A) entitled with Project Co to exercise the rights, powers and discretions of Project Co in accordance with the FM Subcontract (excluding any accrued rights of Project Co for any damage, loss, cost, charge, expense, outgoing or payment to the extent that the rights arose prior to the Assumption Date) **(Project Co's Rights)**; and
 - (B) liable with Project Co for the performance or non-performance of all Project Co's obligations in accordance with the FM Subcontract arising on or after the Assumption Date except as released in accordance with Clause 5.3(e);
 - (ii) as between Project Co, the FM Subcontractor and the Additional Obligor, only the Additional Obligor is authorised to deal with the FM Subcontractor and to exercise Project Co's Rights;
 - (iii) Project Co agrees that it will be legally bound by all the acts and omissions of the Additional Obligor in so dealing with the FM Subcontractor and in exercising Project Co's Rights;
 - (iv) the Additional Obligor will be bound by any earlier decision, directions, approvals or consents given or made under the FM Subcontract prior to the Assumption Date;
 - (v) Clause 14 will apply to the FM Subcontractor and the Additional Obligor as if the address, facsimile number and email address of the Additional Obligor were set out in Clause 14; and
 - (vi) the FM Subcontractor will owe its obligations in accordance with the FM Subcontract to Project Co and the Additional Obligor jointly but the performance by the FM Subcontractor in favour of either Project Co or the Additional Obligor will be a good discharge of the obligations in accordance with the FM Subcontract;
- (c) **(no Liability)**: the Additional Obligor will have no Liability for remedying any Default Event arising prior to the Assumption Date;
- (d) **(Additional Obligor Step-out Date)**: the Additional Obligor may at any time give the FM Subcontractor not less than 30 days' notice terminating the Additional Obligor's obligations in accordance with the FM Subcontract (without affecting the continuation of Project Co's obligations or Liabilities towards the FM Subcontractor

in accordance with the FM Subcontract). Such notice must specify the date on which it takes effect, which must be:

- (i) the date specified in the notice; or
- (ii) if a Novation Notice has been given in accordance with Clause 6.1, the Novation Date;

(Additional Obligor Step-out Date); and

- (e) **(release)**: on and from the Additional Obligor Step-out Date, between the FM Subcontractor and the Additional Obligor, each of the Additional Obligor and the FM Subcontractor will be released from all obligations in accordance with the FM Subcontract (except for those obligations which have arisen during the Step-in Period including in respect of additional Liabilities incurred by the FM Subcontractor during the Step-in Period), whether or not they have fallen due to be performed or have not been performed.

5.4 Indemnity

Project Co indemnifies the State and the State Associates against any Liability (including any Claim made by or Liability incurred to a third party) the State or any State Associate suffers or incurs in connection with taking any action in accordance with Clause 5.1, Clause 5.2 or Clause 5.3, provided that Project Co's liability to indemnify will be reduced to the extent that such Claim or Liability is a consequence of any of the events set out in Clause 4.6(a), Clause 4.6(b) or Clause 4.6(c) of the Agreement or a Claim against the State as described in Clause 4.6 of the Agreement.

6 NOVATION OF RIGHTS AND OBLIGATIONS

6.1 Option

- (a) The State may require a novation of the FM Subcontract upon the termination of the Agreement, by giving a notice (**Novation Notice**) to the FM Subcontractor and the FM Subcontractor Guarantor. The Novation Notice must specify the person to whom the State intends to novate the FM Subcontract whether this be the State, any State Associate or another person (**Substitute Party**).
- (b) If the State issues a Novation Notice then the FM Subcontractor must comply with this Clause 6 and until the Novation Date the FM Subcontractor must continue to perform its obligations in accordance with the FM Subcontract subject to Clauses 4.2 and 4.3.
- (c) If the FM Subcontractor has exercised its right to suspend in accordance with Clause 4.3 or 4.4, the FM Subcontractor must recommence performance of the Services from the Novation Date or the date on which the cause of the suspension is remedied (whichever is the earlier).
- (d) The FM Subcontractor agrees that the giving of a Novation Notice by the State will not of itself contravene, or constitute a Default Event in accordance with the FM Subcontract or entitle the FM Subcontractor to exercise any right (including termination) in accordance with it.

6.2 Novation

If the State issues a Novation Notice to the FM Subcontractor, the parties agree, subject to Clause 6.3, to novate the FM Subcontract to the Substitute Party identified in the Novation Notice and must enter into a novation agreement in the form of the deed of novation included as Schedule 25 (Subcontractor Deed of Novation) of the Agreement. The form of the deed of novation included as Schedule 25 (Subcontractor Deed of Novation) of the Agreement will have the following clause added to it:

On the Execution Date, the novated Subcontract will be amended to delete Clauses 5.15(d) and 5.15 (e) and insert the following clauses (and clause 3(c) of this Deed is intended to operate such that the references to Project Co below are to be read as references to the State from the Execution Date):

- (d) *If:*
 - (i) *a Subcontractor is entitled to suspend work which forms part of the FM Obligations under the CCA; or*

- (ii) *the FM Subcontractor informs Project Co, or Project Co becomes aware that the FM Subcontractor has failed to pay an amount that is certified or determined under the relevant Subcontract as being due and payable to a Subcontractor,*

Project Co may then make that payment directly to the Subcontractor, provided that Project Co has given sufficient notice to the FM Subcontractor of its intention to pay an amount to the Subcontractor to enable the FM Subcontractor to provide reasons (accompanied by contemporaneous Records) as to why the payment should not be made.

- (e) *If Project Co makes a payment directly to the Subcontractor under Clause 5.15(d), such amount will be a debt due and payable by the FM Subcontractor to Project Co.*

6.3 Novation to a Substitute Party other than the State or an Additional Obligor

- (a) **(Information to be provided by the State):** If the State gives a Novation Notice to the FM Subcontractor and the FM Subcontractor Guarantor that states that Project Co must novate the FM Subcontract to a Substitute Party other than the State or an Additional Obligor, the State must provide with the Novation Notice the following details in connection with that Substitute Party:
- (i) the name, place of incorporation and identity of the proposed Substitute and its shareholder(s);
 - (ii) if available, its most recent published audited accounts; and
 - (iii) sufficient particulars of the finance available to the Substitute Party to enable the FM Subcontractor to decide whether to grant its consent to the Substitute Party.
- (b) **(Consent by FM Subcontractor):** A novation to a Substitute Party other than the State or an Additional Obligor in accordance with this Clause 6.3 will only be effective if the FM Subcontractor consents to the novation (such consent not to be unreasonably withheld or delayed) or is deemed to have consented in accordance with Clause 6.3(d).
- (c) **(Further information):** The State must (as soon as practicable) supply the FM Subcontractor with such additional information to that provided in accordance with Clause 6.3(a) as the FM Subcontractor reasonably requires to enable it to decide whether to grant consent in accordance with Clause 6.3(b), and the FM Subcontractor must consider such information expeditiously.
- (d) **(Deemed consent):** The FM Subcontractor's consent to the novation will be deemed to be given if the FM Subcontractor has not notified the State whether it consents to the novation within 15 Business Days of the later of receipt of the Novation Notice and receipt of the additional requested information pursuant to Clause 6.3(c).
- (e) **(Unreasonably withholding consent):** The FM Subcontractor is not entitled to refuse consent to the novation unless:
- (i) the grounds for refusal are reasonable and are based on:
 - (A) the proposed documentation for the Substitute Party to assume the rights and obligations of Project Co in accordance with the FM Subcontract not being effective to substitute the Substitute Party for Project Co;
 - (B) the Substitute Party not having the legal capacity, power and authorisation to become a party to and perform the obligations of Project Co in accordance with the FM Subcontract including any necessary authorisations and consents;
 - (C) the technical competence or financial standing of the Substitute Party being insufficient for it to meet the obligations of Project Co in accordance with the FM Subcontract; or
 - (D) the FM Subcontractor being placed in breach of any Laws by the proposed novation and assignment; and
 - (ii) it has notified the State of such reasons.

- (f) **(If FM Subcontractor withholds consent):** If the FM Subcontractor withholds its consent to the novation in accordance with this Clause 6, this will not prejudice the ability of the State to give one or more subsequent Novation Notices containing changed particulars relating to the same Substitute Party or particulars relating to another Substitute Party.

6.4 FM Guarantee

- (a) If the State gives a Novation Notice then, subject to Clause 6.3, from the Novation Date:
- (i) a new deed of guarantee (**New FM Guarantee**) will be deemed to have been entered into on the same terms as the FM Guarantee, in respect of the DBFM Project except that:
 - (A) Project Co will not be a party to the New FM Guarantee; and
 - (B) the Substitute Party will be named as beneficiary to the New FM Guarantee in substitution for Project Co; and
 - (ii) the FM Subcontractor Guarantor will guarantee for the benefit of the Substitute Party all of the obligations of the FM Subcontractor, including those obligations of the FM Subcontractor which existed prior to the Novation Notice, in accordance with the New FM Guarantee.
- (b) As soon as reasonably practicable after the Novation Date, the FM Subcontractor Guarantor must document and execute the New FM Guarantee on the terms described in Clause 6.4(a). Once the New FM Guarantee is documented and executed the FM Guarantee will terminate and be of no further force or effect.
- (c) If the Novation Notice referred to in Clause 6.4(a) requires the novation of the FM Guarantee to a Substitute Party other than the State or an Additional Obligor, then the FM Subcontractor and the FM Subcontractor Guarantor must enter into a side deed with the State and the Substitute Party (which is not the State) on substantially the same terms as this deed.

7 AMENDMENTS TO FM SUBCONTRACT AND FM GUARANTEE

Except to the extent it is obliged to do so by the Security Trustee under the FM Consent Deed in connection with the implementation of a Financiers' Cure Program under the Finance Side Deed, the FM Subcontractor and the FM Subcontractor Guarantor each agree with the State that it will not rescind (unless permitted in accordance with this deed), grant or accept any waiver or discharge of the FM Subcontract or the FM Guarantee (as applicable), or agree to or permit any variation, waiver or amendment to the terms of the FM Subcontract or the FM Guarantee (as applicable) without the prior written consent of the State where such approval is required under Clause 5.13 of the Agreement.

8 RESTRICTION ON DEALINGS

The FM Subcontractor agrees with the State that it will not assign, novate, grant an Encumbrance over or otherwise deal with its interest in the FM Subcontract without the prior written consent of the State and without procuring that such transferee, assignee, mortgagee, novatee, chargee, encumbrancee or the secured party enters into a deed in which it agrees to be bound by the terms of this deed.

9 CONFIDENTIALITY

9.1 Confidential Information

- (a) **(Confidentiality obligations):** The FM Subcontractor and the FM Subcontractor Guarantor must and the FM Subcontractor must ensure that the FM Subcontractor's Associates, keep confidential, subject to Clauses 9.1(b) and 9.1(c), the Project Documents, all Records and all Disclosed Information (**Confidential Information**).
- (b) **(Permitted disclosure):** The FM Subcontractor and the FM Subcontractor Guarantor are not obliged to keep confidential any information:
- (i) which is in the public domain through no default of any party or any FM Subcontractor Associate; or
 - (ii) the disclosure of which is:

- (A) required by Law, including in accordance with the *Freedom of Information Act 1992* (WA);
 - (B) required by a relevant stock exchange;
 - (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.
- (c) **(Disclosure to FM Subcontractor's Associates):** Without limiting the FM Subcontractor and the FM Subcontractor Guarantor's obligations under Clause 9.1(a) and provided that the FM Subcontractor and FM Subcontractor Guarantor ensure that the FM Subcontractor Associates comply with the obligations under 9.1(a), the FM Subcontractor and the FM Subcontractor Guarantor may disclose Confidential Information to the FM Subcontractor Associates to the extent necessary for the purpose of undertaking the DBFM Project.
- (d) **(Government websites):** Subject to Clause 49.1(i) of the Agreement, the contents of the State Project Documents and any other document in connection with the DBFM Project which is authored or authorised by the State or a Governmental Agency may be published on any Western Australian government website.

9.2 Public announcements

- (a) The FM Subcontractor and the FM Subcontractor Guarantor must not and the FM Subcontractor must ensure that the FM Subcontractor's Associates do 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 FM Subcontractor's, the FM Subcontractor's or any FM Subcontractor's Associate'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 9.1, the State may use this deed and the FM Subcontractor's name and logo in connection with this deed as the State reasonably requires, provided that the State acknowledges the role of the FM Subcontractor to the extent that is reasonable in the circumstances.

9.3 Media releases

The FM Subcontractor and the FM Subcontractor Guarantor must, and the FM Subcontractor must ensure that the FM Subcontractor's Associates:

- (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 9.3(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 FM Subcontractor, the FM Subcontractor Guarantor or a FM Subcontractor's Associate following the State's consent.

9.4 No association

The FM Subcontractor and the FM Subcontractor Guarantor must not, and must ensure that the FM Subcontractor's Associates do 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 that the FM Subcontractor, the FM Subcontractor Guarantor or any FM Subcontractor's Associate has an association or connection with the State or any State Associates other than the FM Subcontractor'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).

9.5 Confidentiality under PPSA

The parties intend that, by operation of Clause 9.1, this deed is a confidentiality agreement (within the meaning of section 275(5) of the PPSA) and the parties agree that any request for disclosure of this deed made under section 275 of the PPSA must be treated accordingly.

10 ACKNOWLEDGMENT, RELEASE AND INDEMNITY

10.1 No Liability

Each of Project Co and the FM Subcontractor agree that:

- (a) subject to the Agreement and Clauses 5 and 6, the State will have no Liability to Project Co or the FM Subcontractor in connection with the exercise by the State of its rights in accordance with this deed except if:
- (i) the State has acted fraudulently or unlawfully; or
 - (ii) in the course of exercising its rights in accordance with this deed, the State has acted fraudulently, recklessly, maliciously or unlawfully; and
- (b) the exercise (or non-exercise) by the State of its rights in accordance with this deed will not limit any other right of the State, whether in accordance with this deed or otherwise.

10.2 Release and indemnity

- (a) Subject to Clauses 5 and 6, Project Co:
- (i) releases the State and any party acting for or on behalf of the State (including any Additional Obligor) from any Liability in connection with the exercise by the State of its rights in accordance with this deed; and
 - (ii) indemnifies the State and any party acting for or on behalf of the State (including any Additional Obligor) against any Liability incurred by the State or any person acting for or on behalf of the State (including any Additional Obligor) to Project Co in connection with the exercise by the State of its rights in accordance with this deed.

10.3 FM Subcontractor's liability

- (a) Despite any other provision of this deed, the parties acknowledge and agree that the FM Subcontractor's and the FM Subcontractor Guarantor's maximum aggregate liability under or arising in connection with this deed and the FM Project Documents (as defined in the FM Subcontract), whether as a matter of contract, under the law of tort (including as a result of negligence), under common law, in equity or otherwise, is limited as set out in the FM Subcontract and the FM Guarantee.
- (b) Under this deed, the FM Subcontractor and the FM Subcontractor Guarantor have the benefit of all limitations on and exclusions of liability to the extent set out in the FM Subcontract, and the FM Subcontractor will not be liable under this deed to the extent its liability is limited or excluded, or the category of loss or liability is limited or excluded, by the terms of the FM Subcontract.

11 DISPUTE RESOLUTION

- (a) Each party may refer a dispute, despite any other provision, in accordance with this deed to dispute resolution in accordance with this Clause 11.
- (b) If a matter is referred for determination in accordance with this Clause 11:
- (i) any dispute or difference of opinion arising between the parties in relation to that matter must be resolved in the same manner that disputes or differences of opinion referred for expert determination in accordance with the Agreement are resolved; and

- (ii) accordingly, the provisions of Clause 45 of the Agreement are incorporated into this deed but as if:
 - (A) the only persons party to the Agreement, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute in accordance with this deed; and
 - (B) the only matters for expert determination in accordance with those provisions are the matters referred for expert determination in accordance with this deed.

12 INSURANCE

- (a) **(Insurances)**: Notwithstanding anything else, the FM Subcontractor will:
 - (i) take out all insurances as are required in accordance with the FM Subcontract; and
 - (ii) otherwise comply with all of its obligations in relation to insurance in the FM Subcontract.
- (b) **(Prejudiced)**: Project Co and the FM Subcontractor must ensure that it does not do or omit to do anything and does not permit anything to be done or omitted to be done whereby any insurance policy may be prejudiced.
- (c) **(Void or voidable)**: If any default is made by the FM Subcontractor in effecting or maintaining such insurance policy or if any such insurance policy becomes void or voidable, the State may (but is not obliged to) effect or maintain that insurance policy at the cost of the FM Subcontractor or, failing it, Project Co.
- (d) **(State covered by insurance)**: If required by the Agreement, on any insurance contract entered into by the FM Subcontractor in accordance with this Clause 12, the FM Subcontractor will ensure, to the extent permitted by Law, that the State is specified as a person to whom the insurance cover provided by that contract extends.
- (e) **(Documents, evidence and information)**: Project Co and the FM Subcontractor will do all things necessary and provide all documents, evidence and information necessary to enable the State to collect or recover any moneys due or to become due in connection with any insurance policy at the cost of the FM Subcontractor or, failing it, Project Co.
- (f) **(State's consent)**: Without prejudice to the above requirements and other than in relation to the renewal of insurances (in which case Project Co must comply with Clause 40.7 of the Agreement to the extent it applies) or endorsements not related to the DBFM Project, neither Project Co nor the FM Subcontractor will cause or take any steps to bring about the cancellation, lapse, material change, reduction or any rescinding of any such insurance policy unless it has first obtained the written consent of the State after giving 60 days prior written notice to the State.
- (g) **(Notify the State)**: Other than in relation to the renewal of insurances (in which case Project Co must comply with Clause 40.7 of the Agreement to the extent it applies) or endorsements not related to the DBFM Project, Project Co and the FM Subcontractor will immediately notify the State of any cancellation, lapse, material change, reduction, or any rescinding of any such insurance policy, and of the occurrence of any event which may give rise to a claim in accordance with any such insurance policy.
- (h) **(Severable)**: The obligations of Project Co and the FM Subcontractor in this Clause 12 are severable unless specified otherwise in the Agreement.

13 GST

- (a) **(Application of Clause)**: This Clause 13 applies as if the GST Law imposed GST, and was able to impose GST, in the circumstances prescribed in the GST Law, on property of any kind belonging to a State (as that expression is used in section 114 of the *Commonwealth of Australia Constitution Act 1900*).
- (b) **(Construction)**: In this Clause 13:

- (i) words and expressions which are not defined in this deed but which have a defined meaning in GST Law have the same meaning as in the GST Law;
 - (ii) GST Law has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
 - (iii) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.
- (c) **(Nominated entity):** The State confirms that the entity nominated to be responsible for the administration of the State's GST reporting obligations **(Nominated Entity)** is registered for GST as at the date of this 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, all prices or other sums payable or consideration to be provided in accordance with this deed are exclusive of GST.
- (e) **(Payment of GST):**
- (i) If GST is payable on any supply made by a party (**Supplier**) under or in connection with this 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 13(e)(i) in addition to and at the same time that the consideration for the supply is to be provided in accordance with this deed.
- (f) **(Tax invoices):**
- (i) The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under Clause 13(e).
 - (ii) The recipient can withhold payment of any amount payable in accordance with this Clause 13 until the Supplier provides a tax invoice or an adjustment note, as appropriate.
- (g) **(Adjustment event):** If an adjustment event arises in connection with a taxable supply made by a Supplier in accordance with this deed, the amount payable by the recipient in accordance with this Clause 13 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.
- (h) **(Reimbursements):** Where a party is required in accordance with this 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.

14 NOTICES

14.1 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 14, "**Notices**"):
- (i) must be in writing; and
 - (ii) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party.
- (b) **(Procedure for sending notices):** All Notices must be:

- (i) delivered or posted by prepaid post to the address; or
- (ii) except where a Notice relates to Claims, defaults or termination, including:
 - (A) an Additional Obligor Step-in Notice;
 - (B) a Default Event Notice;
 - (C) a Novation Notice;
 - (D) a State Cure Notice; and
 - (E) a Suspension Notice;

(which in each case must be delivered in accordance with Clause 14.1(b)(i)), sent by email in the form of a .pdf file letter (or such other form agreed by the State) to the email address,

of the addressee as set out in Clause 14.2 (or as otherwise notified by that party to each other party from time to time).
- (c) **(Date of receipt):** Subject to Clause 14.1(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 in accordance with this Clause 14. Any text in the body of the email or the subject line will not form part of the Notice; and
 - (ii) the FM Subcontractor and the FM Subcontractor Guarantor 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.

14.2 Party details

[Not disclosed]

15 GENERAL

15.1 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 15.1(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 15.1(b) will be a party's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

15.2 Set-off

- (a) Without limiting or otherwise affecting the State's rights in accordance with any other provision of this deed or at Law, the State may deduct from any monies due and payable to the FM Subcontractor in accordance with this deed;
- (i) any amount due and payable by the FM Subcontractor to the State (whether in accordance with or relating to this deed or any other State Project Documents); or
 - (ii) any amount claimed by the State against the FM Subcontractor (acting reasonably) arising out of or in connection with any State Project Document and in good faith.
- (b) If the State makes a deduction from any moneys due and payable to the FM Subcontractor in accordance with Clause 15.2(a)(ii) to the extent that it is subsequently determined that the State is not entitled to payment of those amounts, in addition to repayment of the amounts deducted, the State will pay the FM Subcontractor interest at the Default Rate on such amount from the date of the relevant deduction.
- (c) The FM Subcontractor must make all payments to the State free from any set-off or counterclaim and without deduction or withholding for or on account of any present or future Tax, unless the FM Subcontractor is compelled by Law to make such a deduction or withholding.
- (d) If the FM Subcontractor is compelled by Law to make a deduction or withholding, it must:
- (i) remit the deducted or withheld amount to the relevant Authority within the time required by Law; and
 - (ii) provide to the State all information and documentation relating to that deduction or withholding, including any information or documentation required to obtain a credit for or repayment of the deducted or withheld.

15.3 Relationship of parties

- (a) No duty of good faith is implied on the State in connection with its relationship with the FM Subcontractor or the FM Subcontractor Guarantor.
- (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) Project Co, the FM Subcontractor and the FM Subcontractor Guarantor must not act as or represent itself to be the servant or agent of the State.

15.4 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 Government Agency, or to influence, over-ride or direct

any Government Agency in the proper exercise and performance of its legal duties and functions.

- (c) **(No fettering)**: Nothing contained in 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 15.4(a), Project Co, the FM Subcontractor and the FM Subcontractor Guarantor will not be entitled to make any Claim under the State Project Documents against the State for any Liability relating to any exercise or failure of the State to exercise its statutory rights or powers.
- (e) **(Liability for breach)**: Clauses 15.4(a) to 15.4(d) do not limit any Liability which the State would have had to any party in accordance with any State Project Document as a result of a breach by the State of a term of any State Project Document but for Clauses 15.4(a) to 15.4(d).

15.5 Reasonable endeavours

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

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

15.6 Entire agreement

The Project Documents to which they are a party constitute the entire agreement and understanding between the parties in respect of their subject matter and supersede any prior agreement (whether in writing or not), negotiations, discussions, understandings and agreements between the parties in relation to the subject matter of this deed.

15.7 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.

15.8 Governing law

- (a) This deed is governed by and will be construed according to the Laws of Western Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts of that State and the courts competent to determine appeals from those courts.
- (b) The parties acknowledge that:
 - (i) the State has a substantial relationship to each of the parties to this deed and the transactions contemplated by this deed and the FM Guarantee; and
 - (ii) there is a reasonable basis for the parties' choice of governing law for this deed and the FM Guarantee.

15.9 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 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.

15.10 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.

15.11 Amendments to this deed

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

15.12 Joint and several liability

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

15.13 Indemnities

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination or expiration of this deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.
- (c) A party must pay on demand any amount it must pay in accordance with an indemnity in this deed.
- (d) The State, the FM Subcontractor and Project Co agree that:
- (i) each indemnity or promise referred to in this deed in favour of Indemnified Persons is held on trust by the State for the benefit of any of the Indemnified Persons; and
 - (ii) the consent of the Indemnified Persons referred to in Clause 15.13(d)(i) will not be required for any amendment to, or waiver of rights in accordance with a State Project Document.

15.14 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 and Records available to the State;
 - (iv) any indemnity given in accordance with this deed; or
 - (v) any right or obligation arising on termination of this deed.
- (b) Nothing in this Clause 15.14 prevents any other provision of this deed, as a matter of interpretation, also surviving the termination of this deed.
- (c) No right or obligation of any party will merge on completion of any transaction in accordance with this deed. All rights and obligations in accordance with this deed survive the execution and delivery of any transfer or other agreement which implements any transaction in accordance with this deed.

15.15 Costs and expenses

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

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

15.16 Further acts and documents

- (a) At the request of the State in the circumstances contemplated in Clause 7, each other party to this deed must take such action as is required to vest in the State or any State Associate or Substitute Party full legal and equitable title to any retention account, bank guarantee, performance bond, letter of credit or other security held by Project Co to secure the obligations of the FM Subcontractor in accordance with the FM Subcontract.
- (b) For valuable consideration, Project Co and the FM Subcontractor each irrevocably appoints the State, on its behalf and in its name or otherwise, as its attorney to do anything which Project Co or the FM Subcontractor (as applicable) is obliged to do (but has not done within 5 Business Days of written request) to give effect to the novation in Clause 6. Each of Project Co and the FM Subcontractor agree to ratify and confirm whatever any such attorney lawfully does in the exercise of the power of attorney in this Clause 15.16(b).
- (c) 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.

15.17 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.

15.18 Records

- (a) Notwithstanding any other provision of this deed (other than Clause 15.18(b)), FM Subcontractor is not required to provide the State with:
 - (i) reports or communications prepared for internal management, internal audit, credit and executive group or board reports in relation to the FM Subcontractor or the FM Subcontractor Guarantor;
 - (ii) any documents or communications where the FM Subcontractor or the FM Subcontractor Guarantor has contractual or statutory confidentiality obligations to third parties that are unable to be waived and are unable to be excluded;
 - (iii) employment contracts and employment files, unless specific waivers have been obtained from the relevant employee;
 - (iv) any communication subject to legal professional privilege, including any internal information regarding any Dispute or any Claim against the State under this deed; or
 - (v) documents relating to the FM Subcontractor's internal costs structures and treatment of non-project related overheads, but only to the extent that those cost structures are not related to FM Subcontractor's obligations or the DBFM Project.
- (b) Nothing in Clause 15.18(a) prevents:
 - (i) the Auditor-General or the Ombudsman from having access to the records of the FM Subcontractor described in Clause 15.18(a) which they are entitled to have at Law and which are required for the purpose of satisfying the powers and responsibilities of the Auditor-General referred to in Clause 1.6(c) of the Agreement; or
 - (ii) the State from having access to the information contained in the materials of the FM Subcontractor described in Clauses 15.18(a)(i) and 15.18(a)(ii) to the extent that information is required by the State under Clause 1.6(c),

Clause 48(f) or Clause 48(g) of the Agreement and provided that the State cannot obtain the relevant information from other documents that it has been provided with.

- (c) The parties acknowledge that the foregoing provisions of Clause 15.17(b) shall not supersede any legal privilege to which the FM Subcontractor or the FM Subcontractor Guarantor are entitled to at Law or circumvent any privacy or access to personal information legislation.
- (d) Notwithstanding any other provision of this deed the FM Subcontractor Guarantor shall not be restricted from disclosing any information it is required to disclose in order to comply with US securities laws.

Execution page

Executed as a deed

Executed 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 MLA (witness)

SIGNED 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

Full name of witness

Signed, sealed and delivered by **Brookfield Johnson Controls Pty Ltd ACN 064 638 197** in accordance with section 127 of the Corporations Act by or in the presence of:

Signature of Director

Name of Director in full

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

Full name of attorney

Signature of Secretary/other Director

Name of Secretary/other Director in full

JOHNSON CONTROLS INC.
by

|

Name: Frank A. Voltolina
Title: VP and Treasurer

Name: R. Bruce McDonald
Title: EVP and CEO

I/We have authority to bind the Corporation

Schedule 1 – Default Event Notices

1 CONTENTS OF DEFAULT EVENT NOTICES

All Default Event Notices must include the following information in connection with the Default Event:

- (a) all amounts due and payable to the FM Subcontractor in accordance with the FM Subcontract on or before the date of the Default Event Notice but remaining unpaid at such date;
- (b) the nature and, to the best of the FM Subcontractor's knowledge and belief, the amount of any monetary claim asserted by the FM Subcontractor in connection with the FM Subcontract against Project Co; and
- (c) if the FM Subcontractor intends to terminate or suspend the FM Subcontract due to a payment default or insolvency of Project Co:
 - (i) the provisions of the FM Subcontract alleged to have been breached or not fulfilled;
 - (ii) sufficient information to enable the State to identify the material facts;
 - (iii) the steps reasonably required to remedy the Default Event (if reasonably capable of remedy);
 - (iv) the period available to the Financiers (or the Security Trustee on their behalf) to remedy the Default Event, in accordance with Clause 4.2(b);
 - (v) in respect of insolvency of Project Co, the period available to the State to appoint a receiver once it has received a State Cure Notice in accordance with Clause 4.2(c); and
 - (vi) in respect of a payment default:
 - (A) the amount payable by the State; and
 - (B) the period available to the State to pay the relevant amount to the FM Subcontractor, once it has received a State Cure Notice in accordance with Clause 4.2(c).

2 WARRANTY OF ACCURACY

The FM Subcontractor warrants to the State that each Default Event Notice will contain, true, complete and accurate statements of the amounts to which the FM Subcontractor considers itself entitled.

3 VERIFICATION OF DEFAULT EVENT NOTICES

The State may appoint a firm of independent chartered accountants or a firm of technical advisers to verify (at Project Co's cost) the Default Event Notices, and the FM Subcontractor must, subject to such firm(s) executing a deed poll or confidentiality undertaking providing for confidentiality on terms that are in substance that same as those included in Clause 9, permit such firm(s) to have access to and to make copies of all records, documents, data and accounting and other information not subject to legal (including solicitor and own client) professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such Default Event Notices.

4 DEFAULT EVENT NOTICES TO BE CONCLUSIVE EVIDENCE

- (a) Each of the State, Additional Obligor or Receiver (**Notice Beneficiary**) is entitled to rely on the Default Event Notices for the purpose of determining the extent of the matters occurring prior to a Default Event which are required to be remedied and the requirements to effect the remedy of that Default Event by a Notice Beneficiary.
- (b) The Default Event Notices will be conclusive evidence in favour of any Notice Beneficiary that the FM Subcontractor has waived and abandoned all claims then known or which ought reasonably to have been known to the FM Subcontractor in connection with the FM Subcontract prior to the date of the Default Event Notice.

- (c) Sections 44(a) and 44(b) are without prejudice to the rights of the FM Subcontractor to pursue any claims against Project Co following the end of the Step-in Period.
- (d) A Default Event Notice will not prevent any Notice Beneficiary from disputing the amount of any claim by the FM Subcontractor or the existence of any default by Project Co in accordance with the FM Subcontract. In the case of any such dispute:
 - (i) the relevant Notice Beneficiary must pay the amount (if any) not in dispute;
 - (ii) the dispute must be referred to expert determination in accordance with Clause 11 of this deed;
 - (iii) upon resolution of the dispute, the parties must make payments as determined by the expert; and
 - (iv) during the period of dispute resolution, all parties must continue to perform their obligations in accordance with this deed and the Project Documents.