



# The new Perth Stadium Project

## General Security Agreement

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

Each person listed in Schedule 1 (each a **Grantor**)

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## General Security Agreement

This document 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

Each person listed in Schedule 1 (each a **Grantor**) and the parties agree as follows:

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### Recitals

- A. The background to the DBFM Project is set out in the Agreement.
- B. Each Grantor is, or will be, the legal and beneficial owner of the Secured Property.
- C. This document sets out the terms on which each Grantor grants a first ranking charge to the State over the Secured Property to secure payment of the Secured Money.

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### Operative Provisions

## 1 DEFINITIONS, INTERPRETATION AND RELATED MATTERS

### 1.1 General

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

### 1.2 Definitions

In this document, unless the context indicates otherwise:

<b>Term</b>	<b>Meaning</b>
<b>Agreement</b>	means the document entitled "The new Perth Stadium DBFM Project Design, Build Finance and Maintain (DBFM) – Project Agreement" entered into between the State and Project Co dated on or about the date of this document.
<b>Attorney</b>	an attorney appointed under this document.
<b>Collateral Security</b>	any present or future Encumbrance, guarantee or other document or agreement created or entered into by a Transaction Party or any other person as security for, or to credit enhance, the payment of any of the Secured Moneys.
<b>Debt</b>	includes debts owing by a bank or other financial institution, including in relation to a current trading account.
<b>Enforcement Event</b>	means the occurrence of any of the following events:

<b>Term</b>	<b>Meaning</b>
	<ul style="list-style-type: none"> <li>(a) an Immediate Termination Event as defined in the Agreement; or</li> <li>(b) an Event of Default to which Clause 44.3 of the Agreement applies.</li> </ul>
<b>Key Contract</b>	any Project Document to which each Grantor is expressed to be a party.
<b>Marketable Securities</b>	marketable securities as defined in section 9 of the Corporations Act.
<b>Officer</b>	the State Representative or its authorised delegates.
<b>Permitted Encumbrance</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) the Financiers' Securities (as defined in the Finance Side Deed);</li> <li>(b) liens arising by operation of law in the ordinary course of trading and securing obligations not more than 60 days overdue (unless being contested in good faith);</li> <li>(c) any Security Interest required to be created under or any right of set-off arising under a Project Document;</li> <li>(d) banker's liens or rights of set-off arising in the ordinary course of business, securing or otherwise relating to Financial Indebtedness permitted under the Financing Documents which is not yet due or which has been contested or litigated in good faith;</li> <li>(e) retention of title arrangements in connection with the acquisition of any property or asset in the ordinary course of trading for the carrying out of the Project in accordance with the Project Documents;</li> <li>(f) any Security Interests with authorities or utilities arising in the ordinary course of business; or</li> <li>(g) Security Interests created with the prior written consent of the Senior Agent under the Financing Documents and prior written consent of the State.</li> </ul>
<b>Power</b>	any right, power, authority, discretion or remedy conferred on the State, a Receiver or an Attorney by any Project Document or any applicable law.
<b>PPSA Regulations</b>	the regulations made under the PPSA.
<b>Receiver</b>	a receiver or receiver and manager appointed under this document.

<b>Term</b>	<b>Meaning</b>
<b><i>Revolving Assets</i></b>	<p>any Secured Property which is:</p> <ul style="list-style-type: none"> <li>(a) inventory;</li> <li>(b) a negotiable instrument;</li> <li>(c) machinery, plant, or equipment which is not inventory and has a value of less than \$1,000 or its equivalent; or</li> <li>(d) money (including money withdrawn or transferred to a third party from an account of each Grantor with a bank or other financial institution).□</li> </ul>
<b><i>Secured Moneys</i></b>	<p>all debts and monetary liabilities of each Grantor and each other Transaction Party to the State under or in relation to any Project Document and in any capacity, irrespective of whether the debts or liabilities:</p> <ul style="list-style-type: none"> <li>(a) are present or future;</li> <li>(b) are actual, prospective, contingent or otherwise;</li> <li>(c) are at any time ascertained or unascertained;</li> <li>(d) are owed or incurred by or on account of a Grantor or another Transaction Party alone, or severally or jointly with any other person;</li> <li>(e) are owed to or incurred for the account of the State alone, or severally or jointly with any other person;</li> <li>(f) are owed to any other person as agent (whether disclosed or not) for or on behalf of the State;</li> <li>(g) are owed or incurred as principal, interest, fees, charges, Taxes, damages (whether for breach of contract or tort or incurred on any other ground), losses, costs or expenses, or on any other account;</li> <li>(h) are owed to or incurred for the account of the State directly or as a result of: <ul style="list-style-type: none"> <li>(i) the assignment or transfer to the State of Liability of a Grantor or another Transaction Party; or</li> <li>(ii) any other dealing with any such Liability;</li> </ul> </li> <li>(i) are owed to or incurred for the account of the State before the date of this document or before the date of any assignment of this document to the State by any other person or otherwise; or</li> <li>(j) comprise any combination of the above.</li> </ul>
<b><i>Secured Property</i></b>	<p>in relation to a Grantor, all of its present and after-acquired property. It includes anything in respect of which a Grantor has at any time sufficient right, interest or power to grant a security interest.</p>
<b><i>Security</i></b>	<p>in relation to a Grantor, the security created or expressed to be created by this document.</p>

<b>Term</b>	<b>Meaning</b>
<b>State</b>	<p>(a) during the D&amp;C Phase, the Minister for Works, the Governance Agency and the State of Western Australia; and</p> <p>(b) during the Operating Phase, the Governance Agency and the State of Western Australia.</p>
<b>Title Document</b>	any original, duplicate or counterpart certificate or document of title including any real property certificate of title, a certificate of units in a unit trust, share certificate or certificate evidencing an Investment Instrument or Negotiable Instrument.
<b>Transaction Party</b>	<p>(a) Project Co;</p> <p>(b) Finance Co; or</p> <p>(c) any other Transaction Party as defined in a Project Document.</p>

### 1.3 Interpretation

In this document 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 document;
- (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 document)**: a reference to this document or to any other deed, agreement, document circular, policy or instrument includes a reference to this document 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;



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- (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 document;
  - (l) **(schedules)**: a reference to this document includes all Schedules;
  - (m) **(Clauses)**: a reference to:
    - (i) a Clause or Schedule is a reference to a Clause or Schedule of or to this document 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 document 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) **(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 State Representative (as applicable) has no obligation to a Grantor to do so;
  - (u) **(remedy)**: the use of the word "remedy" or any form of it in this document means that the event to be remedied must be cured or its effect overcome;
  - (v) **(no double counting)**: if this document requires calculation of an amount payable to a party there should be no double counting in calculating that amount;
  - (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 document; and
  - (x) **(Enforcement Event)** an Enforcement Event "subsists" or is "continuing" until the State notifies a Grantor that it has been:
    - (i) remedied to the satisfaction of the State; or
    - (ii) waived by the State.

#### 1.4 Related matters

- (a) **(Provisions limiting or excluding Liability)**: Any provision of this document 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) **(Project Co obligations)**: In complying with or accepting any obligation or risk in accordance with this document, Project Co must procure that, to the extent applicable, each Project Co Associate is required to comply with or accept the relevant obligation or risk and not cause any Grantor to breach its obligations in accordance with this document.

- (c) **(Business Day):** If the day on or by which any thing is to be done in accordance with this document is not a Business Day, that thing must be done on the next Business Day.
- (d) **(Discretion):** A consent or approval in accordance with this document 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 considers fit (in its absolute discretion), unless this document states otherwise.
- (e) **(Document composition):** This document comprises:
  - (i) Clauses 1 to 11; and
  - (ii) Schedules 1 (Grantors) to 4 (Secured Property In Relation To Which the Security May Be Perfected By Control).

## 1.5 PPSA incorporated definitions

The following words and phrases defined in the PPSA have the same meaning in this document:

- (a) Accession;
- (b) Account;
- (c) After-Acquired Property;
- (d) Chattel Paper;
- (e) Commingled;
- (f) Investment Instrument; and
- (g) Negotiable Instrument.

## 1.6 Finance Side Deed

Despite any other provision of this document, the State's rights pursuant to this document, including any exercise of any power by the State, a Receiver or an Attorney, are subject to the Finance Side Deed. To the extent of any inconsistency, ambiguity or discrepancy between this document and the Finance Side Deed, the Finance Side Deed prevails.

## 2 SECURITY

### 2.1 Security Interest

- (a) Each Grantor grants a security interest in the Secured Property to the State, as secured party, to secure payment of the Secured Moneys.
- (b) This security interest is a transfer by way of security of Secured Property consisting of:
  - (i) Accounts and Chattel Paper which are not, or cease to be, Revolving Assets; or
  - (ii) a Key Contract.
- (c) To the extent any Secured Property is not transferred, this security interest is a charge. If for any reason it is necessary to determine the nature of this charge, it is a floating charge over Revolving Assets and a fixed charge over all other Secured Property.

### 2.2 Priority

- (a) Subject to the Finance Side Deed, the parties intend that the Security take priority over all other Encumbrances and other interests in the Secured Property at any time other than any Permitted Encumbrance mandatorily preferred by law.
- (b) Nothing in this document will be construed as an agreement by the State to subordinate the Security to any other Encumbrance or interest affecting the Secured Property at any time.

## 2.3 Collection of proceeds of debts

Each Grantor may collect as agent for the State for this purpose the proceeds of any debts or other amounts now or in the future payable to that Grantor subject to using those proceeds as permitted under the Project Documents.

## 2.4 [Not used]

## 2.5 [Not used]

## 2.6 Authorisation

- (a) Each Grantor must ensure that it obtains all Authorisations necessary to permit the grant of the Security in respect of any asset before it acquires any rights in that asset.
- (b) Without limiting Clause 2.6(a), if the grant of the Security in respect of an asset would invalidate, avoid or render ineffective the Security, whether in respect of that asset only or otherwise, then that asset is excluded from the Security, but only for so long as that effect prevails.
- (c) If the Security could be granted in respect of an asset referred to in Clause 2.6(b) without Clause 2.6(b) applying if an Authorisation was obtained or other action taken, the relevant Grantor must promptly obtain that Authorisation or take that action.

## 3 DISCHARGE OF THE SECURITY

### 3.1 Discharge

Subject to Clause 3.2, at the written request of each Grantor, the State must discharge the Security and retransfer to the relevant Grantor its right and interest in all Accounts and Chattel Paper transferred under Clause 2.1 (or Clause 4.8(c)) if:

- (a) the Secured Moneys have been paid in full; and
- (b) each Grantor and each other Transaction Party has fully observed and performed its respective obligations under this document and each other Project Document.

### 3.2 Final discharge

- (a) The State is not obliged to discharge the Security under Clause 3.1 if, at the time the requirements of Clause 3.1 are satisfied, the State is of the opinion that:
  - (i) any Grantor owes further Secured Moneys contingently or otherwise to the State; or
  - (ii) any Grantor will owe further Secured Moneys to the State within a reasonable time after the date any Grantor requests the discharge of the Security.
- (b) Clause 3.2(a) overrides any other Clause to the contrary in this document.
- (c) The parties intend that Clause 3.2(a)(ii) be severed from Clause 3.2(a) if Clause 3.2(a)(ii) is void or unenforceable under applicable Law.
- (d) The parties do not intend Clause 3.2(c) to exclude the general law of severance from applying to this document.

## 4 REPRESENTATIONS AND WARRANTIES, UNDERTAKINGS

### 4.1 Representations and warranties

Each Grantor represents and warrants that:

- (a) **(representations true)**: each of its representations and warranties contained in the Project Documents are correct and not misleading when made or repeated;
- (b) **(legal and beneficial owner)**: it is the legal and beneficial owner of the Secured Property;
- (c) **(no other interests)**:
  - (i) no person other than the State holds or has the benefit of an Encumbrance or other interest in the Secured Property other than under a Permitted Encumbrance; and

- (ii) there is no agreement, filing or registration that would enable another person to obtain a priority over the Security which is inconsistent with the priority contemplated by this document;
- (d) **(Security):**
  - (i) this document creates the Encumbrance purported to be created by it over the assets purported to be encumbered by it;
  - (ii) the Security has been, or in the case of After-Acquired Property on its acquisition, will be perfected; and
  - (iii) the Security has the priority contemplated by this document;
- (e) **(serial numbers):** Schedule 2 shows accurate serial numbers for each item of Secured Property subject to the Security other than property a Grantor acquired for disposal in the ordinary course of that Grantor's ordinary business, if any:
  - (i) which the PPSA Regulations require to be described by serial number in a registration under the PPSA; and
  - (ii) with a value greater than \$500,000 which the PPSA Regulations permit to be described by serial number in a registration under the PPSA;
- (f) **(location of assets):** Schedule 3 shows all Secured Property with a value greater than \$500,000 located outside Australia;
- (g) **(Authorisations):** it has obtained all Authorisations necessary to permit the grant of the Security in respect of any asset in which it presently has rights; and
- (h) **(perfection by control):** Schedule 4 shows all Secured Property with a value greater than \$500,000 in relation to which the Security may be perfected by control other than Marketable Securities issued by a Transaction Party.

#### 4.2 Survival of representations and warranties

The representations and warranties given under this document:

- (a) survive the execution of this document; and
- (b) (except for the representations and warranties contained in Clauses 4.1(e), 4.1(f) and 4.1(h)) are repeated on the first Business Day of each Quarter whilst any of the Secured Money remains outstanding (whether or not then due for payment) with respect to the facts and circumstances then subsisting, as if made on each such day.

#### 4.3 Reliance

- (a) Each Grantor acknowledges that it has not entered into this document or any Project Document in reliance on any representation, warranty, promise or statement made by the State or any person on behalf of the State.
- (b) Each Grantor acknowledges that the State has entered into each Project Document in reliance on the representations and warranties given by each Grantor under this document.

#### 4.4 Performance under the Project Documents

- (a) Each Grantor must fully and punctually perform its obligations under each Project Document.
- (b) Without limiting the generality of Clause 4.4(a), each Grantor must pay the Secured Moneys to the State in accordance with this document, each other Project Document and each other obligation under which the Secured Moneys are payable.
- (c) Each Grantor must ensure that no Enforcement Event occurs. Without affecting the Liability of any Grantor or the Powers in any other respect (including where a breach of this Clause 4.4(c) is also a breach of another provision of a Project Document), no Grantor is liable in damages for breach of this Clause 4.4(c) but the State may exercise its Powers consequent upon or following that breach.

#### 4.5 Notices to the State

In addition to its obligations in any other Project Document, each Grantor must notify the State as soon as that Grantor becomes aware of any of the following:

- (a) the acquisition by it of, or the entry by it into, an agreement to acquire:
  - (i) any interest in real property;
  - (ii) any Marketable Securities or other property in relation to which the Security may be perfected by control;
  - (iii) any motor vehicles or other property with a value greater than \$500,000 which the PPS Regulations provide may or must be described by serial number in a registration under the PPSA; and
  - (iv) any property with a value greater than \$500,000 which is situated outside Australia;
- (b) any change of the jurisdiction in which any of the Secured Property with a value greater than \$500,000 is situated; and
- (c) any data contained in a registration under the PPSA with respect to the Security being or becoming incorrect.

#### **4.6 Negative pledge**

- (a) No Grantor may:
  - (i) sell, assign, transfer or otherwise dispose of or part with possession of; or
  - (ii) create or allow to exist or agree to any Encumbrance (other than a Permitted Encumbrance) over; or
  - (iii) attempt to do anything listed in Clauses 4.6(a)(i) and 4.6(a)(ii) in respect of,
 

any of the Secured Property except to the extent expressly permitted by any Project Document.
- (b) No Grantor may permit any of the Secured Property to become:
  - (i) Commingled with any asset that is not Secured Property except in the ordinary course of the Grantor's ordinary business; or
  - (ii) an Accession to or to be affixed to any asset that is not Secured Property.

#### **4.7 Permitted dealings**

Each Grantor may do any of the following in the ordinary course of that Grantor's ordinary business unless it is prohibited from doing so by another provision in a Project Document:

- (a) create or allow another interest in, or dispose or part with possession of, any Secured Property which is a Revolving Asset; or
- (b) withdraw or transfer money from an account with a bank or other financial institution.

#### **4.8 Revolving Assets**

If an Enforcement Event subsists then automatically:

- (a) that Secured Property is not (and immediately ceases to be) a Revolving Asset;
- (b) any floating charge over that Secured Property immediately operates as a fixed charge;
- (c) if the Secured Property is Accounts or Chattel Paper it is transferred to the State by way of security; and
- (d) each Grantor may no longer deal with the Secured Property under Clause 4.7.

#### **4.9 Conversion to Revolving Assets**

If any Secured Property of a Grantor is not or ceases to be a Revolving Asset, and becomes subject to a fixed charge or transfer, under this Clause 4.9, the State may give that Grantor a notice stating that, from a date specified in the notice, the Secured Property specified in the notice is a Revolving Asset, or becomes subject to a floating charge or is transferred back to that Grantor. This may occur any number of times.

**4.10 Inventory**

Any inventory which is not, or ceases to be, a Revolving Asset is specifically appropriated to a security interest under this document. No Grantor may remove it without obtaining the specific and express written authority of the State to do so.

**4.11 Further assurances**

Each Grantor must:

- (a) do anything which the State reasonably requests to:
  - (i) ensure, or enable the State to ensure, that this document, the Security and the Powers are fully effective, enforceable and perfected with the contemplated priority;
  - (ii) more satisfactorily assure or secure to the State the Secured Property in a manner consistent with the Project Documents; or
  - (iii) aid the exercise of any Power,
 including executing any document, delivering Title Documents or Chattel Paper, executing and delivering blank transfers or giving notice of the Security to any third party;
- (b) without limiting Clause 4.11(a), when the State requests, execute:
  - (i) a legal or statutory mortgage in favour of the State over any real property; or
  - (ii) any other form of security which the State considers appropriate for the property to be subject to that security,
 each in form and substance required by the State but the State cannot require an obligation for which there is no equivalent obligation in any Project Document or which is more onerous than any equivalent obligation contained in any Project Document; and
- (c) without limiting Clause 4.11(a), cause a third party to provide any Authorisation or take any other action (including executing any document) required to give effect to Clause 4.11(a).

**4.12 Title Documents and Chattel Paper**

- (a) Except to the extent otherwise agreed in the Finance Side Deed, each Grantor must deposit with the State, or as the State directs, all the Title Documents in respect of any of the Secured Property together with executed blank transfers in respect of the Secured Property to which the Title Documents relate and all Chattel Paper forming part of the Secured Property with a value greater than \$500,000 immediately on:
  - (i) its execution of this document; and
  - (ii) acquisition of any asset which forms part of the Secured Property.
- (b) At any time after an Enforcement Event occurs, if required by the State, each Grantor must deposit with the State all Chattel Paper which forms part of the Secured Property regardless of value and which has not already been deposited under Clause 4.12(a).
- (c) Subject to Clause 4.12(d), the State may retain the Title Documents and Chattel Paper deposited with the State until the Security in respect of all the Secured Property is discharged under Clause 3.
- (d) If the Security is enforced by the State, then the State, Receiver or Attorney is entitled:
  - (i) to deal with the Title Documents and the Chattel Paper as if it was the absolute and unencumbered owner of the Secured Property to which the Title Documents relate and of the Chattel Paper; and
  - (ii) in exercising a power of sale, to deliver any Title Document or Chattel Paper to a purchaser of the Secured Property to which the Title Document relates or of the Chattel Paper.

#### **4.13 Perfection, registration and protection of Security**

- (a) Each Grantor must ensure that:
- (i) the Security is perfected in relation to all the Secured Property subject to the Security in all jurisdictions; and
  - (ii) this document and the Security are registered and filed in all registers in all jurisdictions,
- in which the Security must be perfected, registered and filed, to ensure its enforceability, validity, perfection and priority against all persons and to be effective as a security.
- (b) Whenever the State requires that the Security be perfected in a particular way in relation to any part of the Secured Property subject to the Security, each Grantor must ensure that the Security is perfected in that way.
- (c) A Grantor will not be in breach of its obligation under this Clause 4.13 and its representation and warranty under Clause 4.1(d)(ii) will not be incorrect or misleading if, after receiving written request from that Grantor to take any action which can only be taken by the State to enable the Security to be perfected as required under this Clause 4.13, the State fails to take that action.
- (d) Whenever any part of the Secured Property subject to the Security is transferred to or retained in a place where this document or the Security, because of an increase in the Secured Moneys or otherwise, bears insufficient stamp duty or is not registered or recorded, or for any other reason is of limited or of no force or effect, unenforceable, inadmissible in evidence or of reduced priority, each Grantor must within 14 days after that transfer or retention ensure that:
- (i) this document is stamped to the satisfaction of the State;
  - (ii) this document is in full force and effect, enforceable, perfected, admissible in evidence and not of reduced priority; and
  - (iii) this document and the Security are registered in that place, or that part of the Secured Property subject to the Security is removed from that place.

#### **4.14 No caveats**

Each Grantor must ensure that any caveat lodged in respect of the Secured Property, other than a caveat lodged by the State or the Security Trustee, is removed as soon as reasonably practicable but in any event within 14 days after the date that it becomes aware of its existence.

#### **4.15 Term of undertakings**

Each of the Grantor's undertakings in this Clause 4 continue in full force and effect from the date of this document until the Security in respect of all the Secured Property is discharged under Clause 3.

### **5 ENFORCEMENT**

#### **5.1 When enforceable**

- (a) If an Enforcement Event subsists:
- (i) the Security is immediately enforceable without the need for any demand or notice to be given to a Grantor or any other person; and
  - (ii) the Secured Moneys are immediately due and payable by each Grantor without the need for any demand or notice to be given to a Grantor or any other person other than a notice expressly required by a Project Document.
- (b) The State agrees that it will not exercise any Power to enforce the Security under Chapter 4 of the PPSA unless an Enforcement Event subsists.

#### **5.2 No dealing with assets**

Any right of a Grantor to deal, for any purpose, with any asset which forms part of the Secured Property (including under Clause 4.6), other than by or through a Receiver appointed under this document, immediately ceases if:

- (a) the State declares that the Secured Moneys are immediately due and payable; or
- (b) the State takes any step to enforce the Security (subject to the Finance Side Deed).

### 5.3 Assistance in realisation

After the Security has become enforceable, each Grantor must take all action required by the State, Receiver or Attorney to assist any of them to realise the Secured Property and exercise any Power including:

- (a) executing all transfers, conveyances, assignments and assurances of any of the Secured Property;
- (b) doing anything necessary or desirable under the law in force in any place where the Secured Property is situated;
- (c) giving all notices, orders, directions and consents which the State, Receiver or Attorney thinks expedient; and
- (d) doing anything necessary:
  - (i) for a call to be made on the uncalled capital of a Grantor; or
  - (ii) to collect all called but unpaid capital of a Grantor.

### 5.4 Postponing or delaying realisation or enforcement

The State, a Receiver or Attorney may postpone or delay the exercise of any Power for such period as the State, Receiver or Attorney may in its absolute discretion decide.

### 5.5 PPSA Retention of Title Property

- (a) In exercising any Power under or in relation to the Security, a State, Receiver or Attorney may not deal with any PPSA Retention of Title Property (as defined in section 51F of the Corporations Act) except to the same extent as a Grantor would be entitled to deal with that property.
- (b) Clause 5.5(a) does not apply:
  - (i) to any Secured Property to which the State has title immediately before starting to exercise any Power; or
  - (ii) to the extent it would otherwise prevent the transfer of the property because a transfer by a Grantor would be prohibited or declared to be a default under a security agreement.

## 6 RECEIVER

### 6.1 Appointment of Receiver

If an Enforcement Event subsists, the State may at any time while it subsists:

- (a) appoint any person or any 2 or more persons jointly, or severally, or jointly and severally to be a receiver or a receiver and manager of the Secured Property;
- (b) remove any Receiver and on the removal, retirement or death of any Receiver, appoint another Receiver; and
- (c) fix the remuneration and direct payment of that remuneration and any costs, charges and expenses of the Receiver out of the proceeds of any realisation of the Secured Property.

### 6.2 Agency of Receiver

- (a) Subject to Clause 6.5, each Receiver is the agent of the relevant Grantor.
- (b) The relevant Grantor is responsible for the acts, defaults and remuneration of the Receiver.

### 6.3 Powers of Receiver

Subject to any express exclusion by the terms of the Receiver's appointment, the Receiver has, in addition to any powers conferred on the Receiver by applicable Law, and whether or not in possession of the Secured Property, or any part of it, the following powers:

- (a) **(manage, possession or control)**: to manage, enter into possession or assume control of any of the Secured Property;



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- (b) **(lease or licence)**: to accept the surrender of, determine, grant or renew any lease or licence in respect of the use or occupation of any of the Secured Property:
- (i) on any terms or special conditions that the State or Receiver thinks fit; and
  - (ii) in conjunction with the sale, lease or licence of any other property by any person;
- (c) **(sale)**: to sell or concur in selling any of the Secured Property to any person:
- (i) by auction, private treaty or tender;
  - (ii) on such terms and special conditions as the State or the Receiver thinks fit;
  - (iii) for cash or for a deferred payment of the purchase price, in whole or in part, with or without interest or security;
  - (iv) in conjunction with the sale of any property by any other person; and
  - (v) in one lot or in separate parcels;
- (d) **(grant options to purchase)**: to grant to any person an option to purchase any of the Secured Property;
- (e) **(acquire property)**: to acquire any interest in any property, in the name or on behalf of any Grantor, which on acquisition forms part of the Secured Property;
- (f) **(carry on business)**: to carry on or concur in carrying on any business of any Grantor in respect of the Secured Property;
- (g) **(borrowings and security)**:
- (i) to raise or borrow any money, in its name or the name or on behalf of any Grantor, from the State or any person approved by the State in writing; and
  - (ii) to secure money raised or borrowed under Clause 6.3(g)(i) by an Encumbrance over any of the Secured Property, ranking in priority to, equal with, or after, the Security or any Collateral Security;
- (h) **(maintain or improve Secured Property)**: to do anything to maintain, protect or improve any of the Secured Property including completing, repairing, erecting a new improvement on, demolishing or altering any of the Secured Property;
- (i) **(income and bank accounts)**: to do anything to manage or obtain income or revenue from any of the Secured Property including operating any bank account which forms part of the Secured Property or opening and operating a new bank account;
- (j) **(access to Secured Property)**: to have access to any of the Secured Property, the premises at which the business of any Grantor is conducted and any of the administrative services of the business of any Grantor;
- (k) **(insure Secured Property)**: to insure any of the Secured Property;
- (l) **(sever fixtures)**: to sever fixtures in respect of any of the Secured Property;
- (m) **(compromise)**: to make or accept any compromise or arrangement;
- (n) **(surrender Secured Property)**: to surrender or transfer any of the Secured Property to any person;
- (o) **(exchange Secured Property)**: to exchange with any person any of the Secured Property for any other property whether of equal value or not;
- (p) **(employ or discharge)**: to employ or discharge any person as an employee, contractor, agent, professional advisor or auctioneer for any of the purposes of this document;
- (q) **(delegate)**: to delegate to any person any Power of the Receiver;
- (r) **(perform or enforce documents)**: to observe, perform, enforce, exercise or refrain from exercising any right, power, authority, discretion or remedy of any Grantor under, or otherwise obtain the benefit of:
-

- (i) any document, agreement or right which attaches to or forms part of the Secured Property; and
- (ii) any document or agreement entered into in exercise of any Power by the Receiver;
- (s) **(receipts)**: to give effectual receipts for all moneys and other assets which may come into the hands of the Receiver;
- (t) **(take proceedings)**: to commence, discontinue, prosecute, defend, settle or compromise in its name or the name or on behalf of any Grantor, any proceedings including proceedings in relation to any insurance in respect of any of the Secured Property;
- (u) **(insolvency proceedings)**: to make any debtor bankrupt, wind-up any company, corporation or other entity and do all things in relation to any bankruptcy or winding-up which the Receiver thinks necessary or desirable including attending and voting at creditors' meetings and appointing proxies for those meetings;
- (v) **(execute documents)**: to enter into and execute any document or agreement in the name of the Receiver or the name or on behalf of any Grantor including bills of exchange, cheques or promissory notes for any of the purposes of this document;
- (w) **(make calls)**: to make calls on any member of a Grantor in respect of uncalled capital of any Grantor;
- (x) **(vote)**: to exercise any voting rights or powers in respect of any part of the Secured Property;
- (y) **(collect called capital)**: to collect or enforce payment of any called but unpaid capital of a Grantor whether or not the calls were made by the Receiver;
- (z) **(ability of Grantor)**: to do anything any Grantor could do in relation to the Secured Property; and
- (aa) **(incidental power)**: to do anything necessary or incidental to the exercise of any Power of the Receiver.

#### 6.4 Nature of Receiver's Powers

The Powers of the Receiver must be construed independently and no one Power limits the generality of any other Power. Any dealing under any Power of the Receiver will be on the terms and conditions the Receiver thinks fit.

#### 6.5 Status of Receiver after commencement of winding-up

- (a) The power to appoint a Receiver under Clause 6.1 may be exercised even if, while an Enforcement Event subsists or if at the time a Receiver is appointed, an order has been made or a resolution has been passed for the winding-up of a Grantor.
- (b) If for any reason, including operation of law, a Receiver:
  - (i) appointed in the circumstances described in Clause 6.5(a); or
  - (ii) appointed at any other time,
 ceases to be the agent of any Grantor as a result of an order being made or a resolution being passed for the winding-up of any Grantor, then the Receiver immediately becomes the agent of the State.

#### 6.6 Powers exercisable by the State

- (a) Whether or not a Receiver is appointed under Clause 6.1, the State may, while an Enforcement Event subsists and without giving notice to any person, exercise any Power that could be conferred on a Receiver in addition to any Power of the State.
- (b) The exercise of any Power by the State, Receiver or Attorney does not cause or deem the State, Receiver or Attorney:
  - (i) to be a mortgagee in possession;
  - (ii) to account as mortgagee in possession; or
  - (iii) to be answerable for any act or omission for which a mortgagee in possession is liable.

**6.7 Notice of exercise of rights**

The State, Receiver or Attorney is not required:

- (a) to give notice of the Security or any Collateral Security to any debtor or creditor of a Grantor or to any other person;
- (b) to enforce payment of any money payable to a Grantor including any of the debts or monetary liabilities secured by this document or by any Collateral Security; or
- (c) to obtain the consent of a Grantor to any exercise of a Power.

**6.8 Termination of receivership and possession**

The State may, at any time, terminate the appointment of a Receiver and may, at any time, give up, or re-take, possession of the Secured Property.

**7 APPLICATION AND RECEIPTS OF MONEY****7.1 Order of application**

- (a) At any time after the Security is enforceable, all money received by the State, Receiver, Attorney or any other person acting on their behalf under this document or any Collateral Security may be appropriated and applied towards any amount and in any order that the State, Receiver, Attorney or that other person determines in its absolute discretion, to the extent not prohibited by Law.
- (b) Failing a determination under Clause 7.1(a), the money must be applied in the following manner and order:
  - (i) first, in payment of all costs, charges and expenses (including any GST) of the State, Receiver or Attorney incurred in or incidental to the exercise or performance or attempted exercise or performance of any Power;
  - (ii) second, in payment of any other outgoings the State, Receiver or Attorney thinks fit to pay;
  - (iii) third, in payment to the Receiver of his remuneration;
  - (iv) fourth, in payment and discharge, in order of their priority, of any Encumbrances of which the State, Receiver or Attorney is aware and which have priority to the Security;
  - (v) fifth, in payment to the State towards satisfaction of the Secured Moneys and applied against interest, principal or any other amount the State, Receiver or Attorney thinks fit;
  - (vi) sixth, in payment only to the extent required by Law, in order of their priority, of other Encumbrances in respect of the Secured Property of which the State, Receiver or Attorney is aware and which are due and payable in accordance with their terms; and
  - (vii) seventh, in payment of the surplus, if any, without interest to the relevant Grantor. The State, Receiver or Attorney may pay the surplus to the credit of an account in the name of Project Co in the books of any bank carrying on business within Australia and, having done so, is under no further Liability in respect of that surplus.
- (c) Any amount required by Law to be paid in priority to any amount specified in Clause 7.1(b) must be paid before any money is applied in payment of the amount specified in Clause 7.1(b).

**7.2 Money actually received**

In applying any money towards satisfaction of the Secured Moneys, each Grantor is to be credited only with so much of the money which is available for that purpose (after deducting any GST imposed) and which is actually received by the State, Receiver or Attorney in connection with the enforcement of the Security granted by that Grantor. The credit dates from the time of receipt.

**7.3 Amounts contingently due**

- (a) If at the time of a distribution of any money under Clause 7.1 any part of the Secured Moneys is contingently owing to the State, then the State, Receiver or

Attorney may retain an amount equal to the amount contingently owing or any part of it.

- (b) If the State, Receiver or Attorney retains any amount under Clause 7.3(a) it must place that amount on short-term interest bearing deposit until the amount contingently owing becomes actually due and payable or otherwise ceases to be contingently owing at which time the State, Receiver or Attorney must:
- (i) pay to the State the amount which has become actually due to it; and
  - (ii) apply the balance of the amount retained, together with any interest on the amount contingently owing, in accordance with Clause 7.1.

#### **7.4 Notice of an Encumbrance**

- (a) If the State receives actual or constructive notice of an Encumbrance over the Secured Property (other than a Permitted Encumbrance) or of the perfection of an Encumbrance, the State:
- (i) may open a new account in the name of the relevant Grantor in its books; or
  - (ii) is regarded as having opened a new account in the name of the relevant Grantor in its books,
- on the date it received or was regarded as having received notice of the Encumbrance or perfection.
- (b) From the date on which that new account is opened or regarded as opened:
- (i) all payments made by the relevant Grantor to the State; and
  - (ii) all financial accommodation and advances by the State to the relevant Grantor,
- are or are regarded as credited and debited, as the case may be, to the new account unless otherwise specified by the State.
- (c) The payments by the relevant Grantor under Clause 7.4(b) must be applied in the manner determined by the State or, failing a determination:
- (i) first, in reduction of the debit balance, if any, in the new account; and
  - (ii) second, if there is no debit balance in the new account, in reduction of the Secured Moneys which have not been debited or regarded as debited to the new account.

#### **7.5 State's statement of indebtedness**

A certificate signed by any Officer of the State stating:

- (a) the amount of the Secured Moneys due and payable; or
- (b) the amount of the Secured Moneys, whether currently due and payable or not,

is sufficient evidence of that amount as at the date stated on the certificate, or failing that as at the date of the certificate, unless the contrary is proved (including where the calculation of the Secured Moneys has not been determined in accordance with the requirements of the Agreement).

#### **7.6 State's receipts**

- (a) The receipt of any Officer of the State for any money payable to or received by the State under this document exonerates the payer from all liability to enquire whether any of the Secured Moneys have become payable.
- (b) Every receipt of an Officer of the State effectually discharges the payer from:
- (i) any future Liability to pay the amount specified in the receipt; and
  - (ii) being concerned to see to the application of, or being answerable or accountable for any loss or misapplication of, the amount specified in the receipt.

#### **7.7 Conversion of currencies on application**

In making an application under Clause 7.1, the State, Receiver or Attorney may itself, or through its bankers, purchase one currency with another, whether or not through an

intermediate currency, whether spot or forward, in the manner and amounts and at the time it thinks fit.

## **7.8 Amounts payable on demand**

If an amount payable under a Project Document is not expressed to be payable on a specified date, that amount is payable by the relevant Grantor on demand by the State.

## **8 POWER OF ATTORNEY**

### **8.1 Appointment of Attorney**

For consideration received, each Grantor irrevocably appoints the State and each Receiver severally its attorney for the purposes set out in Clause 8.2.

### **8.2 Purposes of appointment**

The Attorney may, in its name or in the name of any Grantor, the State or Receiver, do any of the following:

- (a) do any thing which ought to be done by any Grantor under this document or any other Project Document;
- (b) exercise any right, power, authority, discretion or remedy of any Grantor under:
  - (i) this document;
  - (ii) any other Project Document; or
  - (iii) any agreement forming part of the Secured Property;
- (c) do any thing which in the opinion of the State, Receiver or Attorney is necessary or desirable for securing or perfecting the Security and any Collateral Security;
- (d) execute in favour of the State any legal mortgage, transfer, assignment and any other assurance of any of the Secured Property;
- (e) execute deeds of assignment, composition or release;
- (f) sell or otherwise part with the possession of any of the Secured Property; and
- (g) generally, do any other thing, whether or not of the same kind as those set out in Clauses 8.2(a) to 8.2(f), which in the opinion of the State, Receiver or Attorney is necessary or desirable:
  - (i) to more satisfactorily secure to the State the payment of the Secured Moneys; or
  - (ii) in relation to any of the Secured Property.

### **8.3 Exercise after Enforcement Event**

An Attorney must not exercise any Power under Clause 8.2 unless an Enforcement Event subsists but a breach of this Clause 8.3 does not affect the validity of the Attorney's act.

### **8.4 Delegation and substitution**

The Attorney may appoint a substitute attorney to perform any of its Powers.

## **9 PROTECTION**

### **9.1 Protection of third parties**

- (a) No person dealing with the State, Receiver or Attorney is bound to enquire whether:
  - (i) the Security has become enforceable;
  - (ii) the Receiver or Attorney is duly appointed; or
  - (iii) any Power has been properly or regularly exercised.
- (b) No person dealing with the State, Receiver or Attorney is affected by express notice that the exercise of any Power was unnecessary or improper.
- (c) The irregular or improper exercise of any Power is, as regards the protection of any person, regarded as authorised by each Grantor and this document, and is valid.

**9.2 Protection of the State, Receiver and Attorney**

- (a) The State, Receiver or Attorney is not liable for any loss or damage including consequential loss or damage, arising directly or indirectly from:
  - (i) any omission or delay in the exercise or non-exercise of any Power; or
  - (ii) the neglect, default or dishonesty of any manager, director, company secretary, employee, agent, accountant, auctioneer or solicitor of a Grantor, the State, Receiver or Attorney.
- (b) Clause 9.2(a) does not apply:
  - (i) in respect of the State, to any loss or damage which arises from the wilful default, fraud or gross negligence of the State; and
  - (ii) in respect of a Receiver or Attorney, to any loss or damage which arises from the wilful default, fraud or gross negligence of the Receiver or Attorney.

**10 SAVINGS PROVISIONS****10.1 Statutory powers**

- (a) Subject to Clause 10.1(b), the powers of the State under this document or any Collateral Security are in addition to any powers the State has under applicable Law.
- (b) If the State exercises a Power in connection with this document, that exercise is taken not to be an exercise of a Power under the PPSA unless the State states otherwise at the time of exercise. However, this Clause 10.1(b) does not apply to a right, power or remedy which can only be exercised under the PPSA.

**10.2 No notice required unless mandatory**

- (a) To the extent the Law permits, each Grantor waives:
  - (i) its rights to receive any notice that is required by:
    - (A) any provision of the PPSA (including a notice of a verification statement); or
    - (B) any other Law, before a secured party or Receiver exercises a right, power or remedy; and
  - (ii) any time period that must otherwise lapse under any law before a secured party or receiver exercises a right, power or remedy.
- (b) If the Law which requires a period of notice or a lapse of time cannot be excluded, but the Law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the Law allows to be agreed (whichever is the longer).
- (c) However, nothing in this Clause 10.2 prohibits the State or any Receiver from giving a notice under the PPSA or any other Law.

**10.3 Appointment of nominee for PPSA registration**

For the purposes of section 153 of the PPSA, the State appoints each Grantor as its nominee, and authorises each Grantor to act on its behalf, in connection with a registration under the PPSA of any security interest in favour of any Grantor which is:

- (a) evidenced or created by Chattel Paper or a Key Contact;
- (b) perfected by registration under the PPSA; and
- (c) transferred to the State under this document.

This authority ceases when the registration is transferred to the State.

**10.4 Continuing security**

The Security is a continuing security despite:

- (a) any settlement of account; or
- (b) the occurrence of any other thing,

and remains in full force and effect until the State has given a discharge of the Security in respect of all the Secured Property under Clause 3.

### **10.5 No merger of security**

- (a) Nothing in this document merges, extinguishes, postpones, lessens or otherwise prejudicially affects:
  - (i) any Encumbrance or indemnity in favour of the State; or
  - (ii) any Power.
- (b) No other Encumbrance or Project Document which the State has the benefit of in any way prejudicially affects any Power.

### **10.6 Exclusion of moratorium**

Without limiting Clause 10.7, to the extent not excluded by Law, a provision of any legislation (other than a provision of the PPSA mentioned in section 115(1) of the PPSA) which directly or indirectly:

- (a) lessens, varies or affects in favour of a Grantor any obligations under this document or any Project Document;
- (b) stays, postpones or otherwise prevents or prejudicially affects the exercise by the State, Receiver or Attorney of any Power; or
- (c) confers any right on a Grantor or imposes any obligation on the State or a Receiver or Attorney in connection with the exercise of any Power,

is negated and excluded from this document and any Project Document and all relief and protection conferred on that Grantor by or under that legislation is also negated and excluded.

### **10.7 Exclusion of PPSA provisions**

To the extent the Law permits:

- (a) for the purposes of sections 115(1) and 115(7) of the PPSA:
  - (i) the State need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
  - (ii) sections 142 and 143 are excluded;
- (b) for the purposes of section 115(7) of the PPSA, the State need not comply with sections 132 and 137(3);
- (c) if the PPSA is amended after the date of this document to permit each Grantor and the State to agree to not comply with or to exclude other provisions of the PPSA, the State may notify each Grantor that any of these provisions are excluded or that the State need not comply with any of those provisions as notified to that Grantor by the State; and
- (d) each Grantor agrees not to exercise its rights to make any request of the State under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

### **10.8 Conflict**

Where any right, power, authority, discretion or remedy conferred on the State, Receiver or Attorney by this document or any Project Document is inconsistent with the powers conferred by applicable Law then, to the extent not prohibited by that law, those powers conferred by applicable Law are regarded as negated or varied to the extent of the inconsistency.

### **10.9 Consent of State**

- (a) Whenever the doing of any thing by a Grantor is dependent on the consent of the State, the State may withhold its consent or give it conditionally or unconditionally in its absolute discretion unless expressly stated otherwise in a Project Document.
- (b) Any conditions imposed on a Grantor under Clause 10.9(a) must be complied with by that Grantor.

**10.10 Completion of blank securities**

- (a) The State, a Receiver, Attorney or any Officer of the State may at any time complete, in favour of the State, any appointee of the State or any purchaser, any instrument executed in blank by or on behalf of a Grantor and deposited with the State as security under this document or under any Collateral Security.
- (b) The State, a Receiver, Attorney or any Officer of the State must not exercise any Power under Clause 10.10(a) unless an Enforcement Event subsists but a breach of this Clause 10.10(b) does not affect the validity of the act of the State, Receiver, Attorney or Officer of the State.

**10.11 Principal obligations**

The Security and each Collateral Security is:

- (a) a principal obligation and is not ancillary or collateral to any other Encumbrance (other than another Collateral Security) or other obligation; and
- (b) independent of, and unaffected by, any other Encumbrance or other obligation which the State may hold at any time in respect of the Secured Moneys.

**10.12 No obligation to marshal**

The State is not required to marshal or to enforce or apply under, or appropriate, recover or exercise:

- (a) any Encumbrance or Collateral Security held, at any time, by the State; or
- (b) any moneys or assets which the State, at any time, holds or is entitled to receive.

**10.13 Non avoidance**

If any payment by a Grantor to the State is at any time avoided for any reason including any legal limitation, disability or incapacity of or affecting that Grantor or any other thing, and whether or not:

- (a) any transaction relating to the Secured Moneys was illegal, void or substantially avoided; or
- (b) any thing was or ought to have been within the knowledge of the State,

Each Grantor:

- (c) as an additional, separate and independent obligation, indemnifies the State against that avoided payment; and
- (d) acknowledges that any Liability of that Grantor under the Project Documents and any Power is the same as if that payment had not been made.

**10.14 Increase in financial accommodation**

The State may at any time increase the financial accommodation provided under any Project Document or otherwise provide further financial accommodation.

**11 GENERAL****11.1 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 document, then it must pay interest on that amount in accordance with Clause 11.1(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 11.1(b) will be a party's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.



**11.2 [Not used]****11.3 Relationship of parties**

- (a) Except to the extent expressly provided for in this document, no duty of good faith is implied on the State in connection with its relationship with each Grantor.
- (b) Neither this document 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) Each Grantor must not act as or represent itself to be the servant or agent of the State.

**11.4 State's rights, duties, powers and functions**

- (a) **(State's own interests):** Unless this document expressly provides otherwise, nothing in this document gives rise to any duty on the part of the State to consider interests other than its own interests when exercising any of its rights or performing any of its obligations in accordance with the State Project Documents.
- (b) **(State's powers, functions or duties):** Notwithstanding anything contained or implied in this document 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 document 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 11.4(e), each Grantor will not be entitled to make any Claim against the State under the Project Documents for any liability relating to any exercise or failure of the State to exercise its statutory rights or duties.
- (e) **(Liability for breach):** Clauses 11.4(a) to 11.4(d) do not limit any Liability of the State which the State would have had to each Grantor 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 11.4(a) to 11.4(d).

**11.5 Performance by State of Grantors' obligations**

If a Grantor defaults in fully or punctually performing any obligation contained or implied in any Project Document, the State may, without prejudice to any Power, do all things necessary or desirable, in the opinion of the State, to make good or attempt to make good that default to the satisfaction of the State.

**11.6 GST**

- (a) **(Application of Clause):** This Clause 11.6 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 1901* (Cth)).
- (b) **(Construction):** In this Clause 11.6:
  - (i) words and expressions which are not defined in this document 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 document. 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 document 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 document, 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 11.6(e)(i) in addition to and at the same time that the consideration for the supply is to be provided in accordance with this document.
- (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 11.6(e).
  - (ii) The recipient can withhold payment of any amount payable in accordance with this Clause 11.6 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 document, the amount payable by the recipient in accordance with this Clause 11.6 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 document 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.

## 11.7 Notices

Any notice or other communication including any request, demand, consent or approval, to or by a party to this document must be given in accordance with the notice requirements of the Agreement.

## 11.8 Entire agreement

This document constitutes the entire agreement and understanding between the parties in respect of its 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 document.

## 11.9 Counterparts

This document 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.

## 11.10 Governing law and jurisdiction

- (a) This document is governed by and will be construed according to the Laws of Western Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts of Western Australia and the courts competent to determine appeals from those courts.
- (b) Without limiting Clause 11.10(a), for the purposes of section 237 of the PPSA, the law of the Commonwealth of Australia as that law applies in the jurisdiction specified in Clause 11.10(a) governs the Security to the extent it is permitted to apply to the Secured Property under that section.

## 11.11 Waiver and estoppel

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a, right, power or remedy under any Law or under this

document 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 document.

- (b) A waiver given by the State under this document 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 document operates as a waiver of any other breach of that term or of a breach of any other term of this document.
- (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 document 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 document.

#### **11.12 Variations and waivers**

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

#### **11.13 Amendments**

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

#### **11.14 Joint and several liability**

The rights and obligations of the Grantors in accordance with this document are joint and several as between them.

#### **11.15 Cumulative rights**

The Powers are cumulative and do not exclude any other right, power, authority, discretion or remedy of the State, Receiver or Attorney.

#### **11.16 Assignment**

- (a) Subject to any Project Document, the State may assign its rights under this document and each Collateral Security without the consent of any Grantor.
- (b) No Grantor may assign any of its rights under this document or any Collateral Security without the prior written consent of the State.

#### **11.17 Indemnities**

- (a) Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination or expiration of this document.
- (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 document.
- (c) A party must pay on demand any amount it must pay in accordance with an indemnity in this document.
- (d) The State and each Grantor agree that:
  - (i) each indemnity or promise referred to in this document in favour of the State 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 11.17(d)(i) will not be required for any amendment to, or waiver of rights in accordance with a State Project Document.

#### **11.18 Costs and expenses**

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

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

**11.19 Further acts and documents**

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

**11.20 Severability of provisions**

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

**Execution page**

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**Executed as a deed**

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

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Signature of The Hon. Terrence Keith Waldron  
MLA (Witness)

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The Hon. Colin James Barnett MLA

---

The Hon. Terrence Keith Waldron MLA (Witness)

**Signed, sealed and delivered by THE HONOURABLE DR MIKE NAHAN MLA**

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

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

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

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

\_\_\_\_\_  
Full name of attorney

\_\_\_\_\_  
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

**SCHEDULE 1 – GRANTORS**

*[Not disclosed]*



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**SCHEDULE 2 – SERIAL NUMBERED GOODS OR INTANGIBLE PROPERTY**

<b>Goods</b>	<b>Serial Number</b>
<b>Motor vehicle:</b> Vehicle identification number (VIN) If no VIN, chassis number If no chassis number, manufacturer's number	None.
<b>Watercraft:</b> Official number If none, the hull identification number If an outboard motor, manufacturer's number	None.
<b>Aircraft:</b> <b>For engine, airframe or helicopter:</b> manufacturer's serial number manufacturer's name manufacturer's generic model description	None.
<b>Goods</b> For small aircraft: nationality and registration marks assigned to it under the Chicago Convention	None.
<b>Intangible property</b>	<b>Serial Number</b>
<b>Trade mark:</b> IP Australia trade mark number/trade mark application number	None.
<b>Patent:</b> IP Australia patent number/patent application number	None.
<b>Design:</b> IP Australia design number/design application number	None.
<b>Plant breeder's right:</b> IP Australia plant breeder's right number/plant breeder's right application number	None.

**Intangible property****Serial Number**

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Licence over a Trade Mark, Patent, Design  
or Plant Breeder's right

None.

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IP Australia serial number (use serial  
number of corresponding trade mark, patent,  
design or plant breeder's right)

None.

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**SCHEDULE 3 – SECURED PROPERTY WITH A VALUE GREATER THAN  
\$500,000 LOCATED OUTSIDE AUSTRALIA**

Nil.

**SCHEDULE 4 – SECURED PROPERTY IN RELATION TO WHICH THE  
SECURITY MAY BE PERFECTED BY CONTROL**

Nil.