



Government of **Western Australia**
Department of **Treasury**
Strategic Projects

The new Perth Stadium DBFM Project Design, Build, Finance and Maintain (DBFM) Project Agreement

SP0793712

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

and

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

and

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

and

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

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Attachment 4 – Operating Phase Plans

Attachment 5 – Financial Model

Attachment 6 – Work Method Statement

Attachment 7 – DBFM Works Construction Value Schedule

DBFM PROJECT AGREEMENT

This Agreement is made on 2014
between

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

and

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

and

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

and

Westadium Project Co Pty Ltd (ABN 91 169 900 547) in its personal capacity and as trustee for Westadium Project Unit Trust (ABN 27 901 829 646) (**Project Co**)

and the parties agree as follows:

Recitals

- A. The State invited proposals to undertake the DBFM Project.
- B. The State has selected Project Co to undertake the DBFM Project.
- C. This Agreement sets out the terms on which:
 - (a) Project Co agrees to:
 - (i) design, construct and partially finance the DBFM Works;
 - (ii) perform the Services;
 - (iii) undertake the Commercial Opportunities; and
 - (iv) Handover the Stadium and Sports Precinct;
 - (b) the State agrees to pay Project Co the State Capital Contribution and the Monthly Service Payment; and
 - (c) the risks associated with the DBFM Project are allocated as between the State and Project Co.

Operative Provisions

1 DEFINITIONS, INTERPRETATION AND RELATED MATTERS

1.1 Definitions

In this Agreement, unless the context indicates otherwise:

Term	Meaning
<i>2D Supplementary Drawings</i>	means the two-dimensional drawings developed using CADD software for a limited set of Model Elements as set out in the BIM Management Plan included in Attachment 3 (D&C Plans) for the purpose of supplementing the information in the BIM Models during the Design Development Process.
<i>Abatement</i>	means an amount in dollars deducted from a: <ul style="list-style-type: none"> (a) Monthly Service Payment in accordance with Schedule 14 (Payment Schedule); or (b) State Loan Payment in accordance with Clause 36.3(c).
<i>Abatement Regime</i>	means the arrangement method and calculation for abating the: <ul style="list-style-type: none"> (a) Monthly Service Payment as set out in Section 4 of Schedule 14 (Payment Schedule); or (b) State Loan Payment as set out in Clause 36.3(c) and the State Loan Agreement.
<i>Aboriginal Engagement Strategy</i>	means the Aboriginal engagement strategy, the draft of which is set out in Schedule 38 (Aboriginal Engagement Strategy).
<i>Aboriginal Heritage Management Plan</i>	means the plan of that name, the draft of which is set out in Schedule 39 (Aboriginal Heritage Management Plan).
<i>Aconex</i>	means the online project information and management and collaboration system to be procured by the State and made available to Project Co and Project Co Associates during the D&C Phase.
<i>Active Profile Period</i>	has the meaning given to it in Schedule 14 (Payment Schedule).
<i>Activity</i>	has the meaning given to it in Schedule 14 (Payment Schedule).
<i>Activity Adjustment Payment</i>	has the meaning given to it in Schedule 14 (Payment Schedule).
<i>Activity Adjustment Threshold</i>	has the meaning given to it in Schedule 14 (Payment Schedule).
<i>Additional Purchase Date</i>	has the meaning given to it in the Receivables Purchase Deed.
<i>Additional Receivables</i>	has the meaning given to it in the Receivables Purchase Deed.

Term	Meaning
<i>Agreed Resolution</i>	has the meaning given to it in Clause 11.4(b).
<i>Agreement</i>	means this design, build, finance and maintain project agreement between the State and Project Co.
<i>Amortisation Schedule</i>	means the scheduled repayment of indebtedness under and in accordance with the Financing Documents.
<i>Amount Due (RP)</i>	has the meaning given to it in the State Loan Agreement.
<i>Annual Availability Payment</i>	has the meaning given to it in Schedule 14 (Payment Schedule).
<i>Annual Report</i>	means the plan of that name prepared in accordance with this Agreement, including Schedule 19 (Plans) and Schedule 13 (Services Specifications).
<i>Annual Services Plan</i>	has the meaning given to it in Annexure E (Glossary) of Schedule 13 (Services Specifications).
<i>Artefacts</i>	means all artefacts, fossils, bones, coins, articles of value or antiquity, structures and other remains or things of scientific, geological, sociological, cultural, historical or archaeological interest, including all Aboriginal Cultural Material (as that term is defined in the <i>Aboriginal Heritage Act 1972 (WA)</i>).
<i>As Built BIM Model</i>	means the consolidated building information model, to be provided by Project Co to the State at Commercial Acceptance, which incorporates all DBFM Asset Information to Level Of Development LOD500 (except as otherwise stated in the LOD Table), including in accordance with Project Co's BIM Management Plan as approved by the State in accordance with Schedule 3 (Review Procedures), in an open file format suitable for interrogation by the State and the Stadium Operator and for further use and updating by Project Co to record maintenance and lifecycle replacement data in connection with the Services.
<i>Asset Register</i>	has the meaning given to it in Annexure E (Glossary) of Schedule 13 (Services Specifications).
<i>Asset Security Services</i>	has the meaning given to it in Annexure E (Glossary) of Schedule 13 (Services Specifications).
<i>Assumed Refinancing</i>	means a Refinancing on terms referred to in the Financial Model that occurs in the period commencing no earlier than 9 Months prior to the date shown in the Financial Model and ending no later than the date shown in the Financial Model for that Refinancing. For the avoidance of doubt, the Financial Model will take precedence over Project Co's financing proposal to the State, in the event of any inconsistency or ambiguity.

Term	Meaning
<i>Athletics Reconfiguration Works Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Schedule 19 (Plans).
<i>AFL</i>	means the Australian Football League.
<i>Authorisation</i>	means any consent, authorisation, registration, filing, agreement, notarisation, clearance, certificate, permission, licence, permit, approval, authority or exemption from, by or with, an Authority, judicial body, stock exchange or any other person.
<i>Authority</i>	means: <ul style="list-style-type: none"> (a) any Government Agency, administrative or judicial body or tribunal; and (b) any private electricity, telecommunications, gas or other Utility Company.
<i>AV Systems</i>	has the meaning given to it in Part G (Glossary) of Schedule 12 (Design Specifications).
<i>Availability Failure</i>	has the meaning given to it in Schedule 14 (Payment Schedule).
<i>[Not disclosed]</i>	
<i>Base Case Financial Model</i>	means the financial model for the DBFM Project, including assumptions and information, data files, run specification files and output analysis routines used by or incorporated in the financial model, prepared by Project Co in the form provided to the State under Clause 2.2(e) which includes the Model Output Schedule.
<i>Base Costs</i>	has the meaning given to it in Schedule 4 (Change Compensation Principles).
<i>BBSY Rate</i>	means the rate (which is expressed as a yield per centum per annum to maturity) which is the buying rate for bank accepted Bills quoted at approximately 10.10am (Perth time) on page 'BBSY' of the Reuters Monitor System on that day, having a term of one Month.
<i>Best Construction Practices</i>	means construction works and practices which are carried out: <ul style="list-style-type: none"> (a) in accordance with Good Industry Practice; (b) with due expedition and without unreasonable or unnecessary delay; (c) in a manner safe to workers, the general public and the Environment; and (d) using new and high quality fixtures, fittings, finishes and materials which are free from defects.
<i>Best Operating</i>	means maintenance, refurbishment and repair practices, and practices in

Term	Meaning
Practices	<p>the delivery of the Services, performed in accordance with Good Industry Practice and including everything reasonably necessary to ensure that:</p> <ul style="list-style-type: none"> (a) (function): the Stadium and Sports Precinct are functioning to achieve the Output Specifications; (b) (performance): the Services are delivered in a manner which does not impede or otherwise adversely impact the undertaking by the Stadium Operator of the Stadium Activities, and using reliable long-term efficient and safe practices, including: <ul style="list-style-type: none"> (i) proper equipment, tools and procedures; (ii) workmanship and materials which are fit for purpose; and (iii) replacement parts that are new; (c) (personnel): sufficient personnel are available and are adequately qualified, experienced and trained to ensure compliance with the requirements of this Agreement; (d) (materials): adequate materials, resources, Project Co FF&E, Consumables and supplies are available to ensure compliance with the requirements of this Agreement; (e) (advancements): there is a commitment to continually meet advancements in technology and practices, and improve the standards and quality of the operation, maintenance, refurbishment and repair of, and the delivery of Services to, the Stadium, Sports Precinct and the Off-Site Infrastructure and the manner in which they are carried out; and (f) (maintenance): regular and proper maintenance (both routine and non-routine) and prompt repairs to the Stadium and Sports Precinct are undertaken by suitably qualified, experienced and trained personnel, using adequate materials and in accordance with manufacturers' recommendations and guidelines.
Bid Design Documentation	<p>means all design documentation (including all drawings, specifications, models, samples and calculations) in computer readable or written form or stored by any other means that Project Co provided in response to Evaluation Criterion B3 of Volume 1 of the Request for Proposals in its proposal submitted to the State on 13 December 2013.</p>
Bill	<p>has the same meaning as 'bill of exchange' in the <i>Bills of Exchange Act 1909</i> (Cth) (but does not include a cheque or payment order).</p>
BIM Management Plan	<p>means the plan of that name prepared in accordance with this Agreement, including Schedule 19 (Plans).</p>
BIM Models	<p>means the Federated BIM Model and the As Built BIM Model to be developed generally in accordance with the BIM Forum and the NATSPEC National BIM Guide, including as set out in this Agreement.</p>
Builder	<p>means the person engaged by Project Co in accordance with the D&C Subcontract being, at Contractual Close, the party identified in Schedule 1 (Contract Particulars) or any other person approved by the State who, in addition or substitution, is engaged by Project Co in accordance with this</p>

Term	Meaning
	Agreement to undertake all of the DBFM Works.
Builder Guarantee	means any guarantee given by the Builder Guarantor and any other guarantee given by a Builder Guarantor to Project Co in connection with the obligations of a Builder under a D&C Subcontract.
Builder Guarantor	means Brookfield Australia Investments Limited ABN 96 008 687 063 and Brookfield Multiplex Constructions Pty Ltd ABN 70 107 007 527 and any person who, in addition or substitution, guarantees the obligations of a Builder in accordance with a D&C Subcontract.
Builder Side Deed	means the document entitled 'The new Perth Stadium DBFM Project – Builder Side Deed' between Project Co, the State, the Builder Guarantor and the Builder in the form contained in Schedule 29 (Builder Side Deed).
Building Management IT Hardware and Software	has the meaning given to it in Annexure E (Glossary) of Schedule 13 (Services Specifications).
Business Day	means any day other than: <ul style="list-style-type: none"> (a) a Saturday or a Sunday; or (b) a gazetted holiday in Perth, Western Australia under the <i>Public and Bank Holidays Act 1972</i> (WA).
Casualty Occurrence	means: <ul style="list-style-type: none"> (a) on or prior to the Date of Commercial Acceptance, the total loss of the DBFM Works or a substantial part of the DBFM Works; or (b) after the Date of Commercial Acceptance, the total loss of the use of the Stadium, Sports Precinct and Off Site Infrastructure for the performance of the Stadium Activities or a substantial part of the Stadium, Sports Precinct and Off Site Infrastructure for the performance of the Stadium Activities, <p>in each case, due to destruction or damage.</p>
Change Compensation Event	means an event set out in Section 2 of Schedule 4 (Change Compensation Principles).
Change Compensation Principles	means the principles set out in Schedule 4 (Change Compensation Principles).
Change in Control	means where, at any time, any person alone or together with any associate or associates (as that term is used in the Corporations Act) ceases to or commences to, directly or indirectly have Control of an entity.
Change in Law	is defined in Clause 32.1(a).
Change in	means a change in the senior employees of Project Co who carry out the management functions of Project Co or the management of any other entity

Term	Meaning
Management	that provides management functions to Project Co.
Change in Quality Standards	<p>means any one or more of the following:</p> <ul style="list-style-type: none"> (a) the introduction of a new Quality Standard; or (b) a material change in a Quality Standard, <p>excluding:</p> <ul style="list-style-type: none"> (c) a new Quality Standard or change to a Quality Standard, that was not in force at the date of this Agreement but which: <ul style="list-style-type: none"> (i) had been communicated to Project Co at or prior to the date of this Agreement; (ii) was contained or referred to in the Design Requirements, any Disclosed Information provided to Project Co prior to the date of this Agreement or any Project Document; (iii) a party experienced and competent in the implementation of works similar to the DBFM Works or the provision of services similar to the Services would have reasonably foreseen or anticipated at the date of this Agreement or, in respect of the Reviewable Services, at the Date of Commercial Acceptance; (iv) as at the date of this Agreement, was within the public knowledge; (v) is substantially the same as a Quality Standard in force prior to the date of this Agreement; (d) for the first two years following Contractual Close, a change in an Australian or New Zealand Standard; (e) for the first two years following Contractual Close, a change in the Disability (Access to Premises – Buildings) Standards (2010); (f) for the first two years following Contractual Close, a change to the National Construction Code; (g) for the first two years following Contractual Close, a change in any Quality Standards in respect of health and safety; (h) a change in any Quality Standards in respect of health and safety to the extent that change: <ul style="list-style-type: none"> (i) has the effect of increasing administration or reporting requirements; or (ii) requires a whole of business change; (i) a change in any Quality Standards in respect of health and safety which does not result in either: <ul style="list-style-type: none"> (i) a change to the requirements in Schedule 13 (Services Specifications); (ii) unavoidable increased costs to meet the requirements in Schedule 13 (Services Specifications); or (iii) capital expenditure in respect of the Stadium, Sports Precinct or Off-Site Infrastructure after the 2nd anniversary of Contractual Close; or

Term	Meaning
	<ul style="list-style-type: none"> (j) a new Quality Standard or a change in a Quality Standard in response to: <ul style="list-style-type: none"> (i) the failure of Project Co or a Project Co Associate to comply with a Quality Standard, Law or Authorisation; (ii) an illegal act or omission of Project Co or a Project Co Associate; or (iii) any breach of this Agreement by Project Co; or (k) a new Quality Standard or a change in a Quality Standard after the Date of Commercial Acceptance insofar as it changes the cost of providing a Reviewable Service.
Change Notice	is defined in Schedule 4 (Change Compensation Principles).
Claim	<p>means any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity), made:</p> <ul style="list-style-type: none"> (a) in connection with this Agreement, the Stadium, the Sports Precinct or the DBFM Project; (b) at Law; or (c) for specific performance, restitution, payment of money (including damages), an extension of time or any other form of relief.
Clean Fill	has the same meaning as defined in the Department of Environment Regulation Guideline 'Landfill Waste Classification and Waste Definitions 1996' (as amended December 2009).
Commercial Acceptance	means the Commercial Acceptance Criteria have been satisfied to the reasonable satisfaction of the State Representative.
Commercial Acceptance Criteria	means those criteria that are required to be satisfied to achieve Commercial Acceptance as set out in Schedule 7 (Completion Criteria).
Commercial Acceptance Plan	means the plan of that name to be prepared by Project Co in accordance with this Agreement, including Schedule 19 (Plans).
Commercial Acceptance Report	<p>means a report of that name which sets out in detail, each of:</p> <ul style="list-style-type: none"> (a) the Commercial Acceptance Criteria; (b) the manner in which the Commercial Acceptance Criteria have been satisfied, including all Commercial Acceptance Tests; and (c) when the Commercial Acceptance Criteria were satisfied or otherwise failed to be satisfied.
Commercial Acceptance Tests	means all tests (excluding the Technical Completion Tests) required to be carried out in accordance with this Agreement or as may be required by the State to assist in determining that Commercial Acceptance has been achieved.

Term	Meaning
<i>Commercial in Confidence Information</i>	the information contained in Table 1 of Schedule 17 (Confidential Provisions).
<i>Commercial Opportunities</i>	means the commercial opportunities which are permitted by the State to be delivered by Project Co in accordance with this Agreement.
<i>Commercial Opportunity Revenue</i>	means income that Project Co derives by reason of and from the Commercial Opportunities, compensation paid by the State in accordance with this Agreement in respect of Commercial Opportunities (to the extent that such compensation is of a revenue replacement nature), and any other income that Project Co earns in connection with the Commercial Opportunities, but does not include interest earned on any Project Co bank account.
<i>Commercial Opportunity Fee</i>	means the amount calculated in accordance with Section 2 of Schedule 23 (Commercial Opportunity Fee) and paid as a fee from Project Co to the State as consideration for the right to pursue and exploit the Commercial Opportunities in the Designated Commercial Area.
<i>Commissioning Period</i>	means the period commencing on the Date of Technical Completion and ending on the Date of Commercial Acceptance.
<i>Commissioning Period Services</i>	means any service Project Co may be directed by the State to perform with respect to the Stadium or Sports Precinct (or both) during the State Access Period, provided that such services are substantially similar to the Services.
<i>Communication Materials</i>	means any materials developed by Project Co during the D&C Phase in accordance with the Communications Plan, including publishing newsletters, notifications of works, liaison with land owners, conducting information sessions, publishing advertisements, providing or publishing project updates, website updates and publishing journal and periodical articles with respect to the DBFM Project.
<i>Communications Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Schedule 19 (Plans).
<i>Compensable Extension Event</i>	means each of the following events: <ul style="list-style-type: none"> (a) (PCS Works): the PCS Works have not achieved PCS Works Practical Completion by 31 March 2015; (b) (breach): breach by the State of any State Project Document in its capacity as a contracting party to the relevant State Project Document; (c) (act or omission): any act or omission of the State (in its capacity as a contracting party to the relevant State Project Documents) or a State Associate, other than any such act or omission which is authorised or permitted in accordance with a State Project Document; (d) (suspension): cessation or suspension of any part of the DBFM Works being undertaken (or a change in the way the DBFM Works

Term	Meaning
	<p>are undertaken), because of:</p> <ul style="list-style-type: none"> (i) a direction from the State or a Government Agency; (ii) a court or tribunal order; or (iii) a requirement of Law, <p>in relation to a Heritage Claim, except to the extent that the events in sub-paragraphs (i) to (iii) were caused, or contributed to, by any act or omission of Project Co or any Project Co Associate;</p>
	<p>(e) (Contamination): an event which is described as a Compensable Extension Event in Clause 8.5;</p>
	<p>(f) (State Obtained Authorisations): the State has not obtained the State Obtained Authorisations listed in Schedule 42 (State Obtained Authorisations for which a Compensable Extension Event may be granted) by 2 January 2015, provided that Project Co has, by 30 September 2014, provided all information which is necessary for the State to obtain those State Obtained Authorisations and which was requested by the State prior to 31 August 2014;</p>
	<p>(g) (third party works or services): delay caused by works undertaken:</p> <ul style="list-style-type: none"> (i) to rectify Defects (whether undertaken by or on behalf of Project Co or the State) in the circumstances set out in Clause 15.6(c) or 21(g); or (ii) to implement works as described in Clause 33.1(d)(vi) or Section 5(g)(iii) of Part A of Schedule 4 (Change Compensation Principles);
	<p>(h) (Project Specific Change in Law): a Project Specific Change in Law has occurred for which Project Co is entitled to relief in accordance with Clause 32.1;</p>
	<p>(i) (Change in Quality Standards): a Change in Quality Standards has occurred for which Project Co is entitled to relief in accordance with Clause 32.2;</p>
	<p>(j) (rectification of Defects or damage): rectification of a Defect or damage in the circumstances described in Clauses 19.2(h)(i), 19.2(h)(iii), 19.2(h)(iv) or 19.4;</p>
	<p>(k) (Unscheduled State Works): the performance of any Unscheduled State Works; and</p>
	<p>(l) (State Approval of Construction Environment Management Plan and Dewatering and Groundwater Management Plan): The State has not approved the Construction Environment Management Plan and Dewatering and Groundwater Management Plan in accordance with Schedule 3 (Review Procedures) by 2 January 2015, provided that Project Co has:</p> <ul style="list-style-type: none"> (i) within 10 Business Days of a request from the State, provided any information reasonably requested by the State (which will include any information requested by the Contaminated Sites Auditor appointed by the State or any Government Agency) which is necessary for the State to consider and approve those plans in accordance with Schedule 3 (Review Procedures) and Schedule 19 (Plans); and

Term	Meaning
	<ul style="list-style-type: none"> (ii) otherwise complied with all requirements of this Agreement, Schedule 3 (Review Procedures) in respect of any further development of the Construction Environment Management Plan and Dewatering and Groundwater Management Plan from the version of those Plans attached in Attachment 3 (D&C Plans), and Schedule 19 (Plans) in respect of the submission of those plans and related documents, data or other information.
Compensable Intervening Event	<p>means each of the following events:</p> <ul style="list-style-type: none"> (a) (breach): breach by the State of any State Project Document in its capacity as a contracting party to the relevant State Project Document; (b) (reckless, unlawful or malicious act): a reckless, unlawful or malicious act or omission of the State or a State Associate; (c) (suspension): cessation or suspension of any part of the Services (or a change in the way the Services are provided), because of: <ul style="list-style-type: none"> (i) a direction from a Government Agency; (ii) a court or tribunal order; or (iii) a requirement of Law, <p>in relation to a Heritage Claim, provided that the events in subparagraphs (i) to (iii) were not caused or contributed to by any act or omission of Project Co or any Project Co Associate; and</p> (d) (Contamination): an event which is described as a Compensable Intervening Event in Clause 8.5.
Completed Services	<p>has the meaning given to it in Schedule 14 (Payment Schedule).</p>
Completion	<p>means Off-Site Infrastructure Completion, Technical Completion and Commercial Acceptance, or where the context requires, any one of these.</p>
Completion Criteria	<p>means:</p> <ul style="list-style-type: none"> (a) in connection with Technical Completion, the Technical Completion Criteria; and (b) in connection with Commercial Acceptance, the Commercial Acceptance Criteria, <p>as set out in Schedule 7 (Completion Criteria).</p>
Completion Payment	<p>means each payment to be made in accordance with Clause 21A.1 (Completion Price) by the State to Project Co of an amount equal to the aggregate of the corresponding Receivables Purchase Payment payable by Finance Co to the State under the Receivables Purchase Deed and each corresponding 'Funding Portion' under and as defined in the State Loan Agreement.</p>
Completion Payment Date	<p>means:</p> <ul style="list-style-type: none"> (a) each date on which Finance Co pays a Receivables Purchase Payment to the State in accordance with the Receivables Purchase

Term	Meaning
	Deed; and (b) each Funding Date.
Completion Plans	means the Technical Completion Plan and the Commercial Acceptance Plan, or where the context requires, any one of these.
Completion Price	means the price to be paid by the State to Project Co in accordance with Clause 21A.1, being the sum of the Completion Payments, which must equal the aggregate of the amount of the Receivables Purchase Price calculated under the Receivables Purchase Deed and all 'Funding Portions' under and as defined in the State Loan Agreement.
Completion Tests	means the Technical Completion Tests, the Commercial Acceptance Tests and any other completion tests that are required to be performed in accordance with this Agreement.
Condition Precedent	means a condition precedent set out in Clause 2.2.
Condition Review Date	has the meaning given to it in Clause 31.2(b).
Confidential Information	has the meaning given to it in Clause 50.1.
Consortium Entity	means: (a) Project Co; (b) the Builder (up to the end of the last of the Defects liability periods referred to in Clause 15.5); (c) the FM Subcontractor; (d) the Builder Guarantors (up to the end of the Defects liability periods referred to in Clause 15.5); and (e) the FM Subcontractor Guarantor.
Construction Account	has the meaning given to it in the Financing Documents.
Construction Drawdown Schedule	means Annexure A to Schedule 15 (State Capital Contribution).
Construction Environmental Management Framework or CEMF	means the construction environmental management framework set out in Schedule 35 (Construction Environmental Management Framework).
Construction Environment Management Plan or CEMP	means the plan of that name to be prepared in accordance with this Agreement, including Schedule 19 (Plans).

Term	Meaning
Construction Licence	has the meaning given to it in Clause 7.1(a).
Construction Site	means the area contained within the site boundary as shown in Plan 11 in Schedule 11 (Site Plans), as amended from time to time in accordance with Clause 7.1(f).
Construction Site Handover Plan	means the plan developed by the PCS Works Contractor in relation to the transfer of control of the Construction Site from the PCS Works Contractor to Project Co, as that plan exists from time to time.
Construction Sum	has the meaning given to it in Schedule 15 (State Capital Contribution).
Consumables	means materials and goods required by Project Co to perform the Services which are used up or worn out by use rather than Fair Wear and Tear.
Contaminated	has the meaning given to that term in the <i>Contaminated Sites Act 2003</i> (WA).
Contaminated Material	<p>means any solid, liquid or gaseous material (other than Contaminated Water) which is not Clean Fill and which is disturbed or removed from the Site as part of the DBFM Works or Services, and which:</p> <ul style="list-style-type: none"> (a) falls within any of the waste types and waste definitions set out in the Department of Environment and Conservation document entitled 'Landfill Waste Classification and Waste Definitions – 1996 (as amended December 2009)'; (b) is classified as either AASS or PASS in the Department of Environment and Conservation documents entitled 'Acid Sulphate Soils Guideline Series'; or (c) is classified as contaminated in the Department of Environment and Conservation documents entitled 'Contaminated Sites Management Guideline Series'.
Contaminated Sites Auditor	means a person accredited under section 69 of the <i>Contaminated Sites Act 2003</i> (WA) as a contaminated sites auditor.
Contaminated Water	any water that is Contaminated or affected by Contamination and includes water affected by eutrophication, notwithstanding regulation 5(1) of the <i>Contaminated Sites Regulations 2006</i> (WA).
Contamination	means any substance which causes land, water or a site to be Contaminated.
Contract Management Team	has the meaning given to it in Clause 5.7(a).
Contract Material	means:

Term	Meaning
	<ul style="list-style-type: none"> (a) the D&C Documents and the Operating Phase Plans; and (b) all other programs, documents, materials or information prepared by or for or on behalf of Project Co.
Contractual Close	means the date on which the last of the parties executes this Agreement.
Control	<p>means:</p> <ul style="list-style-type: none"> (a) control or influence of, or having the capacity to control or influence the composition of the board (or if the entity is a trust, the appointment of a trustee of that trust), or decision making, directly or indirectly; (b) being in a position to cast, or control the casting of, more than 20% of the maximum number of votes that may be cast at a general meeting (or if the entity is a trust, a meeting of unit holders); or (c) having a relevant interest (as defined in section 608 of the Corporations Act) in more than 20% of the securities (as defined in the Corporations Act), <p>of an entity (whether alone or together with any associate (as that term is defined in the Corporations Act)).</p>
Controlled Area	has the meaning given to it in Schedule 12 (Design Specifications).
Controller	means a person who has Control of another entity.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Costs	has the meaning given to it in Schedule 4 (Change Compensation Principles).
Counterparty Details	<p>means, in connection with each person (other than the State) who is a party to a State Project Document:</p> <ul style="list-style-type: none"> (a) a certified copy of its constitution (or other constituent documents); (b) in the case of a trustee who enters into the State Project Documents on behalf of a trust, a certified copy of the relevant trust deed; (c) a certified copy of any powers of attorney under which the person executed each State Project Document; and (d) a certified copy of the extract of minutes evidencing the resolutions of its board of directors, authorising the entry into, delivery and observance of obligations in accordance with each State Project Document to which it is a party.
CPI	means the Perth All Groups Consumer Price Index published each Quarter by the Australian Bureau of Statistics or, if Clause 1.5 applies, the index determined in accordance with that Clause.
CPI Adjustment Date	means 1 January 2015 and each subsequent anniversary until the Expiry

Term	Meaning
	Date.
<i>Crisis or Major Incident Plan</i>	means the plan of that name to be prepared by Project Co in accordance with this Agreement, including Schedule 19 (Plans).
<i>D&C Consent Deed</i>	means the document entitled 'Builder Consent Deed' between Project Co, the Builder, the Builder Guarantor and the Security Trustee dated on or about Contractual Close.
<i>D&C Documents</i>	means all the documents that Project Co has prepared, prepares or is required to prepare to undertake the DBFM Works, including: <ul style="list-style-type: none"> (a) Attachment 1 (Contractual Close Design Documentation); (b) the Design Documentation; and (c) the D&C Phase Plans, as updated and amended by Project Co in accordance with this Agreement.
<i>D&C Payment Claim</i>	has the meaning given to it in Clause 35.3.
<i>D&C Payment Statement</i>	has the meaning given to it in Clause 35.4(a).
<i>D&C Phase</i>	means the period commencing on Financial Close and ending on the Date of Commercial Acceptance.
<i>D&C Phase Plans</i>	means each of the plans listed in Section 2 of Schedule 19 (Plans), being the: <ul style="list-style-type: none"> (a) Design Development Plan; (b) Project Management Plan; (c) FF&E Plan; (d) Crisis or Major Incident Plan; (e) Geotechnical Interpretive Report; (f) Instrumentation and Monitoring Plan; (g) Construction Environment Management Plan; (h) Dewatering and Groundwater Management Plan; (i) Stormwater Management Plan; (j) Rehabilitation Management Plan; (k) Ground Gas Management Plan; (l) ESD Management Plan; (m) Communications Plan; (n) Industry Participation Plan; (o) Indigenous Recognition and Engagement Plan;

Term	Meaning
	<ul style="list-style-type: none"> (p) Industry Training Plan; (q) Rectangular Reconfiguration Works Plan; (r) Athletics Reconfiguration Works Plan; (s) BIM Management Plan; (t) Technical Completion Plan; (u) Commercial Acceptance Plan; (v) Operational Handover Plan; (w) Security Risk and Threat Assessment Plan; (x) Security Management and Treatment Plan; (y) ICT Risk Assessment; and (z) Spectrum Frequency Management Policy, <p>as updated and amended by Project Co and approved by the State in accordance with this Agreement.</p>
<i>D&C Stadium Personnel</i>	<p>means the Stadium Operator and employees, agents, contractors, subcontractors, consultants and authorised officers of the Stadium Operator involved in the provision of the State Operational Commissioning during the State Access Period but does not include the State, State Associates, Project Co, Project Co Associates, Hirers, Performers or Media Personnel.</p>
<i>D&C Stadium Users</i>	<p>means:</p> <ul style="list-style-type: none"> (a) D&C Stadium Personnel; (b) Hirers; (c) Performers; (d) any Patron; (e) Media Personnel; (f) the State and State Associates; (g) Project Co and Project Co Associates employed or contracted at the Stadium or Sports Precinct, <p>involved in the provision of the State Operational Commissioning during the State Access Period.</p>
<i>D&C Subcontract</i>	<p>means the contract for the DBFM Works entered into between Project Co and Brookfield Multiplex Engineering and Infrastructure Pty Ltd (ABN 95 095 282 992) dated on or about Contractual Close and any other contract approved by the State between Project Co and a Builder for the undertaking of the DBFM Works.</p>
<i>D&C User Damage</i>	<p>has the meaning given to it in Clause 19.4(a).</p>
<i>Date for Commercial Acceptance</i>	<p>means the date specified as such in Schedule 1 (Contract Particulars), as adjusted (if at all) under Clauses 17 or 33.</p>

Term	Meaning
<i>Date for Completion</i>	means: <ul style="list-style-type: none"> (a) the Date for Technical Completion; or (b) the Date for Commercial Acceptance; as the context requires.
<i>Date for Technical Completion</i>	means the date specified as such in Schedule 1 (Contract Particulars), as adjusted (if at all) under Clauses 17 or 33.
<i>Date of Commercial Acceptance</i>	means the date on which Commercial Acceptance was achieved, as specified in the certificate of Commercial Acceptance.
<i>Date of Completion</i>	means: <ul style="list-style-type: none"> (a) in connection with Commercial Acceptance, the Date of Commercial Acceptance; and (b) in connection with the Technical Completion, the Date of Technical Completion.
<i>Date of Technical Completion</i>	means the date on which Technical Completion was achieved, as specified in the certificate of Technical Completion.
<i>Day 1 Uninsurable Risk</i>	means, subject to Clause 40.13, the following Force Majeure Events: <ul style="list-style-type: none"> (a) civil riots that occur other than during an Event Profile Period, rebellions, revolutions, terrorism, insurrections and military and usurped power, act of sabotage, act of public enemy and war (declared or undeclared) and any fire, flood or explosion caused by any of these events; and (b) ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination, unless caused by Project Co or any Project Co Associate.
<i>DBFM Asset Information</i>	has the meaning given to it in Schedule 12 (Design Specifications) of this Agreement.
<i>DBFM Project</i>	means: <ul style="list-style-type: none"> (a) designing, constructing and partially financing the DBFM Works; (b) the performance of the Services; (c) the undertaking of the Commercial Opportunities; and (d) Handover of the Stadium, Sports Precinct and Off-Site Infrastructure, in accordance with this Agreement.
<i>DBFM Transport Infrastructure</i>	means the transport infrastructure of that name, as described in Schedule 12 (Design Specifications).

Term	Meaning
<i>DBFM Works</i>	means the Stadium Works, the Sports Precinct Works and the Off-Site Infrastructure Works.
<i>DBFM Works Construction Value Schedule</i>	means the schedule contained in Attachment 7 (DBFM Works Construction Value Schedule).
<i>DBFM Works Program</i>	means a program of the activities required to undertake the DBFM Works, containing the details required by Schedule 6 (Programming Requirements), as prepared and updated in accordance with this Agreement.
<i>DD&P Area</i>	means those areas of the Stadium, as set out in Chapter C19 of Schedule 12 (Design Specifications).
<i>DD&P Caps</i>	has the meaning given to it in Clause 11.6(c)(i).
<i>DD&P Item</i>	means the items set out in the Delayed Design and Procurement Schedule.
<i>Debt</i>	<p>means:</p> <ul style="list-style-type: none"> (a) at any time prior to the Date of Commercial Acceptance, principal amounts properly drawn down under the Financing Documents; and (b) at any time during the Operating Phase, principal amounts properly drawn down under the Financing Documents less the greater of: <ul style="list-style-type: none"> (i) so much of that amount which has been amortised or which should have been amortised in accordance with the Amortisation Schedule; or (ii) so much of that amount which, in accordance with the Amortisation Schedule, would have been amortised if each Project Entity had complied with all of its obligations under all of the Project Documents and had incurred no Abatement and the full Monthly Service Payment and principal and interest under the State Loan Agreement in an amount corresponding to the State Loan Payment (prior to Abatement) had been paid in connection with each Month, and all of the obligations of each Project Entity under the Financing Documents had been complied with, <p>in each case, including accrued interest (which for the avoidance of doubt, does not include default interest) and other amounts payable, and deducting all credit balances on all debt reserve and debt service accounts (however named) held by or on behalf of a Project Entity or any Financier and related to the DBFM Project, but does not include default interest, equity shareholder loans, amounts in the nature of equity or subordinated debt or amounts payable or receivable under any hedging or swap arrangements relevant to the DBFM Project.</p>
<i>Debt Quarter</i>	means each period commencing on and from the relevant Hedge Period Start Date and ending on the corresponding Hedge Period End Date.

Term	Meaning
<i>Deed of Accession</i>	means the deed of that name set out in schedule 4 of the PCS Works Independent Certifier Agreement.
<i>Default Notice</i>	has the meaning given to it in Clause 43.1(b).
<i>Default Rate</i>	means a rate equivalent to 2% per annum above: <ul style="list-style-type: none"> (a) the BBSY Rate; or (b) if the BBSY Rate is no longer available or, if in the reasonable opinion of the State, the BBSY Rate becomes an inappropriate rate to benchmark the default rate or becomes incapable of application, the rate reasonably determined by the State to be the appropriate equivalent rate having regard to prevailing market conditions.
<i>Default Termination Amount</i>	means the payment calculated in accordance with Schedule 10 (Termination Amounts).
<i>Defect</i>	means: <ul style="list-style-type: none"> (a) any component of the DBFM Works, Stadium, Sports Precinct or Off-Site Infrastructure which does not comply with the requirements of this Agreement; or (b) any defect, shrinkage, fault, or omission in the DBFM Works, Stadium, Sports Precinct or Off-Site Infrastructure (excluding any normal shrinkage of materials unless that shrinkage would have been accommodated for in accordance with Good Industry Practice).
<i>Delayed Design and Procurement Schedule</i>	means the draft schedule in respect of the DD&P Items which is included in Schedule 44 (Delayed Design and Procurement Schedule) and as further developed and updated in accordance with Schedule 5 (Design Development).
<i>Deliverable</i>	means the DBFM Works, Stadium, Sports Precinct, Off-Site Infrastructure, the D&C Documents, the Operating Phase Plans and any other deliverables required to be delivered or goods or services required to be provided by or for Project Co to the State in accordance with this Agreement (or any part of any of them).
<i>Designated Commercial Area</i>	means the 500m ² designated space situated on the southern side of the event level which will be used for uses as approved by the State in accordance with Clause 38.1.
<i>Design Deliverables</i>	has the meaning given to it in Schedule 5 (Design Development).
<i>Design Development Plan</i>	means the plan prepared in accordance with this Agreement, including Schedule 19 (Plans) and Schedule 5 (Design Development).
<i>Design Development Process</i>	means the process for the development of the design of the Stadium and Sports Precinct to be implemented in accordance with Schedule 5 (Design Development).

Term	Meaning
<i>Design Development Sub-Program</i>	means the program of that name which forms part of the DBFM Works Program and as prepared and updated in the same manner as the DBFM Works Program.
<i>Design Documentation</i>	means all design information (including all BIM Models, 2D Supplementary Drawings, specifications, models, samples and calculations) in computer readable or written form or stored by any other means, that Project Co creates or must necessarily create to undertake the DBFM Works including all Design Deliverables.
<i>Design Issues</i>	has the meaning given it in Clause 11.4(a).
<i>Design Issues List</i>	means the list of Design Issues set out in Attachment 1 (Contractual Close Design Documentation).
<i>Design Requirements</i>	means, subject to Clause 1.3(g), the requirements for the design of the Stadium, Sports Precinct and Off-Site Infrastructure set out in: <ul style="list-style-type: none"> (a) Schedule 12 (Design Specifications); (b) Attachment 1 (Contractual Close Design Documentation); and (c) the remainder of this Agreement, including all requirements to meet the relevant Quality Standards and Laws and Authorisations.
<i>Development and Transition Manager</i>	means the person identified as such in Schedule 1 (Contract Particulars), or such other person as may be appointed from time to time to replace that person, in accordance with Clause 5.5.
<i>Dewatering and Groundwater Management Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Schedule 19 (Plans).
<i>Discharge</i>	means any discharge of matter (whether liquid, solid, gaseous or radioactive) or any emission of noise, odour or electromagnetic radiation onto or from the Site whether arising before or after Contractual Close.
<i>Disclosed Information</i>	means: <ul style="list-style-type: none"> (a) the Project Information; (b) all documents and information provided to Project Co prior to Contractual Close by the State or State Associates in connection with the DBFM Project that are not incorporated into this Agreement; and (c) all documents and information provided to Project Co by the State or State Associates after Contractual Close in connection with the DBFM Project, excluding the Project Documents.
<i>Dispute</i>	has the meaning given to it in Clause 45.1.

Term	Meaning
<i>Distribution</i>	<p>means, without double counting, any:</p> <ul style="list-style-type: none"> (a) dividend, return of capital or other distribution or payment (in cash or in kind) in connection with the share capital or units of any Project Entity or shareholder loans (or other loans in the nature of equity funding) to, or for the benefit of, any Project Entity; (b) release by any Project Entity of any actual or contingent liability of any Project Entity or any Equity Investor (or any Related Body Corporate of an Equity Investor); or (c) payment, loan or transfer of any assets by any Project Entity to any Equity Investor (or any Related Body Corporate of any Equity Investor) which is not on arm's length commercial terms.
<i>Document Submission Schedule</i>	<p>means the schedule for submission of Design Documentation as attached to Schedule 3 (Review Procedures).</p>
<i>Due Date for Rectification</i>	<p>means the date specified in the relevant Pitch Rectification Plan, or the date determined in accordance with the Expedited Dispute Resolution Procedure, as extended as a result of Intervening Events.</p>
<i>Encumbrance</i>	<p>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.</p>
<i>Engineering Services</i>	<p>has the meaning given to it in Part G (Glossary) of Schedule 12 (Design Specifications).</p>
<i>Environment</i>	<p>has the same meaning as under the <i>Environmental Protection Act 1986</i> (WA).</p>
<i>Environmental Audit</i>	<p>means a total assessment of the nature and extent of any harm or detriment caused to, or the potential risk of any possible harm or detriment which may be caused to, the Environment by any Discharge, Environmental Event, Environmental Complaint, Contamination, use, process or activity, substance (including any chemical substance), vibration or noise arising out of the DBFM Works, the Services, the use or occupation of the Site, activities being conducted on the Site or the subject of an Environmental Complaint, and includes an assessment of any one or more of the following:</p> <ul style="list-style-type: none"> (a) Project Co's compliance with Environmental Laws, Environmental Authorisations and Environmental Management Documents and the State's compliance with the Environmental Management Strategy Documents; (b) the condition of the Site, plant or machinery on the Site and any other areas affected by the DBFM Works or Services; (c) the operating procedures undertaken by Project Co or any Project Co Associate on the Site; and (d) the effectiveness of the D&C Phase Plans (including the CEMP) and, when prepared, the Operating Phase Plans,

Term	Meaning
	to be performed by the State under Clause 8.3.
Environmental Audit Report	<p>means a report prepared pursuant to an Environmental Audit which addresses the matters that must be assessed in an Environmental Audit and includes:</p> <ul style="list-style-type: none"> (a) an evaluation of the quality of the Environment which has been or is being affected by the DBFM Works, the Services, the use and occupation of the Site or activities being conducted at the Site; (b) an assessment of whether any Remediation is required arising out of the evaluation referred to above; (c) if any Remediation is necessary in the opinion of the person undertaking the report, any recommendation relating to the carrying out of the Remediation; and (d) an evaluation of the extent of Project Co's compliance with the Environmental Management Documents, Environmental Laws and Environmental Authorisations and the State's compliance with the Environmental Management Strategy Documents and, if any non-compliances are identified, the measures necessary to remedy these.
Environmental Authorisations	means all Authorisations required under Environmental Laws, including any State Obtained Authorisation concerning Environmental Matters.
Environmental Complaint	<p>means any complaint, notice or order whether written or oral, received by Project Co:</p> <ul style="list-style-type: none"> (a) under an Environmental Law or any Environmental Authorisation in respect of the Site, or activities conducted at the Site; or (b) otherwise in connection with any Environmental Matter concerning the Site or activities conducted at the Site.
Environmental Event	means any event occurring before or after Contractual Close arising in connection with the occupation, use or operation of, or activities conducted on, the Site which has resulted or results in any actual or potential impact on the Environment.
Environmental Laws	means all Laws concerning Environmental Matters including the <i>Environmental Protection Act 1986 (WA)</i> , the <i>Rights in Water and Irrigation Act 1914 (WA)</i> , the <i>Contaminated Sites Act 2003 (WA)</i> , the <i>Dangerous Goods Safety Act 2004 (WA)</i> and the <i>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</i> .
Environmental Management Documents	<p>means the:</p> <ul style="list-style-type: none"> (a) Construction Environment Management Plan; (b) Dewatering and Groundwater Management Plan; (c) Stormwater Management Plan; (d) Rehabilitation Management Plan;

Term	Meaning
	<ul style="list-style-type: none"> (e) Ground Gas Management Plan; and (f) Operational Environmental Management Plan, <p>the requirements for each of which are set out in Schedule 19 (Plans).</p>
<i>Environmental Management Strategy Documents</i>	<p>means the plans prepared by the State with the following titles:</p> <ul style="list-style-type: none"> (a) Construction Environmental Management Framework; (b) Operational Environmental Management Framework; (c) new Perth Stadium Environmental Management Plan; and (d) the following environmental sub-management plans to the new Perth Stadium Environmental Management Plan: <ul style="list-style-type: none"> (i) Contaminated Site Management Plan; and (ii) Dewatering Management Plan.
<i>Environmental Matter</i>	<p>means any Contamination, Discharge or Environmental Event, any matter which concerns or impacts on the Environment, the protection of the Environment, the prevention and control of any Contamination, Discharge or Environmental Event and the regulation of any matter which concerns or impacts on the Environment.</p>
<i>Equity Associate</i>	<p>means:</p> <ul style="list-style-type: none"> (a) an Equity Investor and any company which is its subsidiary, its holding company and any company which is a subsidiary of such holding company; (b) [not disclosed]; (c) any unit trust, investment fund, investment company, partnership or other fund (a Related Fund) of which any entity referred to in subparagraph (a) of this definition is either: <ul style="list-style-type: none"> (i) a general partner; (ii) a nominee; (iii) a trustee; (iv) a manager; or (v) where there is no separate fund manager and the investment adviser has authority to implement investment policies subject to certain types of decisions being reserved for the board of the Related Fund, the investment adviser; or (d) any body corporate or other entity (whether or not having separate legal personality) in which the majority of the voting or economic rights vests directly or indirectly in JLIF or a Related Fund, <p>in each case (in relation to paragraphs (a), (c) and (d) above) so long as the OECD Requirements are met.</p>

[Not disclosed]

Term	Meaning
<i>Equity Investor</i>	means each person who has provided or has agreed to provide units, shares and shareholder loans as stated in the Financial Model including any other equity, financial arrangement, security or option issued by, or provided to, Project Co which the State has elected to designate as equity funding.
<i>ESD Management Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Schedule 19 (Plans).
<i>Estate Services</i>	means the services described in Part B of Schedule 13 (Services Specifications).
<i>Estate Services Plans</i>	means the plans, reports and manuals to be prepared by Project Co under Schedule 13 (Services Specifications) in connection with the Estate Services, being: <ul style="list-style-type: none"> (a) the Operating Phase Lifecycle Maintenance Plan; (b) the Annual Services Plan; and (c) Monthly Services Plan.
<i>Event</i>	has the meaning given to it in Part G (Glossary) of Schedule 12 (Design Specifications).
<i>Event Activity</i>	has the meaning given to it in Schedule 14 (Payment Schedule).
<i>Event of Default</i>	means any of the following events: <ul style="list-style-type: none"> (a) (fraud): a Project Entity, any Project Co Associate or Equity Investor engages in fraud, collusion, misleading or deceptive conduct in performing their obligations in accordance with the State Project Documents; (b) (false representation): a representation or warranty given by a Project Entity in accordance with a State Project Document is found to be materially incorrect or misleading; (c) (finance default): any event that would restrict or cancel Project Co's ability to obtain or continue to have available finance in accordance with the Financing Documents or Equity Documents; (d) (insurance): Project Co fails to comply with any of its insurance obligations in Clause 40; (e) (Key Subcontractors): Project Co breaches an obligation in Clauses 5.12 or 5.13 in connection with Key Subcontractors or Key Personnel; (f) (assignment): a Project Entity breaches Clause 46.1; (g) (Change in Control): a Change in Control of a Consortium Entity (other than Project Co or Hold Co) occurs without the consent of the State, in the circumstances where consent is required in Clause 46.6; (h) (Probity Event): a Project Entity fails to comply with its obligations in connection with a Probity Event in accordance with Clauses 47.5 to

Term	Meaning
	<p>47.10;</p> <p>(i) (Change in Management): a Change in Management occurs and Clause 46.7 applies;</p> <p>(j) (Completion): Project Co fails to achieve Completion by a Date for Completion;</p> <p>(k) (Service Failures): Service Failures occur and, under the Abatement Regime, Project Co accumulates total Abatements (or would have accumulated total Abatements had the State elected to Abate Project Co for the relevant Service Failures):</p> <p>(i) of greater than [not disclosed] x IL in any [not disclosed] ;</p> <p>(ii) of greater than [not disclosed] x IL in [not disclosed] ;</p> <p>(iii) of greater than [not disclosed] x IL in [not disclosed] ; or</p> <p>(iv) of greater than [not disclosed] x IL in [not disclosed] ,</p> <p>provided that, if any Event of Default occurs under this paragraph (k), then for the purposes of this paragraph (k) only, Project Co's accumulated total Abatements will be deemed to reset to zero from the date of the relevant Default Notice;</p> <p>(l) (Handover): Project Co fails to:</p> <p>(i) deposit an amount into the Handover Escrow Account; or</p> <p>(ii) provide a Handover Bond;</p> <p>in accordance with Clause 31.2(g)(ii), such that the aggregate amount of the Handover Escrow Account and the Handover Bond is equal to 120% of the estimated total cost of the relevant Final Refurbishment Works (as agreed or resolved in accordance with Clause 31);</p> <p>(m) (breach): a Project Entity fails to remedy any breach of a State Project Document by a Project Entity or Project Co Associate within 20 Business Days after written notice from the State (other than a breach set out in paragraphs (a) – (l) of this definition or any of the events described in the definition of Immediate Termination Event or if the relevant breach is the subject of a dispute under the relevant State Project Document); or</p> <p>(n) (Financier Fraud): a Financier engages in fraud in performing its obligations under and in accordance with the State Project Documents to which it is a party and, if requested to do so by the State, Project Co does not replace the relevant Financier at the time Project Co refinances the Debt.</p>
Event Profile Period	has the meaning given to it in Section 1 of Schedule 14 (Payment Schedule).
Event Support Services	has the meaning given to it in Annexure E (Glossary) of Schedule 13 (Services Specifications).
Excluded Items	has the meaning given to it in Schedule 22 (Commercial Opportunities).

Term	Meaning
<i>Excluded Opportunities</i>	has the meaning given to it in Schedule 22 (Commercial Opportunities).
<i>Expedited Dispute Resolution Procedure</i>	means the dispute resolution process in Clause 28B.
<i>Expiry Date</i>	means the date on which the Term ends as determined in accordance with Clause 3.2.
<i>Explanation</i>	has the meaning given to it in Clause 14.3(c)(i).
<i>Extension Event</i>	<p>means any of the following events that occur prior to the Date of Completion:</p> <ul style="list-style-type: none"> (a) a Project Specific Change in Law; (b) a Compensable Extension Event; (c) a Force Majeure Event; or (d) the State is required by Law to discharge a statutory power or statutory duty in emergency circumstances and the exercise of such power requires the State to take control of all or substantially all of the DBFM Works to the extent that such event has not been caused or contributed to by: <ul style="list-style-type: none"> (i) an act or omission of Project Co or a Project Co Associate other than an act or omission in accordance with the requirements of the Project Documents; or (ii) a Force Majeure Event.
<i>Facility Agreement</i>	means the document entitled 'Senior Syndicated Facility Agreement – new Perth Stadium' between Finance Co, Project Co, the Security Trustee, the Financiers and others, dated on or about Contractual Close.
<i>Fair Wear and Tear</i>	means fair wear and tear that can reasonably be expected to occur as a result of the Stadium Activities or in a facility of the type and nature and at the location of the Stadium and Sports Precinct, examples of which are included in Schedule 34 (Fair Wear and Tear).
<i>Fault</i>	has the meaning given to it in Schedule 14 (Payment Schedule).
<i>Federated BIM Model</i>	means the parametrically linked building information models to be developed by Project Co during the D&C Phase for the purpose of undertaking the design, construction and completion of the DBFM Works.
<i>FF&E</i>	means Project Co FF&E and State FF&E.
<i>FF&E List</i>	means the list of Project Co FF&E set out in Schedule 18 (FF&E List), as amended in accordance with Clause 13.1 of this Agreement.
<i>FF&E Modification</i>	means any change to the FF&E List, excluding the following changes:

Term	Meaning
	<ul style="list-style-type: none"> (a) a change to any item of Project Co FF&E if the substituted item of Project Co FF&E has an equivalent Whole of Life Cost to the relevant item of Project Co FF&E specified in the FF&E List; (b) a change which is a consequence of a Project Specific Change in Law, a General Change in Law or a Change in Quality Standard; (c) for the purposes of Clause 33 only, a Minor Modification; (d) the procurement of Project Co FF&E: <ul style="list-style-type: none"> (i) during the Operating Phase in accordance with Clause 25; or (ii) as part of a Modification; (e) any change to the FF&E List made: <ul style="list-style-type: none"> (i) to address any comments provided by the State Representative or the Independent Certifier with respect to the Project Co FF&E made in accordance with Schedule 3 (Review Procedures); or (ii) in order for Project Co to satisfy the FFP Warranty; (f) a change that is permitted in accordance with Clause 11.6 or Clause 11.7; and (g) before the applicable date which is set out in the FF&E Schedule of the DBFM Works Program, any change which is compensated for by another change to the FF&E List such that the FF&E List remains capital cost neutral when the changes are considered together.
<i>FF&E Plan</i>	means the plan of that name to be prepared by Project Co in accordance with this Agreement, including Schedule 19 (Plans).
<i>FFP Warranty</i>	means the Fit For Purpose obligation imposed on Project Co in Clause 4.1.
<i>Final Expiry Date</i>	means the date which is 25 years after the Date for Commercial Acceptance.
<i>Final Design Documents</i>	means the For Construction Documentation which has been reviewed or deemed to be reviewed by the State Representative in accordance with Schedule 3 (Review Procedures) and Schedule 5 (Design Development).
<i>Final Refurbishment Works</i>	has the meaning given to it in Clause 31.2(c)(ii).
<i>Finance Co</i>	means Westadium Partners Pty Ltd (ACN 162 441 018).
<i>Finance Side Deed</i>	means the document entitled 'The new Perth Stadium DBFM Project – Finance Side Deed' between the State, Project Co, Finance Co and the Security Trustee in the form contained in Schedule 28 (Finance Side Deed).
<i>Financial Close</i>	means when the last Condition Precedent to be satisfied (or waived in accordance with Clause 2.4) has been satisfied (or waived in accordance with Clause 2.4) as set out in a notice given by the State to Project Co in accordance with Clause 2.3.

Term	Meaning
<i>Financial Indebtedness</i>	means any indebtedness, present or future, actual or contingent, in connection with moneys borrowed or raised, or any financial accommodation whatsoever, including in accordance with the Financing Documents and Equity Documents, or under or in connection with any bill, acceptance, guarantee, discounting arrangement, redeemable share or stock, finance or capital lease, hire purchase arrangement, the deferred purchase cost of any asset or service, or any obligation to deliver goods or provide services paid for in advance by any Financier or in connection with any financing transaction.
<i>Financial Model</i>	means the Base Case Financial Model as updated from time to time in accordance with Clause 49.
<i>Financial Year</i>	means a period commencing on 1 July and ending on the next 30 June.
<i>Financiers</i>	means the providers of any financial facilities, financial arrangements or accommodation to a Project Entity in accordance with the Financing Documents for the purpose of financing the carrying out of the DBFM Project.
<i>Financing Delay Costs</i>	has the meaning given to it in Schedule 4 (Change Compensation Principles).
<i>Financing Documents</i>	means: <ul style="list-style-type: none"> (a) the Facility Agreement; (b) the Security Trust Deed; (c) the Financiers' Securities (as defined in the Finance Side Deed); (d) the D&C Consent Deed; (e) the FM Consent Deed; (f) the Finance Side Deed; (g) each Hedging Agreement (as defined in the Facility Agreement); (h) the Independent Certifier Agreement; (i) the Financiers' Certifier Agreement (as defined in the Facility Agreement); (j) any fee letters entered into in respect of the foregoing; (k) any document entered into in connection with a financial transaction approved by the State in accordance with Clause 37.1; and (l) any other document which the parties agree is a Financing Document for the purposes of this Agreement, <p>but excludes the Equity Documents.</p>
<i>Fit For Purpose</i>	means the Stadium, Sports Precinct and Off-Site Infrastructure at all times at and from the Date of Commercial Acceptance and, as at the Date of Commercial Acceptance only, Group 2 FF&E: <ul style="list-style-type: none"> (a) satisfy each of the purposes, objectives, functions, uses and requirements set out in or reasonably inferred from the Output

Term	Meaning
	<p>Specifications;</p> <ul style="list-style-type: none"> (b) are constructed so that they are capable of enabling Project Co to perform the Services in order to achieve the Output Specifications; (c) are constructed and maintained so that they allow the Stadium Activities to be performed without impacting, impairing or adversely affecting the manner in which those Stadium Activities are performed; (d) satisfy all Laws, Authorisations and Quality Standards; (e) are fit for use in accordance with all Sporting Standards; and (f) are in accordance with all other requirements of this Agreement in connection with the design, construction and maintenance of the Stadium and Sports Precinct, <p>in each case by reference to all Laws, Authorisations and Quality Standards as at the Date of Commercial Acceptance or, if any works are undertaken pursuant to a Change in Law, Change in Quality Standards or Modification after the Date of Commercial Acceptance, those works by reference to the Laws, Authorisations and Quality Standards in existence at the time those works are undertaken.</p>
<p>Fixed Force Majeure Costs</p>	<p>means the sum of those fixed costs:</p> <ul style="list-style-type: none"> (a) incurred by the FM Subcontractor in respect of its Key Personnel; (b) incurred by the FM Subcontractor with respect to insurance premiums, board costs, office rental and office expenses, equipment hire costs, excluding Project Co FF&E and Consumables capable of being demobilised and remobilised to a different site and third party accounting, audit and legal costs; and (c) incurred by Project Co with respect to insurance premiums, <p>and which are:</p> <ul style="list-style-type: none"> (d) incurred directly by the FM Subcontractor or Project Co during the Term in meeting its obligations under this Agreement and directly attributable to the DBFM Project which are not reasonably capable of being deferred or avoided by the FM Subcontractor or Project Co; and (e) evidenced in writing to the State, <p>excluding, except as expressly provided for in paragraphs (a) or (b) above, any costs payable by Project Co to the FM Subcontractor for the provision of labour.</p>
<p>FM Consent Deed</p>	<p>means the document entitled 'FM Consent Deed' between Project Co, the FM Subcontractor and the Security Trustee dated on or about Contractual Close.</p>
<p>FM Guarantee</p>	<p>means the guarantee given by Johnson Controls, Inc., a company incorporated in the State of Wisconsin, United States of America and any other guarantee given by an FM Subcontractor Guarantor to Project Co in connection with the obligations of an FM Subcontractor to Project Co in accordance with the FM Subcontract.</p>

Term	Meaning
<i>FM Margin</i>	has the meaning given to it in Schedule 4 (Change Compensation Principles).
<i>FM Subcontract</i>	means the contract for the performance of all or part of the Services entered into between Project Co and Brookfield Johnson Controls Pty Ltd (ABN 83 064 638 197) dated on or about Contractual Close and any other contract approved by the State between Project Co and an FM Subcontractor for the performance of the Services.
<i>FM Subcontractor</i>	means the person engaged by Project Co in accordance with the FM Subcontract being, at Contractual Close the party identified in Schedule 1 (Contract Particulars) or any other person approved by the State who in addition or substitution, is engaged by Project Co in accordance with this Agreement to perform any of the Services.
<i>FM Subcontractor Guarantor</i>	means Johnson Controls, Inc., a company incorporated in the State of Wisconsin, United States of America and any person who, in addition or substitution, guarantees the obligations of an FM Subcontractor in accordance with an FM Subcontract.
<i>FM Subcontractor Side Deed</i>	means the document entitled 'The new Perth Stadium DBFM Project – FM Subcontractor Side Deed' between Project Co, the State, the FM Subcontractor Guarantor and the FM Subcontractor in the form contained in Schedule 30 (FM Subcontractor Side Deed).
<i>For Construction Documentation</i>	has the meaning given to it in Schedule 5 (Design Development).
<i>Force Majeure Event</i>	<p>means any one or more, or a combination, of the following:</p> <ul style="list-style-type: none"> (a) lightning, natural disasters, cyclones, earthquakes and tsunamis; (b) civil riots (other than during an Event Profile Period which involve Patrons in connection with their attendance at the Stadium or Sports Precinct), rebellions, revolutions, insurrections and military and usurped power, act of sabotage, act of public enemy and war (declared or undeclared), civil war or terrorism; (c) nuclear or biological contamination, ionising radiation or contamination by radioactivity; (d) during the D&C Phase, flooding levels which exceed a 1 in 25 year flood (as defined by the Government of Western Australia Department of Water); (e) during the D&C Phase, fire or explosion caused by an event referred to in paragraph (a) or (d); (f) during the Operating Phase, Utility Interruption upstream of a connection point, <p>which occurs at or directly in the vicinity of the Site, the Stadium and Sports Precinct or the Off-Site Infrastructure or impacting on the Site, the Stadium, Sports Precinct or the Off-Site Infrastructure which (either separately or together) directly causes Project Co to be unable to comply with all or a material part of its obligations in accordance with this</p>

Term	Meaning
	<p>Agreement, to the extent that:</p> <ul style="list-style-type: none"> (g) Project Co is meeting its obligations in the Design Requirements and performing its obligations in Schedule 13 (Services Specifications) (except to the extent the obligations in Schedule 13 (Services Specifications) cannot be met as a direct result of the Force Majeure Event) (as relevant); (h) the event or its consequences was not caused or contributed to by Project Co or a Project Co Associate, including failing to use Best Operating Practices or Best Construction Practices (as applicable) as required by this Agreement, the State or a State Associate; and (i) the event does not arise out of Land Conditions, other than in respect of an event specifically set out in paragraph (a), (d) or (e) of this definition.
Force Majeure Termination Amount	means the payment calculated as such in Schedule 10 (Termination Amounts).
Force Majeure Termination Event	means a Force Majeure Event which prevents Project Co from undertaking all or substantially all of its obligations in accordance with this Agreement for a continuous period exceeding 6 Months.
Function	has the meaning given to it in Part G (Glossary) of Schedule 12 (Design Specifications).
Function Activity	has the meaning given to it in Schedule 14 (Payment Schedule).
Funding Date	means the funding date defined as such in the State Loan Agreement.
General Change in Law	<p>means any one or more of the following:</p> <ul style="list-style-type: none"> (a) a change in, or repeal of, an existing Law; (b) the enactment or making of a new Law; or (c) a change in the way a Law is applied or is interpreted as a result of a decision of a court of competent jurisdiction, <p>excluding:</p> <ul style="list-style-type: none"> (d) a Modification or an FF&E Modification; (e) a Project Specific Change in Law; (f) a change in the way a Law is applied or interpreted as a result of: <ul style="list-style-type: none"> (i) the failure of Project Co to comply with a Law or any Authorisation; (ii) an illegal act or omission of Project Co or a Project Co Associate; or (iii) any breach of this Agreement by Project Co; (g) a change in any Law relating to Taxes including the <i>Income Tax Assessment Act 1936</i> (Cth), the <i>Income Tax Assessment Act 1997</i> (Cth), the <i>Duties Act 2008</i> (WA) and the GST Law;

Term	Meaning
	<ul style="list-style-type: none"> (h) a change in Law which is the introduction of the Model WHS Law into Western Australia; (i) a change in any, or the enactment of a new, Law relating to employment or industrial relations, including an Industrial Award, Agreement or Order; (j) a change in Law which was not in force at Contractual Close but which: <ul style="list-style-type: none"> (i) had been published prior to Contractual Close in a Government Gazette by way of bill, draft bill or draft statutory instrument, had been introduced prior to Contractual Close as a bill into the Parliament of Western Australia or the Parliament of Australia or otherwise specifically referred to prior to Contractual Close; (ii) is contained or referred to in the Design Requirements, any Disclosed Information provided to Project Co prior to Contractual Close or any Project Document; (iii) a party experienced and competent in the implementation of works similar to the DBFM Works or the provision of services similar to the Services would have reasonably foreseen or anticipated prior to Contractual Close; or (iv) is substantially the same as a Law in force prior to Contractual Close; (k) a Change in Quality Standard; or (l) a change in Law relating to the <i>Civil Liability Act 2002 (WA)</i> or its application which limits or eliminates the impact of that Act or any legal risk allocation in accordance with this Agreement.
General Security Agreement	means the document entitled 'The new Perth Stadium DBFM Project – General Security Agreement' between the State, Project Co and Finance Co in the form contained in Schedule 31 (General Security Agreement).
Geotechnical Interpretive Report	means the report of that name prepared in accordance with this Agreement, including Schedule 19 (Plans).
Good Industry Practice	means: <ul style="list-style-type: none"> (a) with the exercise of that degree of skill, diligence, prudence and foresight that would be reasonably expected from a professional, reputable and prudent contractor undertaking works similar to the DBFM Works or providing services similar to the Services under conditions comparable to those applicable to the DBFM Project; and (b) in accordance with all Laws, Authorisations and Quality Standards.
Government Agency	means any organ of government, government entity, government authority, body politic (but excluding any political party) or government department.
Gross Commercial Opportunity Receipts	has the meaning given to it in Schedule 23 (Commercial Opportunity Fee).

Term	Meaning
Ground Gas Management Plan	means the plan of that name prepared in accordance with this Agreement, including Schedule 19 (Plans).
Grounds and Gardens Services	has the meaning given to it in Annexure E (Glossary) of Schedule 13 (Services Specifications).
Group 1 FF&E	means any furniture, fittings or equipment identified as 'Group 1 FF&E' in the FF&E List, being furniture, fittings or equipment which is to be provided and installed or located (as applicable, depending on whether the relevant FF&E is loose or fixed) by Project Co in accordance with the obligations of this Agreement and described in Schedule 12 (Design Specifications) and to be maintained by Project Co for the duration of the Operating Phase in accordance with Schedule 13 (Services Specifications), but excludes Services Equipment.
Group 2 FF&E	means any furniture, fittings or equipment identified as 'Group 2 FF&E' in the FF&E List, being furniture, fittings or equipment which is to be provided and installed or located (as applicable, depending on whether the relevant FF&E is loose or fixed) by Project Co in accordance with the obligations of this Agreement and described in Schedule 12 (Design Specifications) and to be maintained by the State or the Stadium Operator from the Date of Commercial Acceptance and which must be handed over to the State or the Stadium Operator in accordance with Schedule 7 (Completion Criteria).
Group 3 FF&E	means any furniture, fittings or equipment provided by the State and described in Schedule 12 (Design Specifications), which is to be installed or located (as applicable, depending on whether the relevant FF&E is loose or fixed) by Project Co or the State (as set out in Schedule 12 (Design Specifications)) and maintained by the Stadium Operator.
Group 4 FF&E	means any furniture, fittings or equipment provided by the Stadium Operator and described in Schedule 12 (Design Specifications), which is to be installed or located (as applicable, depending on whether the relevant FF&E is loose or fixed) and maintained by the Stadium Operator.
GST	has the meaning given in the GST Law.
GST Law	has the same meaning as under the <i>A New Tax System (Goods and Services) Tax Act 1999</i> (Cth).
Handover	means the stage when Project Co has done everything that this Agreement requires to enable Project Co to handover the DBFM Works or the Stadium, Sports Precinct and Off-Site Infrastructure (as applicable) in the Handover Condition at the Expiry Date.
Handover Bond	means a bond provided to the State in accordance with Clause 31 or any bond accepted in substitution for or replacement of that bond.
Handover Condition	has the meaning given to it in Clause 31.1.

Term	Meaning
<i>Handover Escrow Account</i>	has the meaning given in Clause 31.2(g)(ii)(A).
<i>Handover Package</i>	has the meaning given to it in Annexure E (Glossary) of Schedule 13 (Services Specifications).
<i>Head Lessee</i>	any lessee under any lease for the Head Lease Area and their employees, agents, operators and contractors.
<i>Head Lease Area</i>	means the area identified as such in the plans in Schedule 11 (Site Plans).
<i>Hedge Period End Date</i>	means the date set out in the cell in the column headed 'Hedge Period End' contained in the Hedge Profile Table.
<i>Hedge Period Start Date</i>	means the date set out in cell in the column headed 'Hedge Period Start' contained in the Hedge Profile Table.
<i>Hedge Profile Table</i>	means the 'Hedge Profile – Opening Balance' table located within the Model Output Schedule sheet in the Financial Model, as adjusted in accordance with Section 2A(c) of Schedule 14 (Payment Schedule) and the State's consent provided under Clause 37.
<i>Heritage Claim</i>	means a claim made in accordance with any Law in respect of native title or for the protection, preservation or removal of any Artefact.
<i>Hirers</i>	means those bodies, including their employees, agents, contractors, advisers, consultants and officers, that enter into an agreement with the Stadium Operator or the State in relation to the presentation or hosting of an Event or Function at the Stadium.
<i>Hold Co</i>	Westadium Project Hold Co Pty Ltd (ACN 169 899 094) in its own capacity and in its capacity as trustee for the Hold Co Trust.
<i>Hold Co Trust</i>	means the trust known as the Westadium Project Unit Hold Trust constituted under the Hold Co Trust Deed.
<i>Hold Co Trust Deed</i>	means the trust deed dated on or about the date of this Agreement and executed by Hold Co as trustee for the Hold Co Trust as amended from time to time in accordance with this Agreement.
<i>ICT and AV Services</i>	has the meaning given to it in Annexure E (Glossary) of Schedule 13 (Services Specifications).
<i>ICT Risk Assessment</i>	means the plan of that name prepared in accordance with this Agreement, including Schedule 19 (Plans).
<i>ICT Systems</i>	has the meaning given to it in Part G (Glossary) of Schedule 12 (Design Specifications).

Term	Meaning
IL	has the meaning given to it in Section 4.3 of Schedule 14 (Payment Schedule).
Immediate Termination Event	<p>means any of the following events:</p> <ul style="list-style-type: none"> (a) (abandonment): Project Co wholly or substantially abandons the DBFM Works or the Services or, while an Event of Default is subsisting, removes FF&E from the Site such that it may not be able to comply with its obligations in Clause 31.3; (b) (delay in Commercial Acceptance): Commercial Acceptance is not achieved within 18 months of the Date for Commercial Acceptance; (c) (Insolvency Event of a Project Entity): an Insolvency Event occurs in relation to a Project Entity, whether or not a Project Entity is then in breach of a State Project Document; (d) (Insolvency Event of Builder, Builder Guarantor, FM Subcontractor or FM Subcontractor Guarantor): an Insolvency Event occurs in relation to the Builder, the Builder Guarantor, the FM Subcontractor or the FM Subcontractor Guarantor whether or not Project Co is then in breach of a State Project Document, and that Builder, Builder Guarantor, FM Subcontractor or FM Subcontractor Guarantor (as applicable) is not replaced within 90 days by a party approved by the State taking into account the considerations listed in Clause 46.6(f); (e) (Service Failures): following two Service Failure Defaults in any rolling <i>[not disclosed]</i> (whether or not they have been cured by Project Co), the point at which a further Default Notice is issued during that rolling <i>[not disclosed]</i> in respect of a Service Failure Default, other than where Project Co has notified the State that it is intending to replace the FM Subcontractor, in which case the Immediate Termination Event occurs at the point at which a Default Notice is issued in respect of a fourth Service Failure Default during that rolling <i>[not disclosed]</i> . For the purpose of this paragraph (e) only, any Abatements in any <i>[not disclosed]</i> arising from a single event or incident can only lead to a single Service Failure Default provided Project Co is diligently pursuing a cure for the cause of the Abatements; (f) (multiple Events of Default): a total of <i>[not disclosed]</i> Events of Default (which may include one or more Service Failure Default) have been notified by the State to Project Co in any <i>[not disclosed]</i> (which notice is not required to be a Default Notice); or (g) (Change in Control): a Change in Control of Project Co or Hold Co occurs without the consent of the State in accordance with Clause 46.6.
Incident	has the meaning given to it in Schedule 14 (Payment Schedule).
Incident Failure	has the meaning given to it in Schedule 14 (Payment Schedule).
Increased State Risk Allocation	means any increase in the risks for the State in relation to the DBFM Project as a result of entry into the Securitised Licence Structure or the State Loan Agreement.

Term	Meaning
<i>Indemnified Person</i>	has the meaning given to it in Clause 39.9.
<i>Independent Certifier</i>	means the entity appointed as the Independent Certifier in accordance with the Independent Certifier Agreement, as replaced (if at all) in accordance with Clause 5.8.
<i>Independent Certifier Agreement</i>	means the document entitled 'The new Perth Stadium DBFM Project Independent Certifier Agreement' between the State, Project Co, the Independent Certifier and once appointed, the Stadium Operator, dated on or about Contractual Close, which document must be substantially in the form of the Independent Certifier Agreement set out in Schedule 27 (Independent Certifier Agreement).
<i>Independent Expert</i>	means a person with suitable expertise and experience required to determine a Dispute having regard to the nature of the Dispute, appointed in accordance with Clause 45.
<i>Indexed</i>	with respect to an amount which is required to be indexed in accordance with this Agreement (other than those amounts for which this Agreement specifically provides are to be indexed in accordance with some other index or measure), means, on the date specified in this Agreement, that amount will be adjusted in accordance with the formula set out below and then rounded upwards or downwards to two decimal places: $A(\text{Indexed}) = B \times \frac{\text{CPI A} - 1}{\text{CPI Base}}$ <p>Where:</p> <p>A (Indexed) = the monetary amount after indexation has been applied.</p> <p>B = the monetary amount to be indexed.</p> <p>CPI A-1 = the CPI figure for the September Quarter immediately preceding the CPI Adjustment Date.</p> <p>CPI Base = the CPI figure for the period ended 30 September 2013, being 104.2.</p>
<i>Indigenous Recognition and Engagement Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Schedule 19 (Plans).
<i>Indirect or Consequential Loss</i>	means, subject to Clause 39.14(a)(i) to Clause 39.14(a)(viii) and Clause 39.14(b)(i) to Clause 39.14(b)(xiii), any: <ul style="list-style-type: none"> (a) loss of opportunity, profit, anticipated profit, business, business opportunities or revenue, including any failure to realise anticipated savings or the costs and Liabilities relating to the hiring of a venue to hold Stadium Activities not otherwise capable of being held at the Stadium from time to time;

Term	Meaning
	<ul style="list-style-type: none"> (b) any penalties payable under contracts other than this Agreement; (c) cost of capital and financing costs; or (d) damage to reputation.
Industrial Award, Agreement or Order	<p>means an award, a registered or certified agreement or an order of the Western Australian Industrial Relations Commission, Australian Industrial Relations Commission or Fair Work Australia and includes transitional instruments under schedule 3 of the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> (Cth), and any agreement including a workplace or enterprise agreement between an individual or group of individuals or any Project Co Associate that is lodged, registered or certified under any Law applying in Western Australia.</p>
Industry Participation Plan (IPP)	<p>means the plan of that name prepared in accordance with this Agreement, including Schedule 19 (Plans).</p>
Industry Training Plan	<p>means the plan of that name prepared in accordance with this Agreement, including Schedule 19 (Plans).</p>
Insolvency Event	<p>means, in relation to a corporation, the occurrence of any of the following events:</p> <ul style="list-style-type: none"> (a) (informs creditors): that corporation informs its creditors generally that it is insolvent; (b) (receiver): a liquidator, administrator, trustee in bankruptcy, receiver or receiver and manager or similar officer is appointed in connection with any of the assets of that corporation; (c) (execution): a distress, attachment or other execution is levied or enforced upon or against any assets of that corporation and in the case of a writ of execution or other order or process requiring payment, it is not withdrawn or dismissed within 10 Business Days; (d) (application): an application is made for the administration, dissolution or winding up of that corporation which application is not stayed within 10 Business Days of being made; (e) (winding up): an order is made for the administration, dissolution or winding up of that corporation; (f) (resolution): a resolution is passed for the administration or winding up of that corporation other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the State; (g) (arrangement or composition): that corporation enters, or resolves to enter into or has a meeting of its creditors called to enter into any scheme of arrangement or composition with its creditors generally, or any class of its creditors, other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the State; (h) (statutory demand): <ul style="list-style-type: none"> (i) that corporation fails to comply with, or apply to have set aside, a statutory demand within 10 Business Days of the time for compliance; or (ii) if that corporation applies to have the statutory demand set

Term	Meaning
	<p>aside within 10 Business Days of the time for compliance, the application to set aside the statutory demand is unsuccessful and that corporation fails to comply with the statutory demand within 5 Business Days of the order of the court dismissing the application;</p> <p>(i) (execution levied against it): that corporation has an execution levied against it by creditors, debenture holders or trustees or under a floating charge which is not satisfied, withdrawn or dismissed within 10 Business Days; or</p> <p>(j) (insolvency): that corporation is unable to pay its debts when they fall due, or is deemed unable to pay its debts in accordance with any applicable Law.</p>
<i>Instrumentation and Monitoring Plan</i>	means the plan of that name to be prepared in accordance with this Agreement, including Schedule 19 (Plans).
<i>Insurance Proceeds Account</i>	means the account established in accordance with Clause 40.12.
<i>Insurances</i>	means the insurances required to be effected and maintained in accordance with this Agreement.
<i>Intellectual Property Rights</i>	<p>means all intellectual and industrial property rights existing in Australia or throughout the world, including registered and unregistered trade marks, copyright (including future copyright), inventions, patents, designs, circuits and other eligible layouts and database rights, and includes:</p> <p>(a) any application or right to apply for registration of any of these rights; and</p> <p>(b) any renewals and extensions of these rights.</p>
<i>Interest Rate Service Payment Adjustment</i>	means the amount payable by the State to Project Co or Project Co to the State (as applicable) calculated in accordance with Section 2A of Schedule 14 (Payment Schedule).
<i>Intervening Event</i>	<p>means each of the following events:</p> <p>(a) (Compensable Intervening Event): a Compensable Intervening Event;</p> <p>(b) (State act or omission): an act or omission by the State in its capacity as a contracting party to the relevant State Project Documents or a State Associate which prevents, hinders or disrupts Project Co in the performance of the Services in accordance with the State Project Documents, excluding an act or omission by the State or a State Associate:</p> <p>(i) in undertaking the Stadium Activities;</p> <p>(ii) which is authorised or permitted under any State Project Document;</p> <p>(iii) which is a reasonably foreseeable consequence of undertaking</p>

Term	Meaning
	<p>the Stadium Activities or the acts or omissions permitted under the State Project Documents; or</p> <p>(iv) which is caused by an act or omission of Project Co (other than an act or omission of Project Co authorised or permitted under a State Project Document);</p> <p>(c) (Force Majeure): a Force Majeure Event;</p> <p>(d) (deferral of maintenance) a direction by the State Representative in accordance with Clause 23.4(d) or under the Operational Interface Agreement, and a Service Failure occurs as a consequence which could not have been reasonably avoided;</p> <p>(e) (Statutory Step-in): if the State is required by Law to discharge a statutory power or statutory duty in emergency circumstances and the exercise of such power requires the State to take control of all or substantially all of the Stadium and Sports Precinct to the extent that such event has not been caused or contributed to by:</p> <p>(i) an act or omission of Project Co or a Project Co Associate other than an act or omission in accordance with the requirements of the Project Documents; or</p> <p>(ii) a Force Majeure Event;</p> <p>(f) (third party works or services): works or services undertaken:</p> <p>(i) to rectify Defects (whether undertaken by or on behalf of Project Co or the State) in the circumstances set out in Clause 21(g); or</p> <p>(ii) to implement works or provide services as described in Clauses 28.1(d)(ii), 29.8, 33.1(d)(vi) or Section 5(g)(iii) of Part A of Schedule 4 (Change Compensation Principles);</p> <p>(g) (fire, explosion or flood): fire, explosion or flood levels which exceed 1 in 25 year flood (as described in Schedule 45 (Flood Parameters)) at or transgressing onto the Site, where Project Co can demonstrate that all reasonable preventative measures were taken to minimise the cause and effect of that fire, explosion or flood on the performance of its obligations under this Agreement;</p> <p>(h) (Stadium Personnel damage or breach): damage by the Stadium Personnel or a breach of the Operational Interface Agreement which prevents, hinders or disrupts Project Co in the performance of the Services in accordance with the State Project Documents, excluding an act or omission by the Stadium Operator:</p> <p>(i) in undertaking the Stadium Activities, other than in breach of the Operational Interface Agreement; or</p> <p>(ii) which is authorised or permitted under any State Project Document,</p> <p>and excluding damage:</p> <p>(iii) which arises as a result of Fair Wear and Tear; or</p> <p>(iv) to the extent caused or contributed to by an act or omission of Project Co (other than an act or omission of Project Co authorised or permitted under a State Project Document),</p> <p>and provided that Project Co is diligently rectifying the damage in</p>

Term	Meaning
	<p>accordance with this Agreement;</p> <p>(i) (Stadium User damage): material damage by:</p> <p>(i) a Hirer, Performer or Media Personnel that is during an Active Profile Period;</p> <p>(ii) a Patron that is both during an Event Profile Period or Permitted Training Profile Period and in respect of an Event Activity or Permitted Training Activity, or during and in respect of a Function Activity; or</p> <p>(iii) Stadium Personnel at any time,</p> <p>which, in each case, prevents, hinders or disrupts Project Co in the performance of the Services in accordance with the State Project Documents, excluding damage:</p> <p>(iv) which is authorised or permitted under any State Project Document;</p> <p>(v) which is reasonably foreseeable having regard to equivalent stadia in Australia of relevant configuration and capacity;</p> <p>(vi) which arises as a result of Fair Wear and Tear; or</p> <p>(vii) to the extent caused or contributed to by an act or omission of Project Co (other than an act or omission of Project Co authorised or permitted under a State Project Document),</p> <p>and provided that Project Co is diligently rectifying the damage in accordance with this Agreement; and</p> <p>(j) (Reviewable Services): damage or Defects arising in connection with services performed by a State Associate or Stadium Personnel engaged to perform any of the Reviewable Services, where that damage or Defect arose due to a breach of the contract pursuant to which the State Associate or Stadium Personnel was engaged to perform the Reviewable Services, but excluding any damage to the extent it is Fair Wear and Tear.</p>
Invoice	<p>means:</p> <p>(a) a tax invoice for payment in the form agreed between the parties (each acting reasonably) which must contain a full break down of all elements of the payment to be made in accordance with that invoice and any other items reasonably requested by the State; and</p> <p>(b) a statement in the form agreed between the parties (each acting reasonably) after Financial Close which must contain a full break down of all elements of the State Loan Payments and any other items in relation to the State Loan Agreement reasonably requested by the State.</p>
IRSPA Commencement Date	<p>means the date as specified in the 'Hedge Profile – Opening Balance' table of the Model Output Schedule sheet in the Financial Model.</p>
IRSPA Invoice	<p>has the meaning given to it in Clause 36.4A(d).</p>
IRSPA Notice	<p>has the meaning given to it in Clause 36.4A(c).</p>

Term	Meaning
<i>ISGS Expert</i>	means the expert who will undertake an independent peer review for both the State and Project Co and provide independent sports ground safety advice in relation to the DBFM Project and to assist in relation to interpretation of the ISGS Publications (as defined in Schedule 12 (Design Specifications)).
<i>ISGS Expert Agreement</i>	means the document entitled 'The new Perth Stadium DBFM Project ISGS Expert Agreement' between the State, Project Co and the ISGS Expert, to be entered into in accordance with Clause 5.9.
<i>Issue</i>	has the meaning given to it in Schedule 14 (Payment Schedule).
<i>Key Personnel</i>	means the persons listed in Schedule 1 (Contract Particulars) who are to carry out the roles and functions described in that Schedule, as amended from time to time in accordance with Clause 5.12.
<i>Key Subcontractor</i>	means: <ul style="list-style-type: none"> (a) the Builder; (b) the FM Subcontractor; (c) the Subcontractors set out in Schedule 1 (Contract Particulars); and (d) any Subcontractor the State determines, acting reasonably, from time to time is a Key Subcontractor, and any replacement of them in accordance with this Agreement.
<i>Key Subcontractor Direct Deeds</i>	means the deed procured from a Key Subcontractor in accordance with Clause 5.12(e).
<i>Key Subcontracts</i>	means: <ul style="list-style-type: none"> (a) the D&C Subcontract; (b) the FM Subcontract; and (c) any Subcontract entered into with any Key Subcontractors identified in paragraphs (c) or (d) of the definition of Key Subcontractor.
<i>Land Conditions</i>	means any physical conditions on, under or over the surface or in the vicinity of, the Site, the Off-Site Infrastructure Construction Areas, the Off-Site Infrastructure Maintenance Areas and the Head Lease Area, including: <ul style="list-style-type: none"> (a) (water and gas): ground gas, ground water, ground water hydrology, surface water, water quality, salinity, the existence of any wells and the effects of any dewatering; (b) (physical structures): physical and structural conditions above, upon and below the ground including any fill, waste material, underground obstructions, infrastructure (including utilities and transport infrastructure), partially completed structures, Artefacts or in ground works; (c) (vegetation and fauna): plants, grasses or other vegetation and fauna on the Site;

Term	Meaning
	<p>(d) (topography): topography, ground surface and sub-surface conditions and geology including rock or other materials, the effects of loading and unloading and soil quality;</p> <p>(e) (climate): climatic and weather conditions, rain, stormwater, surface water run-off and drainage, water seepage, wind, wind-blown dust and sand storms, airborne salinity, humidity, mud and other effects of climatic and weather conditions;</p> <p>(f) (Contamination): any Contamination or any substance above background concentrations;</p> <p>(g) (acid sulphate soils): any soils and sediments that contain iron sulfides; and</p> <p>(h) (easements): all easements over or in connection with the Site, whether or not they were in existence or known to Project Co before Contractual Close, but excluding the PCS Works.</p>
Law	<p>means:</p> <p>(a) Commonwealth, Western Australian and local government legislation, including statutes, ordinances, instruments, codes (but excluding any building codes or Quality Standards), requirements, regulations, by-laws and other subordinate legislation;</p> <p>(b) common law; and</p> <p>(c) principles of equity.</p>
Level Of Development	<p>means the level of certainty to which a Model Element is described in the BIM Models.</p>
Liability	<p>includes any debt, obligation, claim, action, cost (including legal costs, deductibles or increased premiums), expense, loss (whether direct or indirect), damage, compensation, charge or liability of any kind (including fines or penalties), actual, prospective or contingent and whether or not currently ascertainable and whether arising under or for breach of contract, in tort (including negligence), restitution, pursuant to statute or otherwise at Law.</p>
Licence Payment	<p>means the licence payments payable by Project Co to the State under the Operating Phase Licence.</p>
Lifecycle Services	<p>means the periodic refurbishment or replacement of all elements comprising the Stadium and Sports Precinct in accordance with the Estate Services Plans or otherwise as necessary to ensure Project Co:</p> <p>(a) satisfies the FFP Warranty;</p> <p>(b) complies with Schedule 13 (Services Specifications); and</p> <p>(c) complies with all relevant Laws, Authorisations and Quality Standards.</p>
LOD Table	<p>means the table of that name incorporated in Project Co's BIM Management Plan included in Attachment 3 (D&C Plans), which sets out</p>

Term	Meaning
	the Level Of Development (LOD) for individual Model Elements at each Design Stage and at Technical Completion and Commercial Acceptance.
Main Contractor	<p>means:</p> <ul style="list-style-type: none"> (a) 'main contractor' or similar term (such as 'principal contractor') as defined in an OHS Law; or (b) where 'main contractor' or similar term (such as 'principal contractor') is not defined in an OHS Law, the entity that performs a role similar to the role of 'main contractor' within the meaning of the <i>Occupational Safety and Health Regulations 1996 (WA)</i>.
Main Roads	means the Commissioner of Main Roads (Western Australia) constituted under the <i>Main Roads Act 1930 (WA)</i> .
Margin	means an amount on account of off-site and on-site overheads and administrative and corporate and other like costs and profit.
Media Personnel	means members of the media and press associated with broadcast and narrowcast mediums (including radio, television, newspapers, magazines, journals and the internet) attending the Stadium and Sports Precinct for the purposes of covering an Event, including all associated activities undertaken before, during and after that Event.
Minister	means a minister acting for and on behalf of the Crown in right of the State of Western Australia.
Minor Modification	<p>means a Modification or FF&E Modification:</p> <ul style="list-style-type: none"> (a) the estimated Base Cost of which does not exceed the Minor Modification Threshold; (b) which will not delay Project Co in achieving Technical Completion or Commercial Acceptance; and (c) which is implemented in accordance with Clause 12.
Minor Modification Running Schedule	has the meaning given to it in Clause 12.2.
Minor Modification Threshold	means for each Minor Modification, an amount of [<i>not disclosed</i>] (as Indexed on each CPI Adjustment Date).
Minor Works	<p>means any:</p> <ul style="list-style-type: none"> (a) services or change to the Stadium or Sports Precinct (or both) required by the State or the Stadium Operator during the Operating Phase which has a total Minor Works Price less than \$20,000 (excluding GST) (as Indexed on each CPI Adjustment Date) in connection with each Minor Works Notice; and (b) any other works agreed by the parties to be Minor Works, <p>but does not include:</p>

Term	Meaning
	<ul style="list-style-type: none"> (c) a Modification, a FF&E Modification or a Minor Modification; (d) any change required to ensure the Stadium, Sports Precinct or the Off-Site Infrastructure satisfy the FFP Warranty, is Fit For Purpose (excluding Group 2 FF&E, Group 3 FF&E and Group 4 FF&E) or to rectify a Defect; or (e) any works or services that form part of the DBFM Works or Services, including rectifying Faults or Incidents.
Minor Works Cost	<p>means:</p> <ul style="list-style-type: none"> (a) the direct cost actually and properly incurred by Project Co in carrying out the Minor Works excluding the labour or provision of services where this could reasonably have been expected to be provided by the FM Subcontractor as part of the Services being undertaken at the relevant time; and (b) the expected cost of performance of any future services as a direct result of the Minor Works discounted back to the date of completion of the Minor Works using the BBSY Rate, <p>payable in accordance with Clause 28.</p>
Minor Works Limit	<p>means an amount of:</p> <ul style="list-style-type: none"> (a) [not disclosed] for the first Operating Year; and (b) [not disclosed] for each Operating Year thereafter (as Indexed on each CPI Adjustment Date) and as increased pursuant to Clause 28.5.
Minor Works Notice	<p>has the meaning given to it in Clause 28.1(a).</p>
Minor Works Price	<p>means the price payable to Project Co in connection with the Minor Works.</p>
Minor Works Quote	<p>has the meaning given to it in Clause 28.1(b).</p>
Model Elements	<p>means the physical infrastructure elements of the DBFM Works to be modelled in terms of quantities, size, shape, location and orientation, with associated non geometric information (including in respect of materials and other performance parameters), in the BIM Models.</p>
Model Output Schedule	<p>means the worksheet in the Financial Model identified as the Model Output Schedule, a printout of which is signed or initialled by an authorised representative of the State and Project Co (amongst others) on or before Financial Close.</p>
Model WHS Law	<p>means the Model Work Health and Safety Act and the Model Work Health and Safety Regulations as published by Safe Work Australia current as at Contractual Close, or any Law which is substantially the same as or based on the Model Work Health and Safety Act and the Model Work Health and Safety Regulations that are enacted in the State of Western Australia.</p>

Term	Meaning
Modification	<p>means:</p> <ul style="list-style-type: none"> (a) in the period prior to the Date of Commercial Acceptance in connection with the DBFM Works, any change made by the State to the DBFM Works or the Output Specifications, including any addition, decrease, omission, deletion or removal to or from the relevant DBFM Works which result from a change to the Output Specifications (other than design development in accordance with the Design Development process); or (b) in the period from the Operational Commencement Date: <ul style="list-style-type: none"> (i) any change to Schedule 13 (Services Specifications) or the scope of the Services; (ii) any changes to the Off-Site Infrastructure; or (iii) a Stadium or Sports Precinct Modification, <p>but excludes:</p> <ul style="list-style-type: none"> (c) any works undertaken by the State or third parties on behalf of the State, other than consequential changes to the Services to accommodate works undertaken by the State or third parties on behalf of the State; (d) a FF&E Modification; (e) for the purposes of Clause 33 only, a Minor Modification; (f) Minor Works; (g) a change that is permitted in accordance with Clause 11.6 or Clause 11.7; and (h) any change referred to in paragraphs (a) or (b) required to ensure the Stadium, the Sports Precinct or the Off-Site Infrastructure (or a combination of them) satisfy the FFP Warranty and are Fit For Purpose (excluding Group 2 FF&E during the Operating Phase only, and excluding Group 3 FF&E and Group 4 FF&E) or to rectify a Defect.
Modification Order	has the meaning given to it in Clause 33.1(d)(i) which requires Project Co to proceed with a Modification or FF&E Modification.
Modification Price Request	has the meaning given to it in Clause 33.1(a).
Modification Quote	has the meaning given to it in Clause 33.1(a).
Month	means a calendar month.
Monthly Performance Report	has the meaning given to it in Annexure E (Glossary) of Schedule 13 (Services Specifications).
Monthly Service Payment	has the meaning given to it in Schedule 14 (Payment Schedule).

Term	Meaning
Monthly Services Plan	has the meaning given to it in Annexure E (Glossary) of Schedule 13 (Services Specifications).
Monthly Works Report	means the report of that name to be prepared by Project Co in accordance with Schedule 19 (Plans).
Noise Management Plan	means the plan of that name prepared in accordance with this Agreement, including Schedule 19 (Plans) and Schedule 12 (Design Specifications).
Notice of Dispute	has the meaning given in Clause 45.1(b).
Occupational Health and Safety Plan	means the plan of that name to be prepared by Project Co in accordance with Schedule 19 (Plans).
OECD Requirements	the entity or Related Fund is incorporated or resident in an OECD country or, in the case of a Related Fund, primarily operates in OECD countries but which is incorporated or resident in a country in which a unit trust, investment fund, investment company, partnership, or other fund (a 'Fund') could reasonably be expected to be incorporated or resident given the nature of that Fund, provided the country in which it is incorporated or resident is not listed, at any time, in the United Nations Security Council sanctions regime or the Australian autonomous sanctions regime in accordance with the <i>Autonomous Sanctions Regulations 2011</i> (Cth).
Off Season	means a time of year designated by the Sporting Codes when there is no official competition for any of the Sporting Codes played at the Stadium from time to time.
Off-Site Infrastructure	means each item of infrastructure identified in Schedule 8 (Off-Site Infrastructure Works) to the extent that Project Co is required, in accordance with that Schedule, to construct or maintain that infrastructure.
Off-Site Infrastructure Completion	means, in respect of each item of Off-Site Infrastructure, the stage when Project Co has done everything that this Agreement requires to enable Project Co to handover the relevant item of Off-Site Infrastructure to the owner of that item of Off-Site Infrastructure in accordance with this Agreement, including having achieved the Completion Criteria in respect of that item of Off-Site Infrastructure as set out in Schedule 7 (Completion Criteria).
Off-Site Infrastructure Construction Areas	means the land on which the Off-Site Infrastructure Works are to be completed including as shown on plan 7 in Schedule 11 (Site Plans).
Off-Site Infrastructure Maintenance Areas	means the area on which the Off-Site Infrastructure is located, as described and shown on the Operating Phase Site Plan, as updated in accordance with this Agreement.
Off-Site Infrastructure Works	means, in respect of each item of Off-Site Infrastructure, all works necessary for the design, construction, completion, commissioning and handover of the relevant item of Off-Site Infrastructure, including all

Term	Meaning
	Modifications and rectification of Defects in respect of that item of Off-Site Infrastructure.
OHS Laws	<p>means all occupational health and safety related:</p> <ul style="list-style-type: none"> (a) Laws that are in, or come into, force during the Term in the State of Western Australia and the Commonwealth in connection with: <ul style="list-style-type: none"> (i) occupational health and safety including the <i>Occupational Safety and Health Act 1984 (WA)</i>, the <i>Occupational Safety and Health Regulations 1996 (WA)</i> and Model WHS Laws; and (ii) to the extent relevant, any occupational health and safety accreditation scheme established under the <i>Fair Work (Building Industry) Act 2012 (Cth)</i> or the <i>Fair Work (Building Industry - Accreditation Scheme) Regulations 2005 (Cth)</i>; (b) Australian Standards; (c) codes of practice and guidance materials issued by an Authority; (d) directions on safety or notices issued by any relevant Authority (including any commissioners and inspectors appointed or employed in respect of a relevant Authority) in accordance with any OHS Laws; and (e) directions, instructions, requests or requirements from an Authority or the State relevant to or associated with or necessary for compliance by Project Co, any Project Co Associate or the State with any of the instruments identified in paragraphs (a) to (d) and including any such matters of which Project Co has been informed by the State orally or in writing, <p>in respect of the location where any part of the DBFM Works or Services are being performed.</p>
Operating and Maintenance Manuals	has the meaning given to it in Annexure E (Glossary) of Schedule 13 (Services Specifications).
Operating Phase	means the period commencing on the Operational Commencement Date and ending on the Expiry Date.
Operating Phase Licence	means the licence granted by the State to Project Co in accordance with Clause 7.6 as amended in accordance with that Clause.
Operating Phase Lifecycle Maintenance Plan	has the meaning given to it in Annexure E (Glossary) of Schedule 13 (Services Specifications).
Operating Phase Plans	<p>means each of the plans listed in Section 3 of Schedule 19 (Plans), being the:</p> <ul style="list-style-type: none"> (a) Work Method Statements; (b) Monthly Services Plan; (c) Security Risk and Threat Assessment Plan;

Term	Meaning
	<p>(d) Security Management and Treatment Plan;</p> <p>(e) Policies and Procedures Manual;</p> <p>(f) Operating Phase Lifecycle Maintenance Plan;</p> <p>(g) Annual Services Plan;</p> <p>(h) Annual Report;</p> <p>(i) Operating and Maintenance Manuals; and</p> <p>(j) Handover Package,</p>
	<p>as updated and amended by Project Co in accordance with this Agreement.</p>
<i>Operating Phase Site</i>	<p>means the area on which the Stadium and Sports Precinct are located, as described and shown on the Operating Phase Site Plan, as updated in accordance with this Agreement.</p>
<i>Operating Phase Site Plan</i>	<p>means the plan prepared and amended in accordance with Clause 7.5 which identifies the boundaries of the land on which the Stadium and Sports Precinct are located.</p>
<i>Operating Year</i>	<p>means each 12 Month period during the Operating Phase with the first Operating Year commencing on the Operational Commencement Date and ending on the day before the anniversary of the Operational Commencement Date, and the last Operating Year ending on the Expiry Date (whether or not such Operating Year is a full 12 Month period).</p>
<i>Operational Commencement Date</i>	<p>means the day after the Date of Commercial Acceptance for the Stadium and Sports Precinct.</p>
<i>Operational Environmental Management Framework</i>	<p>means the operational environmental management framework set out in Schedule 36 (Operational Environmental Management Framework).</p>
<i>Operational Environmental Management Plan</i>	<p>means the plan of that name prepared in accordance with this Agreement, including Schedule 19 (Plans).</p>
<i>Operational Handover Plan</i>	<p>means the plan of that name to be prepared by Project Co in accordance with this Agreement, including Schedule 19 (Plans).</p>
<i>Operational Interface Agreement</i>	<p>means the operational agreement for the cooperation and coordination of activities in relation to the operation and maintenance of the Stadium and Sports Precinct between the State, the Stadium Operator and Project Co, to be entered into once the Stadium Operator is appointed.</p>
<i>Operations Payment Claim</i>	<p>has the meaning given in Clause 36.4(a).</p>

Term	Meaning
<i>Operations Payment Statement</i>	means the statement of that name to be prepared by the State in accordance with Clause 36.4(b).
<i>Operator Agreement</i>	means the agreement between the State and the Stadium Operator for the day to day operations of the Stadium and Sports Precinct, securing content for the Stadium and carrying out Stadium Activities, but not including the Services.
<i>Other Opportunity</i>	has the meaning given to it in Schedule 22 (Commercial Opportunities).
<i>Output Specifications</i>	<p>means the documents set out in Schedule 12 (Design Specifications) and Schedule 13 (Services Specifications) (as applicable), being:</p> <ul style="list-style-type: none"> (a) in relation to Schedule 12 (Design Specifications): <ul style="list-style-type: none"> (i) Project Overview and General Requirements; (ii) Project Vision, Aspirations and Objectives; (iii) Design Brief; (iv) Functional Brief; (v) Technical Brief; (vi) Functional Flow Diagrams; and (vii) the associated Glossary and any relevant appendices or attachments to any of the above; and (b) in relation to Schedule 13 (Services Specifications): <ul style="list-style-type: none"> (i) Overview; (ii) Estate Services; (iii) Facilities Management Services; (iv) Management and Integration Services; (v) Performance Monitoring; (vi) Operating Phase Plans; and (vii) the associated Glossary and any relevant annexures, appendices or attachments to any of the above, <p>as amended in accordance with this Agreement.</p>
<i>Outstanding Item</i>	<p>means a minor Defect which in the opinion of the Independent Certifier or the State Representative:</p> <ul style="list-style-type: none"> (a) does not prevent the Stadium, Sports Precinct, Off-Site Infrastructure or the DBFM Works or the Off-Site Infrastructure Works (as applicable) from being Fit For Purpose (excluding items of Group 3 FF&E and Group 4 FF&E); (b) Project Co has reasonable grounds for not promptly rectifying; and (c) can be corrected without prejudicing the use of: <ul style="list-style-type: none"> (i) the Stadium and Sports Precinct for the performance of the Stadium Activities; or

Term	Meaning
	(ii) the Off-Site Infrastructure, as applicable.
<i>Outstanding Matters Report</i>	has the meaning given to it in Clause 31.2(c).
<i>Pass Through Cost</i>	has the meaning given to it in Schedule 14 (Payment Schedule).
<i>Patron</i>	means: <ul style="list-style-type: none"> (a) any person attending an Event at the Stadium in the capacity of a spectator; (b) any person attending a Function at the Stadium in the capacity of a guest or attendee; or (c) any person attending the Sports Precinct for enjoyment, as the context requires, but does not include Stadium Personnel, Hirers, Performers or any of the persons referred to in paragraphs (e), (f) and (g) of the definition of Stadium Users.
<i>Payment Directions Deed</i>	means the document entitled 'Payments Direction Deed' between the State, each Project Entity and the Senior Agent and dated on or about the date of Financial Close.
<i>PCS Instrumentation and Monitoring Plan</i>	means the plan of that name under the PCS Works Contract.
<i>PCS Works</i>	means the works the subject of the PCS Works Contract comprising ground improvement works at the Site.
<i>PCS Works Contract</i>	means the design and construct contract for the PCS Works between the Minister for Works and the PCS Works Contractor dated 16 May 2013.
<i>PCS Works Contractor</i>	means the Ertech Keller Joint Venture, as described in the PCS Works Contract and only in respect of its performance of the PCS Works Contract.
<i>PCS Works Independent Certifier</i>	means the independent certifier jointly appointed by the PCS Works Contractor and the State in accordance with the PCS Works Contract.
<i>PCS Works Independent Certifier Agreement</i>	means the independent certifier agreement jointly entered into between the State, the PCS Works Contractor and the PCS Works Independent Certifier dated 22 August 2013, a copy of which is attached at Schedule 33 (PCS Independent Certifier Agreement).
<i>PCS Works Practical Completion</i>	means practical completion of the PCS Works, as defined in Clause 18.1 of the PCS Works Contract.
<i>Pedestrian Underpass</i>	has the meaning given to it in Schedule 12 (Design Specifications).

Term	Meaning
<i>Percentage of DBFM Works Completed</i>	means, at any particular point in time, the dollar value of the DBFM Works certified by the Independent Certifier (in accordance with Section 2.4 of Schedule 15 (State Capital Contribution)) as complete, expressed as a percentage of the Construction Sum.
<i>Performance Failure</i>	has the meaning given to it in Schedule 14 (Payment Schedule).
<i>Performance Monitoring Program</i>	means all the performance monitoring activities that Project Co must undertake to monitor the quality of the Services required to be performed by Project Co in accordance with this Agreement, being those performance monitoring activities set out in Part E and Part F of Schedule 13 (Services Specifications).
<i>Performer</i>	means any: <ul style="list-style-type: none"> (a) home or away sporting team; (b) performer, entertainer, musician or band, playing or performing at the Stadium or Sports Precinct (or both), and includes any of their employees, agents, contractors, advisers, consultants and officers.
<i>Period</i>	has the meaning given to it in Schedule 23 (Commercial Opportunity Fee).
<i>Permitted Opportunity</i>	has the meaning given to it in Schedule 22 (Commercial Opportunities).
<i>Permitted Training</i>	has the meaning given to it in Part G (Glossary) of Schedule 12 (Design Specifications).
<i>Permitted Training Activity</i>	has the meaning given to it in Schedule 14 (Payment Schedule).
<i>Permitted Training Profile Period</i>	has the meaning given to it in Schedule 14 (Payment Schedule).
<i>Pitch</i>	has the meaning given to it in Part G (Glossary) of Schedule 12 (Design Specifications).
<i>Pitch Defect</i>	means either or both (as the context requires): <ul style="list-style-type: none"> (a) a Sinkhole; or (b) a Settlement Defect.
<i>Pitch Panel</i>	has the meaning given to it in Clause 28B.1(a).
<i>Pitch Rectification Plan</i>	has the meaning given to it in Clause 28A.3.
<i>Pitch Referral Notice</i>	has the meaning given to it in Clause 28B.2(a).

Term	Meaning
<i>Playing Surface</i>	has the meaning given to it in Part G (Glossary) of Schedule 12 (Design Specifications).
<i>Playing Surface Services</i>	has the meaning given to it in Annexure E (Glossary) of Schedule 13 (Services Specifications).
<i>Policies and Procedures Manual</i>	has the meaning given to it in Annexure E (Glossary) of Schedule 13 (Services Specifications).
<i>PPS Law</i>	means: <ul style="list-style-type: none"> (a) the PPSA; and (b) any amendment made at any time to the Corporations Act or any other legislation as a consequence of the PPSA.
<i>PPSA</i>	means the <i>Personal Properties Securities Act 2009</i> (Cth).
<i>Precinct Partners</i>	means the entities listed as precinct partners in Schedule 22 (Commercial Opportunities) and any other corporate partner which from time to time enters into a Sponsorship Agreement with Project Co with the State's consent.
<i>Pro Forma Direct Deed</i>	means the document entitled 'The new Perth Stadium DBFM Project – Pro Forma Direct Deed' between the State and Project Co in the form contained in Schedule 16 (Pro Forma Direct Deed).
<i>Probity Event</i>	includes any event or thing which: <ul style="list-style-type: none"> (a) relates to a Related Person, a Consortium Entity or an Equity Investor and has a material adverse effect on the public interest, or public confidence, in the DBFM Project; (b) has a material adverse effect on, or on the perception of, the character, integrity or honesty of a Related Person, a Consortium Entity or Equity Investor; (c) involves a material failure of a Consortium Entity or an Equity Investor to achieve or maintain: <ul style="list-style-type: none"> (i) good corporate citizenship; (ii) the avoidance of conflicts of interest which will have a material adverse effect on the ability of a Consortium Entity or an Equity Investor to perform and observe its obligations in connection with the DBFM Project; or (iii) other standards of conduct that would otherwise be expected of a party involved in a State government project.
<i>Probity Investigation</i>	means such probity and criminal investigations to report on the character, honesty and integrity of persons or standards of conduct of corporations or other entities as are required by Law or by the State from time to time, to ensure that a person or entity is fit and proper for its proposed or continued involvement in the DBFM Project.

Term	Meaning
<i>Project Co Associate</i>	<p>means:</p> <ul style="list-style-type: none"> (a) the Project Co Representative; (b) any Consortium Entity; (c) officers, agents, advisers, consultants, contractors and employees of Project Co; (d) the Builder, the FM Subcontractor and any other Subcontractor and their officers, agents, advisers, consultants, contractors and employees; (e) tenants of the Commercial Opportunities; and (f) any visitor to the Site invited onto the Site by Project Co or any of the persons set out in paragraphs (a), (b), (c) or (d) of this definition, <p>but does not include the State, any State Associate, the Independent Certifier, the PCS Works Independent Certifier, the ISGS Expert, the Stadium Operator, any Precinct Partner or the Head Lessee.</p>
<i>Project Co FF&E</i>	means Group 1 FF&E and Group 2 FF&E.
<i>Project Co Representative</i>	means the person nominated as such in Schedule 1 (Contract Particulars), or such other person as may be appointed from time to time to replace that person in accordance with Clause 5.4.
<i>Project Co Sinkhole</i>	means a Sinkhole that is not a Qualifying Sinkhole.
<i>Project Co's Background IP</i>	<p>means any Intellectual Property Rights of Project Co (or licensed to Project Co by a third party) which:</p> <ul style="list-style-type: none"> (a) are in existence before Contractual Close or come into existence after Contractual Close, other than in connection with this Agreement; and (b) Project Co makes available, contributes, brings to or uses in connection with the performance of this Agreement, the DBFM Project, the DBFM Works or Services, <p>and Subcontractor's Background IP has a corresponding meaning in respect of Intellectual Property Rights of a Subcontractor.</p>
<i>Project Documents</i>	<p>means:</p> <ul style="list-style-type: none"> (a) this Agreement; (b) the Operating Phase Licence; (c) the D&C Subcontract; (d) the FM Subcontract; (e) the General Security Agreement; (f) the Finance Side Deed; (g) the Builder Side Deed; (h) the FM Subcontractor Side Deed;

Term	Meaning
	<ul style="list-style-type: none"> (i) all executed Subcontractor Deeds of Novation and Key Subcontractor Direct Deeds; (j) the Builder Guarantee; (k) the FM Guarantee; (l) the Equity Documents; (m) the Financing Documents; (n) the Independent Certifier Agreement; (o) the PCS Works Independent Certifier Agreement, including the Deed of Accession; (p) the Operational Interface Agreement; (q) the Receivables Purchase Deed; (r) the State Loan Agreement; (s) the Payment Directions Deed; (t) the ISGS Expert Agreement; and (u) any other document the parties agree is a Project Document.
<i>Project Entity</i>	<p>means:</p> <ul style="list-style-type: none"> (a) Project Co; and (b) Finance Co, <p>or either one of them, as the context requires.</p>
<i>Project Information</i>	<p>means each of the reports and other information set out or referred to in Volume 4 of the RFP.</p>
<i>Project IP</i>	<p>means all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the performance of this Agreement or the DBFM Project, or the execution of the DBFM Works or the Services (including any Intellectual Property Rights in the BIM Models and the Contract Material).</p>
<i>Project Management Plan</i>	<p>means the plan of that name to be prepared by Project Co in accordance with this Agreement, including Schedule 19 (Plans), and includes the following sub-plans (the requirements for which are set out in Schedule 19 (Plans)):</p> <ul style="list-style-type: none"> (a) Site Access and Interface Protocols; (b) Construction Management Plan; (c) Quality Management Plan; (d) Construction Traffic Management Plan; and (e) Occupational Health and Safety Plan.
<i>Project Specific Change in Law</i>	<p>means a General Change in Law which expressly and exclusively applies to:</p>

Term	Meaning
	<ul style="list-style-type: none"> (a) the DBFM Project; (b) the Stadium, Sports Precinct or Off-Site Infrastructure; (c) the Site; (d) Project Co, but only in its capacity as the entity contracting with the State to implement the DBFM Project; or (e) Project Co and other entities which are undertaking projects using the public private partnership delivery model in the State of Western Australia, or any replacement or substitute policies relating to public private partnership arrangements for the provision of public infrastructure in the State of Western Australia, in each case only as it applies to them in that capacity.
<i>Project Stakeholders</i>	means the stakeholders described in the Schedule 32 (Project Stakeholders) and any updates to that list as a result of an update to the State Stakeholder Management Plan.
<i>Prolongation Costs</i>	has the meaning given to it in Schedule 4 (Change Compensation Principles).
<i>PTA</i>	means the Public Transport Authority of the State of Western Australia.
<i>Qualifying Pitch Defect</i>	<p>means either or both (as the context requires):</p> <ul style="list-style-type: none"> (a) a Qualifying Settlement Defect; or (b) a Qualifying Sinkhole.
<i>Qualifying Settlement Defect</i>	means a Settlement Defect which the parties have agreed under Clause 28A.6 (or it has been determined in accordance with the Expedited Dispute Resolution Procedure) cannot be rectified by Project Co in the various Off Seasons between the end of the AFL season and the beginning of the next AFL season.
<i>Qualifying Sinkhole</i>	<p>means a Sinkhole in the Pitch which:</p> <ul style="list-style-type: none"> (a) is caused by a void forming below the surface of the Pitch as a result of the deterioration of any object or structure which is present in the soil below the surface of the Pitch before the commencement of the DBFM Works; and (b) does not arise out of Project Co's failure: <ul style="list-style-type: none"> (i) to execute the DBFM Works in accordance with the Agreement; or (ii) to meet its obligations under the Agreement, including any failure of the DBFM Works (including irrigation or drainage infrastructure installed as part of the DBFM Works).
<i>Quality Standards</i>	<p>means all standards, codes, specifications, guidelines, policies and requirements to be complied with in accordance with, and subject to, the terms of this Agreement including:</p> <ul style="list-style-type: none"> (a) all requirements of any State Obtained Authorisations (but excluding

Term	Meaning
	<p>Environmental Authorisations) relevant to, and any requirements of the Authorities in respect of those State Obtained Authorisations having jurisdiction over, the DBFM Works, the Services, the Stadium, the Sports Precinct and the Off-Site Infrastructure (or any of them);</p> <p>(b) the National Construction Code;</p> <p>(c) the Disability (Access to Premises - Buildings) Standards (2010) under the <i>Disability Discrimination Act 1992</i> (Cth);</p> <p>(d) all relevant standards, codes and guides of Standards Australia and Standards New Zealand (with the year of the standards, codes and guides to be as referenced by the National Construction Code, unless noted otherwise in the Output Specifications or otherwise approved by the State) and, where an Australian Standard or a New Zealand Standard does not exist, the relevant British standard or International standard;</p> <p>(e) all Sporting Standards;</p> <p>(f) all standards, codes and guides published by the WorkCover Corporation of Western Australia and WorkSafe WA;</p> <p>(g) to the extent they do not conflict with the standards, codes or guides published by WorkSafe WA, the standards, codes and guides published by the National Occupational Health and Safety Commission and Safe Work Australia;</p> <p>(h) <i>National Environment Protection (Assessment of Site Contamination) Measure 1999</i> (Cth);</p> <p>(i) all Environment Protection Authority (WA) publications and bulletins;</p> <p>(j) relevant national and State policies;</p> <p>(k) all requirements of Utility Companies and Governmental Agencies relevant to the DBFM Works, the Services, the Stadium, the Sports Precinct and the Off-Site Infrastructure (or any of them); and</p> <p>(l) all other standards, codes, specifications, guidelines, policies and requirements relevant to the DBFM Works, the Services, the Stadium, the Sports Precinct and the Off-Site Infrastructure (or any of them),</p> <p>as amended, updated or replaced from time to time.</p>

Quarter	<p>means:</p> <p>(a) the period commencing on the Operational Commencement Date and ending on the day before the first Quarterly Date during the Operating Phase for the Stadium and Sports Precinct;</p> <p>(b) each 3 Month period commencing on a Quarterly Date; and</p> <p>(c) the period commencing on the last Quarterly Date during the Operating Phase for the Stadium and Sports Precinct and ending on the Expiry Date.</p>
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Quarterly Date	<p>means every 1 January, 1 April, 1 July and 1 October during the Operating Phase.</p>
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Term	Meaning
<i>Rail Reserve</i>	means the rail reserve identified as such on plan 10 in Schedule 11 (Site Plans).
<i>Receivables</i>	has the meaning given to it in the Receivables Purchase Deed.
<i>Receivables Purchase Deed</i>	means the document entitled 'Receivables Purchase Deed' between the State and each Project Entity, dated on or about the date of Financial Close under which the State agrees to assign to Finance Co each Licence Payment payable under the Operating Phase Licence.
<i>Receivables Purchase Payment</i>	has the meaning given to it in the Receivables Purchase Deed.
<i>Receivables Purchase Price</i>	means the amount payable by Finance Co to the State under the Receivables Purchase Deed as calculated in accordance with that document.
<i>Records</i>	<p>means any information or documents created or procured by a Project Entity or any Subcontractor in connection with delivering the DBFM Project including:</p> <ul style="list-style-type: none"> (a) the D&C Documents, Operating Phase Plans and all source information, documentation and data required for, created, produced or prepared in accordance with such documents; (b) the audited accounts referred to in Clause 42.1(h); (c) copies of all notices relating to Distributions; (d) all records in connection with the repayment of Debt; (e) all records and information relating to the effects of a Force Majeure Event; and (f) books of account, computer print-outs, records, correspondence, invoices, instructions, plans, drawings, receipts and memoranda, whatever the form, including information stored by computer and other devices.
<i>Rectangular Reconfiguration Works Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Schedule 19 (Plans).
<i>Rectification Plan</i>	has the meaning given to it in Clause 14.3(c)(ii).
<i>Refinancing</i>	<p>means:</p> <ul style="list-style-type: none"> (a) (amendments): any amendment to or novation, supplement or replacement of any Financing Document; (b) (rights, waivers and consents): the exercise of any right, or the request for a grant of any waiver or consent, in accordance with any Financing Document; (c) (rights and interests): the disposition of any rights or interests in, or the creation of any rights of participation in connection with the

Term	Meaning
	<p>Financing Documents or the creation or granting of any other form of benefit or interest in either the Financing Documents or the contracts, revenues or assets of Project Co whether by way of security or otherwise;</p> <p>(d) (restructure): any new financing arrangements entered into by Project Co which has the effect of restructuring the financing arrangements as at Financial Close; or</p> <p>(e) (effect of restructure): any other step, arrangement or new contractual or financing arrangement that has an effect which is similar to any matter described in paragraphs (a) to (d),</p> <p>but does not include:</p> <p>(f) (derivatives): the entry into derivative transactions contemplated to be entered into on or before Financial Close by the Financing Documents;</p> <p>(g) (syndication): the syndication or subscription of any debt in accordance with the Financing Documents that is contemplated at the date of Financial Close;</p> <p>(h) (transfer): the transfer or sell down of any bonds, debt or equity in an arm's length transaction at market value;</p> <p>(i) (identity of Financiers): secondary disposals of investments or commitments of Financial Indebtedness in the ordinary course of a Financier's business which change the identity of Financiers but not the commercial terms of the Financing Documents;</p> <p>(j) (amendment or restatement): any amendment or restatement of any Financing Documents which is as a direct result of an amendment or waiver to cure any actual or potential event of default in accordance with any Financing Document; or</p> <p>(k) (interest rate swap): to the extent that any interest rate swap confers on a hedge counterparty a right to break a swap consequent on the hedge counterparty ceasing to be a finance party under the Financing Documents, the exercise of any such right.</p>
Refinancing Event	means an event set out in paragraphs (a) to (e) of the definition of Refinancing.
Refinancing Gain	has the meaning given to it in Clause 37.5(a).
Refinancing Impact	has the meaning given to it in Clause 37.5(a).
Refinancing Loss	has the meaning given to it in Clause 37.5(d).
Rehabilitation Management Plan	means the plan of that name prepared in accordance with this Agreement, including Schedule 19 (Plans).
Related Body Corporate	has the same meaning as 'related body corporate' in the Corporations Act but as if references in the Corporations Act to a 'subsidiary' were references to a Subsidiary as defined in this Agreement.

Term	Meaning
<i>Related Person</i>	<p>means:</p> <ul style="list-style-type: none"> (a) a director or secretary of a Consortium Entity or Equity Investor; (b) any officer or employee, agent or contractor of a Consortium Entity, or Equity Investor who: <ul style="list-style-type: none"> (i) has the ability to exercise influence or control in relation to the Consortium Entity or Equity Investor, or in matters relating to the DBFM Project; (ii) works at the Site; or (iii) has access to confidential information concerning the DBFM Project; or (c) any person or entity with Control over a Consortium Entity or Equity Investor.
<i>Relevant Period</i>	has the meaning given to it in the State Loan Agreement.
<i>Remediate or Remediation</i>	means to rehabilitate the land, restore the land, remove, destroy, dispose of, neutralise, treat, cap or monitor or take other action to prevent or minimise Contamination from being caused, including dealing with any Discharge which contains Contamination.
<i>Removed Reviewable Service</i>	has the meaning given to it in Clause 30.12(c).
<i>Removed Reviewable Services Equipment</i>	has the meaning given to it in Clause 30.12(c).
<i>Reputable Insurer</i>	means an insurance company having a financial performance rating of at least A- by Standard and Poor's (Australia) Pty Limited or an equivalent rating from another internationally recognised rating agency and approved by the State acting reasonably.
<i>RFP</i>	means the document entitled 'Request for Proposal' issued by the State in connection with the DBFM Project on 12 July 2013.
<i>Reviewable Services</i>	<p>means the following services:</p> <ul style="list-style-type: none"> (a) Playing Surface Services; (b) Asset Security Services; (c) ICT and AV Services; and (d) Grounds and Gardens Services.
<i>Reviewable Services Date</i>	means, in relation to each Reviewable Service, the expiry date of the then current Reviewable Services Term for the relevant Reviewable Service.
<i>Reviewable Services Term</i>	means, in respect of a Reviewable Service, each relevant period (or part thereof) shown in the table below (being a reference to years), with the first term commencing on the Operational Commencement Date and the last

Term **Meaning**

term ending on the Expiry Date.

Reviewable Service	Term 1	Term 2	Term 3	Term 4	Term 5
Playing Surface Services	3	5	5	5	7
Asset Security Services	5	5	5	5	5
ICT and AV Services	7	5	5	5	3
Grounds and Gardens Services	3	5	5	5	7

Savings has the meaning given to it in Schedule 4 (Change Compensation Principles).

Scenario Testing means the conduct of:

- (a) the State or Stadium Operator (or both) designed exercises and scenarios (including emergency scenarios) to test any or all of the following:
 - (i) the functionality of the Stadium or Sports Precinct (or both);
 - (ii) the interface between the Stadium and Sports Precinct;
 - (iii) the provision by the State or Stadium Operator (or both) of the Stadium Activities; and
 - (iv) the provision by Project Co of the Services, including Event Support Services;
- (b) Test Events; and
- (c) functionality testing by the Stadium Operator (including involving Hirers and Media Personnel) to ensure that the Stadium Activities can be provided in accordance with the State's and Stadium Operator's operational requirements.

Schedule of State Works means the schedule set out in Schedule 21 (Schedule of State Works and Surrounding Works), as amended in accordance with Clause 16.1.

Scheduled Maintenance has the meaning given to it in Annexure E (Glossary) of Schedule 13 (Services Specifications).

Scheduled State Works means the works specified in the Schedule of State Works.

Securitised Licence Structure means the securitisation structure relating to the Licence Payments in effect under the Receivables Purchase Deed, the Operating Phase Licence, the Payment Directions Deed and Clause 21A (other than Clause 21A.3).

Securitised Modification Payment means an amount equal to the corresponding Receivables Purchase Payment in respect of the Additional Receivables purchased by Finance Co from the State under the Receivables Purchase Deed resulting from the Change Compensation Event or Modification.

Term	Meaning
<i>Security Interest</i>	has the meaning given to it in section 12 of the PPSA.
<i>Security Management and Treatment Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Schedule 19 (Plans), Schedule 12 (Design Specifications) and Schedule 13 (Services Specifications).
<i>Security Risk and Threat Assessment Plan</i>	means the plan of that name prepared in accordance with this Agreement, including Schedule 19 (Plans), Schedule 12 (Design Specifications) and Schedule 13 (Services Specifications).
<i>Security Systems</i>	has the meaning given to it in Part G (Glossary) of Schedule 12 (Design Specifications).
<i>Security Trust Deed</i>	means the deed entitled 'Security Trust Deed – new Perth Stadium Project' between the Security Trustee, Finance Co and others, dated on or about Contractual Close.
<i>Security Trustee</i>	means, at any time, the person appointed as security trustee in accordance with the Security Trust Deed. At Contractual Close, the Security Trustee is as set out in Schedule 1 (Contract Particulars).
<i>[Not disclosed]</i>	
<i>Service Failure</i>	means Performance Failure, Availability Failure and Incident Failure, or where the context requires, either one of these.
<i>Service Failure Default</i>	means an Event of Default under paragraph (k) of the definition of Event of Default in respect of which the State has issued a Default Notice.
<i>Service Standards</i>	means the service standards set out in Schedule 13 (Services Specifications).
<i>Services</i>	means the services to be performed by Project Co, as described in Schedule 13 (Services Specifications).
<i>Services Equipment</i>	means: <ul style="list-style-type: none"> (a) items of equipment used by Project Co in the performance of the Services; and (b) Consumables.
<i>Services Manager</i>	means the person identified as such in Schedule 1 (Contract Particulars), or such other person as may be appointed from time to time to replace that person, in accordance with Clause 5.6.
<i>Services Training and Induction Program</i>	has the meaning given to it in Annexure E (Glossary) of Schedule 13 (Services Specifications).

Term	Meaning
<i>Settlement Defect</i>	<p>means the gradual settlement of the Pitch which:</p> <ul style="list-style-type: none"> (a) results in the whole or a substantial part of: <ul style="list-style-type: none"> (i) the Pitch; or (ii) the services beneath the Pitch, being required to be replaced; and (b) does not arise out of: <ul style="list-style-type: none"> (i) Project Co's failure to execute the DBFM Works in accordance with the Agreement; (ii) Project Co's failure to meet its obligations under the Agreement, including any failure of the DBFM Works (including irrigation or drainage infrastructure installed as part of the DBFM Works); or (iii) a defect in the design of the PCS Works.
<i>Settlement Defect Works</i>	means all work required to be performed by Project Co to rectify a Settlement Defect.
<i>Short Term Sub-licensee</i>	has the meaning given to it in Clause 38.1(r).
<i>Sinkhole</i>	means a substantial and unexpected hole or depression with a discernable crack, edge or lip which suddenly appears or manifests on the surface of the Pitch.
<i>Site</i>	means the Construction Site and the Operating Phase Site, or either one of them, as the context requires.
<i>Site Access and Interface Protocols</i>	means the protocols for accessing the Construction Site during the D&C Phase as set out in the Project Management Plan.
<i>Spectrum Frequency Management Policy</i>	means the plan of that name prepared in accordance with this Agreement, including Schedule 19 (Plans).
<i>Sponsorship Agreement</i>	means a sponsorship agreement to be entered into by Project Co with the Precinct Partners in accordance with Clause 38.5 and the Sponsorship Agreements Framework.
<i>Sponsorship Agreements Framework</i>	means the framework referred to in Clause 38.5, as set out in Schedule 41 (Sponsorship Agreements Framework).
<i>Sporting Code</i>	has the meaning given to it in Schedule 12 (Design Specifications).
<i>Sporting Equipment</i>	has the meaning given to it in Annexure E (Glossary) of Schedule 13 (Services Specifications).

Term	Meaning
<i>Sporting Standards</i>	<p>means all relevant design and operational standards, regulations, codes, guidelines, laws of the game, rules of the game, manuals, handbooks and other like concepts (as amended, updated or replaced from time to time) of professional sporting bodies and their state, national and international representatives, which apply to or govern the Sporting Codes (including the facility, Engineering Services, Sporting Equipment and other furniture, fittings and equipment, supporting infrastructure and operational practices for such Sporting Codes) that, based on the Output Specifications,</p> <ul style="list-style-type: none"> (a) are to be played; or (b) it is reasonable to infer will be played, <p>at the Stadium or Sports Precinct (or both). If there is a conflict or inconsistency between any of the design and operational standards, regulations, codes, guidelines, laws of the game, rules of the game, manuals, handbooks and other like concepts referred to above, the design and operational standard, regulation, code, guideline, law of the game, rule of the game, manual, handbook or other like concept which requires the higher standard applies, unless otherwise agreed in writing by the State.</p>
<i>Sports Precinct</i>	<p>means the parkland precinct surrounding the Stadium situated on the Site, and includes the Group 1 FF&E and DBFM Transport Infrastructure as further described in Schedule 12 (Design Specifications) and all improvements to be situated on the Site including as depicted on Project Co's Development Concept Plan to be designed, constructed, partially financed and maintained by Project Co in accordance with this Agreement, and excludes the Head Lease Area.</p>
<i>Sports Precinct Works</i>	<p>means all work necessary for the design, construction, completion and commissioning of the Sports Precinct including:</p> <ul style="list-style-type: none"> (a) all work associated with the installation or location (as applicable, depending on whether the relevant Project Co FF&E is loose or fixed) and commissioning (if applicable to the relevant Project Co FF&E) of all Project Co FF&E; (b) all Modifications, FF&E Modifications and Minor Modifications; (c) any rectification of Defects; and (d) the works to design, construct, complete and commission the DBFM Transport Infrastructure.
<i>Stadium</i>	<p>means the entire physical infrastructure comprising the stadium building and the Controlled Area situated on the Site, to be designed, constructed, partially financed and maintained by Project Co for the purpose of accommodating the Stadium Activities in accordance with this Agreement, including as described in Schedule 12 (Design Specifications) and Attachment 1 (Contractual Close Design Documentation) and, for the avoidance of doubt, includes Group 1 FF&E, the Pitch and Playing Surface.</p>
<i>Stadium Activities</i>	<p>means all services which the Stadium Operator, the State or other State Associates will undertake at the Stadium or Sports Precinct (or both) during the Operating Phase as specified or reasonably inferred from the Output Specifications, including Events and Functions.</p>

Term	Meaning
<i>Stadium Operator</i>	means the entity appointed by the State from time to time to be responsible for the day to day operations of the Stadium and Sports Precinct, securing content for the Stadium and carrying out any other activities delegated by the State, excluding the performance of the Services.
<i>Stadium or Sports Precinct Modification</i>	any change to the Stadium or Sports Precinct, including any addition, decrease, omission, deletion or removal to or from the Stadium or Sports Precinct (as applicable) during the Operating Phase.
<i>Stadium Personnel</i>	means the Stadium Operator and employees, agents, contractors, subcontractors, consultants and authorised officers of the Stadium Operator involved in the provision of the Stadium Activities but does not include Project Co, Project Co Associates, the State, State Associates, Hirers, Performers or Media Personnel.
<i>Stadium Personnel Induction and Training Program</i>	has the meaning given to it in Annexure E (Glossary) of Schedule 13 (Services Specifications).
<i>Stadium Systems</i>	has the meaning given to it in Clause 24.1(e).
<i>Stadium Users</i>	means: <ul style="list-style-type: none"> (a) Stadium Personnel; (b) Hirers; (c) Performers; (d) any Patron; (e) Media Personnel; (f) the State and State Associates; and (g) Project Co and Project Co Associates employed or contracted at the Stadium or Sports Precinct.
<i>Stadium Works</i>	means all work necessary for the design, construction, completion and commissioning of the Stadium including: <ul style="list-style-type: none"> (a) all work associated with the installation or location (as applicable, depending on whether the relevant Project Co FF&E is loose or fixed) and commissioning (if applicable to the relevant Project Co FF&E) of all Project Co FF&E; (b) all work associated with the installation of Group 3 FF&E, to the extent that Project Co is responsible for its location and installation, as set out in Schedule 12 (Design Specifications); (c) all Modifications, Minor Modifications and FF&E Modifications; and (d) any rectification of Defects.
<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

Term	Meaning
	(b) during the Operating Phase, the Governance Agency and the State of Western Australia.
State Access Period	has the meaning given to it in Clause 19.1(b).
State Associate	means State Entities (including Main Roads and PTA): <ul style="list-style-type: none"> (a) to the extent that they are carrying out activities, works or performing services related to the DBFM Project; (b) in the D&C Phase only, to the extent that they are carrying out activities, works or performing services related to the new Perth Stadium Project; and (c) during the Operating Phase only, to the extent that they are carrying out activities, works or performing services on the Site related to the Stadium, the Sports Precinct, the Off Site Infrastructure or the Stadium Activities.
State's Background IP	means any Intellectual Property Rights of the State (or licensed to the State by a third party) which the State makes available, contributes, brings to or uses in connection with the DBFM Project, the DBFM Works or the Services.
State Capital Contribution	means the amount calculated in accordance with Schedule 15 (State Capital Contribution) which is to be paid by the State to Project Co in instalments as a contribution towards the performance of the DBFM Works in accordance Clause 35 and Schedule 15 (State Capital Contribution).
State Capital Contribution Sum	means \$489,557,721.35.
State Entities	means the State of Western Australia, including any department and any entity, agency or instrumentality of the State of Western Australia and any Minister (including the Minister for Works), whether body corporate or otherwise and their respective officers, employees, agents, contractors and consultants (but does not include the Stadium Operator, Project Co, any Project Co Associate, the PCS Works Independent Certifier, the Independent Certifier, the ISGS Expert, any Precinct Partner or the Head Lessee), and the term 'State Entity' means any one of them.
State FF&E	means Group 3 FF&E and Group 4 FF&E.
State Loan	means the loan to be made available to the State by Finance Co pursuant to the State Loan Agreement.
State Loan Agreement	means the document of that name between the State and Finance Co and dated on or about the date of Contractual Close.
State Loan Payment	has the meaning given to it in the State Loan Agreement.

Term	Meaning
<i>State Obtained Authorisations</i>	means the Authorisations that have been or will be obtained by the State as set out in Schedule 1 (Contract Particulars).
<i>State Operational Commissioning</i>	means the operational commissioning to be conducted by the State and Stadium Operator during the State Access Period described in Clause 19 and in the State Operational Commissioning Plan.
<i>State Operational Commissioning Plan</i>	means the plan of that name to be prepared by the State in accordance with Clauses 19.2(b), 19.2(d) and 19.2(f) , which sets out the State Operational Commissioning, including the State's methodology for that operational commissioning.
<i>State Payment Account</i>	has the meaning given to it in the Financing Documents.
<i>State Project Documents</i>	means: <ul style="list-style-type: none"> (a) this Agreement; (b) the Operating Phase Licence; (c) the Finance Side Deed; (d) the General Security Agreement; (e) the Builder Side Deed; (f) the FM Subcontractor Side Deed; (g) all executed Subcontractor Deeds of Novation and the Key Subcontractor Direct Deeds; (h) the Independent Certifier Agreement; (i) the Operational Interface Agreement; (j) the Receivables Purchase Deed; (k) the Payment Directions Deed; (l) the State Loan Agreement; (m) the ISGS Expert Agreement; (n) PCS Works Independent Certifier Agreement, including the Deed of Accession; and (o) any other Project Document to which the State is a party.
<i>State Representative</i>	means the person identified as such in Schedule 1 (Contract Particulars), or such other person as may be appointed from time to time to replace that person in accordance with Clause 5.2.
<i>State Selected FF&E</i>	has the meaning given to it in Clause 34(b).
<i>State Stakeholder Management Plan</i>	means the plan of that name set out in Schedule 40 (State Stakeholder Management Plan).
<i>State WOL Cost</i>	has the meaning given to it in Clause 34(a).

Term	Meaning
<i>Savings</i>	
<i>State Works</i>	means Scheduled State Works and Unscheduled State Works.
<i>Stormwater Management Plan</i>	means the plan of that name to be prepared in accordance with this Agreement, including Schedule 19 (Plans).
<i>Subcontract</i>	means an agreement which Project Co or a subcontractor to Project Co intends to, or does, enter into with a Subcontractor (which, for the avoidance of doubt, includes the Key Subcontracts).
<i>Subcontractor</i>	means any person to whom Project Co or a subcontractor to Project Co subcontracts or allows to do any part of the DBFM Project (which, for the avoidance of doubt, includes the Key Subcontractors).
<i>Subcontractor Deed of Novation</i>	means the subcontractor deed of novation set out in Schedule 25 (Subcontractor Deed of Novation) of this Agreement.
<i>Subsidiary</i>	has the same meaning as ‘subsidiary’ in the Corporations Act, except that an entity may be a subsidiary of a trust and a trust may be a subsidiary of an entity, for the purposes of which a unit or other beneficial interest will be regarded as a share.
<i>Surrounding Works</i>	means the works listed in Table 3 (Surrounding Works) of Section A10 of Schedule 12 (Design Specifications).
<i>Tax</i>	means any tax, levy, impost, deduction, charge, duty or withholding which is levied or imposed by a Government Agency, including any income, capital gains, withholding, stamp and transaction tax, duty or charge together with interest, penalties, charges, fees, or other amounts (if any) imposed or made on or in connection with the above and Taxation will be construed accordingly.
<i>Technical Completion</i>	means the Technical Completion Criteria have been satisfied to the satisfaction of the Independent Certifier.
<i>Technical Completion Criteria</i>	means those criteria that are required to be satisfied to achieve Technical Completion as set out in Schedule 7 (Completion Criteria).
<i>Technical Completion Plan</i>	means the plan of that name to be prepared by Project Co in accordance with this Agreement, including Schedule 19 (Plans).
<i>Technical Completion Report</i>	means a report of that name prepared by Project Co which sets out in detail each of: <ul style="list-style-type: none"> (a) the Technical Completion Criteria; (b) the manner in which the Technical Completion Criteria have been satisfied including all Technical Completion Tests; and (c) when the Technical Completion Criteria were satisfied or otherwise

Term	Meaning
	failed to be satisfied.
Technical Completion Tests	<p>means all tests (excluding the Commercial Acceptance Tests) required to be carried out in accordance with this Agreement or as may be required by the Independent Certifier including:</p> <ul style="list-style-type: none"> (a) those tests specified in the Technical Completion Plan approved by the Independent Certifier and the State in accordance with Schedule 3 (Review Procedures) of this Agreement; and (b) the minimum completion tests outlined in Schedule 12 (Design Specifications).
Temporary Works	means plant, machinery and other items used by Project Co or its Subcontractors solely for the purpose of enabling or facilitating construction of the Stadium or Sports Precinct (or both) which does not become part of the Stadium or Sports Precinct (or both) and will not be used for the Stadium Activities or performing the Services.
Tender Expiry Date	means the date which is 3 Months after the then current Reviewable Services Term.
Tender Process	means the processes in procuring the DBFM Project commencing from the issue of the State's invitation to submit an expression of interest dated 4 December 2012 up to Contractual Close, including the process described as the 'Procurement Process' in the RFP.
Term	means the term commencing on Financial Close and ending on the Expiry Date.
Termination Amount	means a Force Majeure Termination Amount, a Default Termination Amount or a Voluntary Termination Amount (as applicable).
Test Events	<p>means any event, match, game, performance, assembly, competition, function or production:</p> <ul style="list-style-type: none"> (a) with more than 100 attendees; (b) conducted by the State or Stadium Operator (or both); and (c) held within the Stadium or Sports Precinct (or both) during the State Access Period, <p>for the purpose of functionality and scenario testing and planning of the Stadium Activities in preparation for operational commencement.</p>
The new Perth Stadium Environmental Management Plan	means The new Perth Stadium Environmental Management Plan (Project EMP) set out in Schedule 37 (The new Perth Stadium Environmental Management Plan).
Third Party IP Claim	has the meaning given to it in Clause 51.7(a).

Term	Meaning
<i>Trust</i>	means the trust known as the Westadium Project Unit Trust constituted under the Trust Deed.
<i>Trust Deed</i>	means the trust deed dated on or about the date of this Agreement executed by Project Co as trustee for the Trust as amended from time to time.
<i>Turf Dispute</i>	has the meaning given to it in Clause 45A.1(a).
<i>Turf Dispute Resolution Procedure</i>	means the dispute resolution process in Clause 45A.
<i>Turf Expert</i>	has the meaning given to it in Clause 45A.1(a).
<i>Turf Notice</i>	has the meaning given to it in Clause 45A.2(a).
<i>Unavailable or Unavailability</i>	has the meaning given to it in Schedule 14 (Payment Schedule).
<i>Uninsurable Risk</i>	<p>means Day 1 Uninsurable Risks and any other risk that is required to be insured in accordance with this Agreement and for which insurance is available at Contractual Close but:</p> <ul style="list-style-type: none"> (a) becomes unavailable in the recognised international insurance market in connection with that risk by a Reputable Insurer; or (b) in connection with which the insurance premium payable for insuring that risk with a Reputable Insurer becomes, after Contractual Close, at such a level or the terms and conditions are such that the risk is not generally being insured against by private sector providers of facilities similar to the Stadium and Sports Precinct or services similar to the Services in Australia or the United Kingdom, <p>provided that the uninsurability in accordance with paragraphs (a) or (b) is not caused or contributed to by any act or omission of Project Co or a Project Co Associate (and if Project Co or a Project Co Associate has contributed to the uninsurability, the quantum of loss associated with the Uninsurable Risk that the State is required to pay to Project Co is reduced in the same proportion as that party's contribution).</p>
<i>Unscheduled Maintenance</i>	has the meaning given to it in Annexure E (Glossary) of Schedule 13 (Services Specifications).
<i>Unscheduled State Works</i>	means any works required to be performed by, or on behalf of, the State in connection with the new Perth Stadium Project prior to the Date of Technical Completion and which are not contained in the Schedule of State Works, but excluding the DBFM Works and the PCS Works.
<i>Unscheduled State Works Notice</i>	has the meaning given to it in Clause 16.2(a).

Term	Meaning
<i>User Group</i>	has the meaning given to it in Schedule 5 (Design Development).
<i>Utility</i>	means any utility service, including water, electricity, gas, telephone, drainage, sewerage, stormwater and communications services, but not including communications systems provided as part of the Stadium or Sports Precinct (or both) as generally described in the Output Specifications.
<i>Utility Company</i>	means any public authority or public or private body who provides a Utility.
<i>Utility Infrastructure</i>	means any part of the supply, distribution or reticulation network operated or managed by a Utility Company, including poles, pipes, pipeline, cables, wires, conduits, tunnels, aqueducts, electrical installations, telecommunications plant, water channels and railways and electronic communications systems, but not including communications systems provided as part of the Stadium or Sports Precinct (or both) as generally described in the Output Specifications.
<i>Utility Interruption</i>	<p>means any one or more Utilities are not available during the Operating Phase (either at all or in the necessary quantity) for use for any reason other than because of:</p> <ul style="list-style-type: none"> (a) a fault arising internal to the boundaries of the Operating Phase Site; (b) an act or omission or lack of diligence by Project Co or a Project Co Associate; or (c) a dispute between Project Co and the relevant Utilities provider, regardless of why that dispute is initiated or by whom, or the likely result of the dispute.
<i>Variable Completed Services Payment</i>	has the meaning given to it in Schedule 14 (Payment Schedule).
<i>Voluntary Termination Amount</i>	means the payment calculated as such in accordance with Schedule 10 (Termination Amounts).
<i>Whole of Life Costs</i>	<p>means the anticipated total capital and operating costs to be incurred by Project Co in connection with an item of Project Co FF&E during the Term, assuming usage as intended by the Design Requirements and consisting of costs associated with:</p> <ul style="list-style-type: none"> (a) design, re-design, purchase, insurance, transportation, storage, removal, replacement, dismantling, installation, associated Utility Infrastructure and commissioning (including any fees, Margins and preliminaries); and (b) lifecycle replacement, maintenance, insurance and the need for additional security to be lodged (including any fees, Margins and preliminaries).
<i>Work Method Statements</i>	has the meaning given to it in Annexure E (Glossary) of Schedule 13 (Services Specifications).

1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) **(persons)**: references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), a trust, a trustee or a partnership;
- (b) **(includes)**: the words 'including', 'includes' and 'include' will be read as if followed by the words 'without limitation';
- (c) **(or)**: the meaning of 'or' will be that of the inclusive 'or', that is meaning one, some or all of a number of possibilities;
- (d) **(party)**: a reference to a 'party' is to a party to this Agreement;
- (e) **(other persons)**: a reference to any party or person includes each of their legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any person taking part by way of novation;
- (f) **(Authority)**: a reference to any Authority, Utility Company, institute, association or body is:
 - (i) if that Authority, Utility Company, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, Utility Company, institute, association or body are transferred to another organisation, a reference to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as applicable; and
 - (ii) if that Authority, Utility Company, institute, association or body ceases to exist, a reference to the organisation which serves substantially the same purposes or objectives as that Authority, Utility Company, institute, association or body;
- (g) **(this Agreement)**: a reference to this Agreement or to any other deed, agreement, document, circular, policy or instrument includes a reference to this Agreement or such other deed, agreement, document, circular, policy or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (h) **(plan)**: a reference to any of the D&C Phase Plans or Operating Phase Plans is a reference to that D&C Phase Plan or Operating Phase Plan as amended or updated from time to time in accordance with this Agreement;
- (i) **(State plan)**: a reference to any of the plans provided by the State under this Agreement is a reference to the plan as amended or updated from time to time and provided to Project Co;
- (j) **(legislation)**: a reference to any legislation or to any section or provision of it includes any amendment to or re-enactment of, or any statutory provision substituted for that legislation, section or provision;
- (k) **(rights)**: a reference to a right includes any benefit, remedy, discretion, authority or power;
- (l) **(singular)**: words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (m) **(headings)**: headings are for convenience only and do not affect the interpretation of this Agreement;
- (n) **(schedules)**: a reference to this Agreement includes all Schedules and Attachments;
- (o) **(Clauses)**: a reference to:
 - (i) a Clause, Schedule or Attachment is a reference to a Clause, Schedule or Attachment of or to this Agreement;

- (ii) a paragraph is a reference to a paragraph in the Clause in which the reference appears; and
- (iii) a Section is a section of a Schedule;
- (p) **(defined meaning)**: where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (q) **(\$)**: a reference to '\$' is to Australian currency;
- (r) **(time)**: a reference to time is a reference to Australian Western Standard Time;
- (s) **(form)**: writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions and communication by email;
- (t) **(construction)**: no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Agreement or any part;
- (u) **(information)**: a reference to 'information' includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (v) **(remedy)**: the use of the word 'remedy' or any form of it in this Agreement means that the event to be remedied must be cured or its effects overcome;
- (w) **(may)**: the term 'may', when used in the context of a power or right exercisable by the State, the State Representative or the Stadium Operator, means that the State, the State Representative or the Stadium Operator (as the case may be) can exercise that right or power in its absolute and unfettered discretion and the State, the State Representative or the Stadium Operator (as applicable) has no obligation to Project Co to do so;
- (x) **(no double counting)**: if this Agreement requires calculation of an amount payable to a party there must be no double counting in calculating that amount, which, for the avoidance of doubt includes amounts calculated in accordance with the Schedules to this Agreement; and
- (y) **(writing)**: references to a notice, request, Claim, consent, approval, record or report means that the notice, request, Claim, consent, approval, record or report must be in writing unless otherwise agreed by the parties or expressly stated in this Agreement.

1.3 Related matters

- (a) **(Provisions limiting or excluding Liability)**: Any provision of this Agreement which seeks either expressly or by implication to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.
- (b) **(Cost of performing obligations)**: Each party must perform its obligations in accordance with this Agreement at its own cost, unless expressly provided otherwise.
- (c) **(Project Co obligations)**: In complying with or accepting any obligation or risk in accordance with this Agreement, 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 Project Co to breach its obligations in accordance with this Agreement.
- (d) **(Business Day)**: If the day on or by which any thing is to be done in accordance with this Agreement is not a Business Day, that thing must be done on the next Business Day.
- (e) **(Discretion)**: Any consent or approval in accordance with this Agreement from the State, the Stadium Operator 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, the Stadium Operator or a State Representative (in its absolute discretion) thinks fit, unless this Agreement provides otherwise.

- (f) **(Agreement composition):**
- (i) This Agreement comprises:
 - (A) Clauses 1 to 55;
 - (B) Schedule 1 (Contract Particulars) to Schedule 45 (Flood Parameters); and
 - (C) Attachment 1 (Contractual Close Design Documentation) to Attachment 7 (DBFM Works Construction Value Schedule).
 - (ii) Project Co agrees:
 - (A) to the extent that an Attachment seeks to impose any obligations on the State, such obligations will not be legally binding on the State unless a corresponding obligation (and not merely a cross reference) is expressly imposed on the State or a State Associate in a Clause or a Schedule, and then subject to Clause 1.3(f)(ii)(B); and
 - (B) Project Co is not entitled to make any Claim against the State for any Liabilities incurred by Project Co in connection with a breach of an obligation imposed on the State in an Attachment unless such Liabilities are also incurred by Project Co as a consequence of a breach by the State of a corresponding obligation (and not merely a cross reference) imposed on the State or a State Associate in a Clause or a Schedule.
- (g) **(Order of precedence):** The following order of precedence applies in the event of any inconsistency, ambiguity or discrepancy between the various documents comprising this Agreement:
- (i) Clauses 1 to 55 and Schedule 1 (Contract Particulars) to Schedule 11 (Site Plans), Schedule 12 (Design Specifications) as amended by annexure H-9 to Schedule 12, Schedule 13 (Services Specifications), Schedule 14 (Payment Schedule), Schedule 15 (State Capital Contribution), Schedule 17 (Confidential Provisions), Schedule 26 (Operational Interface Agreement) and the Model Output Schedule;
 - (ii) Attachment 1 (Contractual Close Design Documentation);
 - (iii) the remaining Schedules and Attachments,
- except to the extent that any part of the various documents listed above impose a greater or higher requirement, standard, quality, level of service, quantum or scope than any other part of the documents listed above, in which case, that greater or higher requirement, standard, quality, level of service, quantum or scope prevails.
- (h) **(Ambiguous terms):**
- (i) If either party identifies any inconsistency, ambiguity or discrepancy within or between any of the documents or categories of documents identified in Clause 1.3(g), then that party must notify the other party of the inconsistency, ambiguity or discrepancy as soon as possible and in no case later than 5 Business Days after becoming aware of the inconsistency, ambiguity or discrepancy.
 - (ii) If Project Co issues a notice in accordance with Clause 1.3(h)(i), it must not take any further action in connection with the ambiguity, discrepancy or inconsistency until a direction is issued by the State in accordance with Clause 1.3(h)(iii) or if no direction is issued, 5 Business Days has elapsed.

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

1.4 Authorities

Project Co agrees that:

- (a) there are Authorities with jurisdiction over the DBFM Project and parts of the Site;
- (b) such Authorities may, from time to time and at any time, exercise their statutory functions and powers in such a way that may disrupt, interfere with or otherwise affect the DBFM Project and parts of the Site; and
- (c) except as otherwise expressly provided in this Agreement, Project Co bears the full risk of all occurrences of the kind referred to in Clause 1.4(b) and will not be entitled to make any Claim against the State in connection with such occurrences.

1.5 Changes to indices

- (a) This Clause 1.5 sets out the rules that apply to all amounts in this Agreement that are required to be adjusted in accordance with an index.
- (b) If:
 - (i) there is a substantial change in the coverage of the index from that applying at Contractual Close and the new index is linked to another index, the defined term is to be referable to the new index; or
 - (ii) the index is published and:
 - (A) there is a substantial change in its coverage and it is not linked to another index; or
 - (B) there is a change in its periodicity,
 the parties must agree:
 - (iii) whether the index remains appropriate as a general indicator of the rate of price change for the relevant goods and services; and
 - (iv) if it is not, what other index should be used as a substitute index for the purpose of this Agreement.
- (c) If the parties are unable to reach an agreement in accordance with Clause 1.5(b) within 20 Business Days, the parties must request that the President of the Institute of Actuaries (or the President's nominee) determine the matter set out in Clause 1.5(b) and that determination will be final and binding on the parties.
- (d) If there is a change in the reference base of the index from that applying at Contractual Close and the Australian Bureau of Statistics:

- (i) provides a conversion factor, that conversion factor must be applied to calculate revised figures for the purpose of the defined term's use in this Agreement, in terms of the new reference base; or
 - (ii) does not provide a conversion factor, the parties must request the President of the Institute of Actuaries (or the President's nominee) to calculate a revised index for the purposes of the defined term's use in this Agreement, and that calculation is final and binds the parties.
- (e) If the index ceases to be published and the Australian Bureau of Statistics:
- (i) publishes another index which is:
 - (A) a replacement of that index; and
 - (B) linked to the index prior to its cessation,
 the defined term must be re-calculated to the same reference base as the replacement;
 - (ii) does not publish another index which is linked to the index, the parties must request the President of the Institute of Actuaries (or the President's nominee) to calculate a revised index for the purposes of the defined term's use in this Agreement, and that calculation is final and binds the parties; or
 - (iii) does not publish another index in place of the index, the parties must request the President of the Institute of Actuaries (or the President's nominee) to determine an appropriate index which is a general indicator of the rate of price change for the relevant goods and services for the purposes of the defined term's use in this Agreement, and that determination is final and binds the parties.
- (f) If a General Change in Law causes a material aberration in the index, the index must be adjusted to remove the impact of that material aberration:
- (i) in accordance with any such methodology published by the Australian Bureau of Statistics for adoption by business;
 - (ii) in the absence of such publication within 6 Months of the occurrence of the material aberration, as agreed by the parties; or
 - (iii) in the absence of agreement by the parties, as determined by the President of the Institute of Actuaries (or the President's nominee) or, if the President advises the parties that the matter for determination is not within the President's scope or expertise, an Independent Expert in accordance with Clause 45.

1.6 Open book basis of Agreement

- (a) Subject to Clause 1.7 and Clause 48(c) and without limiting any other Clause of this Agreement, the State has the right to request that Project Co make available to the State any information, records and other documentation in whatever form which relate to this Agreement, the DBFM Works, the Services or the DBFM Project on an open book basis.
- (b) For the purposes of this Clause 1.6, 'open book basis' includes Project Co providing to the State any information, Records and other documentation in a timely, clear and transparent manner which allows the State to properly understand the information, Records and other documentation and making available appropriately qualified personnel to explain the information, Records and other documentation or answer any questions the State may have in respect of the information, Records and other documentation.
- (c) Without limiting Clause 1.6(a), the parties acknowledge and agree that, notwithstanding any provision of this Agreement to the contrary:

- (i) the powers and responsibilities of the Auditor General for the State of Western Australia under the *Financial Management Act 2006* (WA) and the *Auditor General Act 2006* (WA) (or any substituted legislation) are not limited or affected by the terms of this Agreement and each party submits to those powers and responsibilities;
- (ii) Project Co may be the subject of an audit by the Auditor General pursuant to the *Auditor General Act 2006* (WA) or the *Financial Management Act 2006* (WA); and
- (iii) without limiting Clause 1.6(c)(i), Project Co covenants with the State that it will cooperate and comply with any directions of the Auditor General given to the State or any other party in relation to any audit referred to in Clause 1.6(c)(ii).

1.7 Records

- (a) Notwithstanding any other provision of this Agreement (other than Clause 1.7(b) and Clause 37.2(c)), Project Co 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 Builder, Builder Guarantor, the FM Subcontractor or the FM Subcontractor Guarantor;
 - (ii) any documents or communications where Project Co, the Builder, Builder Guarantor, the FM Subcontractor or the FM Subcontractor Guarantor has contractual or statutory confidentiality obligations to third parties that are unable to be waived and are unable to be excluded;
 - (iii) without limiting Section 10(d) of Part D of Schedule 13 (Services Specifications) employment contracts and employment files, unless specific waivers have been obtained from the relevant employee;
 - (iv) any communication subject to legal professional privilege, including any internal information regarding any Dispute or any Claim against the State under this Agreement; or
 - (v) documents relating to the Builder, Builder Guarantors, the FM Subcontractor or the FM Subcontractor Guarantor's internal costs structures and treatment of non-project related overheads, but only to the extent that those cost structures are not related to the Project Company's obligations or the DBFM Project.
- (b) Nothing in Clause 1.7(a) prevents:
 - (i) the Auditor-General or the Ombudsman from having access to the records described in Clause 1.7(a) which they are entitled to have at Law or for the purpose of satisfying the powers and responsibilities of the Auditor-General referred to in Clause 1.6(c); or
 - (ii) the State from having access to the information contained in the materials described in Clauses 1.7(a)(i) and 1.7(a)(ii) to the extent that information is required by the State under Clause 1.6(c), Clause 48(f) or Clause 48(g) and provided that the State cannot obtain the relevant information from other documents that it has been provided with.

2 CONDITIONS PRECEDENT

2.1 Commencement

- (a) Subject to Clause 2.1(b), this Agreement will not commence unless and until each of the Conditions Precedent have been satisfied or waived in accordance with Clauses 2.3 or 2.4.
- (b) The following Clauses of this Agreement commence at Contractual Close:

- (i) Clause 1 (Definitions and interpretation);
- (ii) this Clause 2 (Conditions Precedent);
- (iii) Clause 4.6 (Indemnities);
- (iv) Clause 5.2 (State Representative);
- (v) Clause 5.4 (Project Co Representative);
- (vi) Clause 5.5 (Development and Transition Manager);
- (vii) Clause 5.8 (Independent Certifier);
- (viii) Clause 11.4 (Design Issues List);
- (ix) Clause 39.9 (Indemnity for Project Co breach);
- (x) Clause 39.10 (Property damage and third party liability indemnity);
- (xi) Clause 40.1 (D&C Phase Insurances);
- (xii) Clause 40.3 (General insurance requirements);
- (xiii) Clause 40.4 (Terms of Insurances);
- (xiv) Clause 40.7 (Evidence of Insurance);
- (xv) Clause 41 (Compliance with Laws);
- (xvi) Clause 42 (Representations and warranties);
- (xvii) Clause 43 (Default);
- (xviii) Clause 45 (Dispute resolution);
- (xix) Clause 46 (Assignment and ownership);
- (xx) Clause 50 (Confidentiality);
- (xxi) Clause 52 (Notices); and
- (xxii) Clause 54 (General).

2.2 Conditions Precedent

The Conditions Precedent are as follows:

- (a) **(Counterparty Details)**: duly completed Counterparty Details;
- (b) **(legal opinion)**: a legal opinion given for the benefit of the State from solicitors acting for each Consortium Entity as to:
 - (i) the legal capacity and corporate power of that Consortium Entity to enter into and perform its obligations in accordance with the State Project Documents (other than the Operational Interface Agreement, the Operating Phase Licence, the ISGS Expert Agreement, the Subcontractor Deeds of Novation and any Key Subcontractor Direct Deeds for Key Subcontractors that are not engaged by Financial Close);
 - (ii) the enforceability of the State Project Documents (other than the Operational Interface Agreement, the Operating Phase Licence, the ISGS Expert Agreement and the Subcontractor Deeds of Novation) against the relevant Consortium Entity; and
 - (iii) due execution of the Project Documents (other than the Operational Interface Agreement, the Operating Phase Licence, the ISGS Expert Agreement, the Subcontractor Deeds of Novation and any Key Subcontractor Direct Deeds for Key Subcontractors that are not engaged by Financial Close) by the Consortium Entity;
- (c) **(counterparts)**: original counterparts of all State Project Documents (other than this Agreement, the Operational Interface Agreement, the Operating Phase

Licence, the ISGS Expert Agreement, the Subcontractor Deeds of Novation and any Key Subcontractor Direct Deeds for Key Subcontractors that are not engaged by Financial Close) and certified copies of all other Project Documents (other than this Agreement, the Operational Interface Agreement, the Operating Phase Licence, the ISGS Expert Agreement, Subcontractor Deeds of Novation and any Key Subcontractor Direct Deeds for Key Subcontractors that are not engaged by Financial Close) all duly executed by all parties other than the State;

- (d) **(Financing Documents and Equity Documents)**: certified copies of the Financing Documents and Equity Documents duly executed by all parties to them, and evidence that all conditions precedent to the Financing Documents and Equity Documents coming into force and all conditions precedent to funding and drawdown of the facilities for the DBFM Project have been satisfied (or waived in accordance with their terms) other than the giving of notice to the State under Clause 2.3;
- (e) **(Financial Model)**: the Financial Model as varied from the Financial Model at Contractual Close in accordance with Schedule 2 (Financial Close Adjustment Protocol);
- (f) **(Copies of Insurances or other evidence)**: copies of, or other evidence in the form specified under Clause 40.7, of the Insurances required to be effected and maintained during the D&C Phase, as required by Clause 40.7;
- (g) **(Certificates)**: a certificate from an insurance broker as to the currency of all Insurances required to be effected and maintained in accordance with this Agreement during the D&C Phase (whether the State is required to be an insured party or not), and such evidence as is necessary to demonstrate the compliance of each such policy with the requirements of this Agreement;
- (h) **(PCS Works Independent Certifier Agreement)**: an original of the Deed of Accession, duly executed by Project Co; and
- (i) **(D&C Phase Plans)**: the D&C Phase Plans and any related sub-plans (excluding the Project Management Plan, Communications Plan, Industry Participation Plan, Technical Completion Plan, Commercial Acceptance Plan and the Operational Handover Plan), each of which meets the requirements set out in Clause 6 and Schedule 19 (Plans), have been finalised in accordance with this Agreement, other than a review of the D&C Phase Plans by the Independent Certifier which will occur after Financial Close in accordance with Schedule 3 (Review Procedures).

2.3 Satisfaction of Conditions Precedent

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

2.4 Waiver of Conditions Precedent

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

2.5 Failure to satisfy Condition Precedents

- (a) If a Condition Precedent has not been satisfied or waived by the date and time specified in Clause 2.3, the State may terminate this Agreement upon giving not less than 5 Business Days' notice in writing to Project Co.

- (b) If this Agreement is terminated in accordance with Clause 2.5(a) then:
- (i) each of the other Project Documents that have been executed will be taken to have been terminated at the time this Agreement is terminated; and
 - (ii) Project Co will not be entitled to bring any Claim against the State or a State Entity arising out of or in connection with:
 - (A) the failure of the Conditions Precedent to be satisfied;
 - (B) the termination of this Agreement; or
 - (C) the DBFM Project or the State Project Documents,except for any Claim arising prior to the Expiry Date in connection with the Clauses identified in Clause 2.1(b).

3 TERM

3.1 Commencement date

Subject to Clause 2.1, this Agreement commences on the date of Financial Close.

3.2 Expiry Date

This Agreement ends on the Final Expiry Date unless this Agreement is terminated earlier in accordance with its terms, in which case this Agreement ends on the date of such earlier termination (**Expiry Date**).

4 GENERAL OBLIGATIONS

4.1 FFP Warranty

At the Date of Commercial Acceptance, Project Co must ensure that the Stadium, Sports Precinct, the Off-Site Infrastructure, all Group 1 FF&E and Group 2 FF&E (but not the items of Group 3 FF&E and Group 4 FF&E) are Fit For Purpose and from the Date of Commercial Acceptance continue to be Fit For Purpose (excluding the items of Group 2 FF&E, Group 3 FF&E and Group 4 FF&E) at all times throughout the Term by reference to the standards existing at the Date of Commercial Acceptance.

4.2 Project Co takes all risks

- (a) Project Co must deliver the DBFM Project in accordance with the Project Documents.
- (b) Except as otherwise expressly provided in the State Project Documents:
 - (i) Project Co accepts all risks in connection with delivering the DBFM Project; and
 - (ii) Project Co is not entitled to make any Claim against the State or a State Entity in connection with the DBFM Project or the Project Documents.

4.3 Mitigation by Project Co

- (a) In this Clause 4.3, '**Relevant Relief Event**' means the occurrence of any event which entitles Project Co to:
 - (i) an extension of time under Clause 17;
 - (ii) compensation;
 - (iii) relief from performance of any of its obligations in any State Project Document; or
 - (iv) bring any other Claim against the State.
- (b) If a Relevant Relief Event occurs, Project Co must:

- (i) use its reasonable endeavours to mitigate the effects of the Relevant Relief Event; and
 - (ii) for this purpose, comply with all reasonable directions of the State concerning the Relevant Relief Event and its consequences.
- (c) Notwithstanding any other Clause in this Agreement, the State's Liability in connection with Relevant Relief Events will be reduced to the extent Project Co fails to comply with its obligations set out in Clause 4.3(b).

4.4 No limitation on obligations

- (a) Neither the State nor (except as otherwise expressly provided in the Independent Certifier Agreement) the Independent Certifier owes any duty of care to Project Co to:
- (i) review any Deliverable submitted by Project Co; or
 - (ii) inspect or review the DBFM Works, Stadium or Sports Precinct, for Defects, other errors or omissions or compliance with the State Project Documents.
- (b) Any:
- (i) review of, comments upon, or notice in connection with (including an approval or consent given in accordance with Schedule 3 (Review Procedures)), or failure to review, comment upon or give notice in connection with, any Deliverable submitted by Project Co or any other direction, act or omission of the State or the Independent Certifier in connection with any Deliverable;
 - (ii) inspection or review of the DBFM Works, Stadium, Sports Precinct or Off-Site Infrastructure by (or on behalf of) the State or the Independent Certifier;
 - (iii) compliance by Project Co with its obligations under the State Project Documents or any failure by (or on behalf of) the State, or the Independent Certifier to detect any non-compliance by Project Co with its obligations under the State Project Documents, including where any failure arises from any negligence on the part of the State or the Independent Certifier; or
 - (iv) Deliverable prepared by Project Co,
- will not:
- (v) relieve Project Co from, or alter or affect, its liabilities, obligations or responsibilities whether under the State Project Documents or otherwise according to Law; or
 - (vi) prejudice the State's rights against Project Co whether under the State Project Documents or otherwise according to Law.

4.5 Acts or omissions of Project Co

Except as set out in Clause 8.5 and Clause 28A and otherwise notwithstanding the express rights and entitlements Project Co has under the State Project Documents:

- (a) Project Co is not entitled to bring any Claim against the State or any State Associate in connection with the State Project Documents to the extent that the event for which Project Co is otherwise entitled to bring a Claim was caused or contributed to by any act or omission of Project Co or a Project Co Associate (other than an act or omission which is in accordance with a State Project Document); and
- (b) neither the State nor any State Associate will have any Liability to Project Co or any Project Co Associate in connection with the State Project Documents to the

extent that the event for which the State would otherwise have a Liability was caused or contributed to by any act or omission of Project Co or a Project Co Associate (other than an act or omission which is in accordance with a State Project Document).

4.6 Indemnities

If Project Co is required to indemnify the State or an Indemnified Person against any Claim or Liability in accordance with this Agreement, Project Co's liability to indemnify will be reduced to the extent any such Claim or Liability:

- (a) arises due to a fraudulent, negligent, unlawful or wilful act or omission of the State or any Indemnified Person;
- (b) arises due to a breach by the State of a State Project Document; or
- (c) arises due to a breach by an Indemnified Person of a State Project Document to which it is a party.

Nothing in this Clause limits any Claim which is expressly stated in this Agreement to be able to be made against the State by Project Co and any amounts to which Project Co is entitled in respect of those Claims may be netted off by Project Co against amounts owing by Project Co under an indemnity from Project Co to the State or an Indemnified Person.

4.7 Sole remedy for delay

- (a) Except if the State elects to terminate this Agreement as a result of an Immediate Termination Event, the State's sole financial remedy, and Project Co's sole financial liability, for failure to achieve Commercial Acceptance by the Date for Commercial Acceptance is limited to:
 - (i) the liquidated damages required to be paid by Project Co under Clause 21A.4; and
 - (ii) the amount of the Monthly Service Payment and State Loan Payment not required to be paid by the State in those circumstances (**Relevant Amounts**),

and Project Co's liability in those circumstances is fully and finally satisfied by the State receiving from Project Co the liquidated damages required to be paid by Project Co under Clause 21A.4 and by the State not paying the Relevant Amounts.
- (b) Clause 4.7(a) does not affect the State's rights under this Agreement (including any indemnity to which it is entitled) in respect of:
 - (i) giving a Default Notice and otherwise exercising its rights under Clause 43 in respect of the delay; and
 - (ii) any matter other than a delay to Commercial Acceptance, including any matter that occurs during the period of the delay.

5 CONTRACT ADMINISTRATION

5.1 Parties' representatives

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

5.2 State Representative

- (a) (**Appointment**): The State Representative is the person set out in Schedule 1 (Contract Particulars) or such other person as may be appointed from time to time to replace that person in accordance with this Clause 5.2.
- (b) (**Directions**): The State Representative may administer this Agreement as the State's delegate and:

- (i) give directions and notices to be given by the State; and
 - (ii) receive all notices and documents to be received by the State,
- in connection with this Agreement.
- (c) **(Agent)**: The State Representative will carry out his or her powers, authority and functions as the agent of the State.
 - (d) **(Compliance)**: Without limiting its rights and obligations in accordance with this Agreement, Project Co must comply with any direction by the State Representative given or purported to be given in accordance with this Agreement and, subject to Clause 33.5, any direction given by the State Representative which may give rise to a Modification, FF&E Modification or entitle Project Co to relief in accordance with the terms of this Agreement.
 - (e) **(Oral directions)**: The State Representative may give a direction orally but must as soon as practicable confirm that direction in writing.
 - (f) **(Directions from other people)**: Project Co must not accept or act upon directions in connection with the DBFM Works or Services from an employee or agent of the State other than the State Representative or a delegate of the State Representative appointed in accordance with Clause 5.3 acting in accordance with this Agreement and, in the case of a delegate appointed under Clause 5.3, acting within the scope of the delegation notified under Clause 5.3.
 - (g) **(Vary or terminate delegation)**: The State may vary or terminate any delegated power or authority of the State Representative but must promptly notify Project Co of any such variation or termination.
 - (h) **(Replacement)**: The State may at any time replace a State Representative, in which event the State will appoint another person as the State Representative and notify Project Co of that appointment.

5.3 Further State delegations

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

5.4 Project Co Representative

- (a) **(Appointment)**: The Project Co Representative is the person set out in Schedule 1 (Contract Particulars) or such other person as may be appointed from time to time to replace that person in accordance with this Clause 5.4.
- (b) **(Contact)**: The Project Co Representative must act as the principal point of contact between Project Co and the State and Project Co must ensure that the Project Co Representative is available to the State as and when required during the Term.
- (c) **(Presence)**: Project Co must ensure that the Project Co Representative is present at the Site at such times as are necessary to ensure that Project Co is complying with its obligations in accordance with this Agreement and upon reasonable request by the State Representative.
- (d) **(Directions)**: A direction is given to Project Co if it is given to the Project Co Representative.

- (e) **(Replacement)**: Project Co may only replace the Project Co Representative if any such replacement has the prior written approval of the State (which must not be unreasonably withheld) and if the replacement meets the requirements for the Project Co Representative in this Agreement.
- (f) **(Employee of Project Co)**: The Project Co Representative must be an officer or employee of Project Co or a Related Body Corporate of Project Co.
- (g) **(Authority and skills)**: Project Co must ensure that, at all times during his or her appointment, the Project Co Representative has:
 - (i) the authority to perform his or her role and duties and discharge his or her obligations in accordance with Clause 5.4(h) and elsewhere in this Agreement; and
 - (ii) a detailed knowledge of the DBFM Project and sufficient experience and skills to undertake the role of Project Co Representative.
- (h) **(Duties from Contractual Close until the Expiry Date)** : Project Co must ensure that the Project Co Representative performs the duties of the Project Co Representative in accordance with this Agreement, including to:
 - (i) **(spokesperson)**: act as the spokesperson for Project Co;
 - (ii) **(co-operation)**: ensure the ongoing co-operation with the State and the Stadium Operator in the implementation of the DBFM Project;
 - (iii) **(management)**: understand, co-ordinate and manage all phases of the DBFM Project from Contractual Close until the Expiry Date;
 - (iv) **(liaison)**: liaise and generally deal with stakeholders;
 - (v) **(manage)**: represent the views of Project Co and manage and co-ordinate issues with any Project Co Associate prior to presentation to the State; and
 - (vi) **(presence)**: ensure a strong presence and consistent project management role for Project Co in the implementation of the DBFM Project.

5.5 Development and Transition Manager

- (a) **(Appointment)**: Project Co must appoint the Development and Transition Manager.
- (b) **(Duration)**: The Development and Transition Manager must be engaged for the whole of the period commencing on Contractual Close and ending on the date which is 6 Months after the Operational Commencement Date (**Development and Transition Manager Appointment Period**).
- (c) **(Dual role)**: The role of the Development and Transition Manager may be performed by the same person who performs the role of the Services Manager.
- (d) **(Contact)**: Without limiting Clause 5.4(b), Project Co must ensure that the Development and Transition Manager is available to the State as and when required during the Development and Transition Manager Appointment Period.
- (e) **(Presence)**: Project Co must ensure that, during the Development and Transition Manager Appointment Period, the Development and Transition Manager is present at the Construction Site at such times as are necessary to ensure that Project Co is complying with its obligations in accordance with this Agreement and upon reasonable request by the State Representative.
- (f) **(Reporting)**: The Development and Transition Manager must report directly to the Project Co Representative.
- (g) **(Replacement)**: Project Co may only replace the Development and Transition Manager if any such replacement has the prior approval of the State (which must

not be unreasonably withheld) and if the replacement meets the requirements for the Development and Transition Manager in this Agreement.

- (h) **(Employee of Project Co):** The Development and Transition Manager must be an officer or employee of Project Co or a Related Body Corporate of Project Co and, without limiting Clauses 5.5(a) to 5.5(f), must be employed on the DBFM Project on a full-time basis during the Development and Transition Manager Appointment Period.
- (i) **(Skills and authority):** Project Co must ensure that at all times during his or her appointment, the Development and Transition Manager:
 - (i) is appropriately technically qualified;
 - (ii) has sufficient experience and skills to undertake the role of Development and Transition Manager;
 - (iii) has a detailed knowledge of the DBFM Project; and
 - (iv) has the authority to perform his or her role and duties and discharge his or her obligations in accordance with Clause 5.5(j) and elsewhere in this Agreement.
- (j) **(Duties during the Development and Transition Manager Appointment Period):** Project Co must ensure that the Development and Transition Manager performs the duties of the Development and Transition Manager in accordance with this Agreement, including to:
 - (i) manage and be heavily engaged in the Design Development Process in accordance with Schedule 5 (Design Development) and otherwise in accordance with this Agreement;
 - (ii) co-ordinate and liaise with the Subcontractors and oversee compliance by the Builder and other Subcontractors with the Subcontracts;
 - (iii) co-ordinate all Design Documentation and all information within them, and all communications with the State and the State Representative in connection with the Design Documentation;
 - (iv) examine the Design Documentation prior to submission to the State Representative in accordance with Schedule 3 (Review Procedures), for errors, omissions, inconsistencies and discrepancies and take all steps to ensure they are rectified;
 - (v) certify all Design Documentation prior to submission to the State as complying with the relevant requirements of this Agreement including the Design Requirements;
 - (vi) convene and attend regular co-ordination meetings with the State Representative;
 - (vii) liaise with the persons performing the testing (including the Completion Tests) and commissioning of the DBFM Works and attend the testing (including the Completion Tests) and commissioning of the DBFM Works;
 - (viii) co-ordinate and oversee the installation and commissioning of all Project Co FF&E;
 - (ix) liaise with the State and the Stadium Operator in relation to the Scheduled State Works and Unscheduled State Works carried out in accordance with Clause 16;
 - (x) liaise with the State and the Stadium Operator in relation to State Operational Commissioning;
 - (xi) liaise and co-ordinate with the State and the Stadium Operator in relation to the Commissioning Period Services;

- (xii) co-ordinate the development of Operating Phase Plans and all communications with the State in connection with the Services;
- (xiii) examine the Operating Phase Plans prior to submission to the State Representative in accordance with Schedule 3 (Review Procedures), for errors, omissions, inconsistencies and discrepancies and take all steps to ensure they are rectified;
- (xiv) certify all Operating Phase Plans prior to submission to the State as complying with the relevant requirements of this Agreement including Schedule 13 (Services Specifications);
- (xv) liaise and co-ordinate with the State and the Stadium Operator in relation to the provision of training in accordance with Clause 24; and
- (xvi) co-ordinate the execution of the DBFM Works to ensure that Completion is achieved by each Date for Completion.

5.6 Services Manager

- (a) **(Appointment):** Project Co must ensure a Services Manager is engaged for the whole of the period commencing on and from the date which is:
 - (i) 12 Months prior to the Date for Technical Completion; or
 - (ii) 12 Months prior to the date upon which Project Co reasonably expects to achieve Technical Completion,
 whichever is the earlier, until the Expiry Date (**Services Manager Appointment Period**).
- (b) **(Dual role):** The role of the Services Manager may be performed by the same person who performs the role of the Development and Transition Manager.
- (c) **(Contact):** Without limiting Clause 5.4(b), Project Co must ensure that the Services Manager is available to the State as and when required during the Services Manager Appointment Period.
- (d) **(Presence):** Project Co must ensure that, during the Services Manager Appointment Period, the Services Manager is present at the Operating Phase Site at such times as are necessary to ensure that Project Co is complying with its obligations in accordance with this Agreement and upon reasonable request by the State Representative.
- (e) **(Reporting):** The Services Manager must report directly to the Project Co Representative.
- (f) **(Replacement):** Project Co may only replace the Services Manager if any such replacement has the prior approval of the State (which must not be unreasonably withheld) and if the replacement meets the requirements of this Agreement.
- (g) **(Employee of Project Co):** The Services Manager must be an officer or employee of Project Co or a Related Body Corporate of Project Co and, without limiting Clauses 5.6(a) to 5.6(e), must be employed on the DBFM Project on a full-time basis during the Services Manager Appointment Period.
- (h) **(Skills and authority):** Project Co must ensure that at all times during his or her appointment, the Services Manager has:
 - (i) the authority to perform his or her role and duties and discharge his or her obligations in accordance with Clause 5.6(i) and elsewhere in this Agreement; and
 - (ii) a detailed knowledge of the DBFM Project and sufficient experience and skills to undertake the role of Services Manager.

- (i) **(Duties during Services Manager Appointment Period):** Project Co must ensure that the Services Manager performs the duties of the Services Manager in accordance with this Agreement, including to:
- (i) attend regular co-ordination, Event briefing and Event debriefing meetings with the Stadium Operator;
 - (ii) co-ordinate the Modifications and FF&E Modifications during the Operating Phase in accordance with Clause 33 and otherwise in accordance with this Agreement;
 - (iii) co-ordinate the development and implementation of Operating Phase Plans, and all communications with the State in connection with Schedule 13 (Services Specifications);
 - (iv) examine the Operating Phase Plans prior to submission to the State Representative in accordance with Schedule 3 (Review Procedures), for errors, omissions, inconsistencies and discrepancies and take all steps to ensure they are rectified;
 - (v) certify all Operating Phase Plans prior to submission to the State as complying with the relevant requirements of this Agreement including Schedule 13 (Services Specifications);
 - (vi) co-ordinate the Minor Works in accordance with Clause 28 and otherwise in accordance with this Agreement;
 - (vii) co-ordinate the repricing of Reviewable Services in accordance with Clause 30 and otherwise in accordance with this Agreement;
 - (viii) co-ordinate, and act as the point of liaison between the Stadium Operator and the operators of the Commercial Opportunities; and
 - (ix) manage the process of Handover.

5.7 Contract Management Team

- (a) **(Establishment):** The parties will establish a team consisting of:
- (i) the State Representative;
 - (ii) two or more other representatives of the State notified by the State to Project Co from time to time;
 - (iii) the Project Co Representative;
 - (iv) two other representatives of Project Co nominated by Project Co to the State from time to time; and
 - (v) such other members as the parties may agree from time to time, (together the **Contract Management Team**).
- (b) **(Chair of meetings):** The State Representative will chair Contract Management Team meetings.
- (c) **(Appointment of delegates):** The members of the Contract Management Team may, by notice to the other members of the Contract Management Team, appoint a delegate to:
- (i) attend any Contract Management Team meetings in their absence; and
 - (ii) otherwise discharge their responsibilities in accordance with this Clause 5.7,
- and, in each case, the member appointing the delegate must ensure that the delegate is duly authorised to perform the function of the member.
- (d) **(Duties):** The duties of the Contract Management Team will be to:

- (i) monitor the overall progress of the DBFM Project and compliance with this Agreement;
 - (ii) endeavour to resolve any matters referred to the Contract Management Team by a party, including any Disputes referred to the Contract Management Team in accordance with Clause 45;
 - (iii) review all progress reports provided by Project Co, its Subcontractors and the Independent Certifier; and
 - (iv) discuss and consider any other issues in connection with the DBFM Project.
- (e) **(Meetings):** The Contract Management Team will:
- (i) meet Monthly during the Term; and
 - (ii) conduct its meetings in the manner agreed by its members from time to time.
- (f) **(Meeting agendas):** The State Representative must determine the agenda for each meeting referred to in Clause 5.7(e) and in determining each agenda the State Representative:
- (i) subject to Clause 5.7(f)(ii), must include any items notified to it in writing by Project Co and received no later than 2 Business Days prior to the date of the meeting; and
 - (ii) is not required to include any item proposed by Project Co if, in the State Representative's reasonable opinion, the matters to which the item relates do not fall within or relate to the duties of the Contract Management Team.
- (g) **(Monthly reports and plans):** Project Co must, by no later than 5 Business Days before each meeting of the Contract Management Team convened in accordance with Clause 5.7(e)(i), give each member of the Contract Management Team and the Independent Certifier (for so long as the Independent Certifier is appointed):
- (i) prior to the Date of Commercial Acceptance, a Monthly Works Report prepared in accordance with Schedule 19 (Plans);
 - (ii) during the Operating Phase, the most recent Monthly Performance Report provided to the State under Clause 36.4(a) and the Monthly Services Plan prepared in accordance with Schedule 13 (Services Specifications); and
 - (iii) any other document required to be presented to the Contract Management Team in accordance with this Agreement.
- (h) **(Minutes):** The State will take minutes of each Contract Management Team meeting and distribute such minutes prior to the next Contract Management Team meeting.
- (i) **(Other attendees):** The State may require that:
- (i) the Independent Certifier attend any meeting of the Contract Management Team; and
 - (ii) Project Co procure the attendance of senior representatives of any of Project Co, the Builder, the FM Subcontractor, a Financier or any Project Co Associate at any meeting of the Contract Management Team and Project Co must comply with any such requirement.
- (j) **(Advisory only):** Subject to Clause 5.7(d)(ii), the role of the Contract Management Team is advisory only and its decisions or recommendations are not binding on the parties.

- (k) **(Rights and obligations unaffected)**: The parties' involvement in the Contract Management Team does not affect their respective rights and obligations in accordance with this Agreement.
- (l) **(No restriction)**: The Contract Management Team will not have any power to require any of the parties, a State Associate or a Project Co Associate to act or refrain from acting in any way.
- (m) **(No reliance or Claim)**: Neither the State nor Project Co will be entitled to make any Claim against any member of the Contract Management Team in connection with anything which any such member does or fails to do in his or her capacity as a member of the Contract Management Team.
- (n) **(Other meetings)**: If requested by the State, Project Co must ensure that appropriate personnel are available to attend meetings convened by the State in connection with the DBFM Works during the D&C Phase and the Services during the Operating Phase.

5.8 Independent Certifier

- (a) **(Procurement documents)**: Project Co must:
 - (i) provide the State with a copy of the draft procurement documentation in respect of the procurement of an Independent Certifier for consideration and comment by the State prior to commencing the procurement process;
 - (ii) regularly consult with the State with respect to the procurement of an Independent Certifier, and keep the State regularly informed as to the progress of the procurement process; and
 - (iii) provide the State with a copy of the final procurement documentation in respect of the procurement of an Independent Certifier for approval by the State prior to issuing that documentation to the firms tendering for the role of the Independent Certifier.
- (b) **(Procurement documents to include form of Independent Certifier Agreement)**: Project Co acknowledges and agrees that the procurement documentation in respect of the procurement of an Independent Certifier must include, among other things, the form of Independent Certifier Agreement that the State and Project Co have agreed, as set out in Schedule 27 (Independent Certifier Agreement).
- (c) **(Project Co nominates 3 firms)**: Project Co must, prior to Financial Close, nominate at least 3 firms that have submitted tenders to Project Co from which the State will select the Independent Certifier, each of which must:
 - (i) **(expertise)**: have appropriate qualifications and experience;
 - (ii) **(no conflicts)**: have no interest or duty which may conflict with the role of the Independent Certifier in accordance with this Agreement;
 - (iii) **(execution)**: indicate its willingness to execute the Independent Certifier Agreement without substantial amendment to the form of Independent Certifier Agreement set out in Schedule 27 (Independent Certifier Agreement) (and any amendments must be agreed by all parties);
 - (iv) **(insurance)**: have professional indemnity insurance in accordance with the requirements of the form of Independent Certifier Agreement set out in Schedule 27 (Independent Certifier Agreement); and
 - (v) **(information)**: provide such information in relation to fees and other matters as the State reasonably requires.
- (d) **(State's rights)**: The State may request additional information from and conduct interviews with any of the firms nominated by Project Co and will provide any such

additional information to Project Co and allow Project Co to attend and assist in any interview process.

- (e) **(State selects):** The State may select one of the firms nominated by Project Co in accordance with Clause 5.8(c) to act as the Independent Certifier.
- (f) **(Execution of Independent Certifier Agreement):** Subject to Clause 5.8(g), Project Co must, promptly following the date the State selects the Independent Certifier in accordance with Clause 5.8(e), execute the Independent Certifier Agreement which is substantially consistent with the form of Independent Certifier Agreement set out in Schedule 27 (Independent Certifier Agreement) and which is agreed with the Independent Certifier and the State. Project Co irrevocably appoints the State as its attorney to give effect to this Clause 5.8(f), including executing the Independent Certifier Agreement on behalf of Project Co.
- (g) **(Negotiating Independent Certifier Agreement):** If the Independent Certifier selected by the State in accordance with Clause 5.8(e) requests any amendment to the form of Independent Certifier Agreement set out in Schedule 27 (Independent Certifier Agreement) before that agreement is entered into by the parties, Project Co will, acting reasonably and in good faith, negotiate with the selected Independent Certifier and the State with a view to the parties agreeing, and entering into, the Independent Certifier Agreement as soon as reasonably practicable following the date the State selects the Independent Certifier in accordance with Clause 5.8(e).
- (h) **(Not agent):** The Independent Certifier is appointed jointly by the parties and will act independently and not as agent of either party.
- (i) **(State refusal):** If the State, acting reasonably, refuses to select one of the 3 firms nominated by Project Co within 10 Business Days of Project Co's nomination, Project Co must, within 5 Business Days of receiving notice from the State of that refusal, nominate 3 other firms in accordance with Clause 5.8(c) and the process in Clauses 5.8(d) to 5.8(i) will apply again.
- (j) **(Ability to act for Subcontractors):** Project Co must not, and must ensure that Subcontractors do not, appoint the Independent Certifier to act in any role under or relating to the D&C Subcontract, the FM Subcontract, any other Subcontract, or subject to Clause 5.8(k), the DBFM Project, without the prior written consent of the State Representative and on such terms approved by the State Representative.
- (k) **(Ability to act for Financiers):** Project Co may appoint the Independent Certifier to act for the Financiers in connection with the DBFM Project subject to receiving the State's prior approval which must not be unreasonably withheld provided Project Co and the Independent Certifier agree to implement adequate information barriers to ensure that separation between the Financier role and the Independent Certifier's role under this Agreement is maintained.
- (l) **(Role):** The role, functions, rights and liabilities of the Independent Certifier and the parties' rights and obligations in respect of the Independent Certifier are set out in the Independent Certifier Agreement.
- (m) **(Final and binding):** Except if:
 - (i) there is an express provision in this Agreement to the contrary; or
 - (ii) the Independent Certifier is acting as an Independent Expert in accordance with Clause 45.3,

determinations of the Independent Certifier will be final and binding on the State and Project Co other than determinations made in accordance with items (a), (b), (c), (e)(ii), (e)(iii) and (i) of Schedule 2 of the Independent Certifier Agreement. If the Independent Certifier makes a determination in accordance with item (e)(i) of Schedule 2 of the Independent Certifier Agreement:

- (iii) except as set out in Clause 5.8(m)(iv), the Independent Certifier's determination is final and binding, except that:

- (A) Project Co may promptly, following receipt of the Independent Certifier's determination, give notice to the State and the Independent Certifier of its intention to dispute the Independent Certifier's determination;
 - (B) within 3 Business Days of receipt of the Independent Certifier's determination that there is a Defect, Project Co may present its reasons to the Independent Certifier as to why it considers that there is not a Defect;
 - (C) within 5 Business Days of the State receiving Project Co's notice under Clause 5.8(m)(iii)(A), the State may also provide comments to the Independent Certifier in respect of the Defect;
 - (D) the Independent Certifier must consider Project Co's reasons and the State's comments and promptly affirm, reverse or amend its determination, acting in accordance with the Independent Certifier Agreement; and
 - (E) the Independent Certifier's further determination is final and binding and overrides any previous determination in respect of the same Defect; and
- (iv) the determination as to methodology for rectifying the Defect is not final and binding on the State and Project Co.
- (n) **(No approval):** No certificate or notice given by, or other act or omission of, the Independent Certifier will:
- (i) constitute an approval by the State of Project Co's performance of its obligations in accordance with the State Project Documents; or
 - (ii) prejudice any rights or powers of the State whether in accordance with the State Project Documents or otherwise according to Law.
- (o) **(Appointment and replacement):** If:
- (i) the Independent Certifier Agreement is terminated in accordance with its terms; or
 - (ii) the Independent Certifier is, for any reason, not appointed or ceases to act as the Independent Certifier,
- the State and Project Co must jointly engage another person to act as Independent Certifier on substantially the same terms as the form of Independent Certifier Agreement set out in Schedule 27 (Independent Certifier Agreement) in accordance with the process set out in Clauses 5.8(a) to 5.8(i).
- (p) **(Decisions of previous Independent Certifier):** The new Independent Certifier appointed in accordance with Clause 5.8(o) is bound by the exercise of any functions performed or decisions made by the previous Independent Certifier which would have been binding on the previous Independent Certifier.

5.9 ISGS Expert

- (a) **(Expert):** The parties have agreed to engage the ISGS Expert to provide them jointly with independent expert sports ground safety advice in relation to the DBFM Project and to assist in the interpretation of the SGSA Publications (as defined in Schedule 12 (Design Specifications)). The advice provided by the ISGS Expert is non-binding on the parties.
- (b) **(Procurement documents):** Project Co must:
 - (i) provide the State with a copy of the draft documentation in respect of the engagement of the ISGS Expert for consideration and comment by the State prior to engaging with the ISGS Expert;

- (ii) regularly consult with the State with respect to the engagement of the ISGS Expert; and
- (iii) provide the State with a copy of the final documentation in respect of the engagement of the ISGS Expert for approval by the State prior to issuing that documentation to the ISGS Expert in final form.
- (c) **(Execution of the agreement with the ISGS Expert)**: The parties must, promptly following the finalisation of the documents to engage the ISGS Expert, execute the agreement with the ISGS Expert, which agreement will provide that the cost of the ISGS Expert will be borne equally by the State and Project Co.
- (d) **(Not agent)**: The ISGS Expert is appointed jointly by the parties and will act independently and not as agent of either party. The ISGS Expert is not an Independent Expert for the purpose of Clause 45.3.
- (e) **(Ability to act for Subcontractors)**: Project Co must not, and must ensure that Subcontractors do not, appoint the ISGS Expert to act in any role under or relating to the D&C Subcontract, the FM Subcontract, any other Subcontract or the DBFM Project, without the prior written consent of the State Representative and on such terms approved by the State Representative.
- (f) **(Role)**: The role, functions, rights and liabilities of the ISGS Expert and the parties' rights and obligations in respect of the ISGS Expert are set out in the ISGS Expert Agreement.
- (g) **(Costs)**: The cost of the ISGS Expert will be borne equally by the State and Project Co.

5.10 Subcontracting

- (a) **(General)**: Project Co must not, and must ensure that each Subcontractor does 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 or the services that are the subject of the proposed Subcontract.
- (b) **(Liability for Subcontractors)**: Project Co:
 - (i) is not relieved from any of its obligations or Liabilities in accordance with this Agreement as a result of subcontracting any of those obligations or Liabilities;
 - (ii) remains responsible for the performance of all Subcontractors (including all officers, employees, subcontractors and agents of any Subcontractor) and agrees that a breach by a Subcontractor or a failure by a Subcontractor to comply with the obligations of Project Co in accordance with this Agreement is a breach or failure of Project Co; and
 - (iii) is entirely responsible for all Liabilities suffered or incurred by the State in connection with any acts, omissions, defaults, negligence or termination of any Subcontractors (and those of the officers, employees, subcontractors and agents of any Subcontractors).

5.11 Competence

- (a) If the State notifies Project Co of any person employed or engaged in undertaking the DBFM Works or performing the Services, who in the State's reasonable opinion, is incompetent, negligent, dishonest or guilty of misconduct, then Project Co must promptly:
 - (i) remove the person or ensure that such person is promptly removed from undertaking the DBFM Works or performing the Services;
 - (ii) replace the person or ensure that such person is promptly replaced; and

- (iii) ensure that the person is not again employed or engaged in undertaking the DBFM Works or performing the Services.
- (b) Project Co must ensure that all Project Co Associates hold appropriate qualifications and have received appropriate training for their intended duties and must provide evidence of such qualifications and training to the Stadium Operator and the State as reasonably requested.

5.12 Key Personnel and Key Subcontractors

- (a) Project Co must employ or engage the Key Personnel and Key Subcontractors, or ensure that the relevant Project Co Associate employs or engages the Key Personnel and Key Subcontractors, in the relevant roles and function stated in Schedule 1 (Contract Particulars).
- (b) If the name of a Key Subcontractor has not been included in Schedule 1, prior to the Key Subcontractor role being tendered or otherwise procured by Project Co or a Project Co Associate, Project Co must provide the State with a list of proposed contractors that it is considering procuring or inviting to tender for that role.
- (c) The State may, acting reasonably but without any obligation to give reasons and within 5 Business Days of receipt of a list from Project Co under Clause 5.12(b), provide Project Co with comments in respect of contractors on the list provided by Project Co under Clause 5.12(b). If the State provides comments under this Clause 5.12(c), Project Co will have reasonable regard to those comments but without any obligation to comply with, or give effect to, them (including Project Co has no obligation to remove any contractor from the list of contractors to whom Project Co may invite tenders).
- (d) Project Co must procure from the Builder and from the FM Subcontractor an executed direct deed in the form of Schedule 29 (Builder Side Deed) and Schedule 30 (FM Subcontractor Side Deed) respectively.
- (e) Project Co must procure that the relevant Project Co Associate obtains from each Key Subcontractor listed in Schedule 1 (Contract Particulars) (other than the Builder and the FM Subcontractor) an executed direct deed in the form of Schedule 16 (Pro Forma Direct Deed) at the same time as it enters into the relevant Key Subcontract, except if Schedule 1 (Contract Particulars) states that a direct deed is not required. If the State determines that any other Subcontractor is a Key Subcontractor, Project Co must procure that the relevant Project Co Associate uses its best endeavours to procure from that Subcontractor an executed direct deed in the form of Schedule 16 (Pro Forma Direct Deed). A breach of a Key Subcontractor Direct Deed by a Key Subcontractor will not, of itself, be an Event of Default under this Agreement.
- (f) Subject to the State's rights as set out in Clause 5.11, Project Co must not replace the Key Personnel or Key Subcontractors, or allow a relevant Project Co Associate to replace the Key Personnel or Key Subcontractors, in their roles without the State's prior approval in accordance with Clause 5.12(g).
- (g) If Project Co or a relevant Project Co Associate seeks to replace a Key Subcontractor or a member of Key Personnel, the State may not unreasonably withhold or delay its approval of a proposed replacement if:
 - (i) in connection with the Key Subcontractor to be replaced:
 - (A) the Key Subcontractor has suffered an Insolvency Event;
 - (B) if the Key Subcontractor is the Builder or the FM Subcontractor, there has been a Change in Control of the Builder or the FM Subcontractor (as applicable) in breach of Clause 46.6(a) and the replacement of the Builder or the FM Subcontractor (as applicable) is for the purpose of remedying such breach; or

- (C) the Key Subcontractor has breached the terms and conditions of the relevant Key Subcontract,

and Project Co has:

- (D) demonstrated that the proposed replacement Key Subcontractor is appropriately technically qualified, has adequate experience (technical or otherwise, as the role requires) in relation to the proposed role, has sufficient financial standing and is of good repute; and
- (E) if the Key Subcontractor had previously provided a direct deed to the State, procured that the relevant Project Co Associate obtains from the proposed replacement Key Subcontractor, an executed direct deed in the form of Schedule 16 (Pro Forma Direct Deed);

(ii) in connection with the Key Personnel to be replaced:

- (A) the member of Key Personnel has resigned from his or her employment or has terminated his or her engagement with Project Co;
- (B) the member of Key Personnel has died;
- (C) the member of Key Personnel has become incapable of performing his or her duties due to injury or illness; or
- (D) the member of Key Personnel has committed a breach of any express or implied term of his or her contract of employment or independent contract which would warrant termination of his or her employment or engagement,

and Project Co has demonstrated that the proposed replacement person is appropriately technically qualified, has adequate experience (technical or otherwise, as the role requires) in relation to the proposed role and is of good repute.

5.13 Key Subcontracts

- (a) Project Co must seek the State's prior approval (which will not be unreasonably withheld) to the terms of any Key Subcontract and any amendment to the terms of any Key Subcontract. Approval is not required for:
 - (i) acts relating only to administration of the Key Subcontract by Project Co or the relevant Project Co Associate, provided that the acts do not give rise to an amendment by conduct;
 - (ii) a change to a date for completion under the Key Subcontract; or
 - (iii) a non-material variation to the works or services under that Key Subcontract that will not lead to a non-compliance with the Design Requirements or the requirements of Schedule 13 (Services Specifications).
- (b) Project Co must not at any time terminate, rescind, novate or assign (and must ensure that the principal under the Key Subcontract does not terminate, rescind, novate or assign) any Key Subcontract without the State's prior consent (which will not be unreasonably withheld).

5.14 Requirements for Subcontracting

Project Co must not, and must ensure that each Key Subcontractor does not, engage or permit the engagement of any Subcontractor, or enter into or permit the entry into of any Subcontract, unless:

- (a) if the State requires Probity Investigations to be carried out, the State's probity requirements as described in Clauses 47.5 to 47.10 are satisfied; and

- (b) in connection with a Key Subcontractor, the Subcontract contains provisions giving effect to the exercise by the State of:
 - (i) its rights and protections under and contains all relevant provisions prescribed by (if applicable), Clauses 5.10, 5.11, 10.3, 10.4, 10.7, 11.3, 16, 29, 31, 40, 42, 43, 44, 46, 47.5 to 47.10, 50, 51 and 54.1 to 54.8; and
 - (ii) with respect to the Builder and FM Subcontractor only, its rights to take an assignment of any performance bond in accordance with its terms.

5.15 Security of payment

- (a) This Clause 5.15 will apply only to the extent that the *Construction Contracts Act 2004* (WA) (CCA) applies to any Subcontract.
- (b) Expressions defined or used in the CCA have the same meaning for the purposes of this Clause 5.15 (unless the context otherwise requires).
- (c) If the CCA applies to any Subcontract, Project Co must:
 - (i) within 2 Business Days of receiving any application or notice in accordance with the CCA, give a copy of that application or notice to the State; and
 - (ii) within one Business Day of receiving any notice of a Subcontractor's intention to suspend work under a Subcontract in accordance with the CCA, give a copy of that notice to the State.
- (d) If:
 - (i) a Subcontractor is entitled to suspend work which forms part of the DBFM Works or Services under the CCA; or
 - (ii) Project Co informs the State, or the State becomes aware that Project Co has failed to pay an amount that is certified or determined under the relevant Subcontract as being due and payable to a Subcontractor,

the State may then make that payment directly to the Subcontractor, provided that the State has given sufficient notice to Project Co of its intention to pay an amount to the Subcontractor to enable Project Co to provide reasons (accompanied by contemporaneous Records) as to why the payment should not be made.
- (e) If the State makes a payment directly to the Subcontractor under Clause 5.15(d), such amount will be a debt due and payable by Project Co to the State.

6 D&C PHASE PLANS

6.1 General obligations

- (a) **(Bid D&C Phase Plans not final form):** Project Co acknowledges that the D&C Phase Plans in Attachment 3 (D&C Plans) are not in final form.
- (b) **(Submission):** Project Co must prepare, submit and update, as appropriate, the D&C Phase Plans to the State and, where relevant, the Independent Certifier in accordance with this Agreement, including Schedule 19 (Plans) and Attachment 3 (D&C Plans) for review in accordance with Schedule 3 (Review Procedures).
- (c) **(Additional information):** Project Co must provide any additional information in connection with the D&C Phase Plans as set out in Schedule 19 (Plans) or as reasonably requested by the State or the Independent Certifier.
- (d) **(General D&C Phase Plan requirements):** Project Co must ensure that the D&C Phase Plans:
 - (i) are prepared and updated in accordance with Good Industry Practice;
 - (ii) are aligned and are consistent with this Agreement;
 - (iii) are aligned with the Design Documentation and Design Requirements;

- (iv) meet the requirements set out in Schedule 19 (Plans);
 - (v) are aligned and consistent with each other and the Operating Phase Plans; and
 - (vi) contain complete and accurate information in respect of the DBFM Project, including providing a detailed description of how Project Co intends to undertake the DBFM Works.
- (e) **(Governmental Agency approval)**: If a D&C Phase Plan is required to be approved by a Government Agency, Project Co must ensure that it has obtained that approval prior to submitting the relevant D&C Phase Plan to the State for review.
- (f) **(Delivery)**: Project Co must undertake the DBFM Works and deliver the DBFM Project in accordance with the D&C Phase Plans.
- (g) **(Compliance)**: Project Co must comply with the then current version of each D&C Phase Plan (but only to the extent such D&C Phase Plan is not inconsistent with the Output Specifications).
- (h) **(Submission of written communications)**: During the D&C Phase and subject to Clause 52.1(b), all written communications, including the submission or resubmission of any D&C Phase Plans, submitted to the State or the Independent Certifier by Project Co in accordance with this Agreement must be submitted through Aconex. The State will, at a time mutually agreed between the parties, procure that reasonable training in the use of Aconex is provided to those Project Co Associates who are required to use Aconex in connection with the DBFM Works.
- (i) **(Certification by Independent Certifier)**: The Instrumentation and Monitoring Plan, Geotechnical Interpretive Report, Technical Completion Plan, the Commercial Acceptance Plan and the Operational Handover Plan (and any revisions) must be certified by the Independent Certifier:
- (i) as being appropriate for the DBFM Project;
 - (ii) as being sufficient to demonstrate that the Technical Completion Criteria and the Commercial Acceptance Criteria will be met; and
 - (iii) as otherwise meeting the requirements of this Agreement, including the Design Specifications.
- (j) **(Updating)**: If the Independent Certifier has identified any issues with or made any comments in respect of the Technical Completion Plan, the Commercial Acceptance Plan or the Operational Handover Plan, or any revisions of those D&C Phase Plans, in submitting the documents to the State, Project Co must provide a description as to how Project Co has addressed those issues or comments and include confirmation from the Independent Certifier that the Independent Certifier is satisfied with how those issues or comments have been addressed.
- (k) **(General)**: Project Co must provide any additional information in relation to the D&C Phase Plans reasonably requested by the State.

6.2 DBFM Works Program

- (a) **(Submission)**: Project Co must submit to the State and the Independent Certifier the DBFM Works Program for review in accordance with Schedule 3 (Review Procedures) by the times set out in, and in accordance with, the requirements of Schedule 6 (Programming Requirements).
- (b) **(Compliance)**: The DBFM Works Program submitted in accordance with Clause 6.2(a) must:
- (i) be consistent with Attachment 2 (Works Program);
 - (ii) be consistent with the Schedule of State Works; and

- (iii) comply with the requirements for the DBFM Works Program set out in Schedule 6 (Programming Requirements).
- (c) **(Program must reflect progress)**: Project Co must ensure that the DBFM Works Program is updated in accordance with Schedule 6 (Programming Requirements) and at a minimum bi-monthly to reflect the actual progress of the DBFM Works being undertaken.
- (d) **(Update)**: Without limiting Clause 6.2(c), Project Co must update the DBFM Works Program in accordance with Schedule 6 (Programming Requirements) provided that any updated DBFM Works Program must not adjust any Date for Completion (unless an extension of the relevant Date for Completion has been granted under this Agreement).
- (e) **(Review)**: Project Co must present each updated DBFM Works Program at the meetings of the Contract Management Team convened in accordance with Clause 5.7.
- (f) **(Assessing Claims)**: Neither the State nor the Independent Certifier is bound by, or required to use, the DBFM Works Program for any purpose (including for the purpose of assessing any Claim made by Project Co).

7 THE SITE

7.1 Access arrangements during D&C Phase

- (a) **(Access for DBFM Works)**: Commencing on Financial Close and ending on the Date of Commercial Acceptance, the State must provide Project Co and Project Co Associates with a non-exclusive licence to access the Construction Site to the extent necessary to perform the DBFM Works and provide the Commissioning Period Services (**Construction Licence**).
- (b) **(Risk of obtaining access to additional land)**: Except as set out in Clause 15.1(a), Project Co is solely responsible for obtaining access to and from any land outside the Construction Site to which access is required to carry out the DBFM Works.
- (c) **(Adequate access)**: Project Co accepts all risks in connection with the adequacy of access to the Construction Site.
- (d) **(Termination of Construction Licence)**: The Construction Licence will terminate on the grant of the Operating Phase Licence in accordance with Clause 7.6, or on the Expiry Date, whichever is earlier.
- (e) **(Delayed Access)**: Project Co acknowledges that, as at Financial Close, the Construction Site will be as set out in plan number 12.1 set out in Schedule 11 (Site Plans).
- (f) **(Amendment of Site boundaries)**: The parties acknowledge and agree that the State may, by notice to Project Co, amend the boundaries of the Construction Site:
 - (i) to make minor changes to the Site as a result of the updating of co-ordinates when the title for the Site is issued; and
 - (ii) otherwise, provided that the amendment must not result in Project Co having less of the Site than is set out in the plan contained in Schedule 11 (Site Plans) stated to apply as at the date of the amendment.

The Construction Licence will apply to the whole of the amended Construction Site from the date specified in the notice.

7.2 Control of the Construction Site

- (a) The State will provide Project Co with a copy of the Construction Site Handover Plan, and any updates to the Construction Site Handover Plan, as provided to the State by the PCS Works Contractor.

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- (b) From the date Project Co is provided with access to the Construction Site in accordance with Clause 7.1(a), control of the Construction Site will transfer from the PCS Works Contractor to Project Co. Project Co must comply with the requirements in the Construction Site Handover Plan.
 - (c) From the Date of Commercial Acceptance, control of the Construction Site will transfer from Project Co to the Stadium Operator in accordance with the Operational Handover Plan.
 - (d) For the period that Project Co has control of the Construction Site as set out in Clauses 7.2(b) and 7.2(c), Project Co:
 - (i) must control access to the Construction Site and must keep the Construction Site secure and safe;
 - (ii) must ensure, so far as is reasonably practicable, that the Construction Site and the DBFM Works are protected from any unauthorised access;
 - (iii) is responsible for managing and maintaining the Construction Site;
 - (iv) must ensure that the Construction Site is clearly delineated and secured from areas that Project Co does not control and manage and over which Project Co is not the Main Contractor;
 - (v) must take all measures necessary to protect and ensure, consistent with its obligations under OHS Law, the safety of other people and property in accordance with Best Construction Practices and in accordance with Clause 10.3; and
 - (vi) must, and must ensure that Project Co Associates, do all things necessary to:
 - (A) manage the delivery of materials and the access of Project Co Associates to the Construction Site; and
 - (B) manage the movement of construction related traffic from the point that the traffic joins or leaves the public road to the Construction Site entrance.
 - (e) Project Co acknowledges and agrees that:
 - (i) it is not entitled to exclusive access or possession of the Construction Site;
 - (ii) until PCS Works Practical Completion is achieved, the PCS Works (including all monitoring equipment) will be located on the Construction Site and the PCS Works Contractor will require access to the Construction Site for the purpose of undertaking all activities necessary to achieve PCS Works Practical Completion;
 - (iii) following PCS Works Practical Completion, surcharge and monitoring equipment may be left on the Construction Site in the PCS Works Contractor's discretion; and
 - (iv) for the period that Project Co has control of the Construction Site in accordance with Clause 7.2(b):
 - (A) it must provide safe and sufficient access to any part of the Construction Site to:
 - (1) the State;
 - (2) any State Associate, including the PCS Works Contractor;
 - (3) the PCS Works Independent Certifier and the Independent Certifier;
 - (4) any Utility Company;
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- (5) Government Agencies, including Main Roads and the PTA, and each of their advisors, consultants and contractors; and
- (6) any other person that may have been granted access to the Construction Site by the State or a State Associate,
in accordance with the Site Access and Interface Protocols, including to perform the Scheduled State Works and the Unscheduled State Works and monitoring and completion of the PCS Works; and
- (B) unless directed to do so by any investigator or inspector appointed under an OHS Law, Project Co must not, and must ensure that Project Co Associates do not, obstruct the State or any State Associate from accessing the Construction Site, anything on the Construction Site or any place where materials and equipment are being prepared or stored.
- (f) If the State or a State Associate (other than the PCS Works Contractor) accesses the Construction Site during the D&C Phase, the State must ensure that it and the State Associates:
 - (i) at all times comply with the safety and security requirements of Project Co set out in the Site Access and Interface Protocols; and
 - (ii) without limiting Clause 16 or Clause 19 or the State's right to undertake work described in Clause 21(d) and Clause 43.6, use reasonable endeavours to ensure that Project Co is not impeded in the performance of the DBFM Works by the State or the State Associates.
- (g) When the PCS Works Contractor or PCS Works Independent Certifier accesses the Construction Site, the State must ensure that they comply with Clause 7.2(f)(i), but Project Co must not, and must ensure that the Project Co Associates do not, impede or restrict the access of the PCS Works Contractor or PCS Works Independent Certifier other than in exercising its obligations as Main Contractor.

7.3 Main Contractor Appointment for DBFM Works

- (a) Nothing in this Clause 7.3 limits Project Co's ultimate responsibility for health and safety in accordance with Clause 10.3(e).
- (b) Project Co acknowledges and agrees that:
 - (i) the Builder will do or cause to be done all the DBFM Works; and
 - (ii) as a result the State will appoint and engage the Builder as the Main Contractor for the Construction Site and the DBFM Works, which appointment will take place in accordance with the Builder Side Deed.
- (c) If the State is unable to appoint the Builder as the Main Contractor in accordance with Clause 7.3(b)(ii) or Clause 7.3(d)(ii), then:
 - (i) from the date Project Co is provided with access to the Construction Site in accordance with Clause 7.1(a), Project Co:
 - (A) is appointed and engaged as the Main Contractor for the Construction Site and the DBFM Works;
 - (B) acknowledges that it is appointed and engaged as the Main Contractor for the Construction Site and the DBFM Works; and
 - (C) 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 Project Co to have control over the Construction Site, to the extent necessary to allow Project Co to perform the duties of the Main Contractor. Project Co will immediately notify the State in writing if it believes such authorisation is not sufficient; and
- (iii) Project Co acknowledges and agrees that:
 - (A) if the appointment and engagement of Project Co as the Main Contractor in accordance with Clause 7.3(c) is in any way defective, Project Co 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 Date of Commercial Acceptance; and
 - (B) Project Co will cease to be the Main Contractor for the Construction Site and the DBFM Works on the Date of Commercial Acceptance but will, to the extent that rectification of Defects comprises of 'construction work' (as that term is defined in the OHS Laws), remain the Main Contractor in respect of those works and over the areas where 'construction work' (as that term is defined in the OHS Laws) forming a part of the rectification of Defects is performed.
- (d) **(Rectification of Defects during Operating Phase):** Project Co acknowledges and agrees that during the Operating Phase, subject to Clause 21:
 - (i) either the Builder, the FM Subcontractor or Project Co will rectify Defects in the Stadium, Sports Precinct or Off-Site Infrastructure; and
 - (ii) as a result the State will appoint and engage the Builder, the FM Subcontractor or Project Co (as applicable) as the Main Contractor for those works and the areas where 'construction work' (as that term is defined in the OHS Laws) forming a part of the rectification of Defects is performed which appointment will take place in accordance with this Agreement, the Builder Side Deed or the FM Subcontractor Side Deed (as applicable).
- (e) The State must comply with any directions given by the Main Contractor that are necessary for the Main Contractor to perform the duties of a Main Contractor under any applicable OHS Law.

7.4 Restrictions on access to Rail Reserve

- (a) If Project Co is required to perform any DBFM Works within or in the vicinity of the Rail Reserve, Project Co must obtain the written approval of the PTA prior to accessing the Rail Reserve to perform those DBFM Works and comply with the requirements of the PTA in respect of obtaining that access.
- (b) When Project Co is working in and around the Rail Reserve, in addition to Project Co's other obligations under this Agreement, Project Co must comply with the requirements of Schedule 24 (Guidelines for Working In and Around the Rail Reserve) and the requirements of the PTA as the Government Agency accredited in all matters relating to rail safety.

7.5 Operating Phase Site Plan and Operational Handover Plan

No later than 3 Months prior to the Date for Commercial Acceptance, Project Co must submit to the State Representative for approval in accordance with Schedule 3 (Review Procedures):

- (a) an Operating Phase Site Plan, for inclusion in the Operating Phase Licence, which must include:
 - (i) a description of the Operating Phase Site for the Stadium and Sports Precinct;

- (ii) Project Co's dedicated areas for its project office and storing equipment during the Operating Phase; and
 - (iii) as an annexure, a plan of the Operating Phase Site prepared and certified by a licensed surveyor; and
- (b) an Operational Handover Plan that has been agreed with the State.

7.6 Grant of Operating Phase Licence

- (a) **(Operating Phase Licence Term)**: Subject to Commercial Acceptance having occurred, the State will procure the grant of the Operating Phase Licence to Project Co:
- (i) for a term which will:
 - (A) commence on the Operational Commencement Date; and
 - (B) end on the Expiry Date; and
 - (ii) be on the terms and conditions set out in Schedule 20 (Operating Phase Licence).
- (b) **(Delivery of Operating Phase Licence)**: Not later than 1 Month prior to the expected Date of Commercial Acceptance, Project Co must prepare and deliver to the State for review in accordance with Schedule 3 (Review Procedures), 3 counterparts of the Operating Phase Licence which:
- (i) are in the form contained in Schedule 20 (Operating Phase Licence);
 - (ii) include as an annexure, the Operating Phase Site Plan for the Stadium and Sports Precinct prepared and certified by a licensed surveyor;
 - (iii) are:
 - (A) executed by Project Co; and
 - (B) complete, except for those matters that the State is authorised to complete in accordance with Clause 7.6(c); and
 - (iv) are accompanied by a legal opinion given for the benefit of the State from solicitors acting for Project Co as to:
 - (A) the legal capacity and corporate power of Project Co to enter into and perform its obligations in accordance with the Operating Phase Licence;
 - (B) the enforceability of the Operating Phase Licence against Project Co; and
 - (C) due execution of the Operating Phase Licence by Project Co.
- (c) **(Authority to complete)**: Project Co authorises the State to complete the Operating Phase Licence by inserting:
- (i) the commencement date of the Operating Phase Licence, being the Operational Commencement Date; and
 - (ii) any other particulars necessary to complete the Operating Phase Licence.
- (d) **(Execution)**: The State will complete the counterparts of the Operating Phase Licence delivered by Project Co, execute each counterpart and return one of the completed and executed counterparts to Project Co.
- (e) **(Operating Phase Licence binding)**: The State and Project Co will be bound by the terms and conditions of the Operating Phase Licence from the Operational Commencement Date whether or not the relevant licence has been executed by the State and Project Co.

7.7 Main Contractor Appointment for Operational Phase

- (a) Nothing in this Clause 7.7 limits Project Co's ultimate responsibility for health and safety in accordance with Clause 10.3(e).
- (b) Project Co acknowledges and agrees that:
 - (i) where the FM Subcontractor does or causes to be done 'construction work' (as that term is defined in the OHS Laws) forming a part of the Services; and
 - (ii) as a result the State will appoint and engage the FM Subcontractor as the Main Contractor for the 'construction work' (as that term is defined in the OHS Laws) forming a part of the Services undertaken or performed by the FM Subcontractor and the places where this work is performed which appointment will take place in accordance with the FM Subcontractor Side Deed.
- (c) If the State is unable to appoint the FM Subcontractor as the Main Contractor in accordance with Clause 7.7(b)(ii), or to the extent there is 'construction work' that is not being done or caused to be done by the FM Subcontractor, then:
 - (i) from the Operational Commencement Date, Project Co:
 - (A) 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 Services and all areas where that work is performed;
 - (B) 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 Services and all areas where that work is performed; and
 - (C) 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 Project Co to have control over those workplaces at which 'construction work' (as that term is defined in the OHS Laws) that forms a part of the Services is being performed to the extent necessary to allow Project Co to perform the duties of the Main Contractor. Project Co will immediately notify the State in writing if it believes such authorisation is not sufficient; and
 - (iii) Project Co acknowledges and agrees that if the appointment and engagement of Project Co as the Main Contractor in accordance with Clause 7.7(c) is in any way defective, Project Co 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) The State must comply with any directions given by the Main Contractor that are necessary for the Main Contractor to perform the duties of a Main Contractor under any applicable OHS Law.
- (e) Project Co must comply with its obligations under the Operational Interface Agreement when accessing the Site during the Operating Phase.

7.8 Permitted use

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

7.9 State facilities

Prior to the State being required to vacate the Head Lease Area, Project Co must provide the State with accommodation on the Site, for the State to use until the Date of Commercial Acceptance, in accordance with the requirements set out in Section C4.12(c) of Schedule 12 (Design Specifications).

7.10 Head Lease Area

- (a) Project Co must provide safe and sufficient access for the Head Lessee to and through the Construction Site to enable the Head Lessee to access the Head Lease Area during the D&C Phase, in accordance with the Site Access and Interface Protocols.
- (b) During the Design Development Process, Project Co must, subject to Clause 11.2, liaise and co-operate with the Head Lessee with respect to co-ordinating the relevant Design Documentation incorporating, or interfacing with, the Head Lease Area.
- (c) Project Co acknowledges that:
 - (i) Schedule 12 (Design Specifications) contains requirements in respect of the provision of Utilities to the Head Lease Area;
 - (ii) it must liaise with the Head Lessee in respect of obtaining all information necessary to undertake the works described in Clause 7.10(c)(i); and
 - (iii) as part of the DBFM Works, it must do all things necessary to provide for the usage of Utilities by the Head Lessee to be separately metered from the Date of Commercial Acceptance, for the purpose of enabling the State to recover the cost of that Utility consumption from the Head Lessee as a pass through cost.

8 SITE CONDITIONS**8.1 Condition of land**

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

- (a) the Site;
- (b) the accuracy of any information contained in or any omissions from the Project Information;
- (c) the satisfactory performance of the PCS Works;
- (d) the existence, location, condition or availability of any Utility Infrastructure; and
- (e) any Land Conditions.

8.2 Environment

Project Co must:

- (a) obtain and maintain (and where necessary, renew) in the name of Project Co, the State Associates or the State (as directed by the State) any Environmental Authorisations required in respect of the DBFM Works and Services, other than those Environmental Authorisations that are State Obtained Authorisations;
- (b) comply with and observe and ensure that Project Co Associates comply with and observe, and ensure that the DBFM Works, the Stadium, the Sports Precinct and the Off-Site Infrastructure comply with:
 - (i) the Environmental Management Documents;
 - (ii) all Environmental Laws; and

- (iii) all Environmental Authorisations and any other requirements of any Government Agency in respect of any Environmental Matter, relating to any or all of the Site, the DBFM Works, the Stadium, the Sports Precinct or the Off-Site Infrastructure;
- (c) assist, and ensure that Project Co Associates assist, the State to comply with its obligations under the Environmental Management Strategy Documents, relating to any or all of the Site, the DBFM Works, the Stadium, the Sports Precinct or the Off Site Infrastructure;
- (d) notify the State of any Environmental Complaint as soon as practical after receipt or other notification of the Environmental Complaint and, in any event, within 24 hours of receiving notification of the Environmental Complaint;
- (e) notify the State of the occurrence of any past, present or reasonably anticipated Discharge (other than Discharge which is noise arising from Stadium Activities), or Environmental Event (which occurs after Financial Close), in accordance with the Environmental Management Documents and the Environmental Management Strategy Documents as soon as practicable and, in any event, within 24 hours of any Discharge, or Environmental Event occurring or being anticipated by Project Co;
- (f) comply with any direction from the State to:
 - (i) carry out Remediation, which must be in accordance with Clause 8.4(b); or
 - (ii) otherwise deal with any Discharge, Environmental Event or Environmental Complaint as is required to be dealt with in order to comply with the requirements of the Environmental Management Documents, Environmental Law or Environmental Authorisations, the Design Requirements and any requirements of the Contaminated Sites Auditor appointed by the State and to assist the State to comply with its obligations under the Environmental Management Strategy Documents,
 which actions will be compensated by the State in the circumstances set out in Clause 8.5 and are otherwise at Project Co's cost;
- (g) during the Term, maintain an environmental management system certified as complying with the requirements of AS/NZS ISO 14001; and
- (h) undertake the DBFM Works and Services, and deliver the DBFM Project, in accordance with that environmental management system.

8.3 Environmental Monitoring

- (a) The State, at its cost, may, including through the use of consultants:
 - (i) perform Environmental Audits of the Site and areas affected by, or likely to be affected by, the DBFM Works or Services;
 - (ii) audit Project Co's own environmental audits from time to time;
 - (iii) audit Project Co's compliance with the requirements of this Agreement which may affect the Environment;
 - (iv) prepare an Environmental Audit Report on the results of any Environmental Audit;
 - (v) perform an inspection of the Site, the DBFM Works, the Stadium, the Sports Precinct and Off-Site Infrastructure from time to time (at all times complying with the Site Access and Interface Protocols);
 - (vi) monitor the levels of noise, dust, vibrations and other nuisance; and

- (vii) perform any other inspection, audit or monitoring in respect of the Environment or as required to be performed by the State in accordance with any Environmental Law.
- (b) Without limiting Clause 8.2(f), Project Co must promptly (unless directed otherwise by the State, provided that the State must not direct Project Co to take any action that would not comply with any Environmental Management Document, Environmental Management Strategy Document, Environmental Law, Environmental Authorisation, Design Requirement or any requirement of the Contaminated Sites Auditor appointed by the State or any Government Agency):
 - (i) manage Contamination (including Remediation) in accordance with Clause 8.4(b); or
 - (ii) otherwise deal with any Discharge (other than Discharge which is noise arising from Stadium Activities), Environmental Event or Environmental Complaint,

as recommended in an Environmental Audit Report and as required to comply with any Environmental Management Document, Environmental Law and Environmental Authorisations and to assist the State to comply with its obligations under the Environmental Management Strategy Documents, which actions will be compensated by the State in the circumstances set out in Clause 8.5 (except in relation to recommendations in any Environmental Audit Report, where the State has directed Project Co not to implement the recommendation in accordance with this Clause 8.3(b)) and are otherwise at Project Co's cost.
- (c) From the earlier of the date that PCS Works Practical Completion of all separable portions is achieved, as certified by the PCS Works Independent Certifier, or Project Co commencing ground disturbance works, Project Co must:
 - (i) undertake all environmental monitoring and provide the results of that monitoring to the State; and
 - (ii) operate the groundwater management system,

in accordance with the Environmental Management Documents. Project Co will be relieved of the obligations in Clause 8.3(c)(i) and Clause 8.3(c)(ii) to the extent that the PCS Works Contractor is still performing such obligations.

8.4 [Not disclosed]

8.5 [Not disclosed]

8.6 Utilities

- (a) Project Co must:
 - (i) (**enquires**): make enquires as to the location of existing Utility Infrastructure and liaise with the owner of that Utility Infrastructure and the relevant Utility Company as to the need for any potential relocation, protection or decommissioning of the Utility Infrastructure as a result of the DBFM Works;
 - (ii) (**Utility works**): undertake, or procure that a Utility Company undertakes all necessary work in connection with Utility Infrastructure within the Construction Site required to deliver the Stadium and Sports Precinct;
 - (iii) (**notice**): notify the State at least 14 days before any connection, disconnection or interference with existing Utility Infrastructure and liaise with the State as to how best to manage the disconnection or interference taking into account the nature and requirements of the Construction Site and the Operating Phase Site;
 - (iv) (**supply**): subject to Clause 8.6(b), ensure the continuous supply of Utilities to and within the Construction Site and the Operating Phase Site;

- (v) (**agreements during the D&C Phase**): during the D&C Phase only, enter into all agreements for the supply of Utilities with the Utility Companies;
- (vi) (**payment**): arrange and pay for all Utilities consumed or used in undertaking the DBFM Works in accordance with the agreements entered into with the Utility Companies;
- (vii) (**agreements during the Operating Phase**): do everything reasonably directed by the State from time to time to enable the State to enter into agreements with Utilities Companies for the supply of Utilities to the Operating Phase Site;
- (viii) (**Commercial Opportunities**): do all things necessary to separately meter the usage of Utilities by operators of the Commercial Opportunities, to enable the State to recover the cost of that Utility consumption from Project Co as a Pass Through Cost; and
- (ix) (**indemnity**): indemnify the State against any Claim or Liability incurred in connection with:
 - (A) any damage or disruption to any Utility Infrastructure; or
 - (B) the removal, relocation or carrying out of works to Utility Infrastructure,

in connection with the DBFM Project or resulting from the use or occupation of the Site by Project Co or any Project Co Associate.
- (b) During the Operating Phase, the State will enter into all agreements with Utility Companies for the supply of Utilities to the Operating Phase Site. Project Co must use the Utilities provided to the State:
 - (i) efficiently; and
 - (ii) solely for the provision of the Services.
- (c) The cost of Utilities consumed by Project Co in the performance of the Services will be borne by the State, except for usage by the operators of the Commercial Opportunities, which will be paid for by Project Co to the State. Project Co must provide assistance as requested by the State to separately meter Utilities usage in the Stadium and Sports Precinct.
- (d) Project Co must use its best endeavours to ensure that the artesian bore located on the Site and associated infrastructure is not moved or damaged and is kept fully operational during the Term. If the artesian bore or associated infrastructure are damaged or destroyed by Project Co, Project Co must immediately notify the State and Project Co must rectify the damage at its cost.

8.7 Heritage Claims

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

8.8 Artefacts

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

8.9 General Indigenous obligations

Project Co must undertake the DBFM Works and Services, and deliver the DBFM Project, in accordance with the Aboriginal Heritage Management Plan and the Aboriginal Engagement Strategy.

9 PCS WORKS

9.1 Performance of PCS Works

- (a) Project Co acknowledges that:
 - (i) it has been provided with a copy of the PCS Works Contract and the PCS Instrumentation and Monitoring Plan; and
 - (ii) it has taken the requirements of the PCS Works Contract, the PCS Instrumentation and Monitoring Plan and the requirement to provide access to the Construction Site to the PCS Works Contractor, as set out in Clause 7.2, into account in preparing the DBFM Works Program.
- (b) Without limiting Project Co's obligation to provide the PCS Works Contractor and the PCS Works Independent Certifier with access to the Construction Site in accordance with Clause 7.2, Project Co must:
 - (i) co-operate with the PCS Works Contractor and the PCS Works Independent Certifier in the performance of their obligations, including co-ordinating the DBFM Works with the PCS Works; and
 - (ii) not do anything that will cause or contribute to the PCS Works Contract and the PCS Instrumentation and Monitoring Plan not being complied with or to be delayed.
- (c) Project Co must use its best endeavours to ensure that:
 - (i) all monitoring instruments required for environmental monitoring and the ground water management system are not moved or damaged; and
 - (ii) all other monitoring instruments relating to the PCS Works on the Construction Site are not moved or damaged until the date specified in the DBFM Works Program, which date must be as late as is reasonably practicable and must occur after PCS Works Practical Completion.

- (d) If monitoring instruments or the ground water management system are damaged or destroyed by Project Co, Project Co must immediately notify the State. In the State's discretion, and in the case of the monitoring instruments described in Clause 9.1(c)(ii), subject to the damage or destruction occurring before the relevant date in the DBFM Works Program, the State will procure that the PCS Works Contractor:
- (i) replace the damaged monitoring instruments or ground water management systems (as applicable) with identical monitoring instruments or ground water management systems; and
 - (ii) fully commissions and makes operational those monitoring instruments or ground water management systems (as applicable), including compliance and checking by a Government Agency,
- and Project Co must reimburse the State, upon demand, for all costs and expenses of the State in connection with having the PCS Works Contractor undertake the activities referred to in Clauses 9.1(d)(i) and 9.1(d)(ii) (including the costs of the PCS Works Contractor).
- (e) From the date that PCS Works Practical Completion is achieved, as certified by the PCS Works Independent Certifier, in addition to the obligations described in Clause 8.3, Project Co must undertake all other monitoring, equipment maintenance and reporting so as to continue operating a fully functional monitoring system on, and immediately around, the PCS Works that were being undertaken by the PCS Works Contractor one month prior to PCS Works Practical Completion being achieved and, provide the results of that monitoring to the State in the same format and at the same frequency as the PCS Works Contractor. The monitoring obligations that are not described in Clause 8.3 cease when the relevant monitoring equipment is destroyed as described in Clause 9.1(c)(ii).
- (f) Nothing in this Clause 9 affects Project Co's obligation to comply with the Instrumentation and Monitoring Plan. Project Co must provide all data collected as a result of the monitoring described in the Instrumentation and Monitoring Plan to the State in a monthly report.

9.2 Acceptance of PCS Works

- (a) Following Financial Close, the State must provide Project Co with all information that has been provided to the PCS Works Independent Certifier under the PCS Works Independent Certifier Agreement.
- (b) The conclusion of the PCS Works Independent Certifier as to:
- (i) whether PCS Works Practical Completion of the PCS Works has been achieved; and
 - (ii) any other decision that the PCS Works Independent Certifier is entitled to make under the PCS Works Independent Certifier Agreement,
- is binding on Project Co, with the exception of manifest error on the part of the PCS Works Independent Certifier.
- (c) Project Co may attend any monitoring or testing required to be carried out by the PCS Works Contractor to achieve PCS Works Practical Completion.
- (d) Except as set out in Clause 28A or in respect of a breach of this Agreement by the State, Project Co is not entitled to and must ensure that Project Co Associates do not (including inserting appropriate bars on Claims in the relevant agreement with the Project Co Associates) make any Claim against the State or any State Associate for any Liabilities incurred by Project Co or the Project Co Associates in connection with the PCS Works (including in respect of any delay), regardless of whether PCS Works Practical Completion is achieved before or after Project Co becomes a party to the PCS Works Independent Certifier Agreement. In particular, the State does not provide any warranty or undertaking to Project Co, the Project

Co Associates, the Equity Investors or the Financiers that the PCS Works meet the requirements of the PCS Works Contract or that the PCS Works will be fit for purpose and any failure of the PCS Works to meet the requirements of the PCS Works Contract or to be fit for purpose is not a Defect of the type described in Clause 21(g) or damage caused by a State Associate for which the State is responsible.

10 ADDITIONAL PROVISIONS APPLYING TO THE D&C PHASE AND OPERATING PHASE

10.1 Signage

Project Co must not, during the Term, erect or permit to be erected on the Site, Stadium, Sports Precinct or Off-Site Infrastructure, any signs (including content) except for those:

- (a) required by Law; or
- (b) provided for in any Sponsorship Agreement, the Output Specifications or Schedule 22 (Commercial Opportunities),

unless otherwise approved by the State.

10.2 Industrial issues

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

10.3 Occupational health, safety and rehabilitation prior to Date of Commercial Acceptance

During the D&C Phase, Project Co:

- (a) **(health, safety and welfare)**: must ensure the health, safety and welfare of all persons present on or entering the Construction Site prior to the Date of Commercial Acceptance, consistent with its obligations under the OHS Laws;
- (b) **(comply with OHS Laws)**: must:
 - (i) comply with, and ensure that all Project Co Associates comply with, all OHS Laws, including OHS Laws applicable or relevant to the DBFM Works or access to the Construction Site by Project Co or any other person accessing the Construction Site;
 - (ii) upon the request of the State or the Independent Certifier, demonstrate compliance with OHS Laws;
 - (iii) ensure suitably qualified and experienced personnel are present at the Construction Site to ensure Project Co discharges its duties under this Clause 10.3 including providing Key Personnel qualified to:
 - (A) monitor and manage the health, safety and welfare impacts of all activities on Construction Site;
 - (B) conduct regular audits of the Construction Site; and
 - (C) arrange a minimum of one external audit of compliance with OHS Laws per Quarter. All audit reports are to be provided to the State with details of any corrective action required. For the

avoidance of doubt, any cost associated with the audits referred to in this Clause 10.3(b)(iii)(C) must be borne by Project Co;

- (c) **(cooperation and notice):** must:
- (i) consult, cooperate and coordinate with any other contractors or other persons engaged in or associated with the business of the State or the Stadium Operator (or both) in order to:
 - (A) maintain uniform health and safety practices; and
 - (B) ensure health and safety at the Construction Site;
 - (ii) cooperate with the State to enable the State to comply with its obligations in accordance with all relevant OHS Laws;
 - (iii) comply with any of the State's policies and procedures that relate to work health and safety applicable to the DBFM Works or the Construction Site;
 - (iv) from Financial Close until the Date of Commercial Acceptance, perform all relevant functions and fulfil all relevant duties of an employer, occupier and all other obligations as a duty holder under the OHS Laws;
 - (v) participate in any on-site committee in connection with health and safety, including attending any meetings as requested by the State or the Stadium Operator;
 - (vi) immediately advise the State in writing of any act, omission, fact or circumstance associated with the activities of Project Co or any other person relevant to the ability of Project Co to perform the DBFM Works and access the Construction Site in a manner that is safe and without risks to health;
 - (vii) supply or arrange to be supplied all plant and equipment necessary to ensure the DBFM Works are carried out and the Construction Site is maintained, in a manner that is safe and without risks to health; and
 - (viii) ensure that all plant and equipment supplied or arranged to be supplied by it or any Subcontractor is and will be maintained in a condition that is safe and without risks to any person;
- (d) **(OHS records):** must retain up to date health and safety records and make these available to the State, the Independent Certifier and the Stadium Operator as requested by the State, the Independent Certifier or the Stadium Operator (as the case may be) from time to time; and
- (e) **(ultimately responsible):** accepts that it is ultimately responsible for:
- (i) the control and management of the Construction Site for the purposes of delivering the DBFM Works and discharging the duties imposed by the OHS Laws; and
 - (ii) all health and safety at the Construction Site, including the provision of appropriate equipment and facilities,

from Contractual Close until the Date of Commercial Acceptance and that it cannot delegate or assign this responsibility. Whilst the State does not prevent Project Co delegating its obligations in respect of health and safety as may be permitted by any Law, a delegation or assignment of any responsibility for health and safety by the Project Co under an OHS Law does not derogate from Project Co's overall responsibility as set out in this Agreement.

10.4 Occupational health and safety during Operating Phase

During the Operating Phase, Project Co must:

- (a) **(health, safety and welfare):** so far as is reasonably practicable, ensure the health, safety and welfare of all persons present on or entering the Operating

Phase Site for the provision of, or in relation to, the Services, the Commercial Opportunities or the rectification of Defects by or on behalf of Project Co;

- (b) **(comply with OHS Laws):**
- (i) comply with, and ensure that all Project Co Associates comply with, all OHS Laws, including OHS Laws applicable or relevant to the Services, rectification of Defects by, or on behalf of, Project Co or access to the Operating Phase Site by Project Co or any other person accessing the Operating Phase Site;
 - (ii) upon the request of the State or the Independent Certifier, demonstrate compliance with OHS Laws;
 - (iii) ensure suitably qualified and experienced personnel are present at the Operating Phase Site to ensure Project Co discharges its duties under this Clause 10.4, including providing Key Personnel qualified to:
 - (A) monitor and manage the health, safety and welfare impacts of the Services, the rectification of Defects by, or on behalf of, Project Co and the Commercial Opportunities on the Operating Phase Site;
 - (B) conduct regular audits of the Operating Phase Site; and
 - (C) arrange a minimum of one external audit of compliance with OHS Laws per Quarter. All audit reports are to be provided to the State with details of any corrective action required. For the avoidance of doubt, any cost associated with the audits referred to in this Clause 10.4(b)(iii)(C) must be borne by Project Co;
- (c) **(cooperation and notice):**
- (i) consult, cooperate and coordinate with any other contractors or other persons engaged in or associated with the business of the State or the Stadium Operator (or both) in order to:
 - (A) maintain uniform health and safety practices; and
 - (B) ensure health and safety at the Operating Phase Site;
 - (ii) cooperate with the State to enable the State to comply with its obligations in accordance with all relevant OHS Laws;
 - (iii) comply with any of the State's policies and procedures that relate to work health and safety applicable to the Services or the Operating Phase Site;
 - (iv) perform all relevant functions and fulfil all relevant duties of an employer and all other relevant obligations as a duty holder under OHS Laws;
 - (v) participate in any on-site committee in connection with health and safety, including attending any meetings as requested by the Stadium Operator;
 - (vi) immediately advise the State in writing of any act, omission, fact or circumstance associated with the activities of Project Co or any other person relevant to the ability of Project Co to perform the Services and access the Operating Phase Site in a manner that is safe and without risks to health;
 - (vii) supply or arrange to be supplied all plant and equipment necessary to ensure the Services are performed or Defects which are to be rectified by or on behalf of Project Co, are rectified, and the Operating Phase Site is maintained, in a manner that is safe and without risks to health; and
 - (viii) ensure that all plant and equipment supplied or arranged to be supplied by it or any Subcontractor is and will be maintained in a condition that is safe and without risks to any person; and

- (d) **(OHS records):** retain up to date health and safety records with respect to the Services, the rectification of Defects by, or on behalf of, Project Co and the Commercial Opportunities and make these available to the State, the Independent Certifier and the Stadium Operator as requested by the State, the Independent Certifier or the Stadium Operator (as the case may be) from time to time.

10.5 Occupational health and safety incident reports

- (a) Project Co must:
 - (i) in connection with incidents that occur during the course of the DBFM Works, the Services, the rectification of Defects by or on behalf of Project Co or at the Site, comply with all relevant OHS Laws requiring an employer, a person with management or control of the Site or otherwise applicable to the role of Project Co under this Agreement, to provide notification of an incident;
 - (ii) notify the State immediately (and, in any case, within 24 hours) of any accident, incident which is notifiable under OHS Laws, injury or property damage which:
 - (A) occurs during the performance of the DBFM Works, the rectification of Defects (other than Defects rectified by the State in accordance with Clause 21(g)) or the Services;
 - (B) is associated with the DBFM Works or the Services; or
 - (C) occurs at the Site;
 - (iii) within 2 Business Days of any such incident described in Clause 10.5(a)(ii), provide a written report to the State giving complete details of the incident, including the results of investigations into its cause and any recommendations or strategies for preventing a recurrence, including the implementation of suitable control measures and remedial action as required; and
 - (iv) if the State requests, prepare and provide the State with a written report detailing the ways in which Project Co complies with applicable OHS Laws and which contains such other work health and safety information in relation to the DBFM Works, the Services, the rectification of Defects by or on behalf of Project Co and the Site as the State may reasonably require.
- (b) The State may, at any time and from time to time, perform or require the Independent Certifier to perform an audit of Records and inspect the Site to identify whether Project Co has breached Clause 10.3, Clause 10.4 or this Clause 10.5.

10.6 Breach of OHS Laws

- (a) Without limiting any of the State's rights at Law, any breach by Project Co, or any Project Co Associate, of an OHS Law or the requirements of Clause 10.3 to 10.7 which:
 - (i) gives rise to circumstances which present actual or potential risk to life or serious injury; or
 - (ii) is otherwise required to be notified under an OHS Law,entitles the State to suspend the whole or part of the DBFM Works or the Services, and Project Co must bear any cost it incurs as a result of the suspension.
- (b) When the State is satisfied that Project Co has adequately rectified the situation that gave rise to the breach it will promptly give notice to Project Co to resume the DBFM Works or Services.
- (c) Project Co (to the greatest extent permitted by Law) will indemnify the State against all Liability which the State may suffer or incur arising out of or in

connection with a breach by Project Co of, or an act or omission of a Project Co Associate that causes Project Co to breach any of its obligations under this Clause 10.

- (d) Project Co's Liability to indemnify the State under Clause 10.6(c) will be reduced to the extent that the Liability was directly caused by a negligent act or omission of the State.

10.7 State's right to enter, inspect and test

- (a) **(Right of entry):** During the Term, the State or any nominee of the State:
 - (i) may enter the Site, which must be in accordance with Clause 7.2(e)(iv)(A) if entry is prior to the Date of Commercial Acceptance; and
 - (ii) may inspect or test, or require Project Co to inspect or test, any part of the DBFM Works, Stadium, Sports Precinct or Off-Site Infrastructure upon giving reasonable notice to Project Co.
- (b) **(Project Co to assist):** If requested by the State, Project Co must assist the State to exercise its right to inspect and test the DBFM Works, Stadium, Sports Precinct or Off-Site Infrastructure.
- (c) **(Costs of inspection or testing):** Subject to Clause 10.7(d), the State will bear the costs reasonably incurred of any inspection or test conducted in accordance with Clause 10.7(a).
- (d) **(Project Co must bear costs):** Project Co must bear the costs of the inspection and testing:
 - (i) to the extent that the inspection or testing reveals any Defect; or
 - (ii) if the inspection or test:
 - (A) is a Completion Test or is an inspection or test required to be carried out in connection with a Completion Test; or
 - (B) was otherwise required by this Agreement to be carried out by Project Co or should have been carried out by Project Co in accordance with Best Construction Practices or Best Operating Practices.

10.8 Surrounding Works

- (a) Project Co agrees that the Site is adjacent or proximate to the Surrounding Works.
- (b) Project Co agrees that it will, at its cost, comply with any reasonable request by the State's Representative to amend the Project Management Plan having regard to the requirements in Clause 10.8(d).
- (c) Project Co must not access or enter any areas on which Surrounding Works are being undertaken without the prior written consent of, and on terms agreed with, the State.
- (d) Except to the extent expressly permitted in accordance with this Agreement, Project Co must not compromise, hinder, disrupt or otherwise adversely affect the Surrounding Works.

11 DESIGN

11.1 Design obligations

Project Co must design the Stadium, Sports Precinct and Off-Site Infrastructure so that the Stadium, Sports Precinct and Off-Site Infrastructure, when constructed in accordance with the Final Design Documents, satisfy the FFP Warranty.

11.2 Design Development Process

- (a) Project Co agrees that, subject to Clause 11.4:

- (i) it must comply with the Design Development Process in developing the Design Deliverables;
 - (ii) the purpose of the Design Development Process is to develop, refine and finalise Attachment 1 (Contractual Close Design Documentation) such that Final Design Documents are created in accordance with this Agreement and will be suitable, appropriate and adequate for the performance of the DBFM Works; and
 - (iii) the conduct of the Design Development Process itself does not constitute a Modification or FF&E Modification or otherwise enable Project Co to make any Claim against the State or any State Associate for any Liabilities incurred by Project Co in connection with the conduct of the Design Development Process.
- (b) Project Co must conduct and manage all aspects of the Design Development Process in accordance with:
- (i) the approved and current Design Development Plan;
 - (ii) Schedule 5 (Design Development);
 - (iii) the Document Submission Schedule; and
 - (iv) Good Industry Practice,
- and as otherwise required in accordance with this Agreement.
- (c) During the Design Development Process, Project Co must, subject to the remainder of this Clause 11.2(c):
- (i) attend and facilitate discussions with User Groups and the Stadium Operator to inform design requirements and outcomes; and
 - (ii) liaise closely with the State to ensure the State is kept fully informed of all design issues, design progress, discussions with User Groups and the Stadium Operator and any other matters that affect the Design Documentation.
- Project Co must obtain the prior written consent of the State Representative to any User Group meeting and ensure that the State Representative (or his or her nominee) is also present at that meeting or discussion.
- (d) Project Co must submit the Design Documentation to the State and the Independent Certifier in accordance with the requirements of Schedule 5 (Design Development) and Schedule 3 (Review Procedures).
- (e) The State will review the Design Documentation submitted or resubmitted by Project Co in accordance with Schedule 3 (Review Procedures).

11.3 Changes to Design Deliverables

If Project Co proposes any changes to Attachment 1 (Contractual Close Design Documentation) or the Design Deliverables, then Project Co must submit all proposed changes to the State and the Independent Certifier and the requirements of Schedule 3 (Review Procedures) apply to those proposed changes.

11.4 Design Issues List

- (a) Prior to Contractual Close, the State raised a number of issues with Project Co in respect of the Bid Design Documentation (**Design Issues**).
- (b) The Design Issues List lists the relevant Design Issues and sets out requirements (as agreed between the State and Project Co prior to Contractual Close) as to how the Design Issues must be resolved by Project Co during the Design Development Process (**Agreed Resolution**).
- (c) Project Co acknowledges that:

- (i) nothing in the Design Issues List or any Agreed Resolution is intended to limit Project Co's obligations under this Agreement;
- (ii) nothing in the Design Issues List or any Agreed Resolution will give rise to an amendment to Schedule 12 (Design Specifications);
- (iii) each Agreed Resolution must be incorporated into the Design Deliverables in accordance with the time set out in the relevant Agreed Resolution, and where no time is stated, at an appropriate time in the Design Development Process having regard to the nature of the Design Issue and the time it may reasonably take to be resolved;
- (iv) when developing the Design Deliverables and Final Design Documents in accordance with the Design Development Process and otherwise in accordance with this Agreement, Project Co must comply with the Agreed Resolution; and
- (v) amendments to Attachment 1 (Contractual Close Design Documentation) and actions and methodology necessary to comply with the Agreed Resolution (including the resolution of any issues identified or arising out of the Agreed Resolutions) do not constitute a Modification or FF&E Modification or otherwise enable Project Co to make any Claim against the State or any State Associate for any Liabilities incurred by Project Co.

11.5 Design Documentation to prospective stadium operators

Project Co must, upon request by the State:

- (a) provide all current and up to date Design Documentation to any prospective stadium operators; and
- (b) attend any sessions with prospective stadium operators to provide responses to clarification requests in respect of the then current Design Documentation.

11.6 Delayed Design and Procurement

- (a) The State and Project Co have identified DD&P Areas that will require, amongst other things, input from the Stadium Operator in order to finalise the design of those areas.
- (b) Project Co will ensure that:
 - (i) the design of the DD&P Areas is delayed and carried out in accordance with the relevant dates set out in the DBFM Works Program; and
 - (ii) subject to this Clause 11.6 and Clause 11.7, the Design Documentation in respect of DD&P Areas takes into account any input provided by the Stadium Operator in respect of the DD&P Area, in accordance with Schedule 5 (Design Development) and the Operational Interface Agreement.
- (c) Project Co has identified DD&P Items that will require, amongst other things, input from the Stadium Operator in order to finalise the selection of those items. The Delayed Design and Procurement Schedule:
 - (i) includes a cap on the cost of procurement for each of the DD&P Items (**DD&P Caps**);
 - (ii) sets out the latest date for selection of the DD&P Items; and
 - (iii) is to be further developed by Project Co in conjunction with the State in accordance with this Agreement.
- (d) Subject to Clauses 11.6(f), 11.6(g) and 11.6(h), Project Co will ensure that all Design Documentation in respect of DD&P Items will:

- (i) take into account any input provided by the Stadium Operator in respect of the DD&P Item in accordance with Schedule 5 (Design Development) and the Operational Interface Agreement; and
 - (ii) incorporate specifications, quality and functionality of the highest available standard (provided that the relevant DD&P Item consists of specification, quality and functionality of a standard at least equivalent to the relevant scope set out in the Delayed Design and Procurement Schedule).
- (e) Project Co must demonstrate to the State, on an open-book basis, the cost of procuring each DD&P Item.
- (f) Subject to Clause 11.6(g) and Clause 11.6(i), Project Co accepts that the State will not be liable for any cost of procuring a DD&P Item which exceeds the relevant DD&P Cap (as Indexed on each CPI Adjustment Date).
- (g) Subject to Clause 11.6(j), if the cost of any DD&P Item is less than the relevant DD&P Cap (as Indexed on each CPI Adjustment Date), the amount of the underspend may be reallocated by the State to another DD&P Item, provided always that the cost of procuring all of the DD&P Items will not be more than the sum of the DD&P Caps (as Indexed on each CPI Adjustment Date) multiplied by the relevant quantities of each of the DD&P Items.
- (h) The Stadium Operator and the State may only provide input in respect of a DD&P Item up until the relevant date specified in Schedule 44 (Delayed Design and Procurement Schedule).
- (i) If a DD&P Item is changed from the item listed in the Delayed Design and Procurement Schedule and the change to the DD&P Item requires a Modification to another aspect of the DBFM Works (other than another DD&P Item), Project Co may submit a Claim in respect of the change to the DBFM Works in accordance with Clause 33.5.
- (j) In respect of Delayed Design and Procurement Schedule, Project Co accepts all risks arising from and in connection with:
- (i) quantity allowances for each DD&P Item;
 - (ii) the DD&P Cap for each DD&P Item; and
 - (iii) the DD&P Items, including that the Delayed Design and Procurement Schedule is complete and that the DD&P Items will be capable of complying with the Design Requirements.

11.7 Changes to Delayed Design and Procurement

- (a) Subject to Clause 11.7(c) and without limiting Clause 11.6, Project Co must accommodate a change to a DD&P Area or DD&P Item, provided that the change does not result in an adverse effect on the DBFM Works (including in respect of additional costs) or the DBFM Works Program or increase the cost of providing the Services and such change will not constitute a Modification or FF&E Modification.
- (b) Project Co may propose changes to the Delayed Design and Procurement Schedule, however such changes may be accepted or rejected by the State in its discretion.
- (c) If the State determines (including as a result of any consultation with the Stadium Operator) that a change to the Delayed Design and Procurement Schedule is required, and Project Co is of the view that such change constitutes a Modification or a FF&E Modification, then Project Co must submit a Modification Quote in accordance with Clause 33.5 of this Agreement.

12 MINOR MODIFICATIONS

12.1 Purpose and timing

- (a) This Clause 12 only applies from Financial Close until the Date of Technical Completion.
- (b) The parties agree that the purpose of this Clause 12 is to:
 - (i) better facilitate and more efficiently give effect to Minor Modifications; and
 - (ii) ease the administrative burden on Project Co and the State in the implementation of Minor Modifications.
- (c) Project Co must seek to give effect to the purpose stated in Clause 12.1(b) in complying with its obligations under this Clause 12.

12.2 Minor Modification Running Schedule

- (a) Project Co must prepare and continually update a running schedule of all proposed and approved Minor Modifications (**Minor Modification Running Schedule**).
- (b) The Minor Modifications Running Schedule must be in a form approved by the State and at a minimum contain the following information with respect to each proposed Minor Modification:
 - (i) a unique code, number or identifier (which must not be changed or removed from the Minor Modification Running Schedule regardless of whether a proposed Minor Modification has been rejected or otherwise);
 - (ii) reasons why Project Co considers that the proposed change, item of work, activity or component constitutes a Minor Modification;
 - (iii) the impact of the proposed Minor Modification on the Output Specifications, the performance by Project Co of the Services, the provision of the Stadium Activities and Project Co's ability to satisfy the FFP Warranty and, if the impact disadvantages Project Co, any amendments that are required to the Agreement to address that impact;
 - (iv) to the extent applicable, the name of the State Associate or the relevant User Group that has requested the proposed Minor Modification (or to which the proposed Minor Modification relates) and the reason for the proposed Minor Modification;
 - (v) the proposed amount payable by the State to Project Co or by Project Co to the State for the proposed Minor Modification calculated in accordance with Schedule 4 (Change Compensation Principles) and having regard to the requirements of Clause 12.5; and
 - (vi) details of the total amount payable to Project Co or the State for all Minor Modifications which have been previously approved by the State Representative in accordance with Clause 12.3(b)(ii).

12.3 Minor Modifications meeting

- (a) **(Meeting):** The State or Project Co may convene a meeting concerning the Minor Modifications Running Schedule by giving 2 Business Days' notice and the parties (including the State Representative and, if applicable, the Development and Transition Manager) must attend such meeting.
- (b) **(State Representative's election):** To the extent that the Minor Modifications Running Schedule contains the information required by Clause 12.2 for each of the proposed Minor Modifications, the State Representative must:
 - (i) dispute Project Co's reasoning that a proposed change, item of work, activity or component constitutes a Minor Modification;

- (ii) approve in writing one or more of the proposed Minor Modifications identified in the Minor Modifications Running Schedule;
 - (iii) elect to further consider a proposed Minor Modification;
 - (iv) reject any proposed Minor Modification identified in the Minor Modifications Running Schedule; or
 - (v) otherwise request Project Co to provide additional information concerning a proposed Minor Modification.
- (c) **(Removal):** Subject to Project Co's right to refer the matter for resolution in accordance with Clause 45, if the State Representative:
- (i) disputes Project Co's reasoning that a proposed change, item of work, activity or component constitutes a Minor Modification; or
 - (ii) rejects any proposed Minor Modification identified in the Minor Modifications Running Schedule,
- Project Co must remove the item from the Minor Modifications Running Schedule and mark the relevant item 'rejected' and, if applicable and directed by the State Representative, proceed to carry out the work that had been the subject of the alleged Minor Modification.
- (d) **(Project Co to implement):** If the State Representative approves in writing a proposed Minor Modification identified in the Minor Modifications Running Schedule (and only if there is an approval in writing by the State Representative):
- (i) Project Co must implement the Minor Modification; and
 - (ii) the State must pay to Project Co or Project Co must pay to the State (as applicable) that proposed amount for the approved Minor Modification in accordance with Schedule 4 (Change Compensation Principles) subject to:
 - (A) the proposed amount payable by the State to Project Co or by Project Co to the State for the proposed Minor Modification identified in the Minor Modifications Running Schedule being correctly calculated in accordance with Schedule 4 (Change Compensation Principles); and
 - (B) the payor first receiving an Invoice for the relevant amount.
- (e) **(Further Information):** If the State Representative elects to consider a proposed Minor Modification further, Project Co must provide any further information requested by the State and otherwise retain the proposed Minor Modification on the Minor Modifications Running Schedule until the Minor Modification is accepted or rejected in accordance with Clause 12.3(b).

12.4 Value management

Project Co must:

- (a) regularly arrange and conduct detailed value management workshops with the State Representative, the Stadium Operator, the Builder and any other parties notified by the State for the purpose of identifying proposed changes to the scope of the DBFM Works (including omissions to the scope of the DBFM Works) which will result in costs savings to the State and otherwise minimise the State's liability to Project Co for approved Minor Modifications; and
- (b) otherwise work collaboratively with the State and the State Representative to identify potential costs savings which will eliminate or minimise the State's liability to Project Co for approved Minor Modifications.

12.5 Payment and other entitlements

- (a) Subject to Clause 12.5(d), the amount payable to either party in connection with Minor Modifications will be calculated in accordance with Schedule 4 (Change Compensation Principles).
- (b) Project Co will not be entitled to any extension to any Date for Completion or the payment of any Prolongation Costs or Financing Delay Costs in connection with a Minor Modification. If the State Representative approves the Minor Modification being carried out in accordance with this Clause 12 or it is otherwise determined that the change is a Minor Modification, the Agreement will be amended in the manner set out in, and to reflect, the Minor Modifications Running Schedule.
- (c) Project Co must not implement a proposed Minor Modification, and will not be entitled to make any Claim against the State or any State Associate in connection with a Minor Modification, unless it has been approved by the State Representative or otherwise determined to be a Minor Modification in accordance with this Clause 12.
- (d) To the extent that Project Co is entitled to payment for carrying out a Minor Modification, Project Co:
 - (i) will only be entitled to be paid Base Costs in connection with that Minor Modification; and
 - (ii) will not be entitled to be paid any Margin.

12.6 Changes to Minor Modification process

If the State considers that the Minor Modification process is not meeting the purposes set out in Clause 12.1, the State Representative may, at its discretion, direct Project Co to no longer use the Minor Modification process set out in this Clause 12, in which case, all Minor Modifications will be managed in accordance with the process set out in Clause 33 and this Clause 12 will be deemed not to operate.

13 FF&E

13.1 Selection and procurement of Project Co FF&E

Project Co must:

- (a) update the FF&E List to reflect the outcome of the Design Development Process;
- (b) without limiting Clause 13.1(a), update the FF&E List:
 - (i) ensuring that like Project Co FF&E is grouped together;
 - (ii) to address any comments provided by the State Representative or the Independent Certifier with respect to Project Co FF&E in accordance with Schedule 3 (Review Procedures); and
 - (iii) as necessary to ensure that Project Co will satisfy the FFP Warranty;
- (c) other than for the purposes of meeting its obligations under Clause 13.1(b) or in carrying out a FF&E Modification, not:
 - (i) decrease the quantity of Project Co FF&E identified in the FF&E List as at Contractual Close; or
 - (ii) procure Project Co FF&E of a lesser quality (or attributes which contribute to a determination as to quality, including specification, brand or place of manufacture) than an item identified in the FF&E List as at Contractual Close;
- (d) delay the timing for the final selection of those items of Project Co FF&E which have a high risk of technical obsolescence to a time as close as reasonably possible to the Date of Commercial Acceptance, to better ensure that, as at the Date of Commercial Acceptance, Project Co has procured the most technically up

to date items of such Project Co FF&E, without delaying Project Co in achieving Commercial Acceptance; and

- (e) procure the Project Co FF&E as identified in the FF&E List (amended only in accordance with this Clause 13.1 or as a result of an FF&E Modification) so as to achieve Completion by the relevant Date for Completion.

13.2 Installation and Commissioning of Project Co FF&E

- (a) Project Co must install or locate (as applicable depending on whether the Project Co FF&E is loose or fixed) all items of Project Co FF&E into the Stadium and Sports Precinct:
 - (i) in accordance with the For Construction Documentation;
 - (ii) to the extent that the For Construction Documentation does not identify locations for the placement of loose items of Project Co FF&E, in accordance with the State Representative's directions;
 - (iii) so that the Stadium and Sports Precinct meet the FFP Warranty; and
 - (iv) to achieve Completion by the relevant Date for Completion.
- (b) Project Co must commission and undertake all Completion Tests in connection with the Project Co FF&E in accordance with the Completion Plans.

13.3 Installation of Group 3 FF&E

- (a) Project Co is responsible for the installation or location of the Group 3 FF&E to the extent set out in Schedule 12 (Design Specifications).
- (b) Project Co must install or locate (as applicable depending on whether the relevant Group 3 FF&E is loose or fixed) the items of Group 3 FF&E referred to in Clause 13.3(a) into the Stadium:
 - (i) in accordance with Best Construction Practice;
 - (ii) in accordance with any manufacturer's instructions or guidelines;
 - (iii) in accordance with the For Construction Documentation;
 - (iv) to the extent that the For Construction Documentation does not identify locations for the placement of loose items of Project Co FF&E, in accordance with the State Representative's directions (acting reasonably);
 - (v) to meet the requirements of the Output Specifications; and
 - (vi) to achieve Completion by the relevant Date for Completion.
- (c) Project Co must commission and undertake all Completion Tests in connection with the relevant Group 3 FF&E in accordance with the Completion Plans.
- (d) Any damage to the DBFM Works or the Stadium arising from Project Co's failure to comply with Clause 13.3(b) will be a Defect which must be remedied at Project Co's cost in accordance with Clause 21.

14 CONSTRUCTION

14.1 DBFM Works

- (a) Project Co must not commence the construction of the DBFM Works until the draft Project Management Plan submitted in accordance with Clause 6.1(b) is reviewed and, if necessary amended in accordance with Schedule 3 (Review Procedures).
- (b) Project Co must undertake the DBFM Works and deliver the DBFM Project in accordance with, and to meet the requirements of:
 - (i) the State Project Documents;

- (ii) the Output Specifications;
 - (iii) the Quality Standards;
 - (iv) all Laws;
 - (v) the Final Design Documents;
 - (vi) any Modification Order;
 - (vii) Minor Modifications; and
 - (viii) Best Construction Practices.
- (c) Without limiting Clause 14.1(b), Project Co must coordinate the DBFM Works to enable the Scheduled State Works and if Clause 16.1 applies, the Unscheduled State Works, to be performed.

14.2 Site security, interference, obstruction and nuisance

- (a) Without limiting Project Co's obligations under Clause 7.2, Project Co must, in undertaking the DBFM Works:
- (i) **(tidy)**: keep the Construction Site tidy and free of refuse;
 - (ii) **(nuisance)**: prevent nuisance, noise, dust (including asbestos dust), air pollution, odour, vibration and any disturbance to areas adjacent to the Construction Site (including any Surrounding Works) from exceeding reasonable levels;
 - (iii) **(interference)**: avoid or minimise unreasonable interference with:
 - (A) the passage of people and vehicles around the Construction Site; and
 - (B) the operations or activities carried out in the vicinity of the Construction Site; and
 - (iv) **(damage)**: take all measures to protect property (including any State Works) that is on or outside of (or both) the Construction Site that may be affected by the DBFM Works and, to the extent that Project Co or a Project Co Associate causes damage to any State Works (whether on or outside of (or both) the Construction Site) or property outside of the Construction Site, promptly rectify that damage.
- (b) If in the reasonable opinion of the State or the Independent Certifier, the levels of nuisance or interference are not reasonable or are not in the interests of the safety of persons on the Construction Site, or any areas on which Surrounding Works are being undertaken, Project Co must comply with any reasonable direction of the State or the Independent Certifier to:
- (i) stop or change the manner of undertaking the DBFM Works; and
 - (ii) amend the Project Management Plan accordingly.
- (c) When the State or Independent Certifier (whichever entity raised the issue) is satisfied that Project Co has adequately rectified the nuisance or interference that was not reasonable or not in the interests of the safety of persons on the Construction Site, it will promptly give notice to Project Co to resume the DBFM Works.

14.3 Independent Certifier's review of construction

- (a) **(Review by Independent Certifier)**: Project Co agrees that, in accordance with the Independent Certifier Agreement and if requested by the State, the Independent Certifier may review the construction of the DBFM Works to ensure that the DBFM Works are being undertaken in accordance with the DBFM Works Program, the D&C Documents and the other requirements of this Agreement and

that Commercial Acceptance will be achieved by the Date for Commercial Acceptance.

- (b) **(Notice of non-compliance):** If the Independent Certifier believes that Project Co is not undertaking the DBFM Works in accordance with the DBFM Works Program, the D&C Documents and the other requirements of this Agreement or that Project Co will not achieve Commercial Acceptance by the Date for Commercial Acceptance, the Independent Certifier may, in accordance with the Independent Certifier Agreement, give notice to the State and Project Co of its opinion together with its reasons for forming that opinion.
- (c) **(Project Co's response):** Within 10 Business Days of receipt of the Independent Certifier's notice in accordance with Clauses 14.3(b), 14.3(e) or 14.3(f) (as applicable), Project Co must:
 - (i) notify the State and the Independent Certifier of any matters in connection with which it disagrees with the Independent Certifier's opinion together with its reasons for doing so (**Explanation**); and
 - (ii) to the extent it does not disagree, provide to the State and the Independent Certifier a detailed plan and a program for the rectification of any non-compliance which must include a date by which rectification will be achieved (**Rectification Plan**).
- (d) **(Notice by Independent Certifier):** Within 15 Business Days of receipt of the Explanation or a Rectification Plan (as the case may be), including any resubmitted Explanation or Rectification Plan, the Independent Certifier must give notice to the State and Project Co of its opinion as to whether or not the Explanation or the Rectification Plan (as applicable) (including any resubmitted Explanation or Rectification Plan) satisfactorily addresses its concerns together with its reasons for forming that opinion.
- (e) **(Compliance):** If the Independent Certifier notifies the State and Project Co that, in its opinion:
 - (i) a Rectification Plan satisfactorily addresses its concerns, Project Co must comply with the Rectification Plan; or
 - (ii) a Rectification Plan does not satisfactorily address its concerns, Project Co must re-comply with Clause 14.3(c).
- (f) **(Explanation):** If the Independent Certifier notifies Project Co and the State that, in its opinion:
 - (i) the Explanation is satisfactory and that the DBFM Works comply with the DBFM Works Program and the other requirements of this Agreement, Project Co may proceed with the DBFM Works; or
 - (ii) the Explanation does not satisfactorily address its concerns, Project Co must re-comply with Clause 14.3(c).

15 OFF-SITE INFRASTRUCTURE

15.1 Access

- (a) **(Access for Off-Site Infrastructure Works):** The State will, for each item of Off-Site Infrastructure, procure from the owner of the relevant item of Off-Site Infrastructure a right for Project Co and Project Co Associates to access the Off-Site Infrastructure Construction Areas applicable to the relevant item of Off-Site Infrastructure:
 - (i) on and from Financial Close or in accordance with the DBFM Works Program and until the date of Off-Site Infrastructure Completion applicable to the relevant item of Off-Site Infrastructure; and

- (ii) to the extent necessary to perform the relevant Off-Site Infrastructure Works,

(Off-Site Infrastructure Construction Licence).

- (b) **(Adequacy of Off-Site Infrastructure Construction Licence):** Project Co accepts all risks in connection with the adequacy of access to the Off-Site Infrastructure Construction Areas.
- (c) **(Compliance with owner's requirements):** Project Co must, at all times when accessing, traversing or otherwise being present on an Off-Site Infrastructure Construction Area, comply with the reasonable requirements of the owner of the relevant Off-Site Infrastructure Construction Area in respect of occupational health and safety and security.
- (d) **(Termination of Off-Site Infrastructure Construction Licence):** Each Off-Site Infrastructure Construction Licence terminates on the grant of the Off-Site Infrastructure Maintenance Licence applicable to the relevant item of Off-Site Infrastructure in accordance with Clause 15.5, or on the Expiry Date, whichever is earlier.

15.2 Off-Site Infrastructure Completion

- (a) Project Co must consult with all owners of Off-Site Infrastructure so as to ensure that Project Co identifies the usual requirements of the owners for the Off-Site Infrastructure Works.
- (b) Off-Site Infrastructure Completion is achieved in respect of each item of Off-Site Infrastructure when:
 - (i) the Off-Site Infrastructure Works have been completed in accordance with this Agreement subject only to Outstanding Items;
 - (ii) Project Co has issued a notice to the State, the Independent Certifier and the relevant owner of the Off-Site Infrastructure which:
 - (A) states that it considers that the Off-Site Infrastructure has been completed in accordance with this Agreement; and
 - (B) lists any Outstanding Items;
 - (iii) Project Co and the relevant Project Co Associate, the Independent Certifier and the owner of the Off-Site Infrastructure have jointly inspected the Off-Site Infrastructure at a time to be agreed (or in the absence of agreement determined by the Independent Certifier) which will be no more than 5 Business Days after receipt of Project Co's notice in accordance with Clause 15.2(b)(ii); and
 - (iv) following the joint inspection in accordance with Clause 15.2(b)(iii), the Independent Certifier has issued to the State, the owner of the Off-Site Infrastructure and Project Co a notice confirming that the Off-Site Infrastructure has been completed subject only to Outstanding Items.
- (c) Project Co must submit to the State and the Independent Certifier for review, in accordance with Schedule 3 (Review Procedures), a program for the completion of the Outstanding Items within 5 Business Days after the issue of a notice from the Independent Certifier in accordance with Clause 15.2(b)(iv) which attaches a list of Outstanding Items, which program must be consistent with the time period for rectification determined by the Independent Certifier.
- (d) Project Co must complete any Outstanding Items in accordance with the program as reviewed and amended in accordance with Schedule 3 (Review Procedures) to the reasonable satisfaction of the Independent Certifier.
- (e) For the avoidance of doubt, neither the acceptance of, nor transfer of title to, the Off-Site Infrastructure in any way constitutes the achievement of Technical Completion or Commercial Acceptance.

15.3 Title to Off-Site Infrastructure Works

All rights, title and ownership in each part of the Off-Site Infrastructure Works passes to the owner of the relevant Off-Site Infrastructure Works upon the earlier of:

- (a) installation of that part of the Off-Site Infrastructure Works on the relevant Off-Site Infrastructure Construction Area; or
- (b) payment by the State in relation to that part of the Off-Site Infrastructure Works.

15.4 Access to Off-Site Infrastructure following Completion

(a) **(Access for Defects and Services):** The State will, for each item of Off-Site Infrastructure, procure from the owner of the relevant item of Off-Site Infrastructure a non-exclusive licence for Project Co and Project Co Associates to access the Off-Site Infrastructure Maintenance Areas applicable to the relevant item of Off-Site Infrastructure:

- (i) on and from the date of Off-Site Infrastructure Completion applicable to the relevant item of Off-Site Infrastructure until the Expiry Date; and
- (ii) to the extent necessary to rectify Defects in the relevant Off-Site Infrastructure and perform the Services applicable to the relevant Off-Site Infrastructure,

(Off-Site Infrastructure Maintenance Licence).

(b) **(Adequacy of Off-Site Infrastructure Maintenance Licence):** Project Co accepts all risks in connection with the adequacy of access to the Off-Site Infrastructure Maintenance Areas.

(c) **(Compliance with owner's requirements):** Project Co must, at all times when accessing, traversing or otherwise being present on an Off-Site Infrastructure Maintenance Area, comply with the requirements of the owner of the relevant Off-Site Infrastructure Maintenance Area, including:

- (i) any site access and interface protocols applicable to the relevant Off-Site Infrastructure Maintenance Area; and
- (ii) any requirements in relation to occupational health and safety and security.

(d) **(Termination of Off-Site Infrastructure Maintenance Licence):** Each Off-Site Infrastructure Maintenance Licence terminates on the Expiry Date.

15.5 Defects liability period for Off-Site Infrastructure Works

Without limiting Project Co's obligation to maintain the Off-Site Infrastructure, each item of Off-Site Infrastructure has:

- (a) a defects liability period that commences on the date of Off-Site Infrastructure Completion relating to that item of Off-Site Infrastructure and ends 12 Months after the relevant date of Off-Site Infrastructure Completion; and
- (b) a further defects liability period of 12 Months which commences on the date on which a Defect in the Off-Site Infrastructure is rectified by Project Co or a Project Co Associate in accordance with Clause 15.6(a) or the State or a State Associate in accordance with Clause 21(d), provided that work took place prior to the expiry of the relevant defects liability period,

provided that the maximum combined defects liability period for any item of Off-Site Infrastructure is no longer than 24 Months after the date of Off-Site Infrastructure Completion for the relevant Off-Site Infrastructure Works.

15.6 Correction of Defects in Off-Site Infrastructure Works

- (a) Project Co must correct all Defects in connection with the Off-Site Infrastructure Works or the Off-Site Infrastructure of which Project Co becomes aware, or which

are notified to Project Co, prior to or during the relevant defects liability period (as provided for in Clause 15.5).

- (b) Project Co must give notice to the State and the Independent Certifier that a Defect has been corrected promptly after the correction of that Defect.
- (c) Without limiting Clause 15.6(a), if Project Co reasonably considers that the Defect the subject of any notice in accordance with Clause 15.6(a) was directly caused by any breach of any State Project Document by the State or a wrongful act or omission of the State or a State Associate (including if the structure of the Pedestrian Underpass provided by Main Roads is defective) then the costs reasonably incurred in correcting that Defect will be a debt due and payable by the State to Project Co, except to the extent that:
 - (i) the Defect was caused or contributed to by any act or omission of Project Co or any Project Co Associate; or
 - (ii) insurance proceeds, damages or other compensation is received by Project Co or any Project Co Associate in connection with the Defect (or would have been received by Project Co or a Project Co Associate but for the act or omission of Project Co or Project Co Associates).
- (d) Except to the extent Clause 15.6(c) applies, Project Co indemnifies the State and any State Associate against any Claim made by a third party or Liability incurred to a third party (including another State Associate) in respect of the Off-Site Infrastructure Works.

15.7 Services in relation to Off-Site Infrastructure before Operating Phase

- (a) Without limiting Clause 23.2, Project Co must, for each item of Off-Site Infrastructure:
 - (i) commence performing the Services applicable to the relevant item of Off-Site Infrastructure on and from the date of Off-Site Infrastructure Completion applicable to the relevant item of Off-Site Infrastructure until the expiry of the Operating Phase; and
 - (ii) ensure that any Services performed under Clause 15.7(a)(i) prior to the commencement of the Operating Phase comply in all respects with the requirements for such Services that are to be performed during the Operating Phase.
- (b) Project Co is not entitled to payment of any sum, including any portion of the Monthly Service Payment, for any Services performed under Clause 15.7(a)(i) prior to the commencement of the Operating Phase.

16 SCHEDULED AND UNSCHEDULED STATE WORKS

16.1 Schedule of State Works

- (a) The Schedule of State Works contains:
 - (i) the details of the Scheduled State Works;
 - (ii) the dates for access for the State and the State Associates to undertake the Scheduled State Works;
 - (iii) the times for access for the State and the State Associates to undertake the Scheduled State Works, which may (in accordance with the status of the DBFM Works Program, the DBFM Works and the reasonable requirements of Project Co and the State) be outside of normal business hours; and
 - (iv) Project Co's obligations to, amongst other things, co-ordinate and facilitate access for the State and the State Associates and their respective equipment, including where relevant moving any equipment

for the State or the State Associates and coordinating access with other users of the Construction Site.

- (b) If at any time Project Co considers, acting reasonably, that the Schedule of State Works should be changed, including as a result of an update to the DBFM Works Program:
 - (i) Project Co must provide written, detailed reasons to the State for the change; and
 - (ii) the State must, acting reasonably, by notice to Project Co within 10 Business Days of receipt of the request by Project Co, approve or not approve the change, which approval must not be unreasonably withheld by the State and which may be given subject to reasonable conditions.
- (c) If the State does not provide notice in accordance with Clause 16.1(b) within 6 Business Days of Project Co's request, Project Co will provide an additional notice to the State to advise that it has not received a response to its request
- (d) If the State does not give notice of its decision to approve or not approve the change under Clause 16.1(b) within the time required under that Clause, Project Co must comply with the version of the Schedule of State Works that was previously approved.
- (e) The State may, acting reasonably, amend the Schedule of State Works by giving 20 Business Days' notice to Project Co. Project Co must comply with the Schedule of State Works as amended by the State in accordance with this Clause 16.1(e) to the extent the Schedule of State Works as amended will not adversely affect or delay the critical path in the DBFM Works Program.
- (f) Without limiting Clause 7.2, the State and any State Entities are entitled to access the Construction Site at the times specified in the Schedule of State Works.
- (g) The parties must comply with their obligations at the times specified in the Schedule of State Works.
- (h) Project Co acknowledges that it is part of Project Co's obligations, and does not constitute a Modification or a Minor Modification, to provide necessary equipment which is readily available on the Site including cranes, hoists and other lifting support, and the resources necessary to operate that equipment, to the State and the State Associates:
 - (i) at the times specified in the Schedule of State Works and the DBFM Works Program; and
 - (ii) otherwise, when reasonably requested by the State, provided that:
 - (A) the equipment is physically located on the Construction Site; and
 - (B) the use of the relevant equipment or resource (or both) by the State will not delay or adversely impact the DBFM Works, in which case, Project Co will make the equipment and resource available to the State as soon as practicable after the time requested by the State.

16.2 State notification of Unscheduled State Works

- (a) Without limiting Clause 7.2(e)(iv)(A), the State must notify Project Co of the period during which it needs access to a particular area or areas within the Construction Site for the purposes of carrying out any Unscheduled State Works (**Unscheduled State Works Notice**).
- (b) The Unscheduled State Works Notice must include the following details:

- (i) the discrete areas within the Construction Site that the State requires access to for the purposes of carrying out the relevant Unscheduled State Works and the timing and extent of such access;
- (ii) the relevant Unscheduled State Works to be carried out in each of the discrete areas within the Construction Site;
- (iii) the method intended to be used to carry out the relevant Unscheduled State Works;
- (iv) the State's requirements for access to the Construction Site which, for the avoidance of doubt, must be consistent with the Site Access and Interface Protocols, including use of Project Co's equipment as described in Clause 16.1(h);
- (v) timing for undertaking the relevant Unscheduled State Works; and
- (vi) to the extent that the State requires specific components of the DBFM Works to have been completed prior to the carrying out of the relevant Unscheduled State Works, the relevant components of the DBFM Works, which is a request to accelerate under Clause 17.11(a)(ii).

16.3 Timing for State notification of Unscheduled State Works

- (a) Subject to Clause 16.3(b), the State must issue an Unscheduled State Works Notice 1 Month prior to the date for commencement by the State of the Unscheduled State Works as determined in accordance with Clause 16.2(b)(v).
- (b) If urgent Unscheduled State Works is required, the State may issue an Unscheduled State Works Notice 24 hours prior to commencement by the State of the Unscheduled State Works.

16.4 Project Co obligations

Project Co must:

- (a) provide the State or relevant State Associates with access to the relevant areas within the Construction Site, Stadium or Sports Precinct (or any combination of them) in accordance with an Unscheduled State Works Notice;
- (b) ensure that the works specified in the Unscheduled State Works Notice in accordance with Clause 16.2(b)(vi) have been completed to such a stage and are otherwise in such condition as to enable the State to carry out the Unscheduled State Works the subject of the Unscheduled State Works Notice; and
- (c) otherwise provide the reasonable assistance required by the State to enable the State to carry out the Unscheduled State Works.

17 TIME

17.1 Dates for Completion

Project Co must:

- (a) regularly, expeditiously and diligently undertake the DBFM Works;
- (b) achieve each Completion by the relevant Date for Completion; and
- (c) undertake the DBFM Works in accordance with the then current DBFM Works Program.

17.2 Delays to achieving Completion

If Project Co reasonably forms the view that it will be delayed, or is likely to be delayed, in achieving Completion, Project Co must give the State and the Independent Certifier a written notice stating:

- (a) the details of the delay or disruption and Project Co's anticipated Date of Completion; and

- (b) the steps, if any, Project Co proposes to take to prevent or minimise the delay or disruption.

17.3 Form of extension of time claim

If Project Co will be delayed, or is likely to be delayed, in achieving Completion by an Extension Event, Project Co's notice submitted in accordance with Clause 17.2 is a Change Notice and must also set out:

- (a) **(particulars)**: detailed particulars and evidence of the Extension Event causing the delay;
- (b) **(consequences)**: detailed particulars of the consequences or the likely consequences of the Extension Event including details of how Project Co will be delayed, or is likely to be delayed, by the Extension Event;
- (c) **(days claimed)**: Project Co's estimate of the total number of days of extension of time claimed to the relevant Date for Completion that are attributable to the Extension Event;
- (d) **(costs payable)**: if Project Co believes the Extension Event is a Compensable Extension Event, details of the Prolongation Costs and the Financing Delay Costs (if incurred or likely to be incurred) claimed and calculated in accordance with Schedule 4 (Change Compensation Principles);
- (e) **(Change Compensation Principles)**: other information so that the Change Notice is in accordance with Schedule 4 (Change Compensation Principles); and
- (f) **(other information)**: such other information reasonably requested by the State.

17.4 Submission of updated extension of time claim

If the effects of the Extension Event continue beyond the period of extension claimed, and if Project Co wishes to Claim an extension of time in connection with such further delay, Project Co must submit an updated Change Notice to the State and the Independent Certifier:

- (a) before the expiry of the extension granted by the Independent Certifier in accordance with Clause 17.6; and
- (b) containing the information required by Clause 17.3.

17.5 Conditions precedent to extension

- (a) Project Co will only be entitled to an extension of time if:
- (i) Project Co has been or will be delayed by an Extension Event in connection with the DBFM Works occurring between Contractual Close and the Date of Commercial Acceptance in a manner which will delay Completion;
- (ii) the delay suffered by Project Co is due to an activity on the critical path contained and shown in the then current DBFM Works Program;
- (iii) Project Co has not been given an instruction to accelerate the execution of the DBFM Works if acceleration to overcome the delay is reasonably achievable;
- (iv) the Extension Event was beyond the reasonable control of Project Co or any Project Co Associate;
- (v) Project Co submits a Change Notice to the State and the Independent Certifier in accordance with Clauses 17.2 and 17.3 within 10 Business Days from the earlier of the date Project Co became aware, or ought reasonably to have become aware that it will be delayed or is likely to be delayed in achieving Completion by an Extension Event; and
- (vi) Project Co has complied with all of its obligations in accordance with Schedule 3 (Review Procedures) and Schedule 6 (Programming

Requirements) in connection with the DBFM Works Program relevant to the Claim for an extension of time.

- (b) Project Co's entitlement to an extension of time will be determined by the Independent Certifier, whose decision is binding on the parties except in the case of manifest error. In determining any extension of time, the Independent Certifier must take into account all relevant evidence presented by the parties and may have regard to, but will not be bound by, the DBFM Works Program.

17.6 Extension of time

If Project Co has satisfied the requirements set out in Clauses 17.3 and 17.5 (and if it applies, Clause 17.4), within 20 Business Days of such satisfaction, the Independent Certifier will extend the Date for Completion by a reasonable period and notify Project Co and the State of the extension granted.

17.7 Concurrent delays

To the extent that Project Co is concurrently delayed by:

- (a) an Extension Event; and
- (b) an event which is not an Extension Event,

the Independent Certifier will, when determining the entitlement to the extension of time for the Extension Event under Clause 17.6, apportion the relevant delay in accordance with each respective event's contribution so that the Date for Completion is extended by the period determined by the Independent Certifier as having been delayed, or which will be delayed, by the Extension Event having regard to the critical path on the then current DBFM Works Program. Without limiting Clause 17.5, the Independent Certifier must only grant an extension of time to the extent that Project Co would not have been delayed but for the Extension Event, as determined by the Independent Certifier in accordance with this Clause 17.7.

17.8 Unilateral extensions

- (a) Subject to Clause 17.8(b), the State may, by notice to Project Co, unilaterally extend any Date for Completion where the State considers that any act or omission of the State or a State Associate will, or is likely to, delay Project Co in a manner that will prevent Project Co from achieving Completion, whether or not Project Co has made, or is entitled to make, a Claim for an extension of time in accordance with this Clause 17.
- (b) The State is not required to exercise the State's discretion in accordance with Clause 17.8(a) for the benefit of Project Co or at all.
- (c) The exercise or failure to exercise the State's discretion in accordance with this Clause 17.8 is not capable of being the subject of a Dispute in accordance with Clause 45 or otherwise subject to review.
- (d) The State's discretion in accordance with Clause 17.8(a) must not be used if the Independent Certifier is otherwise required to extend a Date for Completion in accordance with Clause 17.6.

17.9 Compensable Extension Events

To the extent that a delay is caused by a Compensable Extension Event for which Project Co is granted an extension of time in accordance with Clause 17.6, the State will compensate Project Co for the Prolongation Costs and Financing Delay Costs (to the extent that Project Co is delayed, or will be delayed, in achieving Technical Completion or Commercial Acceptance) calculated in accordance with Schedule 4 (Change Compensation Principles).

17.10 Force Majeure Events

- (a) Except for the payment obligations under Clause 44.2, if the Extension Event is a Force Majeure Event, the obligations of each party in accordance with this

Agreement which are affected by the Force Majeure Event will be suspended, but only to the extent that, and for so long as, the Force Majeure Event prevents that party from meeting its obligations in accordance with this Agreement.

- (b) A party's failure to perform its obligations in accordance with this Agreement which are suspended in accordance with Clause 17.10(a) will not be a breach of this Agreement, an Event of Default or an Immediate Termination Event during the period of suspension in accordance with Clause 17.10(a).

17.11 Acceleration

- (a) If:
 - (i) the DBFM Works are delayed; or
 - (ii) the State, in its discretion, requires that specific aspects of the DBFM Works be completed prior to the date specified in the DBFM Works Program,

the State may direct Project Co to give the State a Change Notice prepared in accordance with Schedule 4 (Change Compensation Principles). Within 10 Business Days of a direction from the State under this Clause, Project Co must prepare a Change Notice which either:

 - (iii) states:
 - (A) the amount payable to Project Co as a consequence of accelerating the DBFM Works to the extent necessary to overcome the delay or complete the aspect of the DBFM Works in accordance with the State's request; and
 - (B) whether the acceleration is likely to result in Completion being achieved by the Date for Completion or the revised date for completion of a specified part of the works being met (as the case may be); or
 - (iv) states that acceleration is not reasonably achievable.
- (b) The amount payable to Project Co in the circumstances contemplated by Clauses 17.11(d) or 17.11(e) must be calculated by Project Co in accordance with the principles set out in Schedule 4 (Change Compensation Principles).
- (c) Following receipt of Project Co's Change Notice, the State and Project Co must meet to agree the contents of the Change Notice and provided that acceleration is reasonably achievable, the State may direct Project Co to accelerate the DBFM Works in accordance with Project Co's Change Notice (as agreed in accordance with this Clause) and Project Co must comply with the State's direction.
- (d) If the State directs Project Co under Clause 17.11(c) to accelerate the DBFM Works for the reason contemplated by Clause 17.11(a)(i), and Project Co would, but for the direction, have been granted an extension of time to the relevant Date for Completion for the delay in accordance with Clause 17.6, the State will pay Project Co the relevant amount stated in the Change Notice (as agreed by the parties), being that amount calculated in accordance with Schedule 4 (Change Compensation Principles).
- (e) If the State directs Project Co under Clause 17.11(c) to accelerate the DBFM Works for the reason contemplated by Clause 17.11(a)(ii), then:
 - (i) the DBFM Works Program will be revised to reflect the dates indicated in the Change Notice (as agreed by the parties); and
 - (ii) the State will pay Project Co the relevant amount stated in the Change Notice (as agreed by the parties), being that amount calculated in accordance with Schedule 4 (Change Compensation Principles).

18 TECHNICAL COMPLETION

18.1 Notice before Technical Completion

(a) Project Co must give the State and the Independent Certifier separate notices:

- (i) 12 Months;
- (ii) 9 Months;
- (iii) 6 Months;
- (iv) 3 Months; and
- (v) 1 Month,

prior to the date upon which it reasonably expects to achieve Technical Completion.

(b) If after Project Co gives the State and the Independent Certifier a notice in accordance with Clause 18.1(a) the expected Date of Technical Completion changes, Project Co must notify the State and the Independent Certifier promptly of the revised date.

18.2 Technical Completion Plan

(a) At the same time as Project Co notifies the State of the date on which it reasonably expects to achieve Technical Completion in accordance with Clause 18.1(a)(i), Project Co must submit to the State and the Independent Certifier a draft Technical Completion Plan for review in accordance with Schedule 3 (Review Procedures).

(b) Where Project Co notifies the State and the Independent Certifier of the date upon which it reasonably expects to achieve Technical Completion in accordance with Clauses 18.1(a)(iii) to 18.1(a)(v) and Project Co is aware of any changes to the form of Technical Completion Plan submitted under Clause 18.2(a), Project Co must submit to the State and the Independent Certifier an updated Technical Completion Plan for review in accordance with Schedule 3 (Review Procedures) showing all changes to the form of Technical Completion Plan submitted under Clause 18.2(a) in mark-up.

(c) The Independent Certifier may require Project Co to include additional Technical Completion Tests in the Technical Completion Plan if the Independent Certifier considers that the Technical Completion Tests proposed by Project Co are not sufficient to demonstrate that the Technical Completion Criteria are satisfied.

18.3 Technical Completion Tests

(a) Project Co must carry out all Technical Completion Tests in accordance with, and otherwise comply with, the approved Technical Completion Plan and this Clause 18.

(b) Project Co must:

- (i) no later than 2 Business Days prior to the date for conducting any Technical Completion Test identified in the Technical Completion Plan, give the Independent Certifier, the State Representative and the Stadium Operator a notice identifying any changes to the date upon which the relevant Technical Completion Test will be performed (such date must be not earlier than the date stated in the Technical Completion Plan);
- (ii) allow the Independent Certifier to take samples, make measurements and otherwise carry out whatever checks and investigations it may reasonably require in order to ensure that any Technical Completion Test has been successfully carried out;
- (iii) allow the Stadium Operator to attend all Technical Completion Tests;

- (iv) conduct the Technical Completion Tests to the reasonable satisfaction of the Independent Certifier;
- (v) comply with all reasonable directions of the Independent Certifier in relation to the conduct of any Technical Completion Tests; and
- (vi) if a test fails, immediately inform the Independent Certifier and the State and carry out rectification works to enable retesting to occur as soon as possible.

18.4 Unsuccessful Technical Completion Test

- (a) If Project Co fails to successfully complete a Technical Completion Test (which must be successfully completed prior to Technical Completion), the Independent Certifier may:
 - (i) refuse to issue the certificate of Technical Completion; or
 - (ii) subject to Clause 18.8, identify the unsuccessful Technical Completion Test as an Outstanding Item.
- (b) The Independent Certifier may waive the requirement for Project Co to satisfy a Technical Completion Test, provided that it does not affect the ability of the Independent Certifier to determine whether the Technical Completion Criteria have been satisfied.

18.5 Initial Technical Completion Report

- (a) Project Co must submit to the Independent Certifier (for review in accordance with Schedule 3 (Review Procedures), except that the State will have 10 Business Days for review), and provide a copy to the State, of a substantially complete draft Technical Completion Report in connection with Technical Completion 1 Month prior to the date on which it anticipates reaching Technical Completion.
- (b) Project Co must submit to the State and the Independent Certifier (for review in accordance with Schedule 3 (Review Procedures) except that the State will have 5 Business Days to review) a further draft Technical Completion Report in connection with Technical Completion 10 Business Days prior to the date on which it anticipates reaching Technical Completion. The draft Technical Completion Report must reflect all Technical Completion Tests undertaken in connection with Technical Completion to the date of the further draft Technical Completion Report.
- (c) Project Co must take into account and comply with any directions reasonably given by the Independent Certifier in connection with preparing for Technical Completion.

18.6 Notice of Technical Completion

- (a) When Project Co is of the reasonable opinion that it has achieved Technical Completion, Project Co must provide:
 - (i) notice of its opinion that it has achieved Technical Completion; and
 - (ii) the Technical Completion Report,to the State and the Independent Certifier.
- (b) Project Co must not submit the information to the State and the Independent Certifier in accordance with Clause 18.6(a) until a date which is 10 Business Days after the submission of the draft Technical Completion Report in accordance with Clause 18.5(a).

18.7 Determination of Technical Completion

- (a) The Independent Certifier must, within 10 Business Days after receiving the notice from Project Co in accordance with Clause 18.6(a):
 - (i) determine that Technical Completion is achieved;
 - (ii) determine that Technical Completion has not been achieved; or

- (iii) request further information from Project Co so that the Independent Certifier can determine if Technical Completion has been achieved, in accordance with this Clause 18.7.
- (b) If, in the opinion of the Independent Certifier, Technical Completion is achieved, the Independent Certifier must issue to Project Co a certificate of Technical Completion stating the date on which Project Co achieved Technical Completion.
- (c) If Technical Completion has not been achieved, the Independent Certifier must issue to Project Co and the State a notice containing details of the outstanding Technical Completion Criteria and any Completion Tests that must be satisfied by Project Co as a condition precedent to achieving Technical Completion.
- (d) The Independent Certifier may, in its sole and absolute discretion, issue a certificate of Technical Completion if Technical Completion has been achieved notwithstanding that Project Co has not issued a notice in accordance with Clause 18.6(a).
- (e) The issue of a certificate of Technical Completion in accordance with this Clause 18 does not constitute evidence that Project Co has satisfied the FFP Warranty.

18.8 Outstanding Items

- (a) The Independent Certifier may issue a certificate of Technical Completion with an attached list of Outstanding Items which Project Co must rectify within a reasonable period of time as determined by the Independent Certifier.
- (b) Project Co must submit to the State and the Independent Certifier for review in accordance with Schedule 3 (Review Procedures), a program for the completion of the Outstanding Items within 5 Business Days after the issue of a certificate of Technical Completion which attaches a list of Outstanding Items, which program must be consistent with the time period for rectification determined by the Independent Certifier in accordance with Clause 18.8(a).
- (c) Project Co must complete any Outstanding Items in accordance with the program as reviewed and amended in accordance with Schedule 3 (Review Procedures) to the reasonable satisfaction of the Independent Certifier.

18.9 Final Technical Completion Report

Project Co must submit to the State and the Independent Certifier a final Technical Completion Report no later than 20 Business Days after the Date of Technical Completion.

19 STATE ACCESS PERIOD

19.1 Minimum period for State Access Period

- (a) Project Co must give the State and the Stadium Operator access to the Stadium and Sports Precinct following the Date of Technical Completion in accordance with this Clause 19.1.
- (b) Project Co must give the State and the Stadium Operator uninterrupted, priority access to the Stadium and Sports Precinct to carry out State Operational Commissioning for a period of 90 consecutive and uninterrupted days, commencing from the Date of Technical Completion (the **State Access Period**).
- (c) The State will not conduct any Test Events during the last two weeks of the State Access Period.
- (d) The Stadium Operator will only be permitted to undertake the State Operational Commissioning during the State Access Period.
- (e) During the State Access Period, the State acknowledges that Project Co will be undertaking its commissioning activities. However, Project Co must vacate any area that the State or the Stadium Operator reasonably requires to undertake the

State's or the Stadium Operator's commissioning activities during the State Access Period.

- (f) Provided the State and the State Associates comply with the Site Access and Interface Protocols and except in the circumstances expressly set out in this Agreement, Project Co will not have any entitlement to make any Claim against the State for any delay to Commercial Acceptance caused by any access to, or work undertaken by the State on, the Site during each State Access Period.

19.2 State Operational Commissioning

- (a) **(Intended activities):** The State's intended activities for State Operational Commissioning include:
- (i) operational exercises;
 - (ii) installation of State FF&E;
 - (iii) training State Associates and Stadium Personnel in the use of the State FF&E;
 - (iv) carrying out induction training for State Associates, Stadium Personnel, Media Personnel and Hirers;
 - (v) conducting Scenario Testing;
 - (vi) stocking up the Stadium and Sports Precinct with items necessary for the provision of the Stadium Activities (except for those items for which Project Co is responsible); and
 - (vii) the conduct of such other activities or exercises reasonably identified by the State Representative as constituting State Operational Commissioning.
- (b) **(Draft State Operational Commissioning Plan):** The State will provide Project Co with a copy of the draft State Operational Commissioning Plan 6 Months prior to the Date for Technical Completion and a copy of any updates to the draft State Operational Commissioning Plan, including, in both, any construction works to be conducted by the State or the Stadium Operator. The State will provide the last State Operational Commissioning Plan for Project Co to comment on, no later than 45 days prior to the Date for Technical Completion.
- (c) **(Project Co comments):** Project Co may, acting reasonably, provide the State with any comments it has in respect of the State Operational Commissioning Plan within 15 Business Days, or in respect of the last State Operational Commissioning Plan, 10 Business Days, of the receipt of the State Operational Commissioning Plan, including:
- (i) commenting on whether, in its view, any of the construction or commissioning works proposed to be performed by the State or the Stadium Operator may result in a Defect;
 - (ii) commenting on whether, in its view, there are any reasonably anticipated inherent difficulties or risks in undertaking the construction or commissioning works; and
 - (iii) its reasonable requirements in respect of those construction and commissioning works,
- provided that Project Co may only comment on new items in the State Operational Commissioning Plan since the last State Operational Commissioning Plan reviewed. The State will use reasonable endeavours to accommodate the comments received from Project Co.
- (d) **(Integration with Commercial Acceptance Plan):** Project Co must ensure that the Commercial Acceptance Plan is integrated with the activities in the draft State Operational Commissioning Plan as it exists from time to time.

- (e) **(Limit on amendments)** The State must not amend the draft or final State Operational Commissioning Plan in a way which is inconsistent with:
- (i) the Commercial Acceptance Plan; or
 - (ii) the dates for training to be provided to the State by Project Co,
- each as at 2 Months prior to the Date for Technical Completion.
- (f) **(Final State Operational Commissioning Plan):** The State will provide Project Co with a copy of the final State Operational Commissioning Plan 1 Month prior to the Date for Technical Completion (or such later time as is reasonably required to incorporate comments received from Project Co in accordance with Clause 19.2(c)). Project Co may provide comments to the State on the final State Operational Commissioning Plan in accordance with Clause 19.2(c) but, without limiting Clause 19.2(h)(i), the State is not required to issue an updated State Operational Commissioning Plan responding to Project Co's comments.
- (g) **(State Operational Commissioning):** The State must carry out the State Operational Commissioning in accordance with the State Operational Commissioning Plan and the Commercial Acceptance Plan. All or part of the State Operational Commissioning may be carried out by the Stadium Operator.
- (h) **(Defects):** To the extent that a Defect arises as a result of construction or commissioning works carried out by the State, a State Associate or by or on behalf of the Stadium Operator during the State Access Period:
- (i) if Project Co has given notice to the State under Clause 19.2(c) that the construction or commissioning works may give rise to a Defect or of any reasonably anticipated inherent difficulties or risks in undertaking the construction or commissioning works and the entity undertaking the work has not complied with Project Co's requirements in respect of those construction or commissioning works notified under Clause 19.2(c) or taken reasonable steps to address the identified inherent difficulties or risks notified under Clause 19.2(c), rectification of the Defect is at the State's cost;
 - (ii) subject to Clauses 19.2(h)(iii) and 19.2(h)(iv), if Project Co has not given notice to the State in respect of the Defect in accordance with Clause 19.2(c), rectification of the Defect is at Project Co's cost [*not disclosed*];
 - (iii) if the construction or commissioning works are not referred to in, or are not undertaken in accordance with, the State Operational Commissioning Plan, rectification of the Defect is at the State's cost; or
 - (iv) to the extent that the standard of workmanship of the entity undertaking the work is responsible for causing the Defect and could not have been anticipated by Project Co at the time Project Co provided notice under Clause 19.2(c), rectification of the Defect is at the State's cost.
- (i) **(Compliance):** The State will and will also procure that the State Associates who access the Construction Site during the State Access Period:
- (i) will comply with the State Operational Commissioning Plan and the Site Access and Interface Protocols; and
 - (ii) subject to the terms of the State Operational Commissioning Plan, the Commercial Acceptance Plan and the Operational Interface Agreement, do not interfere with, prevent, disrupt or delay Project Co in achieving Commercial Acceptance.
- (j) **(Reasonable assistance):** Project Co must provide all reasonable assistance to the State in carrying out the State Operational Commissioning, including accommodating requests for rescheduling of the State's and the Stadium Operator's commissioning activities to the extent that it does not have a material

adverse effect on Project Co (including that it will not delay Commercial Acceptance).

19.3 Project Co activities during the State Access Period

Project Co must, during the State Access Period:

- (a) provide the Commissioning Period Services to the State in accordance with this Agreement and Best Operating Practices;
- (b) provide training for State Associates and Stadium Personnel in accordance with the Stadium Personnel Induction and Training Program;
- (c) provide such information as is required by the State or the Stadium Operator to carry out State Operational Commissioning, including:
 - (i) all operating manuals, instructions and Design Documentation reasonably required by the Stadium Operator to operate the Stadium and Sports Precinct and to achieve the requirements contained in Schedule 12 (Design Specifications); and
 - (ii) an up to date Asset Register,
 and ensure that those documents are provided in final form to the State on the Date of Commercial Acceptance;
- (d) prepare for Commercial Acceptance in accordance with the Commercial Acceptance Plan;
- (e) assist the State in carrying out the State Operational Commissioning;
- (f) without limiting any other express or implied obligation set out in this Agreement, otherwise do all things reasonably necessary to achieve Commercial Acceptance; and
- (g) not compromise, hinder, disrupt or otherwise adversely affect the carrying out by the State of the State Operational Commissioning.

19.4 [Not disclosed]

20 COMMERCIAL ACCEPTANCE

20.1 Independent Certifier

Schedule 7 (Completion Criteria) sets out whether the Independent Certifier or the State is responsible for determining whether each Commercial Acceptance Criteria has been met. If a Commercial Acceptance Criteria is identified as the responsibility of the Independent Certifier, the State must (without limiting Clause 20.4(c)), act on the advice of the Independent Certifier. In this Clause 20, references to the State Representative and Independent Certifier (where relevant) are to give effect to this intention.

20.2 Notices prior to Commercial Acceptance

- (a) Project Co must notify the State and the Independent Certifier of the date upon which it reasonably expects to achieve Commercial Acceptance when Project Co:
 - (i) provides the notice required by Clause 18.1(a)(i);
 - (ii) provides the notice required by Clause 18.1(a)(iv);
 - (iii) requests the approval required in accordance with Clause 7.5; and
 - (iv) provides documents for review in accordance with Clause 7.6(b).
- (b) If, after Project Co provides the State and the Independent Certifier with a notice in accordance with Clause 20.2(a), the expected Date of Commercial Acceptance changes, Project Co must immediately notify the State and the Independent Certifier of the revised date.

20.3 Notice before Commercial Acceptance

- (a) Project Co must give the State and the Independent Certifier separate notices:
 - (i) 12 Months;
 - (ii) 9 Months;
 - (iii) 6 Months;
 - (iv) 3 Months; and
 - (v) 1 Month,prior to the date upon which it reasonably expects to achieve Commercial Acceptance.
- (b) If, after Project Co gives the State and the Independent Certifier a notice in accordance with Clause 20.3(a), the expected Date of Commercial Acceptance changes, Project Co must notify the State and the Independent Certifier promptly of the revised date.

20.4 Commercial Acceptance Plan

- (a) At the same time as Project Co notifies the State and the Independent Certifier of the date on which it reasonably expects to achieve Commercial Acceptance in accordance with Clause 20.3(a)(i), Project Co must submit to the State and the Independent Certifier a draft Commercial Acceptance Plan for review in accordance with Schedule 3 (Review Procedures).
- (b) Where Project Co notifies the State and the Independent Certifier of the date upon which it reasonably expects to achieve Commercial Acceptance in accordance with Clauses 20.3(a)(iii) to 20.3(a)(v) and Project Co is aware of any changes to the form of Commercial Acceptance Plan submitted under Clause 20.4(a), Project Co must submit to the State and the Independent Certifier an updated Commercial Acceptance Plan for review by the State and the Independent Certifier in accordance with Schedule 3 (Review Procedures) showing all changes to the form of Commercial Acceptance Plan submitted under Clause 20.4(a) in mark-up.
- (c) The State or Independent Certifier (as relevant) may require Project Co to include additional Commercial Acceptance Tests in the Commercial Acceptance Plan if the State or Independent Certifier (as relevant) believes that the Commercial Acceptance Tests proposed by Project Co are not sufficient to demonstrate that the Commercial Acceptance Criteria are satisfied. The State will act reasonably in determining whether to add additional Commercial Acceptance Tests.

20.5 Commercial Acceptance Tests

- (a) Project Co must carry out all Commercial Acceptance Tests in accordance with, and otherwise comply with, the approved Commercial Acceptance Plan and this Clause 20.
- (b) Project Co must:
 - (i) no later than 2 Business Days prior to the date for conducting any Commercial Acceptance Test identified in the Commercial Acceptance Plan, give the State Representative, the Independent Certifier and the Stadium Operator (as relevant) a notice identifying any changes to the date upon which the relevant Commercial Acceptance Test will be performed (such date must not be earlier than the date stated in the Commercial Acceptance Plan);
 - (ii) allow the State Representative or Independent Certifier (as relevant) to take samples, make measurements and otherwise carry out whatever checks and investigations it may reasonably require in order to ensure that any Commercial Acceptance Test has been successfully carried out;
 - (iii) allow the Stadium Operator to attend all Commercial Acceptance Tests;

- (iv) conduct the Commercial Acceptance Tests to the reasonable satisfaction of the State Representative and the Independent Certifier (as relevant);
 - (v) comply with all reasonable directions of the State Representative or Independent Certifier (as relevant) in relation to the conduct of any Commercial Acceptance Tests; and
 - (vi) if a test fails, immediately inform the State Representative or Independent Certifier (as relevant) and carry out rectification works to enable retesting to occur as soon as possible.
- (c) The Commercial Acceptance Tests which are relevant to the Independent Certifier are those which are in respect of Commercial Acceptance Criteria for which the Independent Certifier is responsible for certifying, as set out in Schedule 7 (Completion Criteria).
- (d) Project Co acknowledges that the State is entitled to make comment to the Independent Certifier in respect of Commercial Acceptance Tests that the State is not certifying and that the Independent Certifier will take such comments into account in making a determination as to whether the relevant Commercial Acceptance Test has been satisfied.

20.6 Unsuccessful Commercial Acceptance Test

- (a) If Project Co fails to successfully complete a Commercial Acceptance Test (which must be successfully completed prior to Commercial Acceptance), the State Representative may (including acting on any advice of the Independent Certifier (where relevant)):
- (i) refuse to issue the certificate of Commercial Acceptance; or
 - (ii) subject to Clause 20.10, identify the unsuccessful Commercial Acceptance Test as an Outstanding Item.
- (b) The State Representative may waive the requirement for Project Co to satisfy a Commercial Acceptance Test (including acting on the advice of the Independent Certifier (where relevant)), provided that it does not affect the ability of the State Representative to determine whether the Commercial Acceptance Criteria have been satisfied.

20.7 Initial Commercial Acceptance Report

- (a) Project Co must submit to the Independent Certifier, and provide a copy to the State Representative (for review in accordance with Schedule 3 (Review Procedures) except that the State will have 10 Business Days to review), a substantially complete draft Commercial Acceptance Report, 1 Month prior to the date on which it anticipates reaching Commercial Acceptance.
- (b) Project Co must submit to the Independent Certifier and State Representative (for review in accordance with Schedule 3 (Review Procedures) except that the State will have 5 Business Days to review) a further draft Commercial Acceptance Report, 10 Business Days prior to the date on which it anticipates reaching Commercial Acceptance. The draft Commercial Acceptance Report must reflect all Commercial Acceptance Tests undertaken in connection with Commercial Acceptance to the date of the further draft Commercial Acceptance Report.
- (c) Project Co must take into account and comply with any directions reasonably given by the State Representative and the Independent Certifier (as relevant) in connection with preparing for Commercial Acceptance.

20.8 Notice of Commercial Acceptance

- (a) When Project Co is of the reasonable opinion that it has achieved Commercial Acceptance, Project Co must provide:
- (i) notice of its opinion that it has achieved Commercial Acceptance; and

- (ii) the Commercial Acceptance Report,
to the State Representative and the Independent Certifier.
- (b) Project Co must not submit the information to the State Representative or the Independent Certifier in accordance with Clause 20.8(a) until a date which is 10 Business Days after the submission of the draft Commercial Acceptance Report in accordance with Clause 20.7(a).

20.9 Determination of Commercial Acceptance

- (a) The State Representative must, within 10 Business Days after receiving the notice from Project Co in accordance with Clause 20.8(a):
 - (i) determine that Commercial Acceptance has been achieved;
 - (ii) determine that Commercial Acceptance has not been achieved; or
 - (iii) request further information from Project Co so that the State Representative can determine if Commercial Acceptance has been achieved,
in accordance with this Clause 20.9.
- (b) Subject to Clause 20.11, if, in the opinion of the State Representative (acting reasonably and in accordance with the requirements of Schedule 7 (Completion Criteria) including the advice of the Independent Certifier (where relevant)), Commercial Acceptance is achieved, the State Representative must issue to Project Co a certificate of Commercial Acceptance stating the date on which Project Co achieved Commercial Acceptance.
- (c) If, in the opinion of the State Representative (acting reasonably and in accordance with the requirements of Schedule 7 (Completion Criteria) including the advice of the Independent Certifier (where relevant)), Commercial Acceptance has not been achieved, the State Representative must issue to Project Co a notice containing details of the outstanding Completion Criteria that must be satisfied by Project Co to achieve Commercial Acceptance.
- (d) If the Independent Certifier has notified the State that the Commercial Acceptance Criteria that are set out in Schedule 7 (Completion Criteria) as being the responsibility of the Independent Certifier to certify have been met, the State Representative must not withhold the certificate of Commercial Acceptance on the basis of those Commercial Acceptance Criteria not having been satisfied.
- (e) The State Representative may issue a certificate of Commercial Acceptance if Commercial Acceptance has been achieved notwithstanding that Project Co has not issued a notice in accordance with Clause 18.6(a) (as applicable to Commercial Acceptance).
- (f) The issue of a certificate of Commercial Acceptance in accordance with this Clause 20.9 does not constitute evidence that Project Co has satisfied the FFP Warranty.

20.10 Outstanding Items

- (a) The State Representative may issue a certificate of Commercial Acceptance with an attached list of Outstanding Items or, without limiting the State's rights under Clause 43, any other requirement of this Agreement which Project Co has failed to meet, which Project Co must rectify within a reasonable period of time as determined by the State Representative. In respect of the Commercial Acceptance Criteria described in Clause 20.9(d) and without limiting Clause 5.8(m), the State Representative may only include on the list Outstanding Items which have been provided to it by the Independent Certifier.
- (b) Project Co must submit to the State Representative and the Independent Certifier for review in accordance with Schedule 3 (Review Procedures), a program for the completion of the Outstanding Items, within 5 Business Days of the Date of

Commercial Acceptance, which attaches a list of Outstanding Items and which must be consistent with the time period for rectification determined by the State Representative and the Independent Certifier (where relevant) in accordance with Clause 20.10(a).

- (c) Project Co must complete any Outstanding Items in accordance with the program as reviewed and amended in accordance with Schedule 3 (Review Procedures) to the satisfaction of the State Representative (acting reasonably).

20.11 No obligation to certify Commercial Acceptance early

Notwithstanding any other provision of this Agreement, the State Representative is under no obligation to certify Commercial Acceptance prior to the Date for Commercial Acceptance (as defined at Financial Close) or before the end of the State Access Period, regardless of whether Commercial Acceptance has been achieved prior to the Date for Commercial Acceptance or before the end of the State Access Period.

21 DEFECTS

- (a) **(All Defects):** Subject to Clauses 15.6(a), 21(b), 21(e) and 21(g), Project Co must rectify all Defects during the Term regardless of whether or not such Defects are the subject of a notice under this Clause 21.
- (b) **(Notice):** If the State Representative is of the opinion that there is a Defect, then the State Representative may give a notice to Project Co specifying the Defect, requiring Project Co to rectify the Defect and specifying a reasonable time within which this must occur.
- (c) **(Project Co to rectify):** If a notice is given under Clause 21(b), Project Co must rectify the Defect within the time specified in the State Representative's notice.
- (d) **(State may rectify):** If the Defect is not rectified by Project Co within the time specified in the State Representative's notice, then the State is entitled to rectify the Defect itself or engage a third party to rectify the Defect and the cost of any such rectification work will be a debt due and payable by Project Co to the State.
- (e) **(Not affected):** Neither the State's rights, nor Project Co's liability, whether in accordance with this Agreement or otherwise at Law in connection with Defects will be:
 - (i) affected or limited by the rights conferred upon the State by this Clause 21 or any other provision of this Agreement; or
 - (ii) affected or limited by the failure of the State to exercise any such rights.
- (f) **(Costs):** Subject to Clause 21(g) and without limiting Clause 1.3(b), all Defects must be rectified by Project Co at Project Co's sole cost.
- (g) **(Third party defects):** If Project Co reasonably considers that a Defect is in respect of or was caused by:
 - (i) works or services that have been performed by the State or a State Associate; or
 - (ii) works or services that have been performed by a third party engaged by the State or a State Associate,

in any of the circumstances set out in Clauses 16, 19.2(h)(i), 19.2(h)(iii), 19.2(h)(iv), 28.1(d)(ii), 29.8, 33.1(d)(vi) or Section 5(g)(iii) of Part A of Schedule 4 (Change Compensation Principles), Project Co will notify the State. If the State agrees, or it is determined through resolution of a Dispute, that the Defect is in respect of or was caused by works or services performed by the State or a State Associate, or by works or services that have been performed by a third party engaged by the State or State Associate in the circumstances set out in Clauses 16, 19.2(h)(i), 19.2(h)(iii), 19.2(h)(iv), 28.1(d)(ii), 29.8, 33.1(d)(vi) or Section 5(g)(iii) of Part A of Schedule 4 (Change Compensation Principles), the State must:

- (iii) rectify the Defect itself or require a third party to rectify the Defect; or
- (iv) give notice to Project Co to rectify the Defect, in which case Project Co must rectify the Defect within the time specified in the State Representative's notice, which timing must have regard to the scope of the rectification works, and the State will pay the costs reasonably incurred and demonstrated by Project Co in rectifying the Defect.

Without limiting section 3.1(c) of Schedule 14 (Payment Schedule), the parties agree that Project Co's obligation to mitigate will be as if the mitigation actions are works to which Clause 39.5 would apply (which for the purposes of this Clause only, will apply to both the D&C Phase and Operating Phase) and does not extend to rectification of the Defect until such time as it receives a notice under Clause 21(g)(iv) above.

- (h) If Project Co receives or would have received (if it had complied with the terms of the Insurance policy, this Agreement and the relevant Project Document) insurance proceeds in respect of the Defect referred to in Clause 21(g), Project Co must apply those insurance proceeds to off-set the cost of the rectification of the Defect. To the extent that the State is liable to pay for the rectification of the Defect, then the State will pay that part of the deductible which proportionally relates to the State's damage.
- (i) **(Payment Schedule):** Nothing in this Clause 21, or any other Clause of this Agreement in connection with Defects, limits Project Co's obligations under Schedule 14 (Payment Schedule) in relation to Faults or Incidents.

21A SECURITISED LICENCE STRUCTURE

21A.1 Completion Price

- (a) In consideration of the execution of the DBFM Works, the State agrees to pay to Project Co the Completion Price by paying each Completion Payment on each Completion Payment Date.
- (b) The State has no obligation to pay a Completion Payment unless and to the extent that the State receives the corresponding Receivables Purchase Payment from Finance Co under the Receivables Purchase Deed or Funding Portion under and as defined in the State Loan Agreement.
- (c) The amount of a Completion Payment and the corresponding Receivables Purchase Payment may only be adjusted:
 - (i) to reflect a Change Compensation Event or Modification occurring prior to the Date of Commercial Acceptance in respect of which finance has been provided under the Financing Documents (and such finance is, where relevant, to be applied in respect of amounts owing to the Builder) and calculated in accordance with Section 2.3A of Part A of Schedule 4 (Change Compensation Principles);
 - (ii) to reflect a Project Co Modification in accordance with Clause 33.3; and
 - (iii) otherwise by agreement in writing between the parties prior to the Date of Commercial Acceptance,

provided that no adjustment to a Completion Payment or the corresponding Receivables Purchase Payment will affect the limitation referred to in Clause 21A.1(b).

- (d) Notwithstanding any other clause of any Project Document, the State may not set off any amount due and payable by Project Co or Finance Co to the State under the Project Documents against any Completion Payment.
- (e) If a Completion Payment and the corresponding Receivables Purchase Payment are adjusted in accordance with Clause 21A.1(c), the State and Project Co agree to adjust the Licence Payment payable under the Operating Phase Licence in

accordance with Section 2.3A of Part A of Schedule 4 (Change Compensation Principles) as appropriate to reflect the adjustment made to the Completion Payment and the corresponding Receivables Purchase Payment.

- (f) Notwithstanding anything else in the Project Documents, the State acknowledges that, if a Receivables Purchase Payment is not received in full or at all under the Receivables Purchase Deed, or a Funding Portion under and as defined in the State Loan Agreement is not received in full or at all under the State Loan Agreement, the State's only right or remedy in respect of such non-payment is the relief from payment of the corresponding Completion Payment under Clause 21A.1(b).

21A.2 Securitised Modification Payment

- (a) If a Change Compensation Event or Modification occurs on or after the Date of Commercial Acceptance and the State requests that Project Co (either itself or via Finance Co), and Project Co (or Finance Co) agrees to provide financing for that event under the Change Compensation Principles, the State must pay the Securitised Modification Payment to Project Co (or as Project Co directs) on the Additional Purchase Date.
- (b) The State has no obligation to pay the Securitised Modification Payment unless and to the extent that it receives the corresponding additional Receivables Purchase Price from Finance Co under the Receivables Purchase Deed in relation to that Change Compensation Event or Modification.
- (c) Notwithstanding any other clause of any Project Document, the State may not set off any amount due and payable by Project Co or Finance Co to the State under the Project Documents against any Securitised Modification Payment.
- (d) The State acknowledges that, if the additional Receivables Purchase Price in relation to a Change Compensation Event or Modification is not received in full or at all under the Receivables Purchase Deed, the State's only right or remedy in respect of such non-payment is the relief from payment of the corresponding Securitised Modification Payment under Clause 21A.2(b).
- (e) If a Securitised Modification Payment and the corresponding Receivables Purchase Price are payable, the State and Project Co agree to adjust the Licence Payment payable under the Operating Phase Licence in accordance with Section 2.3A of Part A of Schedule 4 (Change Compensation Principles) as appropriate to reflect the amount of the Securitised Modification Payment and the corresponding Receivables Purchase Price.

21A.3 No change in risk allocation

- (a) The parties acknowledge and agree that neither the Securitised Licence Structure nor the State Loan Agreement is intended to result in an Increased State Risk Allocation.
- (b) If the State believes (on reasonable grounds supported by external advice) that the Securitised Licence Structure or State Loan Agreement results or is likely to result in an Increased State Risk Allocation, then it may give Project Co a notice stating that the Securitised Licence Structure or State Loan Agreement (as applicable) is to be amended to the extent necessary to ensure there is no Increased State Risk Allocation.
- (c) Project Co agrees to do anything reasonably requested by the State in a notice given by the State under Clause 21A.3(b) or otherwise reasonably necessary to modify the Securitised Licence Structure or State Loan Agreement (as applicable) to ensure there is no Increased State Risk Allocation.
- (d) Project Co undertakes not to make any Claim inconsistent with the acknowledgement in Clause 21A.3(a).
- (e) Project Co acknowledges and agrees that:

- (i) damages may not be an adequate remedy for the State for any failure by Project Co to comply with the undertaking in Clause 21A.3(a); and
- (ii) if there is a breach or purported breach by Project Co of its obligation in Clauses 21A.3(c) or 21A.3(d), the State may seek and is entitled to injunctive or declaratory relief.

21A.4 Delay liquidated damages

- (a) Subject to Clauses 21A.4(b) to 21A.4(d), Project Co agrees to pay liquidated damages to the State in an amount equal to each State Loan Payment (other than amounts payable under the State Loan Agreement in connection with the termination of this Agreement) during the Relevant Period and will pay to the State (or as it directs), without need for demand, an amount equal to each such State Loan Payment on the date on which the aggregate of principal and interest which the State is obliged to pay under the State Loan Agreement related to such State Loan Payment is due.
- (b) Project Co has no obligation to pay any amount under Clause 21A.4(a) except to the extent that it has received sufficient funds to enable it to do so by way of:
 - (i) equity contributions specifically for that purpose;
 - (ii) liquidated damages from the Builder under the D&C Subcontract;
 - (iii) Financing Delay Costs; or
 - (iv) other amounts available to Project Co at the election of Project Co.
- (c) The State may not set off any amount due and payable by Project Co to the State under Clause 21A.4 against any amount payable by the State to Project Co.
- (d) The State acknowledges that the State's only right or remedy in respect of non-payment under Clause 21A.4 is the relief under clause 1.3 of the State Loan Agreement from payment of the Amount Due (RP) corresponding to that State Loan Payment.

22 OPERATING PHASE PLANS

- (a) **(Acknowledgement):** Project Co acknowledges that the Operating Phase Plans in Attachment 4 (Operating Phase Plans) are not in final form.
- (b) **(Submission and update):** Project Co must prepare and submit to the State and update the Operating Phase Plans in accordance with this Agreement, including Schedule 13 (Services Specifications), Attachment 4 (Operating Phase Plans) and any subsequent version of the relevant Operating Phase Plan that has been approved by the State and Schedule 19 (Plans), for review in accordance with Schedule 3 (Review Procedures).
- (c) **(Additional information):** Project Co must provide any additional information in relation to the Operating Phase Plans reasonably requested in writing by the State.
- (d) **(Review):** Project Co must review and, where required following that review, update the Operating Phase Plans:
 - (i) at the times set out in this Agreement;
 - (ii) as necessary to reflect any changes to the nature, understanding or status of the Services; and
 - (iii) at any time if reasonably requested by the State to do so.
- (e) **(General requirements):** Project Co must ensure that the Operating Phase Plans:
 - (i) without limiting Clause 22(d), are prepared and updated in accordance with Good Industry Practice;
 - (ii) are aligned and are consistent with this Agreement;

- (iii) meet the requirements set out in Part F of Schedule 13 (Services Specifications);
 - (iv) are aligned and consistent with each other and the D&C Phase Plans; and
 - (v) contain complete and accurate information in respect of the DBFM Project, including providing a detailed description of how Project Co intends to carry out the Services.
- (f) **(Government Agency approval):** If an Operating Phase Plan is required to be approved by a Government Agency, Project Co must ensure that it has obtained that approval prior to submitting the relevant Operating Phase Plan to the State for review. Project Co must comply with all requirements of a Government Agency in respect of regular updates of an Operating Phase Plan.
- (g) **(Delivery):** Project Co must perform the Services and deliver the DBFM Project in accordance with the Operating Phase Plans.
- (h) **(Compliance):** Project Co must comply with the then current version of each Operating Phase Plan (but only to the extent such Operating Phase Plan is not inconsistent with Schedule 13 (Services Specifications)).

23 OPERATIONS

23.1 Operational Interface Agreement

- (a) Project Co acknowledges that, prior to Commercial Acceptance, the State intends to appoint an entity as the Stadium Operator.
- (b) As part of the procurement of the Stadium Operator, the State will provide this Agreement (excluding the Commercial In Confidence information) and the then current Design Documentation to the entities seeking to be appointed as the Stadium Operator for the purpose of preparing their proposals.
- (c) The State will provide the version of the Operator Agreement to be included in the procurement documents and any changes to that Operator Agreement negotiated with the preferred proponent to Project Co. Project Co must review and advise whether the Operator Agreement will or may cause it to be unable to perform its obligations in accordance with this Agreement. The State acknowledges and agrees that the comments provided by Project Co are not binding on Project Co as the only circumstances in which the Operator Agreement would cause it to be unable to perform its obligations in accordance with this Agreement. Project Co does not owe any duty of care to the State to review at all, or in reviewing, commenting or failing to comment on, accepting, approving, endorsing the Operator Agreement, to detect defects, errors, omissions, non-compliances or inconsistencies with this Agreement, any Law or any Authorisation.
- (d) Subject to Project Co agreeing to the form of the Operational Interface Agreement to be executed in accordance with Clause 23.1(e), the State must procure that the Stadium Operator executes an Operational Interface Agreement. Upon appointment of the Stadium Operator and execution of the Operational Interface Agreement by the State and the Stadium Operator, Project Co must execute the Operational Interface Agreement, but only if the Operational Interface Agreement is materially consistent with the form set out in Schedule 26 (Operational Interface Agreement).
- (e) If the Stadium Operator requests any amendments to the form of the Operational Interface Agreement set out in Schedule 26 (Operational Interface Agreement), Project Co will, acting reasonably and in good faith, negotiate with the Stadium Operator and the State with a view to the parties agreeing, and executing, the Operational Interface Agreement as soon as reasonably practicable following the appointment of the Stadium Operator by the State.

- (f) If the State considers Project Co is not acting reasonably or in good faith in the negotiation of the Operational Interface Agreement with the State and the Stadium Operator, the State may refer the matter to dispute resolution in accordance with Clause 45 (but not Clause 45.3), and both the issue of conduct of the negotiation and the substantive issues being negotiated are to be resolved in accordance with the dispute resolution process.
- (g) When Project Co executes the Operational Interface Agreement, it must deliver to the State a legal opinion given for the benefit of the State from solicitors acting for Project Co as to:
 - (i) the legal capacity and corporate power of Project Co to enter into, and perform its obligations in accordance with, the Operational Interface Agreement;
 - (ii) the enforceability of the Operational Interface Agreement against Project Co; and
 - (iii) due execution of the Operational Interface Agreement by Project Co.
- (h) Without limiting any other provision of this Agreement, Project Co must comply with the Operational Interface Agreement.
- (i) Project Co acknowledges that, at any time during the Term, the State, through the Governance Agency, may elect by notice to Project Co to undertake the role of the Stadium Operator. To take effect, the notice must be in writing and stated to be given for the purpose of this clause. If the State gives a notice in accordance with this Clause 23.1(i) and the State requires any changes to the State Project Documents as a result:
 - (i) the parties must meet and agree any changes to the State Project Documents (on a temporary or permanent basis, depending on the duration of the State undertaking the role as Stadium Operator) in order to retain the same risk allocation to the parties which is reflected in this Agreement, including Schedule 26 (Operational Interface Agreement) but with the State taking on the risk allocation of the Stadium Operator; and
 - (ii) the State will pay Project Co its reasonable legal costs incurred in respect of negotiating and agreeing the changes to the State Project Documents.

If the State does not require changes to the State Project Documents (other than as a result of any request for amendment by Project Co), Clause 23.1(i)(ii) does not apply.
- (j) The State must use reasonable endeavours to ensure that the Stadium Operator enters into agreements with Hirers for the use of the Stadium that are in accordance with Operator Good Industry Practice, as that term is defined in the Operational Interface Agreement.

23.2 Services

- (a) Project Co must perform the Services throughout the Operating Phase:
 - (i) so that the:
 - (A) Service Standards set out in Schedule 13 (Services Specifications) and the Quality Standards are met; and
 - (B) Stadium, the Sports Precinct and the Off-Site Infrastructure comply at all times with the FFP Warranty; and
 - (ii) in accordance with Best Operating Practices and otherwise in accordance with this Agreement.
- (b) If Project Co fails to perform the Services in accordance with this Agreement then, without limiting the State's rights under Clauses 8.6(a)(ix), 15.6(d), 36.3, 39.9, 39.10 and 43, the State's right to terminate in accordance with Clause 44 or the

State's rights to any Termination Amount or the amounts set out in Clause 36.5(c), Project Co may be Abated in accordance with Schedule 14 (Payment Schedule).

- (c) Project Co must, in performing the Services:
 - (i) minimise disruption to the State and the Stadium Operator in carrying out the Stadium Activities, including by ensuring the performance of the Services are scheduled so as to avoid or minimise disruption and that all activities are otherwise in accordance with the Operational Interface Agreement; and
 - (ii) provide all technical and managerial support and advice in respect of the Stadium and Sports Precinct as reasonably required by the Stadium Operator.

23.3 Performance Monitoring Program

Project Co must:

- (a) monitor its own performance in accordance with the Performance Monitoring Program;
- (b) subject to Clause 23.3(c), conduct annual audits of its performance of the Services, and provide the outcome of such audits to the State;
- (c) provide the State with a minimum of 5 Business Days written notice prior to undertaking the annual audits, and must only undertake such audits during business hours and otherwise at a time which does not interfere with Stadium Activities; and
- (d) without limiting any other Clause of this Agreement, provide the State with access to the Stadium, the Sports Precinct, the Off-Site Infrastructure, all Records and such other information required by the State to enable the State, from time to time, to conduct its own audit of Project Co's performance of the Services.

23.4 Deferral of maintenance

- (a) Without limiting the Operational Interface Agreement, except where any delay or rescheduling would result in a breach of Law, the State Representative may request that an activity described in the Monthly Services Plan be delayed or rescheduled.
- (b) Project Co must comply with a request of the State Representative pursuant to Clause 23.4(a) unless Project Co reasonably considers that the delay or rescheduling would cause or increase the likelihood of a Service Failure, in which case Project Co must give the State Representative written notice of this opinion.
- (c) Upon receipt of a notice from Project Co under Clause 23.4(b), the State Representative may either withdraw its request for the activity to be delayed or rescheduled or require that the activity be delayed notwithstanding Project Co's notice, in which case Project Co must comply with the State Representative's direction.
- (d) If the State Representative requires the activity to still be delayed or rescheduled and a Service Failure occurs as a consequence of such delay or rescheduling, the State Representative's direction will be deemed to be an Intervening Event, but not a Compensable Intervening Event.

23.5 Liaison

During the Operating Phase, Project Co must regularly liaise with:

- (a) the Stadium Operator and the State Representative, including in relation to undertaking, or preparing to undertake, action which may impact upon the delivery of Stadium Activities or upon the comfort or wellbeing of Stadium Users (other than the State and State Associates); and

- (b) external advisers and Government Agencies as required by the State Representative from time to time, in connection with the Services provided.

24 TRAINING AND INDUCTION

24.1 General

Project Co must ensure that all Project Co Associates, State Associates and Stadium Personnel who are users of:

- (a) ICT Systems;
- (b) Security Systems;
- (c) Building Management IT Hardware and Software;
- (d) AV Systems;
- (e) other Engineering Services, Stadium and Sports Precinct systems, hardware and software (together, **Stadium Systems**); or
- (f) Project Co FF&E,

are trained to use and operate the Stadium Systems or Project Co FF&E (as applicable) to ensure, at all times during the Operating Phase, Project Co Associates competently and effectively provide the Services and the State Associates and Stadium Personnel are able to undertake the Stadium Activities.

24.2 Stadium Personnel Induction and Training Program

Without limiting any other Clause of this Agreement, Project Co must:

- (a) during the Commissioning Period, provide induction and training in accordance with the Stadium Personnel Induction and Training Program to all State Associates and Stadium Personnel nominated by the State;
- (b) during the Operating Phase:
 - (i) provide induction and training in accordance with the Stadium Personnel Induction and Training Program to all new State Associates and Stadium Personnel; and
 - (ii) provide updated induction and training to State Associates and Stadium Personnel if the Stadium Personnel Induction and Training Program is amended during the Term; and
- (c) notify the State Representative and Stadium Operator upon each State Associate's and Stadium Personnel's completion of the Stadium Personnel Induction and Training Program.

24.3 Services Training and Induction Program

Without limiting any other Clause of this Agreement, Project Co must:

- (a) ensure all Project Co Associates involved in the performance of the Services undertake and successfully complete training and induction in accordance with the Services Training and Induction Program prior to performing Services at the Stadium or Sports Precinct (or both);
- (b) notify the State Representative and Stadium Operator upon each Project Co Associate's completion of the Services Training and Induction Program;
- (c) provide ongoing training to Project Co Associates appropriate to their role at least annually;
- (d) ensure Project Co Associates involved in the performance of the Services attend training conducted by the Stadium Operator annually and as otherwise notified by the Stadium Operator from time to time; and

- (e) provide appropriate replacement staff so as to continue to perform the Services while Project Co Associates attend any required training.

24.4 Records

Project Co must retain records of all training and induction (including if reasonably practicable, by way of continuing professional development through 'tool box talks', training events, information sheets and on-the-job training) in order to demonstrate the competencies of all Project Co Associates, State Associates and Stadium Personnel engaged in delivering the Services or the Stadium Activities (as applicable) at any time on request of the State Representative.

25 FF&E DURING THE OPERATING PHASE

25.1 Title and responsibility for risk

- (a) The State will own all FF&E during the Operating Phase.
- (b) Project Co must:
 - (i) transfer title to any Project Co FF&E; and
 - (ii) transfer, or procure the transfer of, all warranties associated with any Project Co FF&E,

which is:
 - (iii) procured by Project Co prior to Commercial Acceptance, at Commercial Acceptance; and
 - (iv) procured by Project Co after Commercial Acceptance, at the time of procurement,

to the State, free from all Encumbrances.
- (c) Subject to the terms of this Agreement, Project Co will be responsible for the performance of and loss or damage to all Group 1 FF&E and Services Equipment during the Term.
- (d) The State agrees that all warranties associated with Group 1 FF&E which are transferred to the State in accordance with Clause 25.1(b) will be available to Project Co during the Term.

25.2 Asset Register

Project Co must:

- (a) prepare and maintain an Asset Register in accordance with Schedule 13 (Services Specifications); and
- (b) make the Asset Register, and any Records in relation to audits undertaken in accordance with this Clause 25, available to the State and the Stadium Operator on request.

25.3 Maintenance and replacement of FF&E during Operating Phase

- (a) **(Group 1 FF&E):** Project Co must maintain, replace and repair all Group 1 FF&E until the end of the Operating Phase in accordance with the Estate Services Plans and Schedule 13 (Services Specifications) and as otherwise required to meet the FFP Warranty.
- (b) **(FF&E):** If Project Co is required to replace Group 1 FF&E, it must do so using FF&E that:
 - (i) has the same standard relative to the market for that Group 1 FF&E at the time of replacement, as the Group 1 FF&E being replaced had relative to the market at the time that the Group 1 FF&E was purchased;

- (ii) has at least the same levels of quality and is as technically up to date as that which would be used in accordance with Best Operating Practices;
 - (iii) has a design life equal to or greater than that of the Group 1 FF&E being replaced; and
 - (iv) does not materially increase operating or maintenance costs to the Stadium Operator, the cost of any Reviewable Services or any other costs payable by the State (and in relation to Group 1 FF&E, if alternative Group 1 FF&E on comparable terms is readily available and would not have had such an effect).
- (c) **(Group 1 FF&E):** Project Co must:
- (i) ensure all items of Group 1 FF&E are securely stored to prevent unauthorised access;
 - (ii) undertake at least one audit of all Group 1 FF&E every 6 Months during the Operating Phase to:
 - (A) record the existence and state of repair of Group 1 FF&E; and
 - (B) otherwise ensure the Asset Register is up to date;
 - (iii) maintain records of Group 1 FF&E and Services Equipment, and make such records available to the State and the Stadium Operator on request; and
 - (iv) ensure all deliveries of Group 1 FF&E and Services Equipment occur during times agreed with the Stadium Operator.

25.4 Services Equipment

Project Co must:

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

26 COMMUNICATIONS AND STAKEHOLDER MANAGEMENT

26.1 D&C Phase reporting requirements

- (a) Project Co must, at the relevant times during the D&C Phase, provide the State with the following reports:
 - (i) each Month, the following Monthly reports:
 - (A) a report on the previous and upcoming Months' communication activities;
 - (B) a database summary that includes a record of all contacts, key issues and resolutions;
 - (C) copies of all Communication Materials used; and
 - (D) a CD of production quality digital moving and still images of construction activities taken in the previous Month; and
 - (ii) each Quarter, the following Quarterly reports:
 - (A) that Month's Monthly reports;

- (B) a summary report of the previous and upcoming Quarters' communication activities; and
 - (C) a report on the key performance indicators.
- (b) The reports referred to in Clauses 26.1(a)(i) and 26.1(a)(ii) may be used by the State, the Stadium Operator and the Hirers for their communications and promotional requirements throughout the D&C Phase.

26.2 General requirements

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

27 DEFERRAL OF LIFECYCLE SERVICES

- (a) **(Deferral):** Without limiting the Operational Interface Agreement, Project Co may only defer Lifecycle Services in accordance with this Clause 27 and only if, notwithstanding the deferral, Project Co will continue to satisfy the FFP Warranty and, at the Expiry Date, will satisfy the Handover Condition.
- (b) **(Proposal):** If Project Co proposes to defer any Lifecycle Services specified in any Estate Services Plan, it must identify the proposed deferral in any updated Estate Services Plan and the period of time of the deferral.
- (c) **(State may reject (a)):** The State may reject any Estate Services Plan updated in accordance with Clause 27(b):
- (i) in accordance with Schedule 3 (Review Procedures);
 - (ii) if the proposed deferral is for a Premium Product Area, as that term is defined in Schedule 13 (Services Specifications); or
 - (iii) if the State Representative is of the view, acting reasonably, that such plans will not enable Project Co to continue to satisfy the FFP Warranty and, at the Expiry Date, satisfy the Handover Condition.
- (d) **(State may reject (b)):** The State may reject any Estate Services Plan updated in accordance with Clause 27(b) if Project Co's proposed deferral of the performance

of the first Lifecycle Services in respect of each item listed in Annexure B of Schedule 13 (Services Specifications) under Clause 27(b) would, if approved, result in the Lifecycle Services being deferred from the Operating Year when the works were initially scheduled to be undertaken in the relevant Estate Services Plan current as at Commercial Acceptance, by a period (measured in Operating Years) equal to or greater than:

$[not\ disclosed] \times P$

Where:

P = the Operating Year (expressed as a number from 1 to 25) in which those works were initially scheduled to be undertaken.

- (e) **(State may reject (c)):** The State may reject any Estate Services Plan updated in accordance with Clause 27(b) if Project Co's proposed deferral of the performance of any subsequent Lifecycle Services in respect of each item listed in Annexure B of Schedule 13 (Services Specifications) under Clause 27(b) would, if approved, result in the relevant Lifecycle Services being deferred from the Operating Year when the works were initially scheduled to be undertaken in the Operating Phase Lifecycle Maintenance Plan current as at Commercial Acceptance, by a period (measured in Operating Years) equal to or greater than:

$([not\ disclosed] \times P) + TD$

Where:

P = the number of Operating Years between the Operating Year in which the relevant Lifecycle Services were initially scheduled to be undertaken in the Operating Phase Maintenance Lifecycle Plan current as at Commercial Acceptance and the Operating Year in which the previous Lifecycle Services were initially scheduled to be undertaken in the Operating Phase Maintenance Lifecycle Plan current as at Commercial Acceptance; and

TD = the total of the previously approved deferral periods in connection with the Lifecycle Services (measured in Operating Years).

Worked Example

Assume that Project Co's Operating Phase Lifecycle Maintenance Plan at Commercial Acceptance states that the carpet in a particular Functional Unit will be replaced in Operating Years $[not\ disclosed]$ and $[not\ disclosed]$.

In respect of the first replacement of the carpet in Operating Year $[not\ disclosed]$, Clause 27(d) applies and the State may reject any Estate Services Plan updated in accordance with Clause 27(b) if it proposes to defer the replacement of the carpet from Operating Year $[not\ disclosed]$ as originally contemplated to Operating Year $[not\ disclosed]$ or later.

$[not\ disclosed]$, therefore assume that deferral by $[not\ disclosed]$ Operating Years may be rejected.

Assume that Project Co defers the first replacement of the carpet in the above-mentioned example to Operating Year $[not\ disclosed]$. In respect of the second replacement of the carpet in Year $[not\ disclosed]$, Clause 27(e) applies and the State may reject any Estate Services Plan updated in accordance with Clause 27(b) if it proposes to defer the replacement of the carpet from Operating Year $[not\ disclosed]$ as originally contemplated to Operating Year $[not\ disclosed]$ or later.

$[not\ disclosed]$, therefore assume that deferral by $[not\ disclosed]$ Operating Years may be rejected.

28 MINOR WORKS

28.1 Process for performance of Minor Works

- (a) **(State notice):** The State may, at any time from the Operational Commencement Date, notify Project Co of any Minor Works required to be performed by way of a notice entitled 'Minor Works Notice' (**Minor Works Notice**).
- (b) **(Project Co Notice):** As soon as possible, but in any event no later than 5 Business Days of receipt by Project Co of a Minor Works Notice, Project Co must prepare and submit for the approval of the State a notice entitled 'Minor Works Quote' (**Minor Works Quote**) which sets out:
- (i) the Minor Works Price calculated on an open book basis with the breakdown of goods, services, labour, equipment, materials, Subcontract costs and any recurring costs clearly set out and available for review by the State;
 - (ii) an estimate of the time to complete the proposed Minor Works;
 - (iii) details of any Subcontractors proposed to be engaged to implement the Minor Works;
 - (iv) details of the impact, if any, of the Minor Works on:
 - (A) the provision, by Project Co, of the Services;
 - (B) Project Co's ability to comply with this Agreement; and
 - (C) the undertaking by the Stadium Operator of the Stadium Activities;
 - (v) whether the sum of the Minor Works Price and all other payments paid or payable for Minor Works, undertaken in accordance with this Clause 28, in that Operating Year will exceed the Minor Works Limit and if not, the amount available for future Minor Works in that Operating Year; and
 - (vi) any other particulars reasonably requested by the State.
- (c) **(State to advise):** Within a reasonable time of receiving a Minor Works Quote, the State must advise Project Co whether the Minor Works Quote is approved or rejected by the State.
- (d) **(Rejection):** If the State rejects the Minor Works Quote then the State may:
- (i) elect not to proceed with the proposed Minor Works;
 - (ii) proceed to implement the works itself or engage a third party to carry out the required works, in which case the works will not be Minor Works; or
 - (iii) take such other course of action it considers necessary in the circumstances.
- (e) **(Approval):** If the State approves the Minor Works Quote, Project Co must carry out the Minor Works for the Minor Works Price included in the relevant Minor Works Quote.
- (f) **(Not to commence):** Project Co must not commence any work or incur any cost, and will not have any entitlement to make any Claim in connection with any proposed Minor Works, unless a Minor Works Quote has been approved in accordance with Clause 28.1(c).

28.2 Notice of Minor Works

- (a) If, in Project Co's opinion, any direction given by the State or the Stadium Operator, other than any such direction given in a Minor Works Notice, constitutes or involves Minor Works, Project Co must provide written notice to this effect to the State within 48 hours of receipt of the direction.

- (b) If the State agrees that the direction constitutes and involves Minor Works then the State will serve a Minor Works Notice and the process for performance of the Minor Works will proceed in accordance with Clause 28.1.
- (c) Except as set out in the Operational Interface Agreement, Project Co must not commence any work the subject of a direction which it believes constitutes a direction to perform Minor Works unless the State agrees that the direction constitutes Minor Works and the State approves the Minor Works Quote under Clause 28.1(c).

28.3 Variations to the approved Minor Works Costs

- (a) Unless otherwise agreed with the State at the time it receives the Minor Works Quote, the Minor Works Price must be a fixed lump sum.
- (b) Where the actual Minor Works Costs incurred in connection with Minor Works implemented in accordance with Clause 28.1(e) are likely to exceed the Minor Works Price approved in accordance with Clause 28.1(c):
 - (i) Project Co must ensure that prior to exceeding the approved Minor Works Price, it advises the State that the Minor Works Cost is likely to exceed the approved Minor Works Price, the amount by which it proposes the Minor Works Price should be increased and the reasons for this, including evidence reasonably acceptable to the State;
 - (ii) the State must advise Project Co within 72 hours of receiving the information required to be provided under Clause 28.3(b)(i), whether the State approves the increased Minor Works Price and Project Co must not proceed with the additional Minor Works until such time as such approval is received; and
 - (iii) if the State does not approve the additional Minor Works Price, the State may direct Project Co to immediately discontinue the Minor Works and must (if applicable) pay Project Co the Minor Works Cost for the Minor Works undertaken by Project Co, and any reinstatement costs reasonably incurred, up to the date of any such direction up to the amount of the approved Minor Works Price.
- (c) Clause 28.3(b) does not apply in respect of Minor Works Costs that are incurred unreasonably or as a result of Project Co undertaking the Minor Works otherwise than in accordance with Good Industry Practice.

28.4 Completion

Project Co must notify the State upon completion of the Minor Works implemented in accordance with Clause 28.1(e).

28.5 Payment for Minor Works

- (a) **(No increase):** Subject to Clauses 28.5(b) and 28.5(f), Project Co acknowledges that it is not entitled to any increase to the Monthly Service Payment or a separate payment as a result of performing any Minor Works.
- (b) **(State to pay):** If:
 - (i) the performance of any Minor Works will result in the Minor Works Limit for any Operating Year being exceeded; and
 - (ii) the State has approved the Minor Works that resulted in the Minor Works Limit being exceeded in accordance with Clause 28.1(c),
 the State must pay for such Minor Works within 20 Business Days of receipt of an Invoice from Project Co, capped at the amount of the Minor Works Quote approved by the State plus any increase in the Minor Works Price approved by the State under Clause 28.3(b)(ii).

- (c) **(No Margin):** For the purpose of preparing a Minor Works Quote, Project Co, the FM Subcontractor and any other Subcontractor who undertakes the Minor Works are not entitled to payment of any Margin in connection with the Minor Works other than the FM Margin.
- (d) **(Minor Works Limit):** If the Minor Works Limit for the previous Operating Year is not fully expended, the State may require:
 - (i) Project Co to pay any amount of the relevant Minor Works Limit not expended and such amount will be a debt due and payable by Project Co to the State; or
 - (ii) any amount of the relevant Minor Works Limit not expended to be carried over to the following Operating Year, in which case the amount of the Minor Works Limit for that following Operating Year will be increased by the amount not expended.
- (e) **(Project Co to pay):** If 1 Month prior to the end of the Term the then current Minor Works Limit for that Operating Year has not been fully expended or repaid in accordance with Clause 28.5(d)(i), Project Co must pay to the State the amount of any remaining monies as a lump sum at the time of presentation of the Invoice for the last Month of that Operating Year.
- (f) **(Final Month payment):** The State must pay for any Minor Works undertaken during the final Month prior to the end of the Term within 20 Business Days of receipt of an Invoice from Project Co.

28.6 Subcontract provisions

Project Co must ensure that any FM Subcontract in connection with Minor Works contains:

- (a) provisions (including acknowledgements, agreements and warranties) to give effect to the regime set out in Clauses 28.1 to 28.5; and
- (b) acknowledgements by the FM Subcontractor that:
 - (i) it will not be entitled to make any Claim in connection with the Minor Works unless it strictly complies with the notice provisions set out in this Clause 28; and
 - (ii) it will not be entitled to payment of any Margin (other than the FM Margin) for Minor Works.

28A PITCH DEFECTS

28A.1 Application of this Clause 28A

This Clause 28A applies solely in relation to Pitch Defects occurring at any time after Commercial Acceptance.

28A.2 Notice of Pitch Defect

Immediately upon the occurrence of a Sinkhole or when a Settlement Defect becomes apparent to Project Co, Project Co must provide the State with notice of the Pitch Defect. The notice must include:

- (a) details of any Events that are likely to be cancelled as a result of the occurrence of the Pitch Defect; and
- (b) the details of any temporary rectification possible (including, for example, using a staged platform to hold concerts) to enable the next scheduled Event or Events to be held until the permanent rectification of the Pitch Defect.

28A.3 Pitch Rectification Plan

As soon as practicable following the notice under Clause 28A.2 or a written notice from the State advising of a Pitch Defect (whichever is earlier), Project Co must provide the State with a written plan:

- (a) giving details regarding the nature of the Pitch Defect, including its location, magnitude and the likely impact of the Pitch Defect;
- (b) indicating how it intends to permanently rectify the Pitch Defect or, in the case of a Settlement Defect, indicating how it intends to overcome the consequences of the Settlement Defect; and
- (c) confirming the date by which it will have permanently rectified the Pitch Defect, being the time that it would take an experienced, skilled and qualified contractor acting in accordance with Best Operating Practices to permanently rectify the Pitch Defect and, in the case of a Settlement Defect, having regard to the fact that Project Co may, subject to Clause 28A.6(c), only undertake works in an Off Season,

(Pitch Rectification Plan). The State may dispute the nominated Due Date for Rectification and the method of rectification, in which case, the Dispute will be referred for resolution in accordance with the Expedited Dispute Resolution Procedure.

28A.4 Temporary rectification of Sinkholes

- (a) Immediately upon the occurrence of a Sinkhole (and without waiting for the Pitch Rectification Plan to be finalised), Project Co must take all proper and reasonable steps to ensure the safety of Stadium Users and use its best endeavours to implement the temporary rectification notified to the State in accordance with Clause 28A.2(b) to, where possible, enable the scheduled Events to be held pending permanent rectification of the Sinkhole.
- (b) In Clause 28A.4(a), 'best endeavours' includes (without limiting any higher standard as may be required by Law) Project Co taking, and continuing to take, all proper and reasonable steps:
 - (i) to temporarily rectify and overcome the effects of the Sinkhole;
 - (ii) to avoid and minimise the formation of additional Sinkholes; and
 - (iii) to avoid and minimise any damage to the Stadium or Sports Precinct,
 in the shortest possible time, including the expenditure of money, rescheduling of manpower and resources and implementing appropriate temporary measures and fixes, including those reasonably required by the State.

28A.5 Permanent rectification of Sinkholes

- (a) If a Sinkhole occurs, Project Co must permanently rectify that Sinkhole by the Due Date for Rectification.
- (b) Project Co will be responsible for all costs and expenses associated with rectifying any Project Co Sinkhole (including any temporary or permanent rectification of the Project Co Sinkhole).
- (c) The State will be liable to pay Project Co for the cost of rectifying any Qualifying Sinkhole (both temporarily, including costs incurred by Project Co under Clause 28A.4, and permanently). The amount that the State must pay in respect of the rectification of the Qualifying Sinkhole will be determined in accordance with Schedule 4 (Change Compensation Procedures).

28A.6 Rectification of Settlement Defects

- (a) If a Settlement Defect occurs, Project Co must rectify that Settlement Defect by the relevant Due Date for Rectification.
- (b) Subject to Clause 28A.6(c), Project Co may only perform Settlement Defect Works in the period between the end of the AFL season and the beginning of the next AFL season, during the various Off Seasons.
- (c) If the parties agree (or it is determined in accordance with the Expedited Dispute Resolution Procedure) that it would not be possible for an experienced, skilled and qualified contractor acting in accordance with Best Operating Practices to rectify a

Settlement Defect during the various Off Seasons between the end of the AFL season and the beginning of the next AFL season (assuming that the performance of the Settlement Defect Works commenced immediately following the commencement of that period), Project Co may continue to perform the Settlement Defect Works beyond the expiry of the Off Season provided that:

- (i) Project Co has, prior to the commencement of the relevant period, mobilised and undertaken all required planning (as would be required of an experienced, skilled and qualified contractor acting in accordance with Best Operating Practices) to enable Project Co to commence (and Project Co does in fact commence) the performance of the Settlement Defect Works without delay following the commencement of the relevant period; and
 - (ii) during the various Off Seasons, and any period following an Off Season, where it is agreed that Project Co may perform Settlement Defect Works, those works are performed continuously and expeditiously.
- (d) If a Settlement Defect occurs (in the State's reasonable opinion), Project Co must undertake the whole or substantial replacement of the Pitch including, at the State's direction, undertake the full replacement of the Pitch in accordance with the requirements of Clauses 28A.3 and 28A.6(a) to (c), and all costs and expenses associated with the first such replacement will be the responsibility of Project Co. For clarity:
- (i) a full replacement of the Pitch directed by the State in accordance with this Clause 28A.6(d) will be a Qualifying Settlement Defect (and therefore a Qualifying Pitch Defect) if the requirements in the definition of 'Qualifying Settlement Defect' are met; and
 - (ii) if a full replacement of the Pitch directed by the State in accordance with this Clause 28A.6(d) is a Qualifying Settlement Defect, Section 4.18 of Schedule 14 (Payment Schedule) applies in respect of that Qualifying Settlement Defect.
- (e) Subject to Clause 28A.6(d), the State will be responsible for all costs and expenses (other than those costs and expenses which are properly attributable to the Playing Surface or Playing Surface Services which the State is liable to pay as part of the Monthly Service Payment (whether or not Project Co is providing the Playing Surface Services)), of rectifying Settlement Defects to the extent that the Settlement Defect manifests at any time after the date which is 3 years after the Date of Commercial Acceptance. The amount that the State must pay in respect of the rectification of the Settlement Defect will be determined in accordance with Schedule 4 (Change Compensation Principles).
- (f) Project Co will be responsible for all costs and expenses associated with rectifying any Settlement Defect that is not stated to be the responsibility of the State in Clause 28A.6(e) and all costs and expenses associated with any other gradual settlement of the Pitch that is not a Settlement Defect.

28A.7 No relief

- (a) Project Co will be relieved from its obligations to perform the Services from the time that a Pitch Defect is notified to the State in accordance with Clause 28A.2 until the Due Date for Rectification of that Pitch Defect, unless otherwise agreed by the State (acting reasonably), but only to the extent that Project Co is unable to perform those Services as a direct consequence of the existence of the Pitch Defect.
- (b) Except to the limited extent provided for in Clause 28A.7(a), nothing in Clause 28A or Section 4.18 of Schedule 14 (Payment Schedule) will relieve Project Co from its obligation to continue performing the Services during the existence of a Pitch Defect.

28B EXPEDITED DISPUTE RESOLUTION

28B.1 Appointment and term

- (a) The parties will, prior to Commercial Acceptance, nominate a panel of experts for the purpose of resolving disputes under Clause 28A (**Pitch Panel**) which are stated in Clause 28A to be referable to the Expedited Dispute Resolution Procedure (**Relevant Dispute**).
- (b) The Pitch Panel will consist of:
 - (i) a geotechnical engineer;
 - (ii) a pitch advisor; and
 - (iii) a subsurface engineer,
 each having appropriate qualifications and sufficient practical experience to resolve any Relevant Dispute arising under Clause 28A.
- (c) The members of the Pitch Panel may not be State Associates or Project Co Associates, unless otherwise agreed to by the parties.
- (d) Upon each 5 year anniversary of the Date of Commercial Acceptance, the parties will appoint a replacement Pitch Panel in accordance with this Clause 28B.
- (e) If the parties fail to agree on the members of the Pitch Panel prior to Commercial Acceptance or the date on which the Pitch Panel is to be replaced in accordance with Clause 28B.1(d), then the remaining members of the Pitch Panel will be nominated by the president of the institute or governing body for the technical or professional discipline of the relevant member, having regard to any members of the Pitch Panel proposed by the parties in writing to that person.

28B.2 Expedited Dispute Resolution Procedure

- (a) Subject to Clause 28B.2(i), any party to a Relevant Dispute under Clause 28A may by notice (**Pitch Referral Notice**) to the other party refer the Relevant Dispute to the Pitch Panel for resolution. The Pitch Referral Notice must specify in reasonable detail the nature of the Relevant Dispute.
- (b) If a Relevant Dispute is referred to the Pitch Panel, the Pitch Panel must promptly meet to resolve the Relevant Dispute.
- (c) If the Pitch Panel decides that further information is required, the Pitch Panel may call for further submissions, documents or information from either or both parties and the Pitch Panel must provide any information received from one party to the other party.
- (d) Determinations of the Pitch Panel may only be made by unanimous agreement of the members of the Pitch Panel.
- (e) All conferences of the Pitch Panel under this Clause 28B must be held in private.
- (f) The members of the Pitch Panel may, if they consider it necessary, visit the Stadium for the purpose of examining the Pitch, and the parties must facilitate such access.
- (g) The Pitch Panel must make its determination in relation to the Relevant Dispute within 10 Business Days of receipt of the Pitch Referral Notice by the Pitch Panel.
- (h) The members of the Pitch Panel will act as experts and not arbitrators and may make a decision from their own knowledge and expertise.
- (i) If the Pitch Panel cannot reach a unanimous determination:
 - (i) the Relevant Dispute will be referred to the national president of Engineers Australia (or, if that person has a conflict of interest, does not have the relevant expertise or is otherwise unable to act, his or her nominee) (**President**) for resolution;

- (ii) the President will make a determination on the Relevant Dispute within 10 Business Days of referral of the Relevant Dispute to him or her;
 - (iii) the members of the Pitch Panel will provide the President all information relating to the Relevant Dispute (including any evidence of their reasoning) with the referral of the Relevant Dispute to the President, and provide such other assistance as may be reasonably requested;
 - (iv) the President will make a determination on the Relevant Dispute on the basis of the information provided by the Pitch Panel and any further information that the President requests in respect of the Relevant Dispute; and
 - (v) Clauses 45.3(e), 45.3(h), 45.3(n), 45.3(o) and 45.3(p) apply to the determination of the Relevant Dispute by the President.
- (j) For the avoidance of doubt, the Pitch Panel and the President may only make a determination in relation to a Relevant Dispute and will not be entitled to decide any legal issues which arise out of or in connection with a part of the Relevant Dispute which, for the avoidance of doubt, do not form part of a Relevant Dispute.
- (k) To the extent permitted by Law, the determination of the Pitch Panel or, where Clause 28B.2(i) applies, the President, is final and binding on the parties.
- (l) Notwithstanding the existence of a Relevant Dispute, or any related dispute under Clause 45, Project Co will diligently pursue the rectification of any Pitch Defect in accordance with Clause 28A and the State will pay to Project Co the disputed costs of rectifying the Pitch Defect until such time as the Relevant Dispute is determined or the related dispute resolved. Without limiting the implementation of the outcome of the dispute resolution, if the resolution of the Relevant Dispute or related dispute is that the State has overpaid Project Co (including an overpayment as a result of an Abatement not being applied to the Monthly Service Payment), the amount of the overpayment is a debt due to the State by Project Co and, without limiting the State's rights in respect of the debt, the State may deduct the debt from any monies due and payable to Project Co, in accordance with Clause 54.2.

28B.3 General

- (a) The members of the Pitch Panel must undertake to the State and Project Co to keep confidential all matters coming to their knowledge by reason of their appointment, the performance of their duties and the exercise of their powers.
- (b) The Pitch Panel will determine its own procedures for meetings and unless the Pitch Panel otherwise determines all meetings will be held in Perth.
- (c) The cost of the Pitch Panel must be borne equally by the State and Project Co, unless the determination is made against the party who issued the Pitch Referral Notice, in which case the Pitch Panel may (in its discretion) determine that that party will bear all or a greater proportion of the Pitch Panel's costs in respect of that matter.
- (d) No member of the Pitch Panel will be liable to the parties for anything arising out of, or in any way in connection with, the determination process for a Relevant Dispute, except in the case of fraud.

29 INTERVENING EVENTS

29.1 Intervening Events

- (a) If Project Co believes an Intervening Event has occurred following the Date of Commercial Acceptance which has prevented or delayed, or will prevent or delay, performance of the Services, then Project Co must, without limiting Project Co's obligations under Schedule 14 (Payment Schedule):
 - (i) notify the State of the existence of the Intervening Event as soon as possible and in any event within 48 hours of the earlier of:

- (A) the time Project Co becomes aware; or
 - (B) the time Project Co ought reasonably to have become aware, that an Intervening Event will prevent or delay, or is likely to prevent or delay, the performance of the Services; and
 - (ii) submit a Change Notice in accordance with Schedule 4 (Change Compensation Principles) within 10 Business Days after giving the notice referred to in Clause 29.1(a)(i).
- (b) A Change Notice submitted under Clause 29.1(a)(ii) must contain:
- (i) details of:
 - (A) the nature of the Intervening Event, including details of the basis on which Project Co has formed the opinion that the event constitutes an Intervening Event;
 - (B) the obligations affected by the Intervening Event and an estimate of the time (if any) during which Project Co will be unable to carry out the affected obligations; and
 - (C) any damage caused by the Intervening Event;
 - (ii) any other information required by the State; and
 - (iii) if Project Co believes the Intervening Event is a:
 - (A) Compensable Intervening Event, details of any amount, calculated in accordance with Schedule 4 (Change Compensation Principles), to which it considers it is entitled; or
 - (B) Force Majeure Event for which Project Co is entitled to payment under Clause 29.7, details (including evidence to the State's satisfaction) confirming that the circumstances referred to in Clause 29.7 have occurred and details of the calculation of any payment claimed in accordance with Clause 29.7.
- (c) Within 5 Business Days of the date of each Change Notice submitted under this Clause 29, the parties must meet and seek to agree on:
- (i) whether the occurrence set out in the Change Notice is an Intervening Event;
 - (ii) the consequences and the required relief (if any);
 - (iii) the action Project Co is required to take to minimise the consequences of the Intervening Event; and
 - (iv) all insurance moneys to which Project Co will be entitled as a result of an Intervening Event.
- (d) After the meeting under Clause 29.1(c), the State will provide Project Co with minutes of the meeting, including detailing any matters agreed.

29.2 Conditions Precedent to relief

It is a condition precedent to any relief or entitlement in connection with an Intervening Event being granted in accordance with this Agreement, that:

- (a) Project Co has strictly complied with the notice provisions set out in Clause 29.1(a) and, in respect of Clause 29.1(a)(i), the notice must only have been provided within the 48 hour period referred to in Clause 29.1(a);
- (b) neither Project Co nor any Project Co Associate has, by act or omission (other than any act or omission expressly permitted and undertaken in accordance with this Agreement), directly or indirectly caused or contributed to the Intervening Event, except that where Project Co or a Project Co Associate has contributed to the

- Intervening Event, Project Co will still be entitled to relief but its entitlement will be reduced to the extent it has contributed to the Intervening Event;
- (c) the Intervening Event was beyond the reasonable control of Project Co or any Project Co Associate;
 - (d) Project Co has taken, and is continuing to take, all proper and reasonable steps:
 - (i) to minimise the duration of the Intervening Event; and
 - (ii) to avoid or minimise the consequences of the Intervening Event, including:
 - (A) by putting in place temporary measures, including those reasonably required by the State; and
 - (B) by continuing to take proper and reasonable steps (including the expenditure of money, rescheduling of manpower and resources and implementing appropriate temporary measures) to cure, avoid or minimise the consequence of the Intervening Event (including any damage to the Stadium, Sports Precinct or the Off-Site Infrastructure); and
 - (e) Project Co has otherwise complied with this Clause 29.2.

29.3 Obligations suspended

- (a) To the extent that the Intervening Event prevents Project Co from performing the Services in accordance with this Agreement:
 - (i) the obligation to perform such Services will be suspended; and
 - (ii) the failure to perform such suspended obligations will not be a breach of this Agreement by Project Co, an Event of Default or an Immediate Termination Event,

but only until the Intervening Event ceases to prevent performance of the relevant obligation, or would have ceased to prevent performance had Project Co complied with Clause 29.2(d).
- (b) Nothing in this Clause 29.3 entitles Project Co to any relief from its obligations in accordance with this Agreement which are not affected by the Intervening Event.

29.4 Payment

Notwithstanding that:

- (a) Project Co's obligation to perform the Services affected by any Intervening Event is suspended; or
- (b) the Services are being provided by the State in accordance with this Agreement, the State will continue to pay the Monthly Service Payment in connection with the Services affected by the Intervening Event and State Loan Payment for the period of suspension under Clause 29.3 after deducting:
 - (c) the amount of recurrent costs which are not in fact incurred by Project Co during the period, because the obligation to provide the relevant Services has been suspended or those Services are being provided by the State in accordance with this Agreement;
 - (d) any amount recovered by Project Co from third parties, or that would have been able to be recovered by Project Co if it had used reasonable endeavours to recover the relevant amounts from third parties, in respect of the Intervening Event; and
 - (e) to the extent that the Intervening Event or the risk giving rise to the Intervening Event is required to be insured against in accordance with this Agreement, the amounts of such insurances that are paid or would have been payable had Project Co complied fully with its obligations in accordance with this Agreement.

29.5 Compensable Intervening Events

If Project Co's obligations are suspended under Clause 29.3 because of a Compensable Intervening Event, the State will pay Project Co an amount calculated in accordance with Schedule 4 (Change Compensation Principles), provided that Project Co has complied and continues to comply with Clause 29.2(d), including by minimising the impact of the Compensable Intervening Event and its costs resulting from the Compensable Intervening Event.

29.6 Cessation of Intervening Event

Project Co must:

- (a) notify the State immediately after it ceases to be prevented from performing any of its obligations in accordance with this Agreement as a result of an Intervening Event; and
- (b) once any necessary repairs to, or reconstruction of, the Stadium, the Sports Precinct or the Off-Site Infrastructure have been completed by Project Co in accordance with this Agreement, immediately recommence performance of all obligations suspended as a result of the Intervening Event, and the State may no longer exercise its rights under this Clause 29 in connection with the relevant Intervening Event.

29.7 Relief for Force Majeure

- (a) **(Abatement during force majeure):** Unless Clause 44.2 applies, notwithstanding that:

- (i) Project Co's obligations to perform the Services affected by a Force Majeure Event are suspended; or
- (ii) the Services are being provided by the State in accordance with this Agreement,

without limiting Clause 29.7(c), the Monthly Service Payment and State Loan Payment will still be subject to Abatement in accordance with Schedule 14 (Payment Schedule) and Clause 36.3(c) (respectively) to the extent Services are not being provided in accordance with this Agreement as a result of a Force Majeure Event.

- (b) **(Event of Default):** Any Abatement calculated in accordance with Clause 29.7(a) will not be included in the calculation of Abatements for the purposes of determining whether an Event of Default or Immediate Termination Event has occurred, provided that Project Co is complying with its obligations under Clauses 29.2(a) and 29.2(d).

- (c) **(Application):** If:

- (i) Project Co's obligations are suspended due to the occurrence of a Force Majeure Event;
- (ii) Clause 44.2 does not apply;
- (iii) the suspension results in the Monthly Service Payment and State Loan Payment being Abated to such an extent that the Monthly Service Payment and State Loan Payment is less than the sum of:
 - (A) a Project Entity's scheduled principal repayments and interest on its Debt obligations; and
 - (B) [not disclosed] of the Fixed Force Majeure Costs; and
- (iv) the circumstances giving rise to the Force Majeure Event are not:
 - (A) risks which are, or should be, insured in accordance with this Agreement;

- (B) risks which are Uninsurable Risks (as defined, agreed between the parties in accordance with Clause 40.13 or determined in accordance with Clause 45); or
- (C) insurable risks customarily insured by persons, acting in accordance with Best Operating Practices, providing services similar to the Services,

the State must pay Project Co the amount calculated in accordance with Clause 29.7(d).

- (d) **(Amount payable):** For the duration of the Force Majeure Event for which Project Co is entitled to payment under Clause 29.7(c), the amount of the payment to be made by the State to Project Co will be the greater of:
 - (i) the minimum amount necessary to enable a Project Entity to pay:
 - (A) its scheduled principal repayments and interest on its Debt; and
 - (B) [not disclosed] of the Fixed Force Majeure Costs; or
 - (ii) the Monthly Service Payment and State Loan Payment payable to Project Co under Clause 29.4, as reduced by any Abatement in accordance with Clause 29.7(a).
- (e) **(Dispute):** Any dispute as to any amounts payable under this Clause 29.7 is to be determined by an Independent Expert in accordance with Clause 45.

29.8 Alternative arrangements

During the period of suspension for a Force Majeure Event during the Operating Phase which impacts on the Stadium, Sports Precinct or the Off-Site Infrastructure, the State may make alternative arrangements for the performance of any suspended obligations (without incurring any Liability to Project Co except in the circumstances set out in paragraph (f) of the definition of Intervening Event and Clause 21(g)).

30 REPRICING REVIEWABLE SERVICES

30.1 Preparation of repricing

- (a) No later than 15 Months before each Reviewable Services Date, Project Co must meet with the State to agree:
 - (i) changes to be made to Schedule 13 (Services Specifications) and Schedule 14 (Payment Schedule) for the Reviewable Services, for the purposes of the next Reviewable Services Term, including in connection with any Project Specific Change in Law, General Change in Law, Change in Quality Standards and Modifications;
 - (ii) a timetable for the repricing of the Reviewable Services; and
 - (iii) any bundling of the Reviewable Services for repricing.
- (b) No later than 13 Months before each Reviewable Services Date, Project Co must provide the State with Schedule 13 (Services Specifications) and Schedule 14 (Payment Schedule) updated in accordance with Clause 30.1(a), for review and approval by the State in accordance with Schedule 3 (Review Procedures).
- (c) If:
 - (i) agreement is reached in connection with the matters referred to in Clause 30.1(a), the repricing of Reviewable Services must proceed in accordance with this Clause 30, as amended in accordance with the matters agreed; or
 - (ii) no agreement is reached in connection with any of the matters in Clause 30.1(a), insofar as this relates to:

- (A) changes to be made to Schedule 13 (Services Specifications) or Schedule 14 (Payment Schedule) for the Reviewable Services, for the purposes of the next Reviewable Services Term (other than pricing for the relevant Reviewable Services), Schedule 13 (Services Specifications) and Schedule 14 (Payment Schedule) must be changed in accordance with the State's requirements;
- (B) the timetable for the repricing of the Reviewable Services, the timetable in this Clause 30 will prevail; or
- (C) any bundling of the Reviewable Services for repricing, the Reviewable Services must be bundled as required by the State.

30.2 Request for offer to reprice

- (a) **(Offer):** The State Representative may request that Project Co submit an offer for the provision of each Reviewable Service, or a package of the Reviewable Services (as agreed or determined in accordance with Clause 30.1(c)(ii)) for the ensuing Reviewable Services Term and give Project Co at least 1 month to submit such an offer.
- (b) **(Project Co offer):** Whether or not the State Representative has made a request in accordance with Clause 30.2(a), no later than 11 Months before the Reviewable Services Date, Project Co may submit an offer for the provision of the Reviewable Services for the ensuing Reviewable Services Term, as agreed or determined in accordance with Clause 30.1(c)(ii).
- (c) **(Offer detail):** Project Co's offer must:
 - (i) break down the price for each of the Reviewable Services for the ensuing Reviewable Services Term; and
 - (ii) detail all of the relevant factors and inputs into the proposed price, including proposals in connection with labour and materials required to perform the Reviewable Services.
- (d) **(Offer submitted):** If Project Co submits an offer in accordance with Clause 30.2(a) or Clause 30.2(b), then:
 - (i) for a period of 4 Months after the offer is submitted, the State Representative agrees to negotiate exclusively with Project Co for the provision of the relevant Reviewable Service during the applicable ensuing Reviewable Services Term; and
 - (ii) the State Representative will, by a date no later than 1 Month after the expiration of that 4 Month period, advise Project Co whether:
 - (A) Project Co's final offer is acceptable to the State for the provision of the relevant Reviewable Service during the applicable ensuing Reviewable Services Term; or
 - (B) whether the State requires a competitive tender to be conducted under Clause 30.4.
- (e) **(Offer remains open):** Notwithstanding that the State may require Project Co to conduct a competitive tender in accordance with Clause 30.4, Project Co's offer must remain open for subsequent acceptance by the State under Clause 30.2(d)(ii)(A) until the Tender Expiry Date.

30.3 No offer made

If Project Co does not submit an offer under Clause 30.2(a) or Clause 30.2(b):

- (a) the provision of those Reviewable Services will continue on the then current terms and pricing for the ensuing Reviewable Services Term; and

- (b) without limiting the State's rights in accordance with this Agreement, the State may, by notice in writing to Project Co, require a competitive tender to be conducted in accordance with Clause 30.4.

30.4 Competitive tender

- (a) **(Competitive Tender):** Within 1 Month of a notice from the State under Clause 30.2(d)(ii)(B) or Clause 30.3(b), requiring that a competitive tender be undertaken, Project Co must conduct the competitive tender in accordance with this Clause 30.4.
- (b) **(Review of request for tender):** Project Co must provide to the State Representative, the request for tender that Project Co proposes to issue to prospective tenderers and the list of proposed tenderers for each of the Reviewable Services that are to be put out to competitive tender (which must address the criteria in Clause 30.4(c) and Clause 30.4(e)), for review in accordance with Schedule 3 (Review Procedures).
- (c) **(Request for tender content):** The proposed request for tender must:
- (i) provide such information concerning the DBFM Project, the relevant Reviewable Services and the Project Documents as the State reasonably requires, to ensure the tenderers are fully informed of the opportunity tendered (including details of the evaluation criteria set out in Clause 30.4(e));
 - (ii) impose a duty of confidentiality on tenderers;
 - (iii) require tenders to be conforming and irrevocable until 3 Months after the relevant current Reviewable Services Term;
 - (iv) require tenderers to comply with the Subcontracting requirements set out in Clause 5.14;
 - (v) attach a draft Subcontract:
 - (A) substantially on the same terms (other than price, term and any amendments required in accordance with Clause 30.1) as the current Subcontract for the provision of those tendered Reviewable Services, other than in respect of any relevant Change in Quality Standards; and
 - (B) which provides for the review of those Reviewable Services in accordance with the terms of this Clause 30; and
 - (vi) require tenderers to accept the terms of the draft Subcontract.
- (d) **(Offers):** Project Co must procure offers in response to the request for tender reviewed by the State Representative in accordance with Clause 30.4(b), by competitive tender from at least 3 independent, experienced and capable service providers for the relevant component of the Reviewable Services, which may include any one of the existing FM Subcontractor or Project Co, but not more than any one of these parties for each component of the Reviewable Services, and otherwise must not include:
- (i) any Project Co Associate; or
 - (ii) any service provider in which Project Co or the FM Subcontractor has a beneficial interest, or otherwise that has not received the prior approval of the State (which must not be unreasonably withheld).
- (e) **(Content of offers):** Each offer obtained under Clause 30.4(d) must address the following criteria:
- (i) details of the contract price, which reflect a competitive pricing of those Reviewable Services in the then current market;

- (ii) current capacity and capability to carry out the Reviewable Services over the Reviewable Services Term, including current workload and resources plans, key people, subcontractors and consultants;
- (iii) previous performance of services similar to the relevant Reviewable Services, together with referees;
- (iv) financial capacity; and
- (v) demonstration that the offer will allow Project Co to continue to meet the Service Standards.

30.5 Sufficient information

Project Co will, within 3 Months of the notice from the State under Clause 30.2(d)(ii)(B) or Clause 30.3(b), prepare and provide to the State Representative:

- (a) copies of all offers it has received under the tender pursuant to Clause 30.4;
- (b) Project Co's evaluation report in connection with each offer;
- (c) Project Co's recommendation as to the preferred tenderer; and
- (d) such further details as the State Representative reasonably requires in relation to the tender and the offers.

30.6 Consultation

- (a) During the period of 1 Month following provision of the information under Clause 30.5, Project Co will consult with the State concerning the offers for the provision of Reviewable Services made in accordance with Clause 30.4, to attempt to reach agreement on the appointment of one of the tenderers for the provision of the Reviewable Services for the ensuing Reviewable Services Term, having regard to:
 - (i) the experience and capability of each tenderer;
 - (ii) the extent to which each offer provides value for money to the State as against each of the other offers; and
 - (iii) the ability of Project Co to continue to meet the Service Standards relevant to the Reviewable Services put out to tender and otherwise comply with this Agreement on subcontracting the relevant Reviewable Service to any of the tenderers.
- (b) Project Co must not enter into any contract with any tenderers for the provision of the Reviewable Services, other than in accordance with Clause 30.10.

30.7 Consents to Probity Investigations

Project Co must ensure that each of the tenderers for the Reviewable Services, and any persons likely to be associated with the provision of the Reviewable Services, provide their written consent to the carrying out of any Probity Investigations required by the State.

30.8 Probity officer and State Representative

The State may at any time appoint a probity officer to, or have the State Representative, oversee the tender process referred to in this Clause 30, and Project Co must:

- (a) provide all assistance and information required by the State Representative or probity officer; and
- (b) comply with all directions of the probity officer or State Representative, in connection with the tender process.

30.9 Failure to agree

If none of the offers made by the tenderers are acceptable to the State, the State may:

- (a) accept the offer made by Project Co under Clause 30.2;

- (b) require Project Co to proceed to provide the Reviewable Services under the current terms and pricing in accordance with Clause 30.11; or
- (c) omit the Reviewable Services from the Services by way of a Modification Order, and carry out the Reviewable Services itself or procure a third party to carry out the Reviewable Services (in which case the Monthly Service Payment will be adjusted to remove any part of the fee associated with the relevant Service, as set out in the Financial Model).

30.10 Appointment

- (a) If the State notifies Project Co that an offer is acceptable to the State, Project Co must (subject only to the conduct of Probity Investigations satisfactory to the State) subcontract, or ensure that the FM Subcontractor subcontracts, the provision of the relevant Reviewable Services for the ensuing Reviewable Services Term to the successful tenderer, pursuant to a Subcontract which complies with the tender requirements of Clause 30.4.
- (b) A Subcontract entered into in accordance with this Clause 30 will be deemed to be approved by the State for the purposes of Clause 5.13 (to the extent the relevant Subcontract is a Key Subcontract).

30.11 Continued provision of Reviewable Services

Without limiting the State's rights under this Agreement, including under Clause 30.9, if:

- (a) an offer is made by Project Co under Clause 30.2 and the State does not accept Project Co's offer; and
- (b) a Subcontractor is not appointed under Clause 30.10 to provide the Reviewable Services by the date of the commencement of the relevant Reviewable Services Term,

subject to Clause 30.9, Project Co will continue to provide the relevant Reviewable Services on the terms and pricing for the immediately preceding Reviewable Services Term and in accordance with Schedule 13 (Services Specifications), until the earlier of:

- (c) a Subcontractor being appointed under Clause 30.10 and commencing provision of those Reviewable Services; and
- (d) 6 Months following the commencement of the new Reviewable Services Term.

30.12 Playing Surface Services and Grounds and Garden Services

- (a) At any time no later than 3 months prior to the end of a relevant Reviewable Services Term, the State may notify Project Co that it does not require the Playing Surface Services or the Grounds and Garden Services (or both) to be provided by Project Co following the end of the relevant Reviewable Services Term. If any of the processes described in Clause 30 are underway at the time that a notice is given under this Clause 30.12(a), those processes in relation to the relevant Reviewable Services must cease immediately.
- (b) If the State gives Project Co a notice under Clause 30.12(a), it must issue a Modification Order which will include:
 - (i) Project Co must cease providing the relevant Service from the day following the end of the relevant Reviewable Services Term;
 - (ii) Project Co must update the Operating Phase Plans to reflect that it is no longer providing the relevant Service;
 - (iii) the Monthly Service Payment is adjusted to remove any part of the fee associated with the relevant Service, as set out in the Financial Model; and
 - (iv) Project Co is not entitled to any other compensation or adjustment to the Monthly Service Payment as a result of the Service being omitted.

- (c) If the State elects to omit the Playing Surface Services or the Grounds and Garden Services (or both) (each, a **Removed Reviewable Service**) from the Services:
- (i) in accordance with Clause 30.9(c);
 - (ii) in accordance with Clause 30.12(a); or
 - (iii) at any other time, by way of a Modification Order,
- Project Co must, at the State's election, immediately transfer to the State free from any Encumbrances the possession of, and all of the rights, warranties and title to, all equipment (including any Services Equipment) used for undertaking the relevant Removed Reviewable Service (**Removed Reviewable Services Equipment**). Clause 30.12(d) applies to the calculation of any compensation that the State must pay to Project Co in respect of each item of Removed Reviewable Services Equipment.
- (d) For each item of Removed Reviewable Services Equipment transferred to the State in accordance with Clause 30.12(c), the State will pay Project Co an amount equal to:
- (i) in respect of an item of Removed Reviewable Services Equipment which the State has, whether directly or indirectly, contributed to the cost of procuring (including through the payment of the Monthly Service Payment), an amount equal to the written down book value of that relevant Removed Reviewable Services Equipment in the accounts of Project Co or a relevant Project Co Associate less an amount equal to the aggregate of all amounts which the State, whether directly or indirectly, has contributed to the cost of procuring the relevant Removed Reviewable Services Equipment; or
 - (ii) in respect of an item of Removed Reviewable Services Equipment which the State has not contributed to the cost of procuring, an amount equal to the written down book value of the relevant Removed Reviewable Services Equipment in the accounts of Project Co or the relevant Project Co Associate.
- (e) The amounts referred to in Clause 30.12(d) will be Project Co's sole entitlement to compensation for the transfer of Removed Reviewable Services Equipment to the State in accordance with Clause 30.12(c).
- (f) Except for the payment by the State of an amount referred to in Clause 30.12(d), neither the State nor any State Associate will have any Liability to Project Co or any Project Co Associate in connection with the transfer of any Removed Reviewable Services Equipment to the State in accordance with Clause 30.12(c).
- (g) Any Dispute as to an adjustment to the Monthly Service Payment under Clause 30.12(b)(iii) or the amounts payable under Clause 30.12(d) is to be determined by an Independent Expert in accordance with Clause 45.3.
- (h) If the State has procured a third party to carry out Reviewable Services as a result of the Reviewable Service being omitted in the circumstances set out in Clause 30.9(c) or Clause 30.12(a), or at any other time by way of a Modification Order, the State must ensure that:
- (i) the third party is procured such that it is either a State Associate or Stadium Personnel; and
 - (ii) the agreement under which the third party is engaged contains an obligation on the third party to co-operate with Project Co and any relevant Project Co Associate in the provision of the Reviewable Services.

A reference to 'third party' in this clause means either a party engaged by the State or the Stadium Operator, or a party that was originally engaged by Project Co or a Project Co Associate to provide the particular Reviewable Services and has had its

contractual arrangement novated to the State, a State Associate or the Stadium Operator.

31 HANDOVER

31.1 Handover Condition

For the purpose of this Clause 31, 'Handover Condition' means the required condition of the DBFM Works or the Stadium, Sports Precinct and Off-Site Infrastructure (as applicable) upon the Expiry Date, which:

- (a) if Handover of the DBFM Works occurs prior to the Date of Commercial Acceptance, is the condition of the DBFM Works and the Construction Site as at the Expiry Date;
- (b) if Handover of the Stadium, the Sports Precinct and the Off-Site Infrastructure occurs during the Operating Phase and prior to or on the date which is 4 years before the Final Expiry Date, is the condition that the Stadium, Sports Precinct and Off-Site Infrastructure would be in if Project Co had complied with all of its obligations in connection with this Agreement up to the time of termination, provided that if the termination of this Agreement is due to a Force Majeure Termination Event, the expected condition must also take into account the effect of the Force Majeure Event; or
- (c) if Handover of the Stadium, Sports Precinct and Off-Site Infrastructure occurs after the date which is 4 years prior to the Final Expiry Date, is the condition that the Stadium, Sports Precinct and Off-Site Infrastructure would be in:
 - (i) if the requirements pertaining to Damage Thresholds (as set out in Schedule 12 (Design Specifications)) are satisfied;
 - (ii) if the requirements of the Estate Services Plans had been fully implemented as required up to that date;
 - (iii) if all Scheduled Maintenance and Unscheduled Maintenance had been completed as required up to that date;
 - (iv) so that the Stadium, Sports Precinct and Off-Site Infrastructure can reasonably be expected to continue to meet the requirements of Schedule 13 (Services Specifications) for 5 years after the Expiry Date without any major maintenance or refurbishment works, other than routine maintenance that Project Co would have had to carry out in accordance with this Agreement if the Expiry Date was in fact 5 years later than the Expiry Date; and
 - (v) if Project Co had satisfied all relevant obligations in accordance with this Agreement,

provided that if the termination of this Agreement is due to a Force Majeure Termination Event, the expected condition must also take into account the effect of the Force Majeure Event.

31.2 Obligations approaching Expiry Date

- (a) **(Independent certifier):** No later than 12 Months before the inspections to be undertaken in accordance with Clause 31.2(b) (or such shorter period as is necessary having regard to Clause 31.2(b)(ii)), Project Co and the State must meet to determine the identity of an independent certifier, to be appointed jointly by Project Co and the State in accordance with Clause 5.8, to carry out the tasks identified in this Clause 31.2.
- (b) **(Joint inspection):** Project Co, the State and the independent certifier appointed in accordance with Clause 31.2(a), must carry out joint inspections of the Stadium, Sports Precinct and Off-Site Infrastructure (as applicable):
 - (i) at least:

- (A) 4 years, or such shorter period as the parties agree, before the expected expiry of the Operating Phase; and
 - (B) every 6 Months after that initial inspection until the end of the Operating Phase; or
 - (ii) if this Agreement is to be terminated prior to the Final Expiry Date, such shorter period prior to the date of termination as is required by the State, (each a **Condition Review Date**).
- (c) **(Program to achieve proper Handover)**: Following each inspection in accordance with Clause 31.2(b), the independent certifier must give to the State and Project Co a written report (**Outstanding Matters Report**), specifying:
- (i) that the Stadium, Sports Precinct and Off-Site Infrastructure (as applicable) will, as at the Expiry Date, be in a condition which satisfies the Handover Condition; or
 - (ii) the works to be undertaken or services to be performed to enable the Stadium, Sports Precinct and Off-Site Infrastructure to meet the Handover Condition on the Expiry Date and a program for undertaking such works or services (**Final Refurbishment Works**); and
 - (iii) an estimate of the total costs of carrying out those works or performing those services (including an appropriate margin for risks and contingencies) determined in accordance with Best Construction Practices and Best Operating Practices.
- (d) **(Disputing Outstanding Matters Report)**: If Project Co or the State do not agree with any aspect of an Outstanding Matters Report:
- (i) either party may give details of such objections to the other party and the independent certifier within 10 Business Days of receipt of the report; and
 - (ii) the parties will discuss in good faith to reach agreement on:
 - (A) the scope and cost of the Final Refurbishment Works; and
 - (B) a program for carrying out the Final Refurbishment Works.
- (e) **(No agreement reached)**: If the parties cannot reach agreement on the relevant aspects of an Outstanding Matters Report within a further 10 Business Days of the date on which the objections are provided in accordance with Clause 31.2(d), the matter may be referred by either party for resolution by an Independent Expert in accordance with Clause 45.3.
- (f) **(Update of Estate Services Plans)**: Within 1 Month of:
- (i) the delivery of an Outstanding Matters Report; or
 - (ii) the date the disputed aspects of an Outstanding Matters Report are resolved by the parties under Clause 31.2(d) or the Independent Expert in accordance with Clause 45.3,
- and subject to Clause 31.2(n), Project Co must amend the relevant Estate Services Plans to include the Final Refurbishment Works that Project Co is required to undertake in accordance with the then current Outstanding Matters Report. The updated Estate Services Plans will be submitted to the State for review in accordance with Schedule 3 (Review Procedures).
- (g) **(Implement program)**: Without limiting Project Co's obligations in accordance with this Agreement:
- (i) Project Co must carry out the Final Refurbishment Works and implement the program agreed or resolved in accordance with Clause 31.2(f); and
 - (ii) if the amount of all the aggregate of the remaining Monthly Service Payments and State Loan Payments is or will be after the next Monthly

Service Payment or State Loan Payment, equal to or less than 120% of the estimated total cost of the remaining Final Refurbishment Works (as is agreed or resolved in accordance with this Clause 31), Project Co must, within 10 Business Days of the Condition Review Date, either:

- (A) deposit into an account opened by the State in the State's name with a registered bank as nominated by the State (the **Handover Escrow Account**), each subsequent Monthly Service Payment and State Loan Payment made to Project Co until the amount in the Handover Escrow Account is equal to or more than 120% of the estimated total cost of the remaining Final Refurbishment Works (as agreed or resolved in accordance with this Clause 31); or
- (B) provide to the State a bond having a face value equal to 120% of the estimated total cost of the remaining Final Refurbishment Works (as agreed or resolved in accordance with this Clause 31), and which the State may call upon in accordance with Clause 31.2(l) or Clause 31.2(o) (**Handover Bond**),

and if Project Co fails to make an election within 5 Business Days of the Condition Review Date in accordance with Clause 31.2(g)(ii), Project Co will be deemed to have elected that Clause 31.2(g)(ii)(A) will apply.

- (h) **(Interest on Handover Escrow Account):** Interest earned on money standing to the credit of the Handover Escrow Account will be deposited into the Handover Escrow Account and Project Co will be entitled, on request, to receive copies of the statements of account for the Handover Escrow Account.
- (i) **(Excess amounts in Handover Escrow Account):** If at any time the balance of the Handover Escrow Account exceeds the estimated total costs of the remaining Final Refurbishment Works (as agreed or resolved) then the amount of the excess will be a debt due and payable by the State to Project Co and will be added to the next (and if necessary subsequent) Monthly Service Payment or State Loan Payment otherwise due and payable from the State to Project Co.
- (j) **(Payments from Handover Escrow Account):** The State may draw on the Handover Escrow Account:
 - (i) to fund the completion of any Final Refurbishment Works in accordance with Clause 31.2(n) or reimburse the State's costs of undertaking any Final Refurbishment Works in accordance with Clause 31.2(n);
 - (ii) to pay Project Co any amount requested by Project Co in accordance with Clause 31.2(i);
 - (iii) to pay Project Co the costs of undertaking the Final Refurbishment Works provided that the balance of the Handover Escrow Account will not be less than the estimate of the total costs of the Final Refurbishment Works outstanding at that time; and
 - (iv) no later than 20 Business Days after completion of all Final Refurbishment Works, to pay the balance of the Handover Escrow Account to Project Co.
- (k) **(Money remaining in Handover Escrow Account):** If, after completion of the Final Refurbishment Works:
 - (i) the State has recovered the amounts (if any) owing in accordance with Clause 31.2(n) or Clause 31.2(o); and
 - (ii) after any set off or deduction by the State in accordance with Clause 54.2,

there is any money remaining in the Handover Escrow Account, then such money must be paid by the State to Project Co.

- (l) **(Calls on Handover Bond):** If a Handover Bond is provided, without limiting its rights under this Agreement or the General Security Agreement, the State may make a demand on the Handover Bond to fund the completion of any Final Refurbishment Works in accordance with Clause 31.2(n) or reimburse the State's costs of undertaking any Final Refurbishment Works in accordance with Clause 31.2(n) following an election in accordance with Clause 31.2(o).
- (m) **(Return of Handover Bond):** The State must return any Handover Bond to Project Co within the later of 20 Business Days after completion of all Final Refurbishment Works required to be undertaken and the payment of a claim under Clause 31.2(l), if one has been made, less any amount that it has claimed under Clause 31.2(l).
- (n) **(Completion of Final Refurbishment Works by the State):** If Project Co fails to undertake any Final Refurbishment Works when required to do so in accordance with this Clause 31.2, or the Expiry Date occurs before the Final Refurbishment Works are completed, the State may undertake and complete those Final Refurbishment Works.
- (o) **(State election):** The State may, by giving Project Co reasonable prior notice, relieve Project Co from its obligation to implement any Final Refurbishment Works, in which case the estimated value of the relevant Final Refurbishment Works as determined in accordance with this Clause 31.2, will be a debt due and payable and owing to the State, so that the State, without limiting its rights under this Agreement:
 - (i) will be entitled to retain the balance of the Handover Escrow Account; or
 - (ii) provided that prior notice is given to Project Co and the aggregate of the Monthly Service Payments and State Loan Payments are insufficient to cover the estimated value of the relevant Final Refurbishment Works may, if Project Co has provided a Handover Bond, make a demand on the Handover Bond to fund the completion of the Final Refurbishment Works in respect of which the State has relieved Project Co from its obligation to implement,
 (as applicable).
- (p) **(Rights preserved):** Nothing in this Clause 31.2 prevents the State from exercising its rights under this Agreement or at Law to recover amounts owing to it with respect to Final Refurbishment Works which it is unable to recover from the Handover Escrow Account or the Handover Bond.

31.3 Handover

Without limiting Clause 31.4, upon the Expiry Date, Project Co must:

- (a) **(conditions):** during the D&C Phase make safe and handover the DBFM Works or during the Operating Phase, handover the Stadium, Sports Precinct and Off-Site Infrastructure (as applicable) and the relevant Site (including all rights, title and interest in them) to the State or its nominee, free from any Encumbrances and in a state and condition which complies with the Handover Condition;
- (b) **(transfer):**
 - (i) if the Expiry Date occurs prior to Commercial Acceptance, transfer to the State or its nominee, free from any Encumbrances, all rights, title and interest in Project Co FF&E (to the extent that they have not already been transferred) which Project Co has been paid for at that time; and
 - (ii) if the Expiry Date occurs after Commercial Acceptance, transfer to the State or its nominee, free from any Encumbrances, all rights, title and interest in Project Co FF&E (to the extent that they have not already been transferred),

in each case as is required to allow the State or its nominee to operate (in the manner set out in the Design Requirements), maintain and repair the DBFM Works

- or the Stadium, Sports Precinct and Off-Site Infrastructure (as applicable) to the standards required in accordance with this Agreement;
- (c) **(manuals)**: deliver to the State or its nominee the up to date Handover Package and all manuals, Records (including in respect of environmental monitoring), plans and other information under the control of Project Co, including its Subcontractors, which are relevant to the design, construction, operation, maintenance or repair of the DBFM Works or the Stadium, Sports Precinct and Off-Site Infrastructure (as applicable);
 - (d) **(novation)**: procure the novation or, failing this, the assignment to the State or its nominee of:
 - (i) such contracts for works or services to which it, the Builder or the FM Subcontractor is a party, as they relate to the DBFM Works, the Services, the Stadium, Sports Precinct and Off-Site Infrastructure (or any combination of them), as the State may nominate; and
 - (ii) any leases, subleases and licences agreed to by the State;
 - (e) **(Intellectual Property Rights)**: grant or procure the grant to the State or its nominee the Project IP in accordance with Clause 51.3 and the licence to Project Co's Background IP in accordance with Clause 51.1;
 - (f) **(Insurances)**: pay to the State or its nominee any insurance proceeds from any Insurances for the reinstatement or replacement of the DBFM Works or the Stadium, Sports Precinct and Off-Site Infrastructure (as applicable) to the extent not already reinstated or replaced, and assign to the State any rights available to Project Co under the Insurances;
 - (g) **(Insurance Proceeds Account)**: pay to the State or its nominee the balance of the Insurance Proceeds Account as of the Expiry Date;
 - (h) **(Authorisations)**: do all acts and things necessary to enable the State (or its nominee) to have obtained all Authorisations (other than State Obtained Authorisations) which are, prior to the Date of Commercial Acceptance, to have regard to the stage of completion of the DBFM Works at the Expiry Date, necessary for the maintenance and repair of the DBFM Works or the delivery of the Services and the Commercial Opportunities in the Stadium, Sports Precinct and Off-Site Infrastructure (as applicable); and
 - (i) **(operations)**: having regard to the required Handover Condition, do all other acts and things to enable the State (or its nominee) to be in a position to deliver the DBFM Project at the standards stated in this Agreement, with minimum disruption.

31.4 Assistance in securing continuity

Project Co must, at its cost and before the end of the Expiry Date, do all things reasonably required by the State to ensure the smooth and orderly transfer of responsibility for the DBFM Project to the State or its nominee, including:

- (a) meeting with the State and such other persons notified by the State to discuss the DBFM Project;
- (b) providing access to its operations for the purpose of familiarisation;
- (c) providing sufficient training to the State or its nominee to enable the State or its nominee (as the case may be) to take over the management of the DBFM Project; and
- (d) providing sufficient information to the State or its nominee to determine the status and condition of the DBFM Project, any DBFM Works Programs in place at the time and any other information requested by the State or its nominee.

32 CHANGE IN LAW AND QUALITY STANDARDS

32.1 Relief for Project Specific Change in Law or General Change in Law

- (a) If:
- (i) a Project Specific Change in Law occurs during the Term and the Project Specific Change in Law has had or will have a material effect on the capital cost or operating costs (or both) of delivering the DBFM Project in accordance with this Agreement; or
 - (ii) a General Change in Law occurs during the Operating Phase and the General Change in Law has or will result in:
 - (A) a change to the Stadium or the Sports Precinct (or both of them); or
 - (B) a change to Schedule 13 (Services Specifications) (excluding in connection with Reviewable Services) or unavoidable increased costs to meet the requirements in Schedule 13 (Services Specifications) (or both of them), other than administration costs, costs as a result of increased reporting requirements or costs attributable to a whole of business change,
- and Project Co is legally or, in accordance with this Agreement, contractually obliged or required by the State to comply with the Project Specific Change in Law or the General Change in Law (**Change in Law**), then:
- (iii) if Project Co intends to make a claim in accordance with Clause 32.1(a)(v), Project Co must notify the State of the Change in Law as soon as practicable after Project Co became aware or ought reasonably to have become aware of the Change in Law;
 - (iv) upon receipt of the notice from Project Co under Clause 32.1(a)(iii) (and such further information as the State may reasonably request from Project Co in respect of the effect of the Change in Law), the State must notify Project Co whether it will issue a Modification Order to legally overcome the effect of the Change in Law and, where the State has determined it will issue a Modification Order, must issue that Modification Order on or prior to the effective date of the Change in Law;
 - (v) provided that Project Co has provided a notice to the State under Clause 32.1(a)(iii) (and such other information as the State may have reasonably requested in respect of the effect of the Change in Law) and provided that the State has not issued a Modification Order in order to legally overcome the effect of the Change in Law, Project Co may, within 30 Business Days of the Change in Law being introduced, submit a Change Notice to the State that complies with the requirements of Schedule 4 (Change Compensation Principles); and
 - (vi) *[not disclosed]*
 - (vii) If the Change in Law gives rise to a Saving, the amount of the Saving will be a debt due and payable by Project Co to the State, which debt the State may set off in accordance with Clause 54.2.
- (b) If the State considers that a Change in Law has occurred in accordance with Clause 32.1(a)(i) or Clause 32.1(a)(ii) and Project Co has not submitted a notice in accordance with Clause 32.1(a)(iii), the State may request Project Co to submit a notice that complies with the requirements of Clause 32.1(a)(iii) or a Change Notice that complies with the requirements of Clause 32.1(a)(v).

32.2 [Not disclosed]

32.3 [Not disclosed]

32.4 Conditions precedent

It is a condition precedent to Project Co's entitlement under Clause 32.1(a) and Clause 32.2(d) that:

- (a) Project Co has submitted a Change Notice that complies with the requirements of Clause 32.1(a)(v) or 32.2(b); and
- (b) neither Project Co nor any Project Co Associate has, by any act or omission (other than an act or omission authorised or permitted under a State Project Document), directly or indirectly caused the relevant Change in Law or Change in Quality Standards.

32.5 [Not disclosed]

33 MODIFICATIONS AND FF&E MODIFICATIONS

33.1 Modifications proposed by the State

- (a) **(Directing a Modification):** At any time, the State may direct Project Co to perform a proposed Modification or FF&E Modification, in which case, Project Co must submit a quote for the proposed Modification or FF&E Modification (**Modification Quote**), including any measurements, evidence of costs, evidence of any delay to the DBFM Works, any amendments required to the Project Documents, evidence of impact on Abatements or other specific information that the State requires Project Co to include in its Modification Quote (**Modification Price Request**).
- (b) **(Submission of Modification Quote):** Project Co must submit a Modification Quote to the State within 20 Business Days of receipt of the Modification Price Request, or at such other later time as may be agreed by the State (acting reasonably). The Modification Quote must comply with the requirements for a Change Notice in Schedule 4 (Change Compensation Principles) and include particulars of:
 - (i) any adjustment in price, calculated in accordance with Schedule 4 (Change Compensation Principles); and
 - (ii) the effect (if any) of the proposed Modification or FF&E Modification on Project Co's obligations under this Agreement, including:
 - (A) the effect (if any) of the proposed Modification or FF&E Modification on the performance regime included in Schedule 14 (Payment Schedule); and
 - (B) if the Modification or FF&E Modification is proposed prior to the Date of Completion, the adjustment (if any) to the Date for Completion, having regard to any delay to Completion which will be caused by the Modification or FF&E Modification and any Prolongation Costs or Financing Delay Costs which will be payable by the State to Project Co in accordance with Schedule 4 (Change Compensation Principles).
- (c) **(Priced options):** If the Modification is to incorporate any of the items listed in Schedule 43 (Priced Options), and the Modification Order is given prior to the relevant date for the item set out in Schedule 43 (Priced Options), the Modification Quote is limited to the price for that item set out in Schedule 43 (Priced Options) and Project Co is not entitled to any further relief or compensation in respect of the Modification.
- (d) **(State response to Modification Quote):** Within 20 Business Days (or such longer period as the State reasonably requires, given the size and complexity of

the proposed Modification or FF&E Modification) after receiving a Modification Quote, the State must:

- (i) issue a Modification Order to Project Co directing Project Co to carry out the Modification or FF&E Modification on the terms set out in the Modification Quote;
 - (ii) notify Project Co that it does not agree with the Modification Quote, in which case Clause 33.1(g) applies;
 - (iii) notify Project Co that it wishes to negotiate the contents of the Modification Quote, and if the parties agree on the contents of the Modification Quote, the State will issue a Modification Order on the terms agreed between the parties;
 - (iv) notify Project Co that it requires more information in respect of the Modification Quote in which case:
 - (A) the timing in Clause 33.1(b) applies again in respect of when that further information is to be provided; and
 - (B) Clause 33.1(c) applies again from the date that the further information is provided, except that the State will only have 10 Business Days from the date of receipt of the further information to elect how to proceed under this Clause 33.1(c);
 - (v) notify Project Co that it does not wish to proceed with the proposed Modification or FF&E Modification;
 - (vi) notify Project Co that it does not wish to proceed with the proposed Modification or FF&E Modification and, without limiting its right to notify Project Co of Unscheduled State Works, notify Project Co that it will itself, or will procure a third party to, undertake the proposed Modification or FF&E Modification providing that, if the Modification or FF&E Modification is to be performed during the D&C Phase, performance of such Modification:
 - (A) will not delay Completion;
 - (B) if the Modification or FF&E Modification is within that part of the DBFM Works that will comprise the Stadium, relates only to procurement and location or installation of FF&E or works that can be practically isolated from the works being performed by Project Co during the performance of the Modification or FF&E Modification, having regard to the timing of those works; and
 - (C) if the Modification or FF&E Modification is within that part of the DBFM Works that will comprise the Sports Precinct, is able to be practically isolated from the works being performed by Project Co, having regard to the timing of those works and will not adversely affect Project Co's access to the remainder of the Site; or
 - (vii) require Project Co to undertake a tender process in connection with the Modification or FF&E Modification in accordance with Schedule 4 (Change Compensation Principles) which, during the D&C Phase only, can only be required by the State if the State, acting reasonably, believes that Project Co's Modification Quote is unreasonable.
- (e) **(Project Co to implement Modification):** If the State issues a Modification Order to Project Co in accordance with Clause 33.1(d)(i), Project Co must implement the Modification or FF&E Modification in accordance with the Modification Order.
- (f) **(Not to proceed until Modification Order issued):** Project Co must not perform any work or services, and will not be entitled to make any Claim against the State,

in respect of a Modification or FF&E Modification, until the State has issued a Modification Order.

- (g) **(Failure to agree):** If the State informs Project Co that it does not agree with the Modification Quote in accordance with Clause 33.1(d)(ii) and the parties are unable to agree on the terms for the Modification or FF&E Modification within 5 Business Days of the State's notice in accordance with Clause 33.1(d)(ii), and:
- (i) the terms that the parties are unable to agree relate to the amount payable for the Modification or FF&E Modification, the amount for the Modification or FF&E Modification will be determined by the Independent Expert in accordance with the principles stated in Schedule 4 (Change Compensation Principles) and, the State may at its election:
 - (A) issue a Modification Order on the terms of the Modification Quote as varied by the Independent Expert; or
 - (B) inform Project Co that it does not wish to proceed with the Modification or FF&E Modification;
 - (ii) the terms that the parties are unable to agree relate to the adjustment to the Date for Completion, the adjustment to the Date for Completion will be determined by the Independent Certifier having regard to the delay which will be caused to the critical path in the then current DBFM Works Program and the State may, at its election:
 - (A) issue a Modification Order on the terms of the Modification Quote as varied by the Independent Certifier; or
 - (B) inform Project Co that it does not wish to proceed with the Modification or FF&E Modification; or
 - (iii) the terms that the parties are unable to agree do not relate to the amount payable or the adjustment to the Date for Completion for the Modification or FF&E Modification, the State may issue a Modification Order on terms determined by the State acting reasonably. Upon receiving the Modification Order, Project Co must promptly either:
 - (A) implement the Modification or FF&E Modification in accordance with the Modification Order; or
 - (B) refer the matter to dispute resolution in accordance with Clause 45.

Following the outcome of the dispute resolution process, if the outcome of the dispute resolution process was that the Modification Order should be varied, the State may, at its election:

 - (C) issue a Modification Order on the terms of the Modification Quote as varied by the outcome of the dispute resolution process, in which case, Project Co must implement the Modification or FF&E Modification in accordance with the Modification Order; or
 - (D) inform Project Co that it does not wish to proceed with the Modification or FF&E Modification.

The outcome of the dispute resolution under this Clause must also take into account the effect of the time taken for the Dispute to be resolved on the Modification Quote.
- (h) **(Adjustment for Modification):** If Project Co implements a Modification or FF&E Modification in accordance with a Modification Order:
- (i) the State will pay Project Co the amount for implementing the Modification or FF&E Modification as set out in the Modification Quote approved under the Modification Order (if any). If the Modification Order

gives rise to a Saving, Project Co will pay to the State the amount of the Saving (if any); and

- (ii) this Agreement is otherwise amended in the manner set out in the Modification Order (if required), including any adjustment to the Date for Completion and amendment to the State Project Documents.
- (i) **(Payment for Modification Quote):** If Project Co prepares a Modification Quote in accordance with Clause 33.1(a) or 33.5 and the cost of preparing the Modification Quote, as calculated in accordance with Schedule 4 (Change Compensation Principles), is greater than:
- (i) [not disclosed] (as Indexed on each CPI Adjustment Date), if prepared by the Builder (excluding any internal costs of Project Co or the Builder); or
 - (ii) [not disclosed] (as Indexed on each CPI Adjustment Date), if prepared by the FM Subcontractor (excluding any internal costs of Project Co or the FM Subcontractor),
- the State will pay to Project Co the costs under Clause 33.1(i)(i) or the third party costs under Clause 33.1(i)(ii), each actually and reasonably incurred in preparing and submitting the Modification Quote and to the extent that those costs are in excess of the figures referred to in Clauses 33.1(i)(i) or 33.1(i)(ii) (as applicable) if:
- (iii) the State does not issue a Modification Order, within 20 Business Days of receiving an Invoice from Project Co for such costs, provided that the relevant Modification Quote has been prepared and submitted in accordance with this Agreement; or
 - (iv) the State does issue a Modification Order, to the extent such costs are incorporated in the Modification Quote for the relevant Modification Order,
- and provided that in both instances Project Co received the State's prior written consent to incur the amounts that it is seeking to recover.
- (j) **(Stadium or Sports Precinct Modification during Operating Phase):** If:
- (i) the State has issued a Modification Order under Clause 33.1(d)(i) during the Operating Phase; and
 - (ii) the Modification is a Stadium or Sports Precinct Modification,
- then the terms of this Agreement relating to the D&C Phase are revived and Project Co must undertake the Stadium or Sports Precinct Modification (including all associated design works) in accordance with the terms of this Agreement relating to the D&C Phase, as varied to make it applicable to the performance of the Stadium or Sports Precinct Modification during the Operating Phase, as required by the State (acting reasonably), including by:
- (iii) the 'DBFM Works' being read as the scope of works to undertake the Stadium or Sports Precinct Modification, as set out in the Modification Order;
 - (iv) the 'DBFM Works Program' being read as the program for undertaking the Stadium or Sports Precinct Modification, as set out in the Modification Order; and
 - (v) the 'Design Documentation' being read as the design documentation necessary to deliver the Stadium or Sports Precinct Modification.
- (k) **(Disputes):** Any Dispute in relation to the parties' obligations under Clause 33.1(j) (including in respect of the terms of the D&C Phase that apply to the Stadium or Sports Precinct Modification) will be resolved in accordance with the dispute resolution procedure in Clause 45.
- (l) **(Effect on Services):** For the avoidance of doubt:

- (i) Project Co will not be entitled to any relief in relation to the performance of the Services and its other obligations under this Agreement as a result of the performance of the Stadium or Sports Precinct Modification, except as set out in the Modification Order; and
 - (ii) any increase in the volume of the Services resulting from the Stadium or Sports Precinct Modification (once completed) will be paid for by the State in accordance with the Modification Order.
- (m) **(State directed omission):** In the event that the State elects to omit a part of the DBFM Works or the Stadium, the Sports Precinct or the Off-Site Infrastructure in accordance with Clause 39.2(b)(ii)(A), the relevant deemed Modification Order that follows in accordance with Clause 39.7(a) will not change any scheduled Debt repayments or the scheduled equity payments to be made in accordance with the then current Financial Model.

33.2 Modifications proposed by Project Co

- (a) Project Co may, for its convenience, request the State to direct a Modification or FF&E Modification by submitting a notice to the State which contains details of the proposed Modification or FF&E Modification and satisfies the requirements of Clauses 33.1(a) and 33.1(b).
- (b) The State may, in writing, direct a Modification or FF&E Modification in accordance with Project Co's notice by issuing a Modification Order.
- (c) Project Co is not relieved from performing or observing its obligations in accordance with this Agreement as a result of the failure by the State to issue a Modification Order in connection with a Modification or FF&E Modification requested by Project Co.

33.3 Project Co Modification consented to by State

If the State issues a Modification Order in accordance with Clause 33.2:

- (a) Project Co will, subject to complying with any conditions in the Modification Order, carry out the Modification or FF&E Modification proposed by Project Co;
- (b) Project Co will carry out the Modification or FF&E Modification proposed by Project Co at its own cost and will not be entitled to make any Claim against the State in connection with any Modification or FF&E Modification proposed by Project Co; and
- (c) if the Modification Order is issued prior to the Date of Commercial Acceptance, the parties will agree an adjustment to the Completion Payment, the Receivables Purchase Payment and the Licence Payment in accordance with Clauses 21A.1(c) and 21A.1(e).

33.4 Updated documents

Project Co must submit to the State 3 paper copies, one electronic version in .pdf format and one electronic version in original format of the following documents following completion of any Modification or FF&E Modification (if and to the extent applicable given the nature of the Modification or FF&E Modification):

- (a) all final drawings, specifications, models, samples and calculations used to undertake the Modification or FF&E Modification; and
- (b) amended versions of any D&C Documents and Operating Phase Plans necessary to identify and incorporate the Modification or FF&E Modification.

33.5 Direction giving rise to a Modification or FF&E Modification

- (a) **(Direction):** If Project Co believes any direction given, or purported to be given, by the State (other than a Modification Order) constitutes or involves a Modification or FF&E Modification, Project Co must:

- (i) within 5 Business Days of receiving the direction, give notice to the State that it considers the direction constitutes or involves a Modification or FF&E Modification; and
- (ii) within 10 Business Days of giving the notice in accordance with Clause 33.5(a)(i), submit a Claim to the State which must include:
 - (A) detailed particulars concerning the direction upon which the Claim is based and the reason why Project Co believes it constitutes a Modification or FF&E Modification;
 - (B) Project Co's fixed price quote for the cost of implementing the direction as a Modification or FF&E Modification, calculated in accordance with the principles in Schedule 4 (Change Compensation Principles), which quote must meet the requirements set out in Clauses 33.1(a) and 33.1(b);
 - (C) if the direction was given prior to the Date of Completion, the period of any delay which will be caused by the Modification or FF&E Modification and any Prolongation Costs and Financing Delay Costs associated with the Modification or FF&E Modification; and
 - (D) the impact on the ability of Project Co to comply with its obligations under the Project Documents and any amendments required to the Project Documents to overcome those impacts.
- (b) **(Condition precedent):** Project Co's compliance with Clause 33.5(a) is a condition precedent to Project Co's entitlement to be paid for a direction which Project Co believes to be a Modification or FF&E Modification.
- (c) **(Confirmation):** Within 5 Business Days of the State receiving any notice from Project Co in accordance with Clause 33.5(a), the State must:
 - (i) confirm that the direction is in fact a Modification or FF&E Modification by issuing a Modification Order (in which case the quote referred to in Clause 33.5(a) will be the Modification Quote for the purposes of Clause 33.1(b));
 - (ii) vary the direction and confirm that the varied direction is a Modification or FF&E Modification by issuing a Modification Order;
 - (iii) withdraw the direction, in which case Project Co must not comply with the direction and is not entitled to make any Claim against the State or any State Associate in connection with the direction; or
 - (iv) inform Project Co that, in the State's view, the direction is not a Modification or FF&E Modification,

provided that if the State fails to respond to a notice provided by Project Co under Clause 33.5(a) within 5 Business Days, the direction is deemed to be withdrawn, and Clause 33.5(c)(iii) applies.
- (d) **(Dispute):** If Project Co disputes the State's view notified in accordance with Clause 33.5(c)(iv) or the State does not issue a direction in accordance with Clause 33.5(c), Project Co must continue to undertake the DBFM Works, perform the Services and deliver the DBFM Project (including, subject to Clause 33.5(e), the works or services the subject matter of any direction) but may refer the matter for resolution in accordance with Clause 45.
- (e) **(No commencement):** Project Co must not commence any work the subject of a direction which it believes constitutes a Modification or FF&E Modification until the State has acted in accordance with Clauses 33.5(c)(i) or 33.5(c)(ii).

34 WHOLE OF LIFE

- (a) **(Minimise Cost)**: Subject to this Clause 34, at all times prior to the Date of Commercial Acceptance, Project Co must procure Project Co FF&E that minimises the cost to the State and the State Associates of providing the then current Stadium Activities or otherwise operating the Stadium and Sports Precinct (**State WOL Cost Savings**).
- (b) **(Requirements)**: If at any time prior to the Date of Commercial Acceptance, the State Representative considers it likely that any item of Project Co FF&E does not satisfy the requirements of Clause 34(a) and there is an alternative item of Project Co FF&E available that satisfies such requirements and otherwise has the same functionality as Project Co FF&E (**State Selected FF&E**), the State Representative will:
- (i) notify Project Co accordingly; and
 - (ii) provide Project Co with the details of the State WOL Cost Savings generated by the State Selected FF&E.
- (c) **(Project Co to agree)**: Within 10 Business Days of receipt of the notification from the State in accordance with Clause 34(b), Project Co must either:
- (i) agree to procure the item of State Selected FF&E as Project Co FF&E instead of the relevant item of Project Co FF&E contained in the FF&E List; or
 - (ii) prove to the reasonable satisfaction of the State Representative on an open book basis in accordance with Schedule 4 (Change Compensation Principles) that:
 - (A) the relevant item of State Selected FF&E will not enable Project Co to satisfy the FFP Warranty or comply with the Design Requirements;
 - (B) the relevant item of State Selected FF&E will prevent Project Co from achieving Commercial Acceptance by the Date for Commercial Acceptance;
 - (C) the relevant item of State Selected FF&E will have a greater Whole of Life Cost than the relevant item of Project Co FF&E; or
 - (D) the amount of the increase in the Whole of Life Cost of other Project Co FF&E is greater, as a consequence of the State Selected FF&E, than the amount of the State WOL Cost Savings generated by the State Selected FF&E.
- (d) **(Project Co able to prove)**: If Project Co is able to prove, to the reasonable satisfaction of the State Representative, any of the matters set out in Clause 34(c)(ii), Project Co may procure the relevant item of Project Co FF&E, subject to that item otherwise satisfying the terms of this Agreement.
- (e) **(Project Co unable to prove)**: If Project Co is not able to prove to the reasonable satisfaction of the State Representative the matters set out in Clause 34(c)(ii), Project Co must procure the State Selected FF&E.
- (f) **(Change not a Modification)**: Any change in the selection of an item of Project Co FF&E in accordance with this Clause 34 is not a Modification, FF&E Modification or Minor Modification and Project Co will not be entitled to make any Claim against the State or any State Associate arising in connection with such change in the selection of an item of Project Co FF&E.

35 PAYMENTS DURING D&C PHASE

35.1 State Capital Contribution

In consideration for Project Co (either itself or through others) progressively carrying out the DBFM Works during the D&C Phase and subject to the remainder of this Clause 35, the State must pay Project Co the State Capital Contribution:

- (a) calculated in accordance with this Clause 35 and Schedule 15 (State Capital Contribution); and
- (b) in arrears.

For the avoidance of doubt, payments made under this Clause 35 are in addition to payments required under Clause 21A.

35.2 Conditions precedent to payment

The State is not obliged to make a payment under this Clause 35 (subject to any consent given by the State under Clause 8A of the Finance Side Deed):

- (a) unless Project Co has submitted a payment claim to the State and the Independent Certifier in accordance with the requirements set out in Clause 35.3;
- (b) unless Project Co has submitted an Invoice to the State in accordance with Clause 35.5;
- (c) unless Project Co has issued the State with a notice that it has complied with its programming obligations under Clause 6.2(c);
- (d) unless Project Co has issued the State with a notice confirming that:
 - (i) it has complied with its insurance obligations under Clause 40; and
 - (ii) to the extent that a payment claim relates to any unfixed plant and equipment, the requirements in the D&C Subcontract with respect to the bonding, storage, insurance and title of that unfixed plant and equipment have been complied with; and
- (e) to the extent the amount claimed on account of the State Capital Contribution for the relevant Month, together with all previous instalments of the State Capital Contribution paid or payable by the State, is greater than the aggregate State Capital Contributions set out in the Construction Drawdown Schedule up to and including the relevant payment claim.

35.3 D&C Payment Claim

- (a) Project Co must not earlier than 3 Business Days before the end of each Month of the D&C Phase, submit to the State and the Independent Certifier a payment claim in a form reasonably acceptable to the State and setting out the following information:
 - (i) **(progress costs)**: the amount claimed on account of the State Capital Contribution, calculated in accordance with Schedule 15 (State Capital Contribution);
 - (ii) **(unfixed plant and equipment)**: the amount claimed for unfixed plant and equipment; and
 - (iii) **(progress of the DBFM Works)**: Project Co's assessment of:
 - (A) the total Percentage of DBFM Works Completed (or which will be completed) by the end of that Month as determined by reference to the DBFM Works Construction Value Schedule; and
 - (B) the Percentage of DBFM Works Completed since the last D&C Payment Claim, or in the case of the first D&C Payment Claim,

the Percentage of DBFM Works Completed since Financial Close,

(D&C Payment Claim).

- (b) **(Acknowledgement):** The parties agree and acknowledge that:
- (i) a D&C Payment Claim is merely a claim for payment made by Project Co to enable the State to prepare the D&C Payment Statement in accordance with this Clause 35.4;
 - (ii) a D&C Payment Claim is not an Invoice (including for the purposes of Clause 35.5);
 - (iii) a D&C Payment Claim does not:
 - (A) impose any obligation on the State to make a payment (in full or in part) of any amount (including any amount referred to in the D&C Payment Claim) to Project Co at any time; or
 - (B) notify the State of any such obligation.

35.4 D&C Payment Statement

- (a) Within 5 Business Days of the date that the D&C Payment Claim is received, the Independent Certifier must determine the payment to be made to Project Co (if any), acting reasonably and in accordance with the terms of this Agreement. The Independent Certifier must, by notice to Project Co and the State:
- (i) advise that the State must make the payment set out in the D&C Payment Claim and deliver a payment statement to Project Co for the amount of the D&C Payment Claim; or
 - (ii) advise that the State is not required to make all or part of the payment set out in the D&C Payment Claim, providing the reasons for its decision, and deliver a payment statement to Project Co and the State for any amounts to which the Independent Certifier advises that Project Co is entitled,

(D&C Payment Statement).

- (b) If a D&C Payment Claim is received by the Independent Certifier earlier than the date that Project Co is entitled to submit a D&C Payment Claim under Clause 35.3, the State and the Independent Certifier will be taken to have received that D&C Payment Claim on the earliest date on which Project Co may submit a D&C Payment Claim under Clause 35.3.
- (c) The Independent Certifier may, acting reasonably, and in accordance with this Agreement, correct or modify any error in any previous D&C Payment Statement issued by the Independent Certifier under Clause 35.4(a) by adjusting a subsequent D&C Payment Statement including as a result of any audit under Clause 48(d). The State and Project Co may make submissions to the Independent Certifier prior to the issue of the D&C Payment Statement.
- (d) The aggregate amounts assessed in all D&C Payment Statements in respect of the State Capital Contribution must not exceed the State Capital Contribution Sum.

35.5 Project Co to provide Invoice

Within 5 Business Days of receipt of a D&C Payment Statement by Project Co, Project Co must provide an Invoice in a form approved by the State, acting reasonably, and any other documentation necessary for the State to be able to claim any applicable GST or have payment of any GST by the State recognised under the applicable GST Law. The amount in the Invoice must be the same as the amount in the D&C Payment Statement.

35.6 Payment

- (a) Within 10 Business Days of receipt of the Invoice described in Clause 35.5, the State must pay Project Co the amount shown in the D&C Payment Statement (as adjusted under Clause 35.4(c)).
- (b) The amount specified in Clause 35.6(a) is to be transferred by way of an electronic funds transfer of cleared funds to the State Payment Account.
- (c) Any D&C Payment Statement or payment of moneys under this Clause 35.6 is not:
 - (i) evidence of the value of work or services or that work or services have been satisfactorily performed in accordance with this Agreement;
 - (ii) an admission of liability; or
 - (iii) approval by the State of Project Co's performance or compliance with this Agreement,but, subject to Clause 35.6(d) is only to be taken as payment on account.
- (d) Any amount of State Capital Contribution paid by the State to the State Payment Account in accordance with this Clause 35.6 does not accrue for the benefit of Project Co unless and until the conditions set out in the Financing Documents for Project Co accessing those monies have been satisfied.

35.7 Passing of title

- (a) All rights, title and ownership in each part of the DBFM Works (excluding the Off-Site Infrastructure Works, which are dealt with under Clause 15.3) passes to the State upon the earlier of:
 - (i) installation of that part of the DBFM Works on the Construction Site; or
 - (ii) other than in respect of payment for unfixed plant and equipment which is subject to the arrangement in Clause 35.2(d)(ii) and that has not been paid for in full, payment by the State of the State Capital Contribution in relation to that part of the DBFM Works.
- (b) For the avoidance of doubt, from the Date of Commercial Acceptance, all rights, title and ownership in the Stadium and Sports Precinct are with the State.

35.8 Set off restrictions

Notwithstanding any other provision of this Agreement, the State may not set off or otherwise adjust any amount which is due and payable by Project Co to the State under a State Project Document against a State Capital Contribution.

36 PAYMENTS DURING OPERATING PHASE

36.1 Monthly Service Payment

- (a) From the Operational Commencement Date, Project Co will be paid the Monthly Service Payment:
 - (i) calculated in accordance with Schedule 14 (Payment Schedule); and
 - (ii) in arrears.
- (b) Nothing in this Agreement obliges the State to pay Project Co the Monthly Service Payment or State Loan Payment before the Date of Commercial Acceptance.

36.2 Other payments

- (a) After the Date of Commercial Acceptance, the State will pay any payment (other than the Monthly Service Payment and State Loan Payments) which may become due and payable to Project Co, and Project Co will pay any payment which may become due and payable to the State at the time specified in, and in accordance with, this Agreement or the relevant State Project Documents.

- (b) If no time is specified for the payment of the relevant amount in accordance with Clause 36.2(a), the payment will be made within 20 Business Days of a demand being made after occurrence of the circumstance giving rise to the Liability.

36.3 Reduction of Monthly Service Payment and State Loan Payment

- (a) **(Calculation):** The Monthly Service Payment has been calculated assuming the provision of all Services in accordance with this Agreement for the Operating Phase.
- (b) **(Reduction):** The Monthly Service Payment may be reduced to the extent, and in the manner, described in Schedule 14 (Payment Schedule) to reflect the agreed principle that the State will only pay for the quantum and quality of Services provided (and this reduction may also affect the quantum of the State Loan Payments).
- (c) **(State Loan Payment):** The parties acknowledge and agree that if the Monthly Service Payment for any Month, as calculated in accordance with Schedule 14 (Payment Schedule) is less than zero, then:
- (i) the Monthly Service Payment for that Month will be deemed to be zero; and
 - (ii) the amount by which the Monthly Service Payment is less than zero will be deducted from the State Loan Payment otherwise payable for that Month. If the State Loan Payment in any Month, as calculated in accordance with this Clause 36.3(c), is less than zero, then the State Loan Payment applicable to that Month will be deemed to be zero.

For the avoidance of doubt, Project Co provides this acknowledgement for and on behalf of itself and Finance Co, and will ensure that Finance Co complies with this acknowledgement in relation to Finance Co's rights under the State Loan Agreement.

36.4 Payment

- (a) **(Operations Payment Claim):** Within 5 Business Days following the end of each Month during the Operating Phase, Project Co must give the State a Monthly Performance Report prepared in accordance with Schedule 13 (Services Specifications). Within 5 Business Days after the date Project Co delivers the Monthly Performance Report for a Month, Project Co must prepare, and provide to the State, a payment claim for the Monthly Service Payment for that Month, calculated in accordance with Schedule 14 (Payment Schedule) and a payment claim for the State Loan Payment (**Operations Payment Claim**).
- (b) **(Operations Payment Statement):** The State:
- (i) may recalculate the amounts in any Operations Payment Claim if the State believes that this is necessary for the Operations Payment Claim to correctly reflect the amount payable to or by Project Co in accordance with this Agreement; and
 - (ii) will, within the later of:
 - (A) 5 Business Days after receipt by the State of an Operations Payment Claim; and
 - (B) 10 Business Days of receipt by the State of the relevant Monthly Performance Report,
 provide to Project Co a statement (**Operations Payment Statement**) stating the amount payable to or by Project Co and any recalculations made to the amounts set out in the Operations Payment Claim (including deduction of the State Loan Payment if that payment has been made under the State Loan Agreement).

- (c) **(Invoice):** Project Co will provide to the State an Invoice in connection with any supplies the subject of the Operations Payment Statement within 5 Business Days of receipt of the Operations Payment Statement.
- (d) **(Timing of payment):** Payment of the amount stated to be payable to or by Project Co in the Operations Payment Statement will be made by the State to Project Co, or by Project Co to the State (as applicable), by the later of 20 Business Days of receipt of the Operations Payment Claim and 10 Business Days of receipt of a corresponding Invoice.
- (e) **(Payment not evidence of proper performance):** The payment of Monthly Service Payments and State Loan Payments by the State to Project Co will not, of itself, be evidence that the Services have been performed by Project Co in accordance with the State Project Documents.
- (f) **(Dispute):** Without limiting its obligations under Clause 36.4(c), Project Co may dispute the amount in any Operations Payment Statement in accordance with Clause 45. Any Dispute in connection with the amount of any Abatement will be determined in accordance with Clause 45.
- (g) **(Acknowledgement):** The parties agree and acknowledge that:
 - (i) an Operations Payment Claim is merely a claim for payment made by Project Co to enable the State to prepare the Operations Payment Statement in accordance with this Clause 36.4;
 - (ii) an Operations Payment Claim is not an Invoice (including for the purposes of Clause 36.4(c));
 - (iii) an Operations Payment Claim does not:
 - (A) impose any obligation on the State to make a payment (in full or in part) of any amount (including any amount referred to in the Operations Payment Claim) to Project Co at any time; or
 - (B) notify the State of any such obligation; and
 - (iv) information regarding the State Loan Payment has been included in the relevant Invoice only to assist in the determination of the amount to be paid by the State to Finance Co under the State Loan Agreement and that the State is under no obligation to pay any amount to Project Co under this Agreement relating to the State Loan Payment.

36.4A Interest Rate Service Payment Adjustment

- (a) **(IRSPA):** From the IRSPA Commencement Date, the Interest Rate Service Payment Adjustment will be calculated in accordance with Section 2A of Schedule 14 (Payment Schedule) and payable in accordance with this Clause 36.4A.
- (b) **(No payment before IRSPA Commencement Date):** For clarity, nothing in this Agreement obliges the State to pay Project Co or Project Co to pay to the State the Interest Rate Service Payment Adjustment:
 - (i) in respect of any period before the IRSPA Commencement Date;
 - (ii) before the IRSPA Commencement Date in respect of any Debt Quarter occurring after the IRSPA Commencement Date; or
 - (iii) before the Date of Commercial Acceptance.
- (c) **(IRSPA calculation):** Within 5 Business Days following the date the Interest Rate Service Payment Adjustment is able to be calculated for a Debt Quarter following the IRSPA Commencement Date, Project Co must provide a written notice to the State (**IRSPA Notice**) which:
 - (i) details the amount of the Interest Rate Service Payment Adjustment for the Debt Quarter to which the Interest Rate Service Payment Adjustment relates; and

- (ii) includes such information that the State reasonably requires to verify AIR_n for the Debt Quarter the subject of the IRSPA Notice.
- (d) **(IRSPA Invoices):** Within 5 Business Days of the State receiving a IRSPA Notice:
 - (i) if the Interest Rate Service Payment Adjustment specified in that IRSPA Notice is negative, the State must provide Project Co with an Invoice; or
 - (ii) if the Interest Rate Service Payment Adjustment specified in that IRSPA Notice is positive, Project Co must provide the State with an Invoice,
 (each an **IRSPA Invoice**) for the amount of the Interest Rate Service Payment Adjustment applicable to the relevant Debt Quarter.
- (e) **(Timing of payment):** Payment of the amount stated in an IRSPA Invoice will be made by:
 - (i) the State to Project Co by way of an increase to the Monthly Service Payment payable in the last Month of the Debt Quarter to which the IRSPA Invoice relates (provided that the State has received the IRSPA Invoice not less than 10 Business Days before the date the Monthly Service Payment is payable); or
 - (ii) Project Co to the State by way of set off by the State from the Monthly Service Payment payable in the last Month of the Debt Quarter to which the IRSPA Invoice relates,
 as applicable.

36.5 Abatement as only monetary compensation

- (a) Subject to Clauses 36.5(b) and 36.5(c), reduction of the Monthly Service Payment and the State Loan Payment by application of the Abatement Regime will be the only monetary compensation for which Project Co is liable for Service Failures which activate the Abatement Regime.
- (b) Clause 36.5(a) will not affect or limit the State's rights in accordance with Clauses 8.6(a)(ix), 15.6(d), 36.3, 39.9, 39.10 and 43, the State's right to terminate in the circumstances set out in Clause 44 or the amounts set out in Clause 36.5(c).
- (c) Notwithstanding Clause 36.5(a), Project Co will be liable to the State and, where relevant, any other Indemnified Person for any reasonably foreseeable economic loss of the State or any other Indemnified Person caused by a Service Failure where the Service Failure is caused by any wilful misconduct, unlawful or fraudulent act or omission by Project Co or any Project Co Associate.
- (d) Subject to Clause 36.5(e), to the extent that Project Co must pay to the State any costs referred to in Clause 36.5(c), each future Monthly Service Payment and State Loan Payment will be reduced to the extent necessary for the State to recover all costs in full. To the extent the State is then unable to recover its costs, all such amounts will be a debt due and payable by Project Co to the State. The State agrees to use reasonable endeavours to mitigate the reasonably foreseeable economic loss the subject of a Claim under Clause 36.5(c).
- (e) If Project Co recovers any costs referred to in Clause 36.5(c) under any insurance policy or third party indemnity (including from a Project Co Associate), it must pay those proceeds directly to the State and the amount paid reduces Project Co's liability for costs under Clause 36.5(c). If those proceeds are not sufficient to cover Project Co's entire liability to the State or an Indemnified Person Clause 36.5(d) continues to apply.

37 REFINANCINGS

37.1 Consent to new financing arrangements

- (a) Project Co must not (and must ensure that each other Project Entity does not) enter into, or implement any, Refinancing without the prior consent of the State,

which must not be unreasonably withheld, and which will be given or withheld within 20 Business Days of receipt of the information provided by Project Co in accordance with Clause 37.2(a).

- (b) Subject to Clause 37.1(c), it will be reasonable for the State to withhold such consent if:
- (i) **(risks and liabilities)**: the effect of the Refinancing would be an increase or adverse change in the profile of the risks or liabilities of the State in accordance with any State Project Document without adequate compensation to the State;
 - (ii) **(not arm's length)**: the terms and conditions of the Refinancing are not on arm's length commercial terms or are not in accordance with market practice at the time;
 - (iii) **(more onerous)**: the terms and conditions of the Refinancing (taken as a whole) are materially more onerous or disadvantageous to any Project Entity than the terms and conditions in accordance with the existing Financing Documents and the State considers the Project Entity will be unable to adequately service and repay the Financial Indebtedness assumed under the transactions or that such Financial Indebtedness will adversely impact on the Project Entity's ability to perform its obligations in accordance with the Project Documents;
 - (iv) **(other purposes)**: the Financial Indebtedness assumed under the transactions will not be used solely for the DBFM Project; or
 - (v) **(failure to comply)**: Project Co failed to comply with this Clause 37.
- (c) If an event referred to in Clause 37.1(a) is also an Assumed Refinancing, it will be unreasonable for the State to withhold its consent to the Assumed Refinancing:
- (i) if the primary reason for the Assumed Refinancing is to prevent the maturity date of a Financing Document being reached, provided that Project Co has not unreasonably delayed the undertaking of the Assumed Refinancing and has acted in a manner that a normal market participant would in the circumstances with respect to the Assumed Refinancing;
 - (ii) if the indebtedness after execution of the Assumed Refinancing (excluding any indebtedness required to pay break costs for swap transactions required as part of the Assumed Refinancing) would not at any time exceed the indebtedness forecast in the Financial Model to be owing to the Financiers at that time; and
 - (iii) if reasonably requested by the State, Project Co can demonstrate to the reasonable satisfaction of the State that the Assumed Refinancing does not materially adversely affect the contractual liabilities of the State to any party under a State Project Document (other than as reflected in the Financial Model prior to the execution of the proposed Assumed Refinancing).

37.2 Details of new financing transactions

- (a) Project Co must promptly (and at least 30 Business Days prior to a proposed Refinancing) provide the State with full details of any proposed Refinancing, including:
- (i) a copy of the proposed financial model relating to it;
 - (ii) the basis for the assumptions used in the proposed financial model (which must be consistent with those used in the Financial Model, except to the extent directly arising from the transactions);
 - (iii) a comparison with any Assumed Refinancing;

- (iv) a certificate in terms acceptable to the State from the auditors of such financial model; and
 - (v) details of the revised schedule of OD_n and BIR as calculated in accordance with Section 2A of Schedule 14 (Payment Schedule).
- (b) The proposed financial model must show, amongst other things, the material changes to Project Co's obligations to its Financiers and any anticipated Refinancing Gain or Refinancing Loss (as applicable). The proposed financial model may only make changes from the Financial Model to the extent directly arising from the proposed Refinancing.
- (c) Without limiting Clause 37.2(a), Project Co agrees that the State will have unrestricted rights of audit of any proposed financial model and documentation, including formulae and calculations used in connection with a proposed Refinancing.

37.3 Documents

- (a) Project Co must not (and must ensure that each other Project Entity does not) execute or amend any document in connection with a proposed Refinancing (including by amending a Financing Document) without the prior written consent of the State, which consent must not be unreasonably withheld if the document or amendment is in substantially the same terms as disclosed to the State under Clause 37.2.
- (b) Project Co must, within 5 Business Days of the execution of any Financing Document in connection with a Refinancing, deliver to the State a certified true copy of each amended and amending Financing Document.
- (c) Project Co must not (and must ensure that each other Project Entity does not) execute any Refinancing documentation until all new Financiers have executed a deed with the State substantially in the form of the Finance Side Deed and the existing Financiers have executed any document reasonably requested by the State to terminate their rights in accordance with the then current Finance Side Deed.

37.4 Costs of new financing transactions

- (a) Project Co must pay the State its costs (including any legal or financial advisers fees incurred by the State) reasonably incurred in connection with a Refinancing.
- (b) For the purposes of calculating any Refinancing Impact under this Clause 37, Project Co may include an estimate of the costs to be paid to the State in accordance with Clause 37.4(a) where the State has agreed the amount of those costs in writing.

37.5 Calculation of Refinancing Gain

- (a) Subject to this Clause 37.5, a '**Refinancing Gain**' in connection with a Refinancing Event means the greater of zero and the amount (**Refinancing Impact**) calculated in accordance with the formula $A - B$ where:
- A = the net present value of the pre-investor tax Distributions forecast to be made from the effective date of the Refinancing Event in accordance with the Financial Model as updated in accordance with this Agreement to take account of the Refinancing Event; and
- B = the net present value of the pre-investor tax Distributions forecast to be made from the effective date of the Refinancing Event in accordance with the Financial Model in the form it existed in absence of the Refinancing Event.
- (b) The Refinancing Impact will be determined ignoring the impact of non-Refinancing impacts on Distributions such as revenues, costs, Taxes, reserves or levels of retained cash (other than revenue received, costs incurred or Taxes, reserves or

levels of retained cash changed as a result of the Refinancing Event) being different than forecast by the Financial Model.

- (c) In calculating the Refinancing Impact the present values in A and B will be expressed as an aggregate amount as at the date of the Refinancing Event, and will be calculated using the annual forecast pre-investor tax equity internal rate of return as set out in the Financial Model as the nominal discount rate.
- (d) A '**Refinancing Loss**' in connection with a Refinancing Event means a Refinancing Impact of an amount less than or equal to zero.
- (e) For the purposes of calculating a Refinancing Impact:
 - (i) it will be assumed that the terms of the Refinancing will only apply for the actual tenor of that Refinancing and not the balance of the Term;
 - (ii) the costs and expenses incurred by Project Co in connection with the Refinancing will be taken into account when calculating the net present value of the pre-investor tax Distributions; and
 - (iii) Project Co may take into account an estimate of the amount payable to the State in accordance with Clause 37.4 to the extent that the State has agreed that amount in writing.

37.6 Sharing of Refinancing Gains

- (a) If a Refinancing gives rise to a Refinancing Gain, the State and Project Co will share the Refinancing Gain in the following order:
 - (i) Project Co will be entitled to 100% of any Refinancing Gain until it recovers the sum of any Refinancing Losses from previous Refinancings; then
 - (ii) the State will be entitled to 50% of the remaining Refinancing Gain.
- (b) The State may, taking into account the nature and timing of the Refinancing Gain, elect to receive its share of the Refinancing Gain as a direct payment (to the extent a Project Entity receives its Refinancing Gain as a direct payment).
- (c) Project Co must provide (and must ensure that each other Project Entity provides) the State with all information concerning the Refinancing and Distributions that the State may require in order to calculate the Refinancing Gain and Refinancing Loss.

38 COMMERCIAL OPPORTUNITIES AND SPONSORSHIP

38.1 Commercial Opportunities

- (a) (**Grant of rights**): Subject to Clauses 38.1(b) to 38.1(k), the State grants to Project Co the right to pursue and exploit Commercial Opportunities within the Designated Commercial Area in accordance with this Clause 38.1. The parties agree that the Designated Commercial Area forms part of the Stadium for the purpose of this Agreement.
- (b) (**Consent of the State for use of Designated Commercial Area**): The prior consent of the State must be obtained for Commercial Opportunities within the Designated Commercial Area, which consent can be withheld or given on conditions in the State's discretion, subject to the remainder of this Clause 38.1(b). Subject to the requirements of Clauses 38.1(d), 38.1(e), 38.1(m) and 38.2 being met, if the use proposed for the Designated Commercial Area:
 - (i) is a Permitted Opportunity, the State will grant its consent to the use;
 - (ii) subject to Clause 38.1(b)(iii), is an Other Opportunity, the State may not unreasonably withhold its consent to the use; or
 - (iii) is an Excluded Opportunity or will, in the reasonable opinion of the State, conflict with the Stadium Activities, the State may give or withhold its consent in its absolute discretion.

- (c) **(Consent of the State for Commercial Opportunities outside the Designated Commercial Area):** The prior consent of the State must be obtained for any Commercial Opportunities outside the Designated Commercial Area, and sub-licensing arrangements proposed in relation to those Commercial Opportunities, which consent can be withheld or given on conditions at the State's absolute discretion.
- (d) **(Reputable sub-licensees):** Subject to obtaining consent when required by Clause 38.1(b) and Clause 38.1(c), Project Co may pursue the Commercial Opportunities through sub-licences with third parties. Project Co may only pursue a Commercial Opportunity with a third party that, in the State's opinion:
- (i) is experienced, creditworthy, reputable and competent;
 - (ii) holds any necessary registrations or licences (including any registrations or licences applicable to the Commercial Opportunity); and
 - (iii) has sufficient resources to undertake the relevant Commercial Opportunity.
- (e) **(Sub-licence terms):** Without limiting Clauses 38.1(d), Project Co must obtain the State's approval of the terms of any sub-licence with a third party for a Commercial Opportunity pursuant to Clause 38.2 prior to the sub-licence being entered into. The terms of the sub-licence must:
- (i) allow Project Co to terminate the arrangements at the same time that this Agreement is terminated;
 - (ii) other than in relation to the fit-out works, commence no earlier than the Date of Commercial Acceptance;
 - (iii) not allow for any further sub-licensing or other form of sub-letting without the State's approval;
 - (iv) require the maintenance of public and product liability insurance, workers' compensation insurance and, where relevant, professional indemnity insurance and motor vehicle insurance, with adequate cover for liability in connection with the proposed use of the Commercial Opportunities, and any other insurance that a prudent operator of similar commercial activities to the Commercial Opportunities would effect and maintain;
 - (v) require compliance with all relevant Laws;
 - (vi) oblige the third party to operate the Commercial Opportunity to support Events if the nature of the Commercial Opportunity complements the Event;
 - (vii) oblige the third party to comply with the same confidentiality requirements as set out in Clause 50 of this Agreement;
 - (viii) prohibit the sale of Excluded Items;
 - (ix) allow for termination for convenience by the sub-licensor; and
 - (x) otherwise comply with the requirements of this Agreement including all signage requirements set out in Schedule 22 (Commercial Opportunities) and, other than as expressly set out in any sub-licence approved by the State pursuant to Clause 38.2, each other requirement set out in Schedule 22 (Commercial Opportunities).
- (f) **(Restrictions on sub-licences):** Project Co must not:
- (i) assign or novate, or permit an assignment or novation of, any sub-licence for a Commercial Opportunity, other than in accordance with the requirements of this Clause 38.1 and Clause 38.2 as if the assignment or novation was another Commercial Opportunity, or

- (ii) amend any sub-licence with a third party for a Commercial Opportunity in a manner which is inconsistent with the requirements of this Clause 38.1 and Clause 38.2, without the prior written consent of the State.
- (g) **(Project Co as sub-licensee)**: If Project Co operates a Commercial Opportunity itself, the sub-licence terms in Clause 38.1(e) apply also to Project Co.
- (h) **(Designated Commercial Area)**: Project Co must ensure that the Commercial Opportunities approved under Clause 38.1(b) are only performed within the Designated Commercial Area and the Commercial Opportunities approved under Clause 38.1(c) are only performed in the area approved for the Commercial Opportunity.
- (i) **(Utilities)**: Project Co is responsible for, at its own cost:
 - (i) undertaking, or procuring that a Utility Company undertakes all necessary work in connection with Utility Infrastructure which is required in connection with Commercial Opportunities (including at the relevant Commercial Opportunities); and
 - (ii) all Utilities consumed or used at the Commercial Opportunities or otherwise in connection with the Commercial Opportunities.
- (j) **(Excluded Items)**: Project Co must ensure that the Commercial Opportunities do not advertise or sell any Excluded Items at any time.
- (k) **(Termination)**: Upon termination of this Agreement, the State may elect to either take a novation or terminate the sub-licences entered into by Project Co in connection with the Commercial Opportunities.
- (l) **(Sole use)**: Project Co must not use, and must ensure that no other person uses, any area within the Designated Commercial Area to operate a business other than a business for the Commercial Opportunities approved under Clause 38.1(b).
- (m) **(Risk)**: Project Co acknowledges and agrees that it accepts all occupancy and revenue risk associated with the Commercial Opportunities, and Project Co is not entitled to make any Claim and the State will not incur any Liability in connection with or arising from the Commercial Opportunities, including in respect of the costs associated with the design, procurement, construction, maintenance and licensing of the Commercial Opportunities, other than Claims arising out of a breach of a State Project Document by the State or the Stadium Operator which prevents access to the Commercial Opportunities. A sub-licence for a Commercial Opportunity is deemed to be a Project Document for the purpose of Clause 53.2.
- (n) **(Change in use)**: Without limiting Clauses 38.1(d) to 38.1(k), Project Co must obtain the prior written consent of the State under Clauses 38.1(b) or 38.1(c) (as relevant) for any proposed change in use to the Commercial Opportunities during the Operating Phase.
- (o) **(Provision)**: Project Co must ensure that:
 - (i) the Designated Commercial Area is utilised by the Commercial Opportunities referred to in Schedule 22 (Commercial Opportunities), or as otherwise approved by the State, by no later than the date which is 90 days after the Date of Commercial Acceptance; and
 - (ii) Commercial Opportunities, once approved, continue to be provided throughout the Term subject to short, temporary breaks to accommodate any changeover of tenants.
- (p) **(Uncommercial opportunities)**: Project Co is relieved of its obligation under Clause 38.1(o)(i) (but not its obligation to pay the Commercial Opportunity Fee (if any)) if Project Co can demonstrate to the State's reasonable satisfaction that it has used all reasonable endeavours to procure a tenant to provide a Commercial Opportunity but due to business issues generally affecting businesses similar in nature to the affected Commercial Opportunity (and, for the avoidance of doubt,

not due to the design, construction, operation or maintenance of the Stadium or Sports Precinct (or both)) the Commercial Opportunity is not commercially viable.

- (q) **(Periodic demonstration):** If Project Co is not procuring a Commercial Opportunity in reliance on Clause 38.1(p), then Project Co must:
- (i) continue to diligently pursue procuring a tenant to provide that Commercial Opportunity, having regard to the applicable business conditions;
 - (ii) for so long as the Commercial Opportunity is not being provided, demonstrate to the State's reasonable satisfaction every 6 Months from the date referred to in Clause 38.1(o) that the requirements of Clause 38.1(p) continue to be satisfied; and
 - (iii) commence provision of the Commercial Opportunity within 3 Months of the Commercial Opportunity becoming commercially viable.
- (r) **(State control of Commercial Opportunities):** Without limiting Project Co's obligation to pay the Commercial Opportunity Fee (if any), if Project Co is unable to procure a tenant to provide any Commercial Opportunity for a period of 6 or more consecutive Months, the State may direct Project Co to sub-licence the relevant Commercial Opportunity to:
- (i) any State Associate nominated by the State; or
 - (ii) any third party nominated by the State,
- (in each case, the relevant **Short Term Sub-licensee**),
- on terms approved by the State, which terms must reflect the following:
- (iii) the requirements of Clause 38.1(e)(iv);
 - (iv) a licence fee will be payable by the Short Term Sub-licensee to Project Co for the sub-licence of the relevant Commercial Opportunity;
 - (v) the licence fee will be equal to the amount determined by the State, acting reasonably, as the fair compensation for the Commercial Opportunity given the prevailing business and market conditions at the time the relevant Commercial Opportunity is sub-licensed to the relevant Short Term Sub-licensee less 50% (or such lesser percentage as the State may determine in its discretion);
 - (vi) the licence fee will be payable by the Short Term Sub-licensee Monthly in arrears;
 - (vii) subject to Clause 38.1(r)(viii), the term of the sub-licence will be 6 Months (or such longer period specified by the State), and may include any option periods specified by the State;
 - (viii) Project Co will be entitled to terminate the relevant sub-licence on 6 Months written notice to the relevant Short Term Sub-licensee but only if Project Co has secured a replacement third party licensee for the relevant Commercial Opportunity in accordance with the requirements of this Clause 38; and
 - (ix) such other terms reasonably required by the State.

38.2 State approval process for sub-licenses

- (a) Prior to entering into any sub-licence under Clause 38.1 to pursue a Commercial Opportunity with a third party, Project Co must provide copies of the proposed sub-licence to the State for approval.
- (b) The State must notify Project Co whether the State approves or (acting reasonably) does not approve the terms (including the identity of any sub-licensee)

of any sub-licence provided under Clause 38.2(a) within 25 Business Days of the State's receipt of that sub-licence under Clause 38.2(a).

- (c) Without limiting Clause 38.2(b), where the State notifies Project Co that it does not approve the terms (including the identity of any sub-licensee) of any sub-licence provided under Clause 38.2(a), it must identify which specific terms are not approved and provide a brief explanation as to why those terms are not acceptable to the State.
- (d) Notwithstanding the above, the State will not reject the terms (including the identity of any sub-licensee) of a sub-licence in circumstances where the sub-licensee complies with the requirements of Clause 38.1 except in the circumstances set out in Clause 38.1(b)(iii) and Clause 38.1(d).

38.3 Retention of Revenue

Subject to Clause 38.4, Project Co is entitled to collect and retain all Commercial Opportunity Revenue in accordance with this Agreement.

38.4 Share of Revenue

- (a) Not later than 15 Business Days after the end of each Period, Project Co must provide to the State a notice certifying the Gross Commercial Opportunity Receipts received by Project Co for the previous Period. Project Co must procure that the notice is signed by Project Co's auditor as a true and accurate record of the Gross Commercial Opportunity Receipts for that Period.
- (b) Within 25 Business Days of the end of each Period, Project Co must pay to the State the Commercial Opportunity Fee (if any) for the previous Period.
- (c) If the State exercises its right in accordance with Clause 48(d) to audit the notice provided in accordance with Clause 38.4(a) and the audit establishes that Gross Commercial Opportunity Receipts for a Period have been incorrectly stated then:
 - (i) any amount that would have been owing by Project Co to the State had the Commercial Opportunity Fee been based on the correct Gross Commercial Opportunity Receipt figures will be a debt due and payable by Project Co to the State within 20 Business Days of the date the underpayment was determined or such other time agreed between the parties; or
 - (ii) any amount paid by Project Co in excess of the amount which should have been paid to the State had the Commercial Opportunity Fee been based on the correct Gross Commercial Opportunity Receipt figures will be a debt due and payable to Project Co within 20 Business Days of the date the overpayment was determined or such other time agreed between the parties.
- (d) Project Co and the State acknowledge that the Commercial Opportunity Fee (if any) at all times remains the property of the State.

38.5 Sponsorship

- (a) Project Co may enter into Sponsorship Agreements with Precinct Partners which have been approved by the State and which are in accordance with the Sponsorship Agreements Framework in Schedule 41 (Sponsorship Agreements Framework) or as otherwise agreed with the State. The State will grant its consent to the terms of the Sponsorship Agreement if:
 - (i) the Sponsorship Agreement is consistent with the Sponsorship Agreements Framework in Schedule 41 (Sponsorship Agreements Framework), including imposing all of the obligations on the Precinct Partner that are set out in Schedule 41 (Sponsorship Agreements Framework); and

- (ii) any terms in addition to the terms covered in the Sponsorship Agreements Framework in Schedule 41 (Sponsorship Agreements Framework) are acceptable to the State, acting reasonably.

With the exception of the Precinct Partners named in Schedule 41 (Sponsorship Agreements Framework), the State may withhold its consent to a proposed Precinct Partner in its discretion.

- (b) The Sponsorship Agreements Framework is as set out in Schedule 41 (Sponsorship Agreements Framework) and sets out rights and obligations of the State, Project Co and the relevant Precinct Partner. The Sponsorship Agreement will be entered into by Project Co and the relevant Precinct Partner and the Builder may also be a party, in Project Co's discretion. In order to give effect to the rights granted to approved Precinct Partners in Schedule 41 (Sponsorship Agreements Framework), when a Sponsorship Agreement is approved in accordance with Clause 38.5(a) and entered into by Project Co:
 - (i) the State grants the rights to Project Co which are granted to the Precinct Partner in Schedule 41 (Sponsorship Agreements Framework);
 - (ii) Project Co grants those rights to the Precinct Partner in the Sponsorship Agreement; and
 - (iii) Project Co must not enter into or amend a Sponsorship Agreement to have the effect of the rights that the State is obliged to grant to the Precinct Partner in Schedule 41 (Sponsorship Agreements Framework) not being granted to the Precinct Partner.
- (c) Project Co will use its best endeavours to exercise its rights against the relevant Precinct Partner under the relevant Sponsorship Agreement in circumstances where a breach by the relevant Precinct Partner constitutes a breach of the Sponsorship Agreements Framework in Schedule 41 (Sponsorship Agreements Framework).
- (d) To the extent that a Precinct Partner materially breaches its Sponsorship Agreement following Commercial Acceptance and such breach causes a non-compliance with the Sponsorship Agreement Framework in Schedule 41 (Sponsorship Agreements Framework), this will not constitute a breach by Project Co of this Agreement. However, the State may require Project Co to terminate the relevant Sponsorship Agreement in accordance with the terms of that Sponsorship Agreement if the breach is not rectified in accordance with the terms of that Sponsorship Agreement.
- (e) Upon termination of this Agreement, the State will take a novation of any Sponsorship Agreements entered into by Project Co that have not expired.

39 RISK AND LIABILITY

39.1 Risk of loss or damage

- (a) This Clause 39, amongst other things, sets out the responsibility of the parties for the cost of repair and reinstatement and the circumstances in which this Agreement may be terminated due to the DBFM Works or the Stadium and Sports Precinct being damaged. This Clause 39 does not prevent Project Co from making other Claims that may be made in accordance with this Agreement, including Claims for relief for an Extension Event, an Intervening Event or a Force Majeure Event (and any associated compensation, subject to Clause 1.2(x)) in accordance with the relevant Clause, provided that the requirements for relief in respect of the relevant Clauses are met.
- (b) Project Co bears the risk of loss or damage to:
 - (i) the:
 - (A) DBFM Works; and

- (B) unfixed goods and materials (whether on or off the Construction Site), including anything:
 - (1) provided by the State to Project Co;
 - (2) brought onto the Construction Site by a Subcontractor; or
 - (3) used, or to be used, in performing the DBFM Works, until the Date of Commercial Acceptance; and
 - (ii) the Stadium, Sports Precinct and Off-Site Infrastructure until the Expiry Date,
- in accordance with this Clause 39.

39.2 State election to reinstate

- (a) Project Co must promptly notify the State of any loss or damage to the DBFM Works, the Stadium, the Sports Precinct or the Off-Site Infrastructure Works.
- (b) Within 5 Business Days (or in the case of loss or damage for which the State is liable under Clause 39.4, or which is caused by an event which is an Uninsurable Risk or a Force Majeure Event, within 60 Business Days) of receipt of the notice from Project Co pursuant to Clause 39.2(a), the State must notify Project Co:
 - (i) to repair or rebuild the DBFM Works, the Stadium, the Sports Precinct or the Off-Site Infrastructure (as the case may be); or
 - (ii) not to repair or rebuild the DBFM Works, the Stadium, the Sports Precinct or the Off-Site Infrastructure (as the case may be) but such notice may only be given if:
 - (A) the State elects to omit the relevant part of the DBFM Works or the Stadium, the Sports Precinct or the Off-Site Infrastructure (as the case may be) from the DBFM Project in accordance with Clause 39.7(a);
 - (B) a Casualty Occurrence has occurred;
 - (C) the loss or damage is loss or damage for which the State is liable under Clause 39.4; or
 - (D) there is material loss or damage to the DBFM Works or the Stadium, the Sports Precinct and the Off-Site Infrastructure (as applicable), which is caused by an Uninsurable Risk, in which case Clause 39.7(b)(iii) applies.
- (c) Unless and until the State makes an election under Clause 39.2(b) not to rectify the loss or damage, Project Co may pursue any claims against its Insurances in respect of any loss or damage the subject of a notice provided pursuant to Clause 39.2(a) and undertake mitigation measures in respect of that loss or damage as required by its Insurances, as if the State had elected to repair the damage.

39.3 Reinstatement

- (a) If the State notifies Project Co that it requires Project Co to repair or rebuild the DBFM Works, Stadium, Sports Precinct or Off-Site Infrastructure in accordance with Clause 39.2(b)(i), Project Co must:
 - (i) subject to allowing reasonable time for inspection by insurers, take immediate steps to clear any debris and begin initial repair work;
 - (ii) promptly consult with the State and carry out such steps as are necessary to ensure the prompt repair and reinstatement in relation to the loss or damage so that, subject to Clause 39.3(a)(iv):

- (A) the DBFM Works, the Stadium, the Sports Precinct or the Off-Site Infrastructure (as applicable) comply with the requirements of the State Project Documents;
 - (B) to the greatest extent possible, Project Co continues to comply with its obligations in accordance with the State Project Documents; and
 - (C) the State is fully informed of the progress of the repair and reinstatement activities;
- (iii) subject to Clause 39.3(b) to Clause 39.3(d), bear the cost of repairing or rebuilding the DBFM Works, the Stadium, the Sports Precinct or the Off-Site Infrastructure (as applicable); and
 - (iv) unless directed by the State to repair or rebuild the DBFM Works to a different specification in accordance with Clause 39.3(c), repair or rebuild the DBFM Works in accordance with the Design Requirements and to meet the Output Specifications.
- (b) Where the State exercises its rights under Clause 39.3(a):
- (i) Project Co must pay for the cost of repairing or rebuilding the DBFM Works, the Stadium, the Sports Precinct or the Off-Site Infrastructure, as a result of the damage or destruction from the proceeds of any insurance policy, covering the physical loss, destruction or damage;
 - (ii) the State will make available to Project Co the proceeds of any insurance policy received by the State for the purpose of repairing or rebuilding the DBFM Works, the Stadium, the Sports Precinct or the Off-Site Infrastructure (as the case may be) (whether on the same or different specifications) as a result of the physical loss, damage or destruction; and
 - (iii) except as set out in Clause 39.3(c), Clause 39.4, Clause 39.6 Clause 40.13(e)(ii) or Clause 40.13(f)(i), any cost of repairing or rebuilding the DBFM Works, the Stadium, the Sports Precinct or the Off-Site Infrastructure (as applicable) not covered by such Insurances or indemnity (including the deductible of any claim made under the Insurances) will, be funded by Project Co.
- (c) If:
- (i) the State determines that the DBFM Works, the Stadium, the Sports Precinct or the Off-Site Infrastructure (as applicable) is to be rebuilt or repaired on the basis of different specifications to the Output Specifications (as amended for any Modifications or FF&E Modifications); and
 - (ii) the incremental cost of repairing or rebuilding according to such specifications exceeds the total cost of repairing or rebuilding according to the Design Requirements (as amended for any Modifications or FF&E Modifications),
- the State will bear the amount (if any) of the excess either agreed, or if not agreed, determined in accordance with Clause 45 (to the extent that insurance proceeds are insufficient for this purpose), as determined in accordance with Schedule 4 (Change Compensation Principles).
- (d) Where the repairing or rebuilding of the DBFM Works, the Stadium, the Sports Precinct or the Off-Site Infrastructure (as the case may be) to different specifications will increase or decrease the cost of providing the Services over the remainder of the Term, the State will:
- (i) pay the reasonable increased costs of Project Co to the extent there is an increase in cost; and

- (ii) be entitled to the benefit of decreased costs if there is a decrease in cost to Project Co,
calculated in accordance with Schedule 4 (Change Compensation Principles).

39.4 State damage

- (a) This Clause 39.4 does not apply if Clauses 19.4 or 19.2(h) apply but applies in all other circumstances.
- (b) Subject to Clause 39.5, if the loss or damage to the Stadium, the Sports Precinct, the Off-Site Infrastructure or the DBFM Works is caused by:
 - (i) a breach by the State of any State Project Document in its capacity as a contracting party to the relevant State Project Document;
 - (ii) a reckless, unlawful or malicious act or omission of the State or any State Associate;
 - (iii) a Defect in works or that results from services performed by the State or a State Associate, or a third party engaged by the State or a State Associate, in the circumstances set out in Clauses 15.6(c), 21(g), 28.1(d)(ii), 29.8, 33.1(d)(vi) or Section 5(g)(iii) of Part A of Schedule 4 (Change Compensation Principles) and is damage caused by such Defect but not to the extent attributable to a Defect caused or contributed to by Project Co or a Project Co Associate; or
 - (iv) a breach of the contract pursuant to which a State Associate or Stadium Personnel was engaged to perform a Reviewable Service in accordance with Clause 30.9 or Clause 30.12,
and the State requires Project Co to repair or reinstate the Stadium, the Sports Precinct, the Off-Site Infrastructure or the DBFM Works (as the case may be):
 - (v) Project Co must pay for the cost of repairing or rebuilding the DBFM Works, the Stadium, the Sports Precinct or the Off-Site Infrastructure (as applicable) as a result of the damage or destruction to the extent that such costs are insured under an insurance policy or ought to have been insured but for any act or omission of Project Co or a Project Co Associate; and
 - (vi) the State will pay for any remaining costs (including the deductibles payable in respect of the relevant claim in the Operating Phase) in accordance with Schedule 4 (Change Compensation Principles) after taking into account the amounts payable in accordance with Clause 39.4(b)(v).

39.5 [Not disclosed]

39.6 [Not disclosed]

39.7 Consequences of not repairing or rebuilding

If the State notifies Project Co not to repair or rebuild the DBFM Works, the Stadium, the Sports Precinct or the Off-Site Infrastructure (as applicable) in accordance with Clause 39.2(b)(ii), the State must:

- (a) in the case of an election under Clause 39.2(b)(ii)(A), omit the relevant part of the DBFM Works or the Stadium, the Sports Precinct or the Off-Site Infrastructure (as the case may be) from the DBFM Project, in which case the notice of the State in accordance with Clause 39.2(b)(ii) will be deemed to be a Modification or FF&E Modification and the State must issue a Modification Order; or
- (b) other than where Clause 39.7(a) applies, if:
 - (i) the loss or damage was caused by a circumstance listed in Clause 39.4, terminate this Agreement for convenience in accordance with Clause

- 44.1 and pay to Project Co the Voluntary Termination Amount in accordance with Schedule 10 (Termination Amounts);
- (ii) the loss or damage has resulted in a Casualty Occurrence and was caused by a Force Majeure Event (other than as described in Clause 39.7(b)(iii)), terminate this Agreement by notice to Project Co and:
 - (A) this Agreement will terminate on the date stated in the State's notice; and
 - (B) the State will pay to Project Co the Force Majeure Termination Amount;
 - (iii) the loss or damage has resulted in at least material damage and was caused by an Uninsurable Risk, terminate this Agreement in accordance with Clause 40.13(f)(ii)(B); or
 - (iv) the loss or damage has resulted in a Casualty Occurrence and was caused by an Event of Default or Immediate Termination Event, terminate this Agreement in accordance with Clause 44.4 and pay to Project Co the Default Termination Amount in accordance with Schedule 10 (Termination Amounts).

39.8 Damage to third party property or State Works

- (a) Without limiting Clause 14.2(a)(iv), Project Co must avoid interference with, or obstruction or damage to, any property in the vicinity of the Site arising out of or in connection with delivering the DBFM Project.
- (b) Without limiting Clause 14.2(a)(iv), in undertaking the DBFM Project, Project Co must not damage, nor construct the DBFM Works to cause damage to, the State Works.
- (c) If any loss of, or damage to, any:
 - (i) real or personal property of third parties; or
 - (ii) State Works,
 occurs in connection with delivering the DBFM Project, Project Co must:
 - (iii) promptly repair such loss or damage; and
 - (iv) compensate the affected person for that loss or damage (if Project Co has a legal liability to do so and as agreed with the affected person or otherwise determined).

39.9 Indemnity for Project Co breach

Project Co indemnifies:

- (a) the State;
- (b) any State Associates; and
- (c) each Minister, entity, department, Government Agency or instrumentality of the State of Western Australia, which is an owner of, has an interest in, or has responsibility for, State Works,

(Indemnified Persons) against any Claim or Liability incurred by the Indemnified Persons in connection with any breach by a Project Entity or any Project Co Associate of a Project Document or any negligent act or omission of a Project Entity or a Project Co Associate, arising out of or in connection with:

- (d) the DBFM Project; or
- (e) the use or occupation of the Site by Project Co or any Project Co Associate.

39.10 Property damage and third party liability indemnity

Project Co indemnifies the Indemnified Persons against:

- (a) any loss of or damage to property of the Indemnified Persons (other than the DBFM Works, the Stadium, the Sports Precinct, the Off-Site Infrastructure or the State Works (as applicable) which is subject to the regime set out in Clauses 39.1 to 39.8); and
- (b) any Liability incurred by the Indemnified Persons in connection with any loss of or damage to third party property or injury to, disease or death, of a person, arising out of or in connection with:
 - (c) the DBFM Project; or
 - (d) the use or occupation of the Site by Project Co or any Project Co Associate.

39.11 State holds benefit of indemnities on trust

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

39.12 Time for enforcement

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

39.13 Application of Civil Liability Act

- (a) **(Interpretation):** In this Clause 39.13 only, '**Legislation**' means Part 1F of the *Civil Liability Act 2002 (WA)* and any equivalent statutory provision in any other state or territory.
- (b) **(Legislation excluded):** The operation of the Legislation is excluded in relation to all and any rights, obligations and Liabilities arising out of or in connection with this Agreement (including delivering the DBFM Project) whether such rights, obligations or Liabilities are sought to be enforced as a breach of contract or Claim in tort (including negligence), in equity or otherwise at Law.
- (c) **(Agreement specifies Liabilities):** Without limiting the generality of Clause 39.13(b), it is further agreed that the rights, obligations and Liabilities of the parties (including those relating to proportionate liability) are as stated in this Agreement and not otherwise, whether such rights, obligations and Liabilities are sought to be enforced as a breach of contract or Claim in tort (including negligence), in equity or otherwise at Law.
- (d) **(Subcontracts):** Project Co must:
 - (i) include a term in each Subcontract that excludes the application of the Legislation in relation to all and any rights, obligations or Liabilities of either party in accordance with each Subcontract, whether such rights, obligations or Liabilities are sought to be enforced as a breach of contract or a Claim in tort (including negligence), in equity or otherwise at Law; and
 - (ii) require each Subcontractor to include, in any further contract that it enters into with a third party for the undertaking of the DBFM Works, the performance of the Services or the delivery of the DBFM Project, a term

that excludes the application of the Legislation in relation to all and any rights, obligations or Liabilities of either party in accordance with each further contract whether such rights, obligations or Liabilities are sought to be enforced as a breach of contract or a Claim in tort (including negligence), in equity or otherwise at Law.

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

39.14 Indirect or Consequential Loss

- (a) Despite any provision of the State Project Documents, neither the State nor any Indemnified Person has any Liability to Project Co or any Project Co Associate, nor is Project Co or any Project Co Associate entitled to make any Claim against the State or any Indemnified Person, in respect of Indirect or Consequential Loss suffered, incurred or sustained by Project Co or any Project Co Associate, arising out of or in connection with the State Project Documents. The exclusion of Liability for any Indirect or Consequential Loss in this Clause 39.14(a) does not apply to exclude Liability for:
 - (i) criminal acts or fraudulent acts or omissions of, or fraudulent misrepresentation by, the State or a State Associate;
 - (ii) wilful misconduct under any State Project Document by the State or a State Associate;
 - (iii) or arising from, any loss of or damage to third party property or injury to, disease or death of a person;
 - (iv) matters which, by Law, the parties cannot limit or exclude;
 - (v) the obligation of the State to pay the State Capital Contribution and the Monthly Service Payment;
 - (vi) any other moneys expressly payable to Project Co under the State Project Documents other than loss of opportunity, profit, anticipated profit, business, business opportunities or revenue or any failure to realise anticipated savings;
 - (vii) any amounts payable by the State under Schedule 4 (Change Compensation Principles) or Schedule 10 (Termination Amounts); or
 - (viii) amounts payable under Clause 37.6.
- (b) Despite any other provision of the State Project Documents, except Clause 39.14(c) and Clause 39.14(d) which continue to apply, neither Project Co nor any Project Co Associate has any Liability to the State or any Indemnified Person, nor is the State or any Indemnified Person entitled to make any Claim against Project Co or any Project Co Associate, in respect of any Indirect or Consequential Loss suffered, incurred or sustained by the State or any Indemnified Person arising out of or in connection with the State Project Documents. The exclusion of Liability for any Indirect or Consequential Loss in this Clause 39.14(b) does not apply to exclude Liability for:
 - (i) criminal acts or fraudulent acts or omissions of, or fraudulent misrepresentation by, Project Co or any Project Co Associate;

- (ii) wilful misconduct under any Project Document by Project Co or any Project Co Associate;
 - (iii) or arising from, any loss of or damage to third party property or injury to, disease or death of a person;
 - (iv) matters which, by Law, the parties cannot limit or exclude;
 - (v) the direct costs incurred by the State in rectifying a Defect for which Project Co is liable under this Agreement (provided the State has complied with its notification obligations in relation to such Defects);
 - (vi) any Abatement calculated in accordance with Schedule 14 (Payment Schedule);
 - (vii) a breach of Clause 50 (Confidentiality) or Clause 51 (Intellectual Property) by Project Co or any Project Co Associate;
 - (viii) any amounts payable by Project Co under Schedule 4 (Change Compensation Principles) or Schedule 10 (Termination Amounts);
 - (ix) any statutory fine arising from any breach of Law or Authorisation by Project Co or a Project Co Associate;
 - (x) abandonment of the DBFM Works or the Services by Project Co;
 - (xi) any other moneys expressly payable to the State under the State Project Documents other than for loss of opportunity, profit, anticipated profit, business, business opportunities or revenue, any failure to realise anticipated savings and cost of capital and other financing costs;
 - (xii) amounts payable under Clause 37.6; or
 - (xiii) wilful unlawful acts by Project Co or any Project Co Associate to the extent that those acts give rise to the following categories of Indirect or Consequential Loss:
 - (A) costs and Liabilities relating to the hiring of a venue to hold Stadium Activities not otherwise capable of being held at the Stadium from time to time; or
 - (B) penalties payable under contracts other than this Agreement.
- (c) Nothing in Clause 39.14(b) prevents the State or an Indemnified Person from applying to join Project Co or a Project Co Associate to any Claim made against the State or an Indemnified Person by a third party, including if the Claim arises out of a Service Failure. Project Co is barred from raising anything in Clause 39.14(b) as a defence to being joined to such a Claim and must ensure that the Project Co Associates similarly do not raise Clause 39.14(b) in defence to being joined to such a Claim. If a Project Co Associate raises Clause 39.14(b) in defence to being joined to such a Claim, that is a breach of this Agreement by Project Co.
- (d) The exclusion of Project Co's or any Project Co Associate's Liability for Indirect or Consequential Loss in Clause 39.14(b) does not apply to the extent that Project Co or any Project Co Associate recovers Indirect or Consequential Loss, or would have recovered Indirect or Consequential Loss if it had complied with the terms of the relevant insurance policies, this Agreement and the relevant Project Document (as the case may be) and had taken all reasonable steps to pursue such recovery:
- (i) under an Insurance policy; or
 - (ii) pursuant to an indemnity under any Project Document.

40 INSURANCE

40.1 D&C Phase Insurances

During the D&C Phase, Project Co must effect and maintain, or cause to be effected and maintained, each of the Insurances:

- (a) stated in Schedule 9 (Insurance); and
- (b) as a prudent owner and operator would obtain and maintain when undertaking work of a similar nature to the DBFM Works.

40.2 Operating Phase Insurances

From the Date of Commercial Acceptance, Project Co must effect and maintain, or cause to be effected and maintained, each of the Insurances:

- (a) stated in Schedule 9 (Insurance); and
- (b) as a prudent owner and operator would obtain and maintain for the operation and maintenance of facilities of a similar nature to the Stadium, Sports Precinct and Off-Site Infrastructure and when performing services of a similar nature to the Services.

40.3 General insurance requirements

- (a) Project Co must:
 - (i) **(Reputable Insurers)**: ensure that all Insurances are effected and maintained with Reputable Insurers;
 - (ii) **(deductibles)**: pay all deductibles payable in connection with any of the Insurances including if the claim is made by the State or any entity referred to in Clause 40.3(a)(xii) insured under the insurance, which deductibles may be claimed back from the State in the circumstances expressly set out in this Agreement;
 - (iii) **(premiums)**: punctually pay all premiums and other amounts payable in connection with the Insurances effected by it, and give the State copies of receipts for payment of premiums if and when requested by the State;
 - (iv) **(no alteration)**: other than in relation to renewal of Insurances (in which case Project Co must comply with Clause 40.7) or endorsements not related to the DBFM Project, not alter, extend or discontinue or cancel any of the Insurances, or allow any of the Insurances to lapse, without the prior approval of the State;
 - (v) **(do not prejudice)**: not do or permit, or omit to do, anything which prejudices any of the Insurances;
 - (vi) **(rectify)**: promptly rectify anything which might, if not rectified, prejudice any of the Insurances;
 - (vii) **(fully disclose)**: fully and promptly disclose all material information to all relevant insurers (and any persons acting on their behalf) relating to the Insurances (whether held solely or jointly with others) in all respects;
 - (viii) **(comply)**: comply at all times with the terms of each of the Insurances;
 - (ix) **(do everything to enable State recovery)**: except to the extent that such action prejudices Project Co's right to indemnity under a policy of insurance, do everything reasonably required by the State or any entity referred to in Clause 40.3(a)(xii) in whose name an insurance policy is effected and maintained to enable the relevant entity (as applicable) to claim and to collect or recover, money due in accordance with or in connection with any insurance policy;

- (x) (**indemnities secondary**): ensure that the terms of the Insurances do not require the State or any entity referred to in Clause 40.3(a)(xii) to exhaust any indemnities referred to in this Agreement as a condition precedent to the insurer considering or responding to any claim;
- (xi) (**notify**): except to the extent that such action prejudices Project Co's right to indemnity under a policy of insurance, promptly notify the State of any occurrence that may give rise to a claim, or any claim made, under any of the Insurances in accordance with the requirements set out in Clause 40.10;
- (xii) (**references to State**): if the State is insured, or cover is extended to the State:
 - (A) in relation to the D&C Phase Insurances, ensure that the insurance policy (other than a workers' compensation insurance policy) expressly names the State of Western Australia, the Minister for Works (a body corporate constituted under section 5 of the Public Works Act 1902 (WA)) (**Minister for Works**), the Western Australian Sports Centre Trust, trading as VenuesWest and any entity, department, Government Agency or instrumentality of the State of Western Australia, and any Minister, whether body corporate or otherwise, and their respective employees, officers, agents and contractors, and consultants for their manual activities engaged by the State in respect of the new Perth Stadium Project, but only to the extent those consultants are present on the Site or any location where the DBFM Works on the new Perth Stadium DBFM Project are being performed; and
 - (B) in relation to the Operating Phase Insurances, ensure that the insurance policy (other than a workers' compensation insurance policy) expressly names the State of Western Australia, the Minister for Works (a body corporate constituted under section 5 of the *Public Works Act 1902* (WA)) (Minister for Works), the Western Australian Sports Centre Trust, trading as VenuesWest and any entity, department, Government Agency or instrumentality of the State of Western Australia, and any Minister, whether body corporate or otherwise, and their respective employees, officers, agents and contractors, and consultants engaged by the State in respect of the new Perth Stadium Project but only to the extent those consultants are present on the Site or any location where the Services on the new Perth Stadium DBFM Project are being performed, other than:
 - (1) the Stadium Operator;
 - (2) contractors engaged by the State to perform a Stadium or Sports Precinct Modification during the Operating Phase; and
 - (3) third parties engaged by the State in the circumstances set out in Clauses 28.1(d)(ii), 29.8, 33.1(d)(vi) or Section 5(g)(iii) of Part A of Schedule 4 (Change Compensation Principles)); and
- (xiii) (**reinstatement**): promptly reinstate any insurance required by this Agreement if it lapses or if cover is exhausted.
- (b) Project Co bears the risk of, and the State has no liability for, the payment of deductibles under Clause 40.3(a)(ii) or otherwise under this Agreement:
 - (i) during the D&C Phase; or

- (ii) if a claim on the Insurances arises out of events which occurred during the D&C Phase,

except in respect of compensation calculated in accordance with Schedule 4 (Change Compensation Principles) for a Compensable Extension Event.

40.4 Terms of Insurances

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

- (a) contains terms, if relevant and to the extent permitted by Law, to the effect that:
 - (i) the insurer will not impute to any insured party any knowledge or intention or a state of mind possessed or allegedly possessed by any other insured party;
 - (ii) in the case of Insurances in accordance with which the State is also entitled to cover, any breach of the conditions of the Insurances by an insured other than the State, must not in any way prejudice or diminish any rights which the State has under the Insurances;
 - (iii) in the case of Insurances in accordance with which the State is also entitled to cover, the relevant Insurance is primary with respect to the interest of the State, and any other insurance or self-insurance arrangements maintained by the State is excess to, and not contributory with, that Insurance;
 - (iv) in the case of Insurances in accordance with which the State is also entitled to cover, a notice of claim given to the insurer by an insured other than the State, will be accepted by the insurer as notice of claim given also by the State;
 - (v) in the case of Insurances in accordance with which the State is also entitled to cover, the insurer agrees that the interests of the insured include the entire assets and undertaking of the DBFM Project and the Stadium, Sports Precinct and Off-Site Infrastructure and waives any rights of subrogation which it may have against any insured party;
 - (vi) in the case of the contract works insurance (public and products liability) referred to in Table 2, Part A(i) of Schedule 9 (Insurance) and the public and products liability insurance for the Operating Phase referred to in Table 2, Part B of Schedule 9 (Insurance), the insurer agrees to treat each insured as a separate insured party as though a separate contract of insurance had been entered into with each of the insured parties, without increasing the deductibles or increasing the overall limit of indemnity;
 - (vii) other than in respect of the professional indemnity policy for the D&C Phase required under Table 3 of Part A(i) of Schedule 9 (Insurance) and in Table 1 of Part A(ii) of Schedule 9 (Insurance), the insurer agrees that no reduction in limits or coverage affecting the DBFM Project or the Stadium, the Sports Precinct and the Off-Site Infrastructure will be made during the period of insurance, except under the circumstances and to the extent permitted by the *Insurance Contracts Act 1984* (Cth) and with not less than 30 days prior notification to the State; and
 - (viii) if not included on the list of insurers maintained by the Australian Prudential Regulation Authority which are authorised to conduct new or renewal insurance business in Australia, the Insurances are governed by the laws of Western Australia and the insurers submit to the exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising in

connection with the Insurances as well as waiving any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum; and

- (b) take proper account of the nature and objectives of the DBFM Project and the Stadium, the Sports Precinct and the Off-Site Infrastructure, the responsibilities and entitlements of the various insureds in connection with this Agreement and are on terms otherwise acceptable to the State (whose acceptance will not unreasonably be withheld).

40.5 Additional Insurance

- (a) If the State at any time reasonably requires Project Co to:
 - (i) arrange insurance against a risk not specifically provided for or contemplated in accordance with Schedule 9 (Insurance); or
 - (ii) increase the extent of, or change the terms of, an existing insurance from that set out in Schedule 9 (Insurance),it may notify Project Co and request that Project Co give effect to its requirements.
- (b) Project Co must promptly inform the State of the amount of any additional premium payable in giving effect to the requirement of the State in accordance with Clause 40.5(a) before it implements the requirement, and the State will advise Project Co whether it still requires Project Co to give effect to that requirement.
- (c) The cost of any additional premiums paid on any additional, increased or varied Insurances required by the State in accordance with Clause 40.5(b) will be a debt due and payable by the State to Project Co.

40.6 Insurances primary

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

40.7 Evidence of Insurance

- (a) Other than in relation to compulsory third party motor vehicle Insurance and otherwise subject to the remainder of this Clause 40.7, Project Co must give the State copies of all policies, certificates of currency, renewal certificates and endorsement slips evidencing the Insurances are effected and maintained:
 - (i) as soon as it receives them from the insurer of the relevant Insurance; and
 - (ii) whenever reasonably requested by the State.
- (b) In relation to the workers' compensation insurances required under Schedule 9 (Insurance), Project Co must provide the State with certificates of currency in accordance with the requirements of Clause 40.7(a).
- (c) In relation to the initial professional indemnity policy for the D&C Phase required under Table 3 of Part A(i) of Schedule 9 (Insurance), Project Co must provide written advice to the State prior to Financial Close, and as otherwise required under Clause 40.7(a), from Minter Ellison, or another reputable national law firm acceptable to the State stating:

- (i) the names and underwriting percentages of the insurers; and
 - (ii) confirmation that the professional indemnity policy for the D&C Phase required under Table 3 of Part A(i) of Schedule 9 (Insurance) complies with the requirements of Clause 39.13(e)(i), this Clause 40 (except Clause 40.4(b)) and Table 3 of Part A(i) of Schedule 9 (Insurance), or provides details of non-compliance,
- which written advice will be relied upon by the State.
- (d) In relation to the initial professional indemnity policy for the D&C Phase required under Table 1 of Part A(ii) of Schedule 9 (Insurance), Project Co must provide written advice to the State prior to Financial Close, and as otherwise required under Clause 40.7(a), from a reputable Australian or British law firm acceptable to the State, stating:
- (i) the names and underwriting percentages of the insurers; and
 - (ii) confirmation that the professional indemnity policy for the D&C Phase required under Table 1 of Part A(ii) of Schedule 9 (Insurance) complies with the requirements of Clause 39.13(e)(i), this Clause 40 (except Clause 40.4(b)) and Table 1 of Part A(ii) of Schedule 9 (Insurance), or provides details of non-compliance,
- which written advice will be relied upon by the State.
- (e) In relation to the professional indemnity policy for the Operating Phase required under Table 3 of Part B of Schedule 9 (Insurance), Project Co must provide written advice to the State prior to the Date of Commercial Acceptance and as otherwise required under Clause 40.7(a), from a reputable national law firm acceptable to the State stating:
- (i) the names and underwriting percentages of the insurers; and
 - (ii) confirmation that the professional indemnity policy for the Operating Phase required under Table 3 of Part B of Schedule 9 (Insurance) complies with the requirements of Clause 39.13(e), this Clause 40 and Table 3 of Part B of Schedule 9 (Insurance), or provides details of non-compliance,
- which written advice will be relied upon by the State.
- (f) In respect of all renewals of the professional indemnity policies for the D&C Phase required under Table 3 of Part A(i) and Table 1 of Part A(ii) of Schedule 9 (Insurance) and the professional indemnity policy for the Operating Phase required under Table 3 of Part B of Schedule 9 (Insurance), Project Co must provide, within the time limits set out in Clause 40.7(a):
- (i) all applicable certificates of currency in relation to the insurance policy; and
 - (ii) unqualified written advice to the State from a reputable national insurance broker acceptable to the State, advising that the new policy does not differ in any material way from the previous policy, which written advice will be relied upon by the State.

40.8 Failure to produce proof of Insurance terms

- (a) If, after being requested in writing by the State to do so, Project Co fails to produce evidence of compliance with its insurance obligations in accordance with Clause 40.7 to the satisfaction and approval of the State, the State may:
- (i) effect and maintain the Insurances and pay the premiums;
 - (ii) exercise its rights under Clause 43;

- (iii) suspend the whole or part of the DBFM Works or the Services until evidence of Insurances required by this Agreement is produced to the State, and Project Co must bear any cost it incurs as a result of the suspension; or
- (iv) refuse payment of any moneys due to Project Co until evidence of Insurances required by Clause 40.7 is produced to the State.
- (b) The costs reasonably incurred by the State in connection with taking any action in accordance with Clause 40.8(a) will be recoverable from Project Co as a debt due and payable on demand from Project Co to the State.
- (c) The rights given to the State by this Clause 40.8 are in addition to any other rights the State may have.

40.9 Insurance claim

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

40.10 Notification of claims or potential claims

Project Co must:

- (a) in relation to the Insurances required under Part A(i) of Schedule 9 (Insurance) (other than the products liability (completed operations) insurance required under Table 2 of Part A(i) of Schedule 9, compulsory third party motor vehicle and workers' compensation insurances) promptly notify the State of any occurrence arising out of or in connection with the DBFM Project that may give rise to a claim under any of those Insurances, except to the extent notification of the occurrence by Project Co is required under Clause 10.5, in which case, Project Co must promptly notify the State where an actual claim is made under those Insurances;
- (b) in relation to the products liability (completed operations) insurance required under Table 2 of Part A(i) of Schedule 9, promptly notify the State in writing of any claim, or claims in the aggregate, with a value of 50% or greater of the annual limit of cover provided, in which case Project Co and the State must meet within 10 Business Days in order to discuss how to address the matter;
- (c) in relation to the Insurance required under Part A(ii) of Schedule 9, promptly notify the State of any occurrence arising out of, or in connection with, the DBFM Project that has given rise to a claim under that Insurance; and
- (d) in relation to the Insurances required under Part B of Schedule 9 (Insurance) (other than compulsory third party motor vehicle and workers' compensation insurances), promptly notify the State of any occurrence that may give rise to a claim under any of those Insurances.

40.11 Subcontractor Insurance

- (a) If Project Co subcontracts any part of the DBFM Works or Services, then Project Co must ensure that its Subcontractors are insured as required by this Agreement as appropriate (including as to amounts of insurance and type of insurance) given the nature of work or services to be performed by them, as if they were Project Co.
- (b) When determining whether its Subcontractors have appropriate Insurances in accordance with Clause 40.11(a), Project Co must have regard to the insurance

- cover its Subcontractors have under the contract works insurance described in Schedule 9 (Insurance).
- (c) If Project Co fails to ensure that its Subcontractors effect and maintain all the Insurances required by this Agreement, the State may:
- (i) exercise its rights under Clause 43;
 - (ii) suspend the whole or part of the DBFM Works or the Services until evidence of Insurances required by this Agreement is produced to the State, and Project Co must bear any cost it incurs as a result of the suspension; or
 - (iii) refuse payment of any moneys due to Project Co until evidence of Insurances required by Clause 40.7 is produced to the State.
- (d) The State is entitled to, but has no obligation to, satisfy itself as to Project Co's compliance with this Clause 40.11.

40.12 Settlement of claims

- (a) **(Establish account):** Project Co must:
- (i) establish an account to be known as the '**Insurance Proceeds Account**';
 - (ii) maintain that account in the name of Project Co with a financial institution nominated by Project Co and approved by the State (such approval not to be unreasonably withheld) or with a financial institution that is a party to the Finance Side Deed;
 - (iii) give details of that account to the State;
 - (iv) notify the financial institution referred to in Clause 40.12(a)(ii) of the charge over the Insurance Proceeds Account in accordance with the General Security Agreement and procure, and copy the State with, acknowledgement of the notice from the financial institution; and
 - (v) procure the agreement of the financial institution referred to in Clause 40.12(a)(ii) not to exercise any right of set off or combination of accounts in relation to the Insurance Proceeds Account.
- (b) **(Application of moneys):** Upon settlement of a claim which relates to repair or reinstatement of the DBFM Project under the Insurances:
- (i) to the extent that the work to be reinstated has been the subject of a payment or allowance by the State to Project Co, the State must be repaid that amount out of the proceeds of Insurances;
 - (ii) to the extent that the work reinstated has not been the subject of a payment or allowance by the State to Project Co, Project Co is entitled immediately to receive the proceeds of insurance, and the amount of such proceeds must be applied to any loss suffered by Project Co relating to those works; and
 - (iii) if Project Co has not completed reinstatement of work required to be reinstated insurance proceeds received must, if requested by either party, be paid into the Insurance Proceeds Account.
- (c) **(Insurance Proceeds Account):** Subject to the Finance Side Deed, moneys in the Insurance Proceeds Account may only be applied towards the repair or reinstatement of the DBFM Project.
- (d) **(Records):** Project Co must give the State records of expenditure from the Insurance Proceeds Account within 45 days of such expenditure.
- (e) **(Surplus funds):** Any funds remaining in the Insurance Proceeds Account after application in accordance with Clause 40.12(c) will be treated by Project Co as revenue for the DBFM Project.

40.13 Uninsurable Risks

- (a) This Clause 40.13 applies to Uninsurable Risks other than Day 1 Uninsurable Risks except to the extent expressly provided otherwise.
- (b) If a risk is an Uninsurable Risk then:
 - (i) Project Co must notify the State within 5 Business Days of becoming aware that the risk has become an Uninsurable Risk; and
 - (ii) the State must meet with Project Co within 5 Business Days after receipt of Project Co's notice to discuss the risk, including whether the risk is in fact an Uninsurable Risk.
- (c) If both parties agree (or if not, it is determined in accordance with Clause 45), that a risk is an Uninsurable Risk:
 - (i) Project Co is not required to procure insurance against that risk for so long as that risk is, and remains, an Uninsurable Risk; and
 - (ii) the Monthly Service Payment will be immediately adjusted to deduct an amount equal to the premium that was payable by Project Co to insure such risk immediately prior to the risk becoming an Uninsurable Risk.
- (d) Subject to Clause 39.7(b)(ii), if both parties agree (or if not, it is determined in accordance with Clause 45), that a risk is an Uninsurable Risk, the parties must meet promptly following their agreement or determination in accordance with Clause 45, to discuss how the risk should be managed, including:
 - (i) consideration of self-insurance by either party;
 - (ii) assigning some other allocation of responsibility to the risk; or
 - (iii) varying the DBFM Works or Services to overcome the risk.
- (e) If a risk is agreed or determined under Clause 40.13(c) to be an Uninsurable Risk and the requirements of Clause 40.13(c) are otherwise satisfied, but the parties cannot agree on how to manage the Uninsurable Risk, then subject to Clause 40.13(f), the State must (at the State's option) either:
 - (i) if, though an Uninsurable Risk, it is still possible to insure the risk by paying higher premiums, require Project Co to take out that insurance cover, and the Monthly Service Payment will be adjusted to pass the premium charges through to the State from the date that the insurance cover is taken out;
 - (ii) indemnify Project Co against any Claim or Liability incurred in connection with the Uninsurable Risk, up to an amount equal to the insurance proceeds that would have been payable had the relevant insurance continued to be available on the previous terms of that insurance;
 - (iii) issue a Modification Order to remove that part of the DBFM Works, Site, Stadium, Sports Precinct, Off-Site Infrastructure or Services which is affected by the Uninsurable Risk, such that following the implementation of the Modification, Project Co is in the same position compared to if the risk had not become an Uninsurable Risk; or
 - (iv) terminate this Agreement by notice to Project Co, in which case Clause 40.13(f)(ii)(B) will apply.
- (f) If damage occurs as a result of an Uninsurable Risk (including a Day 1 Uninsurable Risk):
 - (i) in the case of a Day 1 Uninsurable Risk, the parties will use reasonable endeavours to agree on how the DBFM Works or the Stadium, Sports Precinct or Off-Site Infrastructure (as applicable) may be reinstated and

- the cost of doing so in accordance with Schedule 4 (Change Compensation Principles); and
- (ii) the State must either:
- (A) indemnify Project Co for the loss or damage suffered or incurred by Project Co to the extent such loss or damage arose from the occurrence of that Uninsurable Risk and calculated in accordance with Schedule 4 (Change Compensation Principles), up to an amount equal to the insurance proceeds that would have been payable, and at times consistent with the times at which Project Co would have been paid, had the relevant insurance continued to be available to Project Co on the terms previously obtained by it, or, if the insurance had never been available the amount agreed by the parties to cover that loss or damage or if no agreement, determined under Clause 45, and this Agreement will continue; or
- (B) in circumstances where the damage is at least material damage or a notice under Clause 40.13(e)(iv) has been given, terminate this Agreement, in which case:
- (1) this Agreement will terminate on the date stated in the State's notice; and
- (2) if a notice under Clause 40.13(e)(iv) has been given the State will pay to Project Co [*not disclosed*]; or
- (3) in all other circumstances, the State will pay to Project Co [*not disclosed*].

40.14 Review of Uninsurable Risks

Project Co must be vigilant in reviewing the insurance market generally, to ascertain whether an Uninsurable Risk (including a Day 1 Uninsurable Risk) has become insurable, and in any event must require its insurance brokers to test the market and determine whether, and if so what, insurance terms as to both premium and coverage are available in connection with that risk, from Reputable Insurers, at intervals of not more than 12 Months. If upon such review it is found that the relevant Uninsurable Risk is insurable, then Project Co will promptly procure the insurance in connection with that risk in accordance with this Clause 40, and subject to Clause 40.15,

- (a) regarding the Day 1 Uninsurable Risk which is no longer uninsurable, the State will pay to Project Co the reasonable direct costs (including taxes and duties) incurred by Project Co to procure and maintain insurance for that Day 1 Uninsurable Risk within 20 Business Days of receipt of a demand from Project Co together with evidence of those costs incurred; and
- (b) regarding the Uninsurable Risk which is no longer uninsurable, each Monthly Service Payment will be increased by a proportionate amount of the premium that was payable by Project Co for insurance of such a risk immediately prior to such risk becoming an Uninsurable Risk from the date that the Uninsurable Risk is no longer uninsurable.

40.15 Review of Operating Phase Insurances

- (a) The State and Project Co will meet:
- (i) 6 Months prior to the anticipated Date of Commercial Acceptance; and
- (ii) 6 Months prior to every 3rd anniversary of the Date of Commercial Acceptance,

(each an **Insurance Review Commencement Date**) to review the minimum limits of liability, sub-limits of liability and deductibles for the Insurances required for the Operating Phase under Part B of Schedule 9 (Insurance) which must be effected

and maintained during the ensuing 3 year period with a view to reaching agreement upon the limits, sub-limits and deductibles which will apply during that ensuing 3 year period.

- (b) To the extent that the State and Project Co are able to reach agreement within 2 Months after the Insurance Review Commencement Date on the limits, sub-limits and deductibles to apply during the ensuing 3 year period, Project Co must, from the commencement and for the duration of the relevant 3 year period, cause the relevant limits, sub-limits and deductibles to be adjusted to those agreed.
- (c) To the extent that the State and Project Co are unable to reach agreement within 2 Months after the Insurance Review Commencement Date, then:
 - (i) those limits, sub-limits and deductibles which have not been agreed will be referred for dispute resolution in accordance with Clause 45; and
 - (ii) if the relevant limits, sub-limits and deductibles have not been agreed or resolved in accordance with the dispute resolution process before the commencement of the relevant 3 year period, then Project Co must, pending the outcome of the dispute resolution process, cause the then current levels of the relevant limits, sub-limits and deductibles to be adjusted in accordance with increases in the CPI from the date the relevant limit, sub-limit or deductible was last reviewed or adjusted.
- (d) The State and Project Co agree that the limits, sub-limits and deductibles are to be agreed or resolved (as applicable) having regard to:
 - (i) the nature of the DBFM Project;
 - (ii) the Insurances which Project Co has effected, or caused to be effected, at that time and the risks covered in accordance with those Insurances;
 - (iii) the risks sought to be insured;
 - (iv) the risks which a prudent owner and operator would obtain and maintain for the operation and maintenance of facilities of a similar nature to the Stadium, Sports Precinct and Off-Site Infrastructure and when performing services of a similar nature to the Services, would seek to insure
 - (v) the terms on which insurance is available;
 - (vi) the commercial reasonableness of those terms;
 - (vii) the insurances and risk management practices generally applying in relation to the operation and maintenance of facilities of a similar nature to the Stadium, Sports Precinct and Off-Site Infrastructure and when performing services of a similar nature to the Services;
 - (viii) any events that have an impact on the cost of procuring insurance in the global insurance market generally; and
 - (ix) any other factors which the State and Project Co may agree to be appropriate.

41 COMPLIANCE WITH LAWS

41.1 Authorisations

Project Co must obtain and maintain all Authorisations in connection with the DBFM Project (including all conditions of such Authorisations), other than the State Obtained Authorisations.

41.2 Compliance with Laws and Authorisations

- (a) Project Co must:
 - (i) comply with;
 - (ii) ensure that the Project Co Associates comply with; and

- (iii) ensure that all elements of the DBFM Project comply with, all applicable Laws and Authorisations.
- (b) Project Co must:
 - (i) give all notices and pay all fees and other amounts required to be paid in connection with delivering the DBFM Project; and
 - (ii) give the State copies of all documents (including Authorisations (other than the State Obtained Authorisations) and other notices) issued to it in connection with the DBFM Project by any Authority.
- (c) Project Co must provide all information and assistance reasonably required by the State or the Stadium Operator in order for the State or the Stadium Operator to discharge any obligation it has in accordance with any Law or Authorisation in connection with the DBFM Project.

41.3 Privacy

- (a) Without limiting Clause 41.2, Project Co must comply with:
 - (i) its obligations (if any) under, or arising pursuant to, the *Privacy Act 1988* (Cth) to the extent relevant to this Agreement;
 - (ii) any directions made by a Privacy Commissioner relevant to this Agreement; and
 - (iii) any other reasonable direction relating to privacy which is given by the State or the Stadium Operator.
- (b) If Project Co is exempt from compliance with the *Privacy Act 1988* (Cth), and if Project Co is not subject to an approved privacy code, Project Co must comply with the National Privacy Principles and, when enacted, the Australian Privacy Principles, set out in the *Privacy Act 1988* (Cth) as if it were required to comply with that legislation.

42 REPRESENTATIONS AND WARRANTIES

42.1 Corporate and trust representations

Project Co represents and warrants that:

- (a) **(Project Documents)**: the execution, delivery and performance of the Project Documents to which each Project Entity is a party does not violate any Law, or any document or agreement to which each Project Entity is a party or which is binding on it or any of its assets;
- (b) **(valid and legally binding)**: each Project Document to which each Project Entity is a party constitutes a valid and legally binding obligation on it in accordance with its terms;
- (c) **(not trustee)**: no Project Entity is the trustee or Responsible Entity (as that term is defined in the Corporations Act) of any trust, nor does it hold any property subject to or impressed by any trust, except in the case of Project Co, as trustee of the Trust;
- (d) **(no subsidiaries)**: no Project Entity has any subsidiaries;
- (e) **(no tax consolidation)**: no Project Entity is part of any tax consolidation arrangement contemplated by the *Income Tax Assessment Act 1997* (Cth), except with the consent of the State;
- (f) **(no other trade)**: no Project Entity has traded since its incorporation, other than for the purposes of entering into the Project Documents and delivering the DBFM Project and has no Liabilities other than those that have arisen in connection with entering into the Project Documents;

- (g) **(no material financial change)**: there has been no material change in the financial condition of each Project Entity (since its incorporation), the Equity Investors, the Builder or the FM Subcontractor (since the date of their last audited accounts) which would prejudice the ability of any Project Entity to perform its obligations in accordance with the Project Documents;
- (h) **(Records)**: in respect of each Project Entity:
- (i) its most recent consolidated and unconsolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of its state of affairs as at the date to which they relate and the results of its operations for the accounting period ended on such date;
 - (ii) 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; and
 - (iii) there is no Financial Indebtedness or any other contingent liability which is not disclosed in such accounts,
- all Records referred to in paragraph (f) of the definition of Records (which are not also Records described in paragraph (b) of that definition), including Records in respect of maintenance and Lifecycle Services, are true, complete and correct upon submission of such Records to the State;
- (i) **(status of each Project Entity and Hold Co)**: each Project Entity and Hold Co are corporations limited by shares duly and validly incorporated and existing under the Corporations Act, where Project Co is the sole trustee of the Trust and Hold Co is the sole trustee of the Hold Co Trust;
- (j) **(no action to remove Project Co or Hold Co)**: Project Co and Hold Co have been validly appointed as trustee of the Trust or Hold Co Trust (as applicable) and no action has been taken or threatened to remove Project Co as trustee of the Trust or Hold Co as trustee of the Hold Co Trust, nor to appoint an additional trustee of either trust;
- (k) **(no intention to retire)**: Project Co has not given notice of its intention to retire as trustee of the Trust and Hold Co has not given notice of its intention to retire as trustee of the Hold Co Trust;
- (l) **(power of each Project Entity and Hold Co)**: each Project Entity and Hold Co have, and have properly exercised, the power (including Project Co under the Trust Deed and Hold Co under the Hold Co Trust Deed (as applicable)) to enter into, deliver and to perform and observe its obligations under, the Project Documents to which it is expressed to be a party and to hold the assets, undertakings and rights both present and future of the Trust or Hold Co Trust (as applicable) and there are no limitations on or conditions of it doing so other than as set out in the Trust Deed or Hold Co Trust Deed (as applicable);
- (m) **(right to be indemnified)**:
- (i) Project Co and Hold Co are entitled to be fully indemnified out of the assets of (and a lien over the assets of) the Trust or Hold Co Trust (as applicable) in respect of obligations and liabilities incurred by it in its capacity as trustee of the Trust or Hold Co Trust (as applicable) arising from, or in connection with, the Project Documents to which it is expressed to be a party; and
 - (ii) there are no limitations on the rights of indemnification of Project Co and Hold Co out of the assets of the Trust or Hold Co Trust (as applicable), other than:
 - (A) those limitations permitted by Law; and

- (B) any limitation arising as a result of Project Co's or Hold Co's fraud, negligence or breach of trust;
- (n) **(no release or disposal)**: neither Project Co nor Hold Co has released or disposed of in any way any part of the whole of the indemnity identified in Clause 42.1(m) or any lien over the assets of the Trust or Hold Co Trust (as applicable) other than (in the case of the Trust) under the General Security Agreement or the Financing Documents and neither Project Co nor Hold Co as trustee has a material liability which may be set off against this right of indemnity or lien;
- (o) **(prior rights)**: the rights of any beneficiary to the Trust relating to, and its interests in, the property of the Trust, as the case may be, are subject to the prior rights and interests of:
- (i) the State under the Project Documents; and
- (ii) in the case of Project Co, in the assets of the Trust pursuant to its right of indemnities and any lien;
- (p) **(title and assets)**:
- (i) neither the Trust nor Hold Co Trust has been terminated, no beneficiary of the Trust or Hold Co Trust is presently entitled to the assets of the Trust or Hold Co Trust (as applicable), neither Project Co nor Hold Co is required to wind up or terminate the Trust or Hold Co Trust (as applicable) under the terms of the Trust or Hold Co Trust or applicable Law nor has any winding up or termination of the Trust or Hold Co Trust commenced; and
- (ii) no asset of the Trust or Hold Co Trust has been re-settled, distributed, set aside or transferred to any other trust except to the extent permitted or not restricted under any Project Document or Financing Document;
- (q) **(no breach of trust deed)**: Project Co is not in breach of the Trust Deed and Hold Co is not in breach of the Hold Co Trust Deed;
- (r) **(internal management)**: all acts of internal management of the Trust in connection with the Project Documents or Financing Documents and the assumption by Project Co of liability for the performance of its obligations in connection with the Project Documents and Financing Documents to which it is a party have been duly performed and all consents, authorisations and approvals required are in full force and effect;
- (s) **(trustee relationship Trust)**: the Trust Deed comprises all the terms relevant to the relationship of trustee and beneficiary between Project Co, as the trustee of the Trust, and the beneficiaries of the Trust and constitutes legal, valid and binding obligations enforceable in accordance with its terms and neither the Trust Deed nor any part of it is void, voidable or otherwise unenforceable;
- (t) **(trustee relationship Hold Co Trust)**: the Hold Co Trust Deed comprises all the terms relevant to the relationship of trustee and beneficiary between Hold Co as the trustee of the Hold Co Trust and the beneficiaries of the Hold Co Trust and constitutes legal, valid and binding obligations enforceable in accordance with its terms and neither the Hold Co Trust Deed nor any part of it is void, voidable or otherwise unenforceable; and
- (u) **(copy of trust deeds)**: a copy of the Trust Deed and the Hold Co Trust Deed has been delivered to the State before the execution of this Agreement and that copy is a true, correct and up to date copy of the Trust Deed and the Hold Co Trust Deed as at execution of this Agreement and there are no other documents governing the Trust or the Hold Co Trust.

42.2 Project Co's representations

Project Co represents and warrants that:

- (a) **(informed itself)**: it has informed itself as to the nature of the DBFM Project;
- (b) **(assessed risks)**: it has assessed the risks which it is assuming in accordance with the State Project Documents;
- (c) **(Land Conditions)**: it has examined the Site and its surroundings and has done everything possible to inform itself sufficiently as to access to those areas and the Land Conditions which may affect delivery of the DBFM Project;
- (d) **(own investigations)**: it enters into this Agreement based on its own investigations, interpretations, deductions, information and determinations;
- (e) **(resources and expertise)**: it has the resources and expertise required to perform the obligations imposed on Project Co in accordance with this Agreement including to deliver the DBFM Project in accordance with this Agreement; and
- (f) **(Lobbyist)**: any 'Lobbyist' (as that term is defined in Public Sector Commissioner's Circular 2009-13 'Contact with Lobbyists Code and the Register of Lobbyists' which can be found at: <http://www.publicsector.wa.gov.au/document/public-sector-commissioners-circular-2009-13-contact-lobbyists-code-and-register-lobbyists>) that it or any Project Co Associate or Equity Investor have employed, engaged or otherwise involved, directly or indirectly, in connection with this Agreement, is duly registered as a 'Lobbyist' in terms of that Public Sector Commissioner's Circular and has fully complied with its obligations under it.

42.3 Disclosed Information

- (a) Project Co agrees that prior to Contractual Close it has done everything that would be expected of a prudent, competent and experienced contractor and service provider in assessing the risks that it is assuming in accordance with this Agreement.
- (b) Project Co represents and warrants that it did not rely upon any Disclosed Information or any other information or the adequacy, accuracy, suitability or completeness of the Disclosed Information or any other information for the purposes of entering into this Agreement and the other State Project Documents.
- (c) Project Co agrees that:
 - (i) **(no representation)**: neither the State nor any State Associate has made or makes any representation, or gives any warranty or guarantee in connection with any information, data and documents (including the Project Information and other Disclosed Information) obtained by the State from investigations carried out by the State or on its behalf by independent consultants;
 - (ii) **(information only)**: the Disclosed Information is provided by the State for information purposes only save that, if a Modification Order, direction, consent or approval is given by the State's Representative in accordance with this Agreement, Project Co can rely on that Modification Order, direction, consent or approval, except in the circumstances described in Clause 4.4 and Section 8 of Schedule 3 (Review Procedures);
 - (iii) **(other information)**: there may be other information which the State or a State Associate is aware of or has in its possession which may be relevant to the rights and obligations of the parties in accordance with this Agreement which may not have been provided to Project Co or to which no reference has been made;
 - (iv) **(intellectual property)**: all Intellectual Property Rights in the Disclosed Information remain the property of the State;
 - (v) **(no offer)**: the Disclosed Information does not form part of this Agreement or constitute an invitation, offer or recommendation by, or on behalf of, the State; and

- (vi) **(third parties)**: if the Disclosed Information was prepared by third parties, the State is a mere conduit in connection with the information contained in that Disclosed Information.
- (d) Project Co will not make any Claim against the State for any Liabilities incurred or suffered by Project Co or any Project Co Associate in connection with:
 - (i) any inadequacy, inaccuracy or incompleteness in any of the Disclosed Information;
 - (ii) the provision of, or the purported reliance upon, or use of, the Disclosed Information by Project Co or any Project Co Associate; or
 - (iii) a failure by the State or State Associate to provide any other information, data or documents to Project Co.

42.4 Repetition of representations and warranties

Each representation and warranty:

- (a) in this Agreement is made on Contractual Close; and
- (b) in Clauses 42.1 and 42.2(e) will be deemed to be repeated each day from Contractual Close until the Expiry Date,

with reference to the facts and circumstances then subsisting.

42.5 Reliance on representations and warranties

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

42.6 Undertakings in relation to the Trust

Project Co must:

- (a) not, without the prior written consent of the State, amend or revoke the Trust Deed;
- (b) comply fully with its obligations under the Trust Deed and at Law, and not by any act or omission lose or cease to be entitled to its rights of indemnity in accordance with the Trust Deed against the assets of the Trust; and
- (c) ensure that:
 - (i) there is no restriction or limitation on or derogation from its right of subrogation or indemnity (whether or not arising under the Trust Deed) as trustee of the Trust; and
 - (ii) the rights of the beneficiaries of the Trust relating to, and their interest in, the property of the Trust are subject to the prior rights and interests of:
 - (A) the State under the General Security Agreement; and
 - (B) Project Co in the property of the Trust pursuant to its right of indemnity.

43 DEFAULT

43.1 Notice of Project Co default

- (a) Project Co must:
 - (i) promptly notify the State upon the occurrence of an Event of Default; and
 - (ii) immediately take steps to commence the remedy of and mitigate the effects of the Event of Default.
- (b) If an Event of Default occurs, the State may give Project Co a notice (**Default Notice**) which contains:
 - (i) details of the Event of Default;

- (ii) if the Event of Default is capable of being remedied, a date by which Project Co must remedy the Event of Default; and
- (iii) if the Event of Default is not capable of being remedied:
 - (A) a date by which Project Co must comply with any reasonable requirements of the State in connection with that Event of Default; or
 - (B) if the State has no reasonable requirements in relation to that Event of Default, a statement to that effect.
- (c) The parties acknowledge and agree that if an event identified in paragraph (j) of the definition of Event of Default occurs, for the purpose of the giving of a Default Notice, such event will be deemed to be capable of cure notwithstanding that it may not, as a matter of fact, be capable of cure.

43.2 Project Co to comply with Default Notice and provide remedy program

If the State gives a Default Notice to Project Co, then:

- (a) Project Co must comply with the Default Notice; and
- (b) unless the relevant Event of Default is a failure to pay money or to provide or replace the Handover Bond:
 - (i) Project Co must give the State a program to either remedy the Event of Default or comply with any reasonable requirements of the State in accordance with the terms of the Default Notice which will specify steps to address the underlying cause of the Event of Default and to avoid similar Events of Default occurring in the future;
 - (ii) the parties must consult to develop and agree the remedy program as soon as reasonably practicable following the State's receipt of the remedy program, and in any event within 10 Business Days of the State's receipt of the remedy program; and
 - (iii) following agreement or determination of the remedy program, Project Co must implement and comply with the remedy program.

43.3 Requests for extensions to remedy period

If Project Co considers, in good faith, that the time stated in a Default Notice given by the State under Clause 43.1 is not reasonable, it must immediately notify the State of that belief, the reasons for that belief and the time which it believes is reasonably required to remedy the Event of Default or comply with any reasonable requirements of the State. The State may then, acting reasonably, extend the time stated in the Default Notice to remedy the Event of Default.

43.4 When extensions to be given

- (a) Subject to Clause 43.4(b), if Project Co has been diligently pursuing:
 - (i) the remediation of the Event of Default; or
 - (ii) compliance with any reasonable requirements of the State in connection with an Event of Default that is not capable of remedy,

and considers, in good faith, that it needs an extension of time to remedy the Event of Default, then it must immediately notify the State of that belief, the reasons for that belief and the time which it now believes is reasonably required to remedy the Event of Default or comply with any reasonable requirements of the State. Provided that Project Co is continuing to diligently pursue the remedy or compliance with the State's reasonable requirements, then the time stated in the Default Notice or any extension of that time granted by the State in accordance with Clause 43.3 will be extended by such period as the State determines is reasonably required to enable Project Co to either remedy the Event of Default or comply with any reasonable requirements of the State.

- (b) Project Co is only entitled to one extension of the time specified in the Default Notice or any extension of that time granted by the State in accordance with Clause 43.3, in accordance with Clause 43.4(a) in connection with the same Event of Default.

43.5 Disputes

If Project Co considers that the time stated in the Default Notice (including any extension) given by the State in accordance with this Clause 43 is not reasonable or there is a failure to agree a remedy program as required by Clause 43.2(b), it:

- (a) may (provided that it is and has either been diligently pursuing the remediation of the Event of Default or compliance with any reasonable requirements of the State) refer the matter for resolution in accordance with Clause 45; and
- (b) must, whilst the matter is being determined, continue to diligently pursue either the remediation of the Event of Default or compliance with any reasonable requirements of the State.

43.6 Failure to remedy

- (a) Without limiting the State's rights under Clauses 21 and 44.3 and subject to the Finance Side Deed, if:
 - (i) Project Co fails to remedy an Event of Default within the period set out in the Default Notice (as extended, if at all, in accordance with Clause 43.4); or
 - (ii) an Event of Default is not capable of remedy and Project Co fails to diligently comply with any reasonable requirements of the State to overcome the consequences of the Event of Default within the time stated in the Default Notice given by the State in accordance with Clause 43.1 (as extended in accordance with Clause 43.4),the State may, or may engage a third party to:
 - (iii) remedy the Event of Default on behalf of Project Co; or
 - (iv) take any actions the State considers necessary to overcome the consequences of the Event of Default,and the cost of any actions taken by, or on behalf of, the State in accordance with this Clause 43.6 will be a debt due and payable by Project Co to the State.
- (b) In exercising the rights referred to in this Clause 43.6, the State must use reasonable endeavours to undertake any actions in accordance with Good Industry Practice (taking into account the nature of the works required and the timeframes available to the State to perform such works).

44 TERMINATION

44.1 Termination for convenience

Subject to Clause 44.5, the State may, at any time, terminate this Agreement at its convenience by giving Project Co not less than 20 Business Days' notice.

44.2 Termination for Force Majeure

- (a) Subject to Clause 44.5, and the remainder of this Clause 44.2, if a Force Majeure Termination Event occurs, either party may terminate this Agreement by giving notice to the other party. Any notice to be given by Project Co can only be given in accordance with Clauses 44.2(c) to 44.2(j) and must be provided to the State no later than 20 Business Days before the Force Majeure Termination Event will arise.
- (b) The termination of this Agreement for a Force Majeure Termination Event will take effect upon the date stated in the notice given in accordance with Clause 44.2(a).

- (c) Project Co may not terminate this Agreement for a Force Majeure Termination Event during the period Project Co:
- (i) is able to recover under the Insurance policy referred to in Table 1(ii) in Part A(i) of Schedule 9 (advance consequential loss) or the business interruption component of the Insurance policy referred to in Table 1 of Part B of Schedule 9 (industrial special risks); or
 - (ii) would have been able to recover had it effected and maintained the relevant Insurance policy described in Clause 44.2(c)(i) in accordance with this Agreement,
- for all Liabilities which are suffered as a consequence of the relevant Force Majeure Termination Event and are the subject of the Insurance policies described in Clause 44.2(c)(i).
- (d) Subject to Clause 44.2(e), if Project Co gives a termination notice under Clause 44.2(a), the State may suspend Project Co's right to terminate by giving a suspension notice on the date which is the later of 20 Business Days after receipt of Project Co's termination notice (**Suspension Notice**) and the date on which the right to terminate arose, provided that the period of suspension under any Suspension Notice will not be more than 12 months after the occurrence of the relevant Force Majeure Termination Event.
- (e) Notwithstanding Clause 44.2(d), if Project Co's Insurances respond to the occurrence of a Force Majeure Event for a period of 12 months or more from the date of that Force Majeure Termination Event, the State may not issue a Suspension Notice in any circumstances.
- (f) If the State gives a Suspension Notice, Clause 29.7 no longer applies and the State must pay to Project Co:
- (i) if the Suspension Notice is given prior to the Date of Commercial Acceptance, Project Co's and Finance Co's debt servicing costs under the Financing Documents for the period of the suspension and Project Co's holding costs actually and reasonably incurred for the period of the suspension less any insurance proceeds recovered by Project Co or Finance Co (or which would have been recovered had it complied with Clause 40 (Insurance) in respect of the Force Majeure Event) (without double counting); or
 - (ii) if the Suspension Notice is given after the Date of Commercial Acceptance, the Monthly Service Payment and State Loan Payment which would have been payable if the Services then required to be carried out under this Agreement, which Project Co is relieved from performing in accordance with this Agreement due to the occurrence of the Force Majeure Event, were being performed in full less the aggregate of (without double counting):
 - (A) the costs not incurred by Project Co as a result of the non-performance of the Services as agreed or determined between the State and Project Co, including as a result of any mitigation undertaken by Project Co;
 - (B) any insurance proceeds recovered by Project Co under any business interruption insurance policy (or which would have been recovered had it complied with Clause 40 (Insurance) in respect of the Force Majeure Event); and
 - (C) all amounts which, in accordance with the Financial Model, would have been payable as a return on equity investment but for this Clause 44.2(f)(ii),

provided that Project Co has mitigated all such costs to the extent reasonably practicable to do so and provided that such amounts have not

been recovered by way of any other payments being made during the period of the Force Majeure Event.

- (g) To the extent that the Services are not suspended during the period of the Force Majeure Event, those Services will remain subject to Abatement in accordance with Schedule 14 (Payment Schedule) to the extent that those Services are not being provided in accordance with this Agreement.
- (h) This Agreement will not terminate until the expiry of the Suspension Notice, including as a result of an amendment to reduce the suspension in accordance with Clause 44.2(i).
- (i) The State may amend the Suspension Notice at any time, provided that the total period of suspension under the Suspension Notice will not be more than 12 months after the occurrence of the relevant Force Majeure Termination Event.
- (j) If, following a Suspension Notice but before the end of the period the subject of that Suspension Notice in accordance with Clause 44.2(d), Project Co becomes able to recommence performing some or all of the relevant obligations such that there would no longer be a Force Majeure Event:
 - (i) Project Co shall recommence performance of its obligations within a reasonable period of time as agreed between Project Co and the State (acting reasonably and having regard to the extent to which Project Co has mitigated its costs under Clause 44.2(f) above);
 - (ii) Project Co's termination notice under Clause 44.2(a) and the Suspension Notice will cease to have any effect; and
 - (iii) this Clause 44.2 no longer applies.

44.3 Termination for Event of Default

- (a) Subject to the Finance Side Deed, the State may terminate this Agreement by giving Project Co a notice if any of the following events occurs:
 - (i) Project Co fails to remedy an Event of Default within the period set out in the Default Notice (as extended, if at all, in accordance with Clause 43.4); and
 - (ii) if an Event of Default is not capable of remedy, Project Co fails to diligently comply with any reasonable requirements of the State to overcome the consequences of the Event of Default within the time period stated in the Default Notice (as extended, if at all, in accordance with Clause 43.4).
- (b) Termination of this Agreement for an Event of Default will take effect upon the date stated in the notice given by the State in accordance with Clause 44.3(a).

44.4 Termination for Immediate Termination Event

- (a) Subject to the Finance Side Deed, the State may terminate this Agreement immediately by notice and without granting Project Co any cure period if an Immediate Termination Event occurs.
- (b) Termination of this Agreement for an Immediate Termination Event will take effect upon the date stated in the notice given by the State to Project Co in accordance with Clause 44.4(a).

44.5 Payments on termination

If this Agreement is terminated by the State, the State must pay to Project Co:

- (a) in accordance with Clause 44.1 for termination for convenience, the Voluntary Termination Amount;
- (b) in accordance with Clause 44.2 for termination for a Force Majeure Termination Event, the Force Majeure Termination Amount; and

- (c) for an Event of Default or Immediate Termination Event, the Default Termination Amount,

in accordance with Schedule 10 (Termination Amounts). Any payment under this Clause 44.5 and Schedule 10 (Termination Amounts) is in full and final settlement of any liability of the State and the State Entities to the Project Entities and the Project Co Associates arising from, or in connection with, a termination by the State of this Agreement.

44.6 Termination and Monthly Service Payment

Upon termination under this Clause 44, the State's obligation to pay the Monthly Service Payment will cease.

44.7 Power of attorney

Project Co irrevocably appoints the State and its nominees as notified from time to time, jointly and severally as Project Co's attorney with full power and authority to carry out Project Co's obligations in accordance with this Clause 44 to the extent that Project Co fails to comply with its obligations under this Clause 44.

44.8 Assistance

Project Co will use its reasonable endeavours to assist the State in the exercise of the State's rights in accordance with this Clause 44.

44.9 Novation of liabilities to the State

- (a) Where this Agreement terminates and any Project Entity has any Debt outstanding, the State may elect to assume some or all of the rights and Liabilities under the Financing Documents that would otherwise have been the rights and liabilities of a Project Entity and to the extent the State so elects:
- (i) Project Co must ensure (and must procure that each other Project Entity ensures) that such rights and Liabilities are novated to the State;
 - (ii) the State agrees to meet all further obligations to those creditors on the same terms and conditions as contained in the Financing Documents; and
 - (iii) the amount of the Termination Amount which the State would otherwise be obliged to pay will be reduced by the amount of any Debt assumed by the State.
- (b) For the avoidance of doubt, the parties agree that in the circumstances contemplated in this Clause 44.9, the Termination Amount which the State would otherwise be obliged to pay will also be reduced by the amount of any costs of terminating the Financing Documents which would otherwise have been taken into account in determining the Termination Amount, but which are not incurred by reason of the novation.
- (c) Project Co must ensure that each Project Entity is permitted, under the terms of all Financing Documents, to procure the novation of its Debt obligations and rights pursuant to this Clause 44.9.

44.10 Rights on termination

If the State terminates this Agreement in accordance with its terms, then Project Co's only entitlement will be in connection with its rights (if any) in accordance with Clause 44.5.

45 DISPUTE RESOLUTION

45.1 Disputes

- (a) If a dispute arises between the parties in connection with any fact, matter or thing in connection with this Agreement (**Dispute**), including any dispute in connection with a determination of the Independent Certifier, the Dispute will be resolved in accordance with this Clause 45.

- (b) If there is a Dispute, then a party may deliver to the other party a notice of dispute which sets out the party's contentions, including any relevant legal basis of claim (**Notice of Dispute**).
- (c) Despite the existence of a Dispute, or the referral of the Dispute for resolution in accordance with this Clause 45, each party must continue to comply with its obligations in accordance with this Agreement.
- (d) Subject to Clause 45.4, the parties agree that unless and until a party has complied with the requirements of this Clause 45, a party may not commence any court proceedings in connection with any Dispute, except if the party seeks urgent interlocutory, injunctive or declaratory relief.

45.2 Consideration by Contract Management Team

If a Notice of Dispute has been delivered in accordance with Clause 45.1(b), the Contract Management Team must, within 10 Business Days of the delivery of the Notice of Dispute, meet, give due consideration to the submissions by the parties in connection with the Dispute and attempt in good faith to:

- (a) assist the parties to resolve the Dispute; or
- (b) agree that the Dispute be referred to an Independent Expert in accordance with Clause 45.3.

45.3 Independent Expert

- (a) (**Referral to Independent Expert**): Disputes that arise between the parties in connection with Clauses 16 (other than if Clause 45.3(c) applies), 24, 28.1(a), 30.12, 35, 37, 45.2(b) and 49.4 and any other Dispute agreed by the parties for referral to an Independent Expert, will be referred to an Independent Expert for resolution in accordance with this Agreement.
- (b) (**Appointment**): If this Agreement expressly provides that a Dispute will be referred for determination by an Independent Expert, then Clause 45.2 will not apply and within 5 Business Days of the delivery of the Notice of Dispute in accordance with Clause 45.1(b) the parties must agree on an Independent Expert to determine the Dispute.
- (c) (**Independent Expert**): For the purpose of Clause 45.3(b), unless the Dispute is in connection with a determination by the Independent Certifier, the parties may appoint the Independent Certifier, or some other person, to act as the Independent Expert.
- (d) (**Failure to agree on Independent Expert**): If the parties fail to agree on the Independent Expert within the time referred to in Clause 45.3(b), then:
 - (i) an Independent Expert will be nominated by the president of the institute or governing body for the technical or professional discipline the subject of the relevant Dispute having regard to any Independent Experts proposed by the parties as notified in writing to the president and to the other party (which in the case of each party, must not exceed 2 proposed Independent Experts); or
 - (ii) if there is no governing body for the technical or professional discipline the subject of the relevant Dispute, an Independent Expert will be nominated by the President of the Institute of Arbitrators and Mediators, Australia having regard to any Independent Experts proposed by the parties as notified in writing to the President and to the other party (which in the case of each party, must not exceed 2 proposed Independent Experts).
- (e) (**Agreement**): The agreed or nominated Independent Expert must execute an agreement with the parties within 10 Business Days after the agreement on, or nomination of, the Independent Expert in accordance with Clauses 45.3(c) or 45.3(d) (as applicable).

- (f) **(Referral)**: If the Independent Expert so agreed or nominated executes an agreement in accordance with Clause 45.3(e), then the Dispute must be referred to that Independent Expert for determination.
- (g) **(New independent expert)**: If the Independent Expert agreed or nominated does not, or either party does not, execute an agreement in accordance with Clause 45.3(e), then the parties must agree or nominate another independent expert in accordance with this Clause 45.3 (but the parties will only have the opportunity to agree or nominate one further Independent Expert after the initial Independent Expert).
- (h) **(Basis for determination)**: The Independent Expert will make its determination based upon:
- (i) the Notice of Dispute;
 - (ii) the submissions provided by the parties which, unless the Independent Expert extends the time for delivery, must be delivered within 5 Business Days of the Independent Expert signing the agreement referred to in Clause 45.3(e); and
 - (iii) any further information provided by the parties in accordance with any request by the Independent Expert for further submissions, documents or information from either or both parties.
- (i) **(Conference)**: After the Dispute has been referred to the Independent Expert, the Independent Expert may call and conduct a conference, or any number of conferences, as the Independent Expert sees fit, between the parties, but will give the parties reasonable notice of the matters to be addressed at any such conference.
- (j) **(Representation)**: The parties may be legally represented at any such conference.
- (k) **(Privacy)**: All conferences will be held in private, except to the extent that representatives of the Key Subcontractors will be permitted to attend on reasonable notice, where the Dispute may impact on their rights or liabilities under their Subcontracts.
- (l) **(Visit)**: The Independent Expert may visit the Site, the Stadium, the Sports Precinct and the Off-Site Infrastructure (as applicable), and the parties will facilitate the Independent Expert's access to any of those areas.
- (m) **(Timing)**: The Independent Expert must make a determination in connection with the Dispute by the earliest of:
- (i) within 10 Business Days after the last of the steps set out in Clauses 45.3(a) to 45.3(l); or
 - (ii) within 30 Business Days after receipt of submissions in accordance with Clause 45.3(h)(ii).
- (n) **(Not arbitrator)**: The Independent Expert will act as an expert and not an arbitrator and may make a decision from his or her own knowledge and expertise.
- (o) **(Final and binding)**: The determination of the Independent Expert will be final and binding on the parties, unless within 15 Business Days of the determination, a party notifies the other party that it intends to commence litigation to appeal the determination.
- (p) **(Mistake)**: The Independent Expert may correct the determination made by it by notice to the parties where the determination contains:
- (i) a clerical mistake or an error arising from an accidental slip or omission; or
 - (ii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter.

- (q) **(Costs):** The cost of the Independent Expert will be borne equally by each of the parties to the Dispute unless the determination is made against the party who issued the Notice of Dispute, in which case the Independent Expert may determine that that party will bear all or a greater proportion of the Independent Expert's costs in connection with that Dispute.

45.4 Mediation

- (a) If the Dispute referred to in Clause 45.1 is not settled within 30 Business Days of receipt of the Notice of Dispute the parties will, if mutually agreed, submit the Dispute to mediation in accordance with the Mediation Rules of the Institute of Arbitrators and Mediators Australia as applicable at the date of the Dispute.
- (b) The mediator will be:
- (i) a retired judge of the High Court of Australia or the Supreme Court of a State or Territory of Australia; or
 - (ii) a dispute resolution practitioner with legal qualifications and at least 20 years' experience in the legal profession,
- as agreed between the parties to the Dispute or, failing agreement, a mediator satisfying the requirements of Clauses 45.4(b)(i) or 45.4(b)(ii) will be appointed by the President of the Institute of Arbitrators and Mediators Australia.
- (c) Any mediation meetings and proceedings under this Clause 45.4 must be held in Perth, Western Australia.
- (d) The costs of the mediation process under this Clause 45.4 will be shared equally between the parties to the Dispute, which for the avoidance of doubt, does not include the costs incurred by each party associated with preparing for and attending mediation, including the costs of any legal representatives.

45.5 Litigation

Either party may commence litigation in connection with a Dispute if and only if a Notice of Dispute has been delivered in accordance with Clause 45.1(b) and:

- (a) Clause 45.2 applies and within 20 Business Days after the delivery of the Notice of Dispute in accordance with Clause 45.1(b) the Contract Management Team has not:
- (i) resolved the Dispute; or
 - (ii) agreed that the Dispute be referred to an Independent Expert in accordance with Clause 45.3; or
- (b) the Dispute has been referred for determination by an Independent Expert in accordance with Clause 45.3 and:
- (i) the agreed Independent Expert and any new Independent Expert agreed in accordance with Clause 45.3(g) or any of the parties did not execute an agreement in accordance with Clause 45.3(e);
 - (ii) the Independent Expert failed to make a determination in accordance with Clause 45.3, including within the time set out in Clause 45.3(m);
 - (iii) the Independent Expert made a determination and, within 15 Business Days of the determination, a party has notified the other party that it intends to commence litigation to appeal the determination; or
 - (iv) either party has failed to comply with any of the requirements of this Clause 45.

45.6 Impact of application for adjudication under the Construction Contracts Act

The *Construction Contracts Act 2004 (WA)* (**CCA**) will have the following impact on this Clause 45:

- (a) an application for adjudication under Part 3 of the CCA will not be considered a Notice of Dispute:
- (b) if a Notice of Dispute is given in accordance with Clause 45.1 and the Dispute the subject of that Notice of Dispute is, or subsequently becomes, the subject of an application for adjudication under Part 3 of the CCA, the operation of Clause 45.1 will be stayed in relation to that Dispute until such time as the application is dismissed or determined under the CCA; and
- (c) if a determination is made pursuant to Part 3 of the CCA, this Clause 45 will have no application in relation to the Dispute the subject of that determination and either party may commence court proceedings relating to the Dispute in accordance with the CCA.

45A TURF EXPERT

45A.1 Appointment and term

- (a) The parties will, at least 90 days prior to the Date for Commercial Acceptance (or the date specified in Clause 45A.1(d)), meet to nominate a turf expert for the purpose of resolving disputes with respect to Pitch Recovery Period or Pitch Recovery Services (**Turf Expert**) under Section 2 of Part C of Schedule 13 (Services Specifications) which are stated in Section 2 of Part C of Schedule 13 (Services Specifications) to be referable to the Turf Dispute Resolution Procedure (**Turf Dispute**).
- (b) The Turf Expert will have appropriate qualifications and sufficient practical experience to resolve any Turf Disputes arising under Section 2 of Part C of Schedule 13 (Services Specifications).
- (c) The Turf Expert must not be an employee, officer, agent or contractor of the State, a State Entity, Project Co, a Consortium Entity or a Project Co Associate, unless otherwise agreed to by the parties.
- (d) Upon each 5 year anniversary of the Date of Commercial Acceptance, the parties will appoint a replacement Turf Expert in accordance with this Clause 45A.
- (e) If the parties fail to agree on the Turf Expert at least 60 days prior to the Date for Commercial Acceptance, or the date on which the Turf Expert is to be replaced in accordance with Clause 45A.1(d), then the Turf Expert will be nominated by the president of the Australian Golf Course Superintendent's Association, having regard to any experts proposed by the parties in writing to that person. The parties must procure that the president of the Australian Golf Course Superintendent's Association appoints the Turf Expert at least 30 days prior to the Date for Commercial Acceptance (or the date specified in Clause 45A.1(d)) but the appointment will not commence until the Date of Commercial Acceptance (or the date specified in Clause 45A.1(d)).

45A.2 Turf Dispute Resolution Procedure

- (a) Subject to Clause 45A.2(g), any party to a Turf Dispute under Section 2 of Part C of Schedule 13 (Services Specifications) may by notice (**Turf Notice**) to the other party refer the dispute to the Turf Expert for determination. The Turf Notice must specify in reasonable detail the nature of the Turf Dispute.
- (b) If a Turf Dispute is referred to the Turf Expert, the Turf Expert must promptly determine the Turf Dispute.
- (c) If the Turf Expert decides that further information is required the Turf Expert may call for further submissions, documents or information from either or both parties and the Turf Expert must provide any information received from one party to the other party.
- (d) The Turf Expert may, if they consider it necessary, visit the Stadium for the purpose of examining the Pitch, and the parties must facilitate such access.

- (e) The Turf Expert must make its determination in relation to the dispute within 2 Business Days of the Turf Notice or as otherwise agreed by the State and Project Co (acting reasonably).
- (f) The Turf Expert will act as an expert and not as an arbitrator and may make a decision from its own knowledge and expertise.
- (g) The Turf Expert may only make a decision on the technical aspects of the Turf Dispute and will not be entitled to decide any legal issues which arise out of, or in connection with, or are part of the Turf Dispute.
- (h) To the extent permitted by Law, the determination of the Turf Expert is final and binding on the parties.

45A.3 General

- (a) The Turf Expert must undertake to the State and Project Co to keep confidential all matters coming to their knowledge by reason of its appointment, the performance of its duties and the exercise of its powers.
- (b) The cost of the Turf Expert must be borne equally by Project Co and the State.
- (c) The Turf Expert will have no liability to the parties for anything arising out of, or in any way in connection with the determination process for a Turf Dispute, except in the case of fraud.

46 ASSIGNMENT AND OWNERSHIP

46.1 Assignment by a Project Entity

Except as expressly permitted in accordance with this Agreement, the Finance Side Deed or the General Security Agreement, Project Co must not (and must ensure that no Project Entity does) assign, mortgage, novate, charge or otherwise encumber the Project Documents, without the prior consent of the State and on such terms and conditions as are determined by the State.

46.2 Financier's securities

A Project Entity may, after execution of the Finance Side Deed, mortgage or charge its interest in accordance with the Project Documents to secure its obligations to any Financier (or the trustee or agent for any Financier) in accordance with the Financing Documents, if, and for so long as, the Financier (or the trustee or agent for any Financier) is a party to the Finance Side Deed.

46.3 Restrictions on sale, lease and parting with possession

Project Co must not (and must ensure that no Project Entity does):

- (a) create or allow to exist any security interest (including a Security Interest) over; or
- (b) lease, license, transfer, sell, dispose of, part with possession of, or otherwise deal with,

the whole or any part of the Site, the Stadium, the Sports Precinct or the Off-Site Infrastructure, except as expressly permitted in accordance with this Agreement, the Finance Side Deed or the Financing Documents or as otherwise consented to by the State.

46.4 Assignment by the State

- (a) The State must not sell, transfer or assign or otherwise dispose of its interest in the State Project Documents without the prior consent of Project Co.
- (b) Project Co must give its consent in accordance with Clause 46.4(a) if:
 - (i) it has been provided with details of the proposed transferee and the terms and conditions of the proposed transfer;

- (ii) the proposed transferee is a Government Agency (including any Minister) which is an agent of, or the obligations of which are supported by, the State of Western Australia; and
- (iii) the proposed transferee has agreed to be bound by the relevant State Project Documents.

46.5 Initial status of ownership

Project Co represents and warrants that, as at Financial Close, Project Co and Hold Co will be indirectly and beneficially owned and Controlled as set out below:

- (a) Hold Co, holding a 100% interest in Project Co; and
- (b) John Laing Investments (Perth Stadium) B.V. holding a 100% interest in Hold Co.

46.6 Change in Control

- (a) **(Prohibition):** Subject to Clause 46.6(c), Project Co must ensure that there is no Change in Control of a Consortium Entity without the prior consent of the State which consent will not be unreasonably withheld.
- (b) **(Listed shares):** If a Change in Control of a Consortium Entity occurs due to the issue or transfer of shares, units or other interests in that Consortium Entity or an Equity Investor (directly or indirectly) which are publicly listed on any stock exchange, Project Co must notify the State as soon as reasonably practicable upon becoming aware of the occurrence of the Change in Control.
- (c) *[Not disclosed]*
- (d) **(Notice):** Any request seeking the consent of the State to a Change in Control must include:
 - (i) the identity and address of each proposed Controller;
 - (ii) the extent and nature of the proposed Change in Control; and
 - (iii) all other information necessary for the State to determine:
 - (A) whether to consent to the Change in Control of the Consortium Entity; or
 - (B) the Probity Investigations (if any) the State wants to undertake.
- (e) **(State response):** The State must, within 10 Business Days of receiving a request in accordance with Clause 46.6(d), notify Project Co whether:
 - (i) the State consents to the proposed Change in Control of the Consortium Entity;
 - (ii) the State does not consent to the proposed Change in Control of the Consortium Entity (and the reasons for this); or
 - (iii) the State needs to conduct a Probity Investigation in connection with the Change in Control prior to making a determination whether or not to consent to the Change in Control.
- (f) *[Not disclosed]*
- (g) *[Not disclosed]*

46.7 Change in Management

An Event of Default will occur if a Change in Management of a Project Entity occurs and as a result the relevant Project Entity no longer has the same or better management skills available to it as it had prior to the Change in Management.

47 BUSINESS ACTIVITIES**47.1 Restrictions on business**

Subject to Project Co's rights under Clause 38, Project Co must not conduct any business other than the DBFM Project and the carrying out of its obligations and the exercise of its rights in accordance with the Project Documents without the State's prior consent.

47.2 Restrictions on acquisition of property and Liabilities being incurred

Project Co must not acquire or hold any property or incur any Liability other than for the purposes of the DBFM Project without the State's prior consent.

47.3 Tax consolidation

Project Co must not (and must procure that any other Australian resident entity must not) elect to form a tax consolidated group as contemplated by the *Income Tax Assessment Act 1997* (Cth) if such an election would result in Project Co becoming a member of a tax consolidated group, without the State's prior consent.

47.4 FF&E

Project Co must ensure that all of its plant, systems, hardware, software and other assets and property comprised or used in the delivery of the DBFM Project will be either:

- (a) owned by Project Co; or
- (b) the subject of an agreement (such as a lease or hire purchase agreement):
 - (i) in accordance with which it has the right to acquire ownership of them for nominal cost at the end of the term of the agreement;
 - (ii) which enables it to meet its obligations under Clauses 13 and 25;
 - (iii) which includes a right for it to assign and novate its rights and obligations in accordance with the agreement to the State (or its nominee) prior to the end of the term of that agreement or on termination of this Agreement;
 - (iv) which will not terminate, be suspended or impose more onerous terms on Project Co or the State if the State was to exercise any of its rights in accordance with the Project Documents; and
 - (v) which allows security to be taken over it.

47.5 Notice of Probity Event

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

47.6 Meeting

Upon receipt of a notice in accordance with Clause 47.5, or otherwise upon the occurrence of a Probity Event:

- (a) the State and Project Co must meet within 10 Business Days to agree to a course of action that will remedy the Probity Event (including conducting a Probity Investigation); and
- (b) Project Co must take all necessary steps in accordance with any agreement in accordance with Clause 47.6(a) to remedy the Probity Event.

47.7 Failure to agree

If the State and Project Co fail to meet or agree to a course of action in accordance with Clause 47.6, Project Co must take any action required by the State to remedy the Probity Event (including conducting a Probity Investigation).

47.8 Consents required for Probity Investigation

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

47.9 Costs of Probity Investigation

Project Co must bear the costs reasonably incurred by the State in carrying out the Probity Investigation.

47.10 No appointment without consent

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

48 PROJECT INFORMATION

- (a) **(Make available to State):** Project Co must, upon receipt of a request from the State, make the Records available to the State within 2 Business Days of receiving the State's request.
- (b) **(Financial information):** To the extent the Records comprise financial information, Project Co must prepare all Records in accordance with established accounting practices and procedures.
- (c) **(Legal professional privilege):** The requirement in Clause 48(a) does not apply to Records which are the subject of legal professional privilege.
- (d) **(Audit):** The State and any auditor appointed by the State may audit any Records requested by the State and Project Co must provide (and must ensure that each Project Entity provides) all reasonable assistance to facilitate such audit.
- (e) **(Accounts audit):** Project Co must (and must ensure that each Project Entity does) have its accounts audited annually on both an unconsolidated basis and on a consolidated basis (to the extent that a Project Entity is part of a consolidated entity, within the meaning of the Corporations Act).
- (f) **(Audited financial statements):** As soon as practicable (and in any event not later than 120 days) after the close of each Financial Year, Project Co must give to the State certified copies of the consolidated (if applicable) and unconsolidated audited statements of financial position and statement of financial performance of each Project Entity for the previous Financial Year, and if requested by the State, of the Builder (during the D&C Phase) and of the FM Subcontractor (during the Operating Phase) for the previous financial year for the Builder or FM Subcontractor, as relevant.
- (g) **(Cashflow and profit and loss statements):** Not later than 30 days after the end of each Quarter, Project Co must give to the State certified copies of each Project Entity's cashflow and profit and loss statements.
- (h) **(Maintenance of Records):** Project Co must (and must ensure that each Project Entity does):
 - (i) maintain all Records:
 - (A) for a period of not less than 7 years from the date that the Record was created; and
 - (B) in a manner which ensures the availability and continuous integrity of all Records; and
 - (ii) maintain all Records otherwise as required by the *State Records Act 2000* (WA) and all other applicable Laws or Quality Standards.

49 MODEL VARIATION EVENTS

49.1 Status of the Financial Model

The State must not be adversely affected by any discrepancies, errors or omissions in the Financial Model, or by the fact that it may not reflect the actual financial performance or the projected performance or budgets of the DBFM Project or Project Co.

49.2 Varying the Financial Model

The Financial Model will be varied in accordance with this Clause 49.2, on the occurrence of any of the following events (each a **Model Variation Event**):

- (a) a Refinancing;
- (b) a Change Compensation Event or Modification; and
- (c) any other event that Project Co and the State agree to be a Model Variation Event.

49.3 Principles for variations to Financial Model

If a Model Variation Event occurs, the Financial Model will be varied by only taking into account the amounts agreed between the State and Project Co, or as determined in accordance with Clause 45.

49.4 Procedures for variations to Financial Model

- (a) Any variation to the Financial Model to take account of a Model Variation Event must be made as follows:
 - (i) Project Co must propose the variation by notice to the State giving full details of the assumptions and calculations used;
 - (ii) the State will review the varied Financial Model in accordance with Schedule 3 (Review Procedures); and
 - (iii) any Dispute about the variation will be referred to an Independent Expert for resolution in accordance with Clause 45.3.
- (b) Once the variation to the Financial Model is agreed or is determined, Project Co must amend the Financial Model accordingly.

49.5 Access to information

Project Co must provide (and must ensure that each Project Entity provides) the State and any nominee of the State with full access to electronic copies of the calculations required to vary the Financial Model for a Model Variation Event, including reasonable access to Project Co's financial modeller or the financial modeller of any Project Co Associate with the ability to access that information, and relevant passwords or other access information.

49.6 Auditing the Financial Model

- (a) The State may at any time appoint a model auditor to audit the Financial Model and:
 - (i) the results of the audit will be disclosed to both the State and Project Co; and
 - (ii) to the extent any discrepancies, errors or omissions are revealed in the audit by the State, subject to Clause 45, Project Co must promptly correct the Financial Model.
- (b) If an audit by the State results in a correction to the Financial Model, Project Co must pay the reasonable costs of the State in conducting the audit, but if not, the State will bear the costs of the audit.

49.7 Custody of the Financial Model

The Financial Model will be held in escrow from the date of Financial Close for the Term by the Western Australian State Solicitor's Office on the basis that it will be released to both parties for the purposes of:

- (a) varying the Financial Model on the occurrence of Model Variation Events;
- (b) the calculation of Termination Amounts;
- (c) the determination of any Disputes under this Clause 49 by an Independent Expert in accordance with Clause 45.3; and
- (d) the State exercising its audit rights under Clause 49.6.

50 CONFIDENTIALITY

50.1 Confidential Information

- (a) **(Confidentiality obligations):** Project Co must, and must ensure that each Project Co Associate, Equity Investor and any prospective financier or equity investor, keep confidential, subject to Clauses 50.1(b) and 50.1(c), the State Project Documents, all Records and all Disclosed Information (**Confidential Information**).
- (b) **(Permitted disclosure):** Project Co is not obliged to keep confidential any information:
 - (i) which is in the public domain through no default of Project Co, a Project Co Associate, Equity Investor or Financier; or
 - (ii) the disclosure of which is:
 - (A) required by Law, including in accordance with the *Freedom of Information Act 1992 (WA)*;
 - (B) required by a relevant stock exchange (in which event a copy of the disclosure must be given to the State at the same time);
 - (C) consented to by the State; or
 - (D) made to a court in the course of proceedings to which Project Co is a party.
- (c) **(Disclosure to Project Co Associates):** Without limiting Project Co's obligations in accordance with Clause 50.1(a), and providing that Project Co ensures that the parties receiving the information comply with the obligations under Clause 50.1(a), Project Co may disclose Confidential Information to:
 - (i) any Project Co Associate, Equity Investor or Financier to the extent necessary for the purpose of undertaking the DBFM Project; or
 - (ii) subject to Clause 50.1(d), any prospective financier or equity investor of the DBFM Project.
- (d) **(No disclosure):** Project Co must not disclose any Confidential Information to any prospective financier or equity investor of the DBFM Project until, if required by the State, the State has carried out any Probity Investigations in connection with the relevant entities.
- (e) **(State disclosure of Disclosed Information):** The State may disclose the Disclosed Information created by it or by a State Entity in any circumstances.
- (f) **(State may disclose):** In addition to the disclosure permitted in Clause 50.1(e) and Clause 50.1(i), the State may at any time disclose the Confidential Information and the Commercial in Confidence Information:
 - (i) as authorised in writing by Project Co;
 - (ii) to any Minister;

- (iii) in accordance with all Laws;
 - (iv) by the Minister for Sport and Recreation of Western Australia, the Premier of Western Australia, the Treasurer of Western Australia, the Minister for Finance of Western Australia, the Governance Agency, the Department of Sport and Recreation (including the Director-General of the Department of Sport and Recreation), the Department of Treasury of Western Australia (including the Under Treasurer) or the Department of Finance (including the Director-General of the Department of Finance) in the performance of their functions or the discharge of their duties, including in responding to any questions, making a public statement, or releasing information in relation to a matter of public interest;
 - (v) to satisfy the requirements of parliamentary accountability or any other reporting or recognised public obligations of the State;
 - (vi) to the Western Australian Auditor-General for the purposes of satisfying its statutory duties; and
 - (vii) in accordance with the *Freedom of Information Act 1992* (WA), the *Ombudsman Act 1976* (Cth) or the *Parliamentary Commissioner Act 1971* (WA).
- (g) **(Limited disclosure):** In addition to the disclosure permitted in Clause 50.1(e) and Clause 50.1(i) and subject to the State using reasonable endeavours to inform the recipient that the relevant information is confidential, and marking the relevant information as confidential, the State may at any time disclose the Confidential Information and the Commercial in Confidence Information to the extent reasonably necessary:
- (i) other than where further limited under Clause 50.1(h), for the purpose of performing the State's obligations under this Agreement;
 - (ii) to satisfy the requirements of any Government Agency, administrative or judicial body or tribunal;
 - (iii) to advise or inform any State Associate or advisor to the State in relation to purposes connected to the DBFM Project;
 - (iv) to comply with the policies of the Western Australian government;
 - (v) to the extent the State believes it is necessary to disclose the information in a value for money analysis of the DBFM Project; and
 - (vi) to complete the annual reports to the Department of Sport and Recreation, the Governance Agency, the Department of Treasury, the Department of Finance of Western Australia and any other Government Agency to which the Agreement has been assigned in accordance with Clause 46.4(b).
- (h) **(Further permitted disclosure of Confidential Information):** In addition to the disclosure permitted in Clause 50.1(e) and Clause 50.1(i), the State may disclose the Confidential Information (subject to redacting the information listed in Table 2 of Schedule 17 (Confidential Provisions)):
- (i) to the Stadium Operator to the extent required for the performance of the Stadium Activities and as reasonably required as part of a procurement process to procure a Stadium Operator from time to time; and
 - (ii) as may be reasonably required in connection with a tender process undertaken by the State in accordance with Schedule 10 (Termination Amounts).
- (i) **(Other permitted disclosure):** Subject to the State redacting the Commercial in Confidence Information, the contents of the State Project Documents and any other document in connection with the DBFM Project which is authored, executed or authorised by the State or a Government Agency may be published on any

Western Australian government internet website or provided to any Government Agency for the purposes of another State project.

50.2 Public announcements

- (a) Project Co must not, and must ensure that Project Co Associates and Equity Investors do not, without the prior approval of the State:
 - (i) use this Agreement or the name or logo of any person specified in this Agreement, the State of Western Australia or any other Government Agency;
 - (ii) refer to Project Co's or any Project Co Associate's, Financier's or Equity Investor's association with the State or any Government Agency which results from this Agreement; or
 - (iii) make any statement concerning this Agreement or the DBFM Project, in any publication, public statement or announcement, advertisement or media release.
- (b) Subject to Clause 50.1, the State may use this Agreement and Project Co's name and logo in connection with this Agreement as the State reasonably requires, provided that the State acknowledges the role of Project Co to the extent that is reasonable in the circumstances.

50.3 Media releases

Project Co must, and must ensure that Project Co Associates and Equity Investors:

- (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 Agreement for publication in any media; or
 - (ii) nominate this Agreement for any award;
- (b) give due recognition to the State and any State Associates where the State consents to a matter specified in Clause 50.3(a); and
- (c) refer all enquiries from any media concerning this Agreement to the State, and thereafter, as soon as practicable provide to the State details of all enquiries, and any material or information released by Project Co, a Project Co Associate, or Equity Investor following the State's consent.

50.4 No Association

Project Co must not, and must ensure that Project Co Associates and Equity Investors 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 Project Co, any Project Co Associate or Equity Investor has an association or connection with the State or any State Associates other than Project Co's engagement under this Agreement,

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

51 INTELLECTUAL PROPERTY

51.1 Project Co's Background IP

- (a) Subject to the terms and conditions of this Clause 51, Project Co's Background IP remains vested in Project Co (or third party licensor as applicable).

- (b) Subject to Clause 51.1(c), Project Co grants to the State a non-exclusive, perpetual, royalty-free, irrevocable, transferable licence (with the right to assign and to sub-licence and permit further sub-licences) to use Project Co's Background IP and the Project IP described in Clause 51.9(d):
- (i) to use, operate, monitor, repair, enhance, modify, alter or otherwise deal in any way with the DBFM Works, the Services, the Stadium, the Sports Precinct, the Off-Site Infrastructure and the Contract Material;
 - (ii) to deliver the DBFM Project (whether with or without Project Co) including completing the design and construction of the DBFM Works and performing the Services;
 - (iii) for any purpose in connection with the DBFM Project and associated with the further development of improvements on or in the vicinity of the Site; and
 - (iv) to exercise the rights referred to in Clause 51.1(b)(i) to 51.1(b)(iii) with other Intellectual Property Rights the State may own or otherwise be entitled to exercise.
- (c) Notwithstanding the terms of Clause 51.5(b), to the extent that the subject matter to which Project Co's Background IP attaches or protects is commercially available off-the-shelf third party software, Project Co must:
- (i) if Project Co is legally able to do so, licence that software to the State and the State Associates on the terms of the licence granted to Project Co by the third party licensor; or
 - (ii) if Project Co is not legally able to licence that software to the State or State Associates without the consent of the licensor, use all reasonable endeavours to procure the consent of the licensor to grant such a licence to the State and the State Associates. If Project Co is obliged to provide the licence or to access such software or system as part of its obligations under the Output Specifications then such licences will be at Project Co's cost. In all other circumstances, the State will be liable to pay for such licences.
- (d) If Project Co is, or reasonably considers it will be, after having used its reasonable endeavours, unable to grant to the State the rights required in accordance with Clause 51.1(c), it must promptly notify the State of that failure and the State and Project Co will negotiate in good faith with respect to Project Co obtaining for the State's benefit, such rights or arrangements as the State reasonably requires. If Project Co and the State are unable to obtain such rights for the State, Project Co will continue to work with the State in order to allow the State to use or take full benefit of the third party software.

51.2 State's Background IP

- (a) The State's Background IP remains vested in the State or the relevant State Associate (as applicable).
- (b) The State grants to Project Co a non-exclusive, royalty-free, revocable, non-transferable licence (including a right to sub-licence on such conditions that the State reasonably requires from time to time) to use the State's Background IP to the extent required to perform Project Co's obligations under this Agreement.
- (c) If the licence of the State's Background IP set out in Clause 51.2(b) is revoked by the State (excluding revocation due to a breach by Project Co of the licence) and the licence is required by Project Co to perform Project Co's obligations under this Agreement, the State will promptly procure a replacement licence at the State's cost.
- (d) If the licence of the State's Background IP set out in Clause 51.2(b) is revoked by the State due to a breach by Project Co of the licence, and the licence is required

by Project Co to perform Project Co's obligations under this Agreement, the State will promptly provide information to Project Co to enable Project Co to procure a replacement licence at its own cost.

51.3 Project IP

- (a) Except for Project IP described in Clause 51.9(d), Project Co hereby assigns to the State all Project IP free of any encumbrance or interest of any third party. Project Co acknowledges and agrees that this Clause 51.3(a) constitutes an assignment of copyright in the relevant Project IP for the purpose of section 196 of the *Copyright Act 1968* (Cth).
- (b) The State grants to Project Co a non-exclusive, royalty-free, non-transferable licence (including a right to sub-licence on such conditions that the State reasonably requires from time to time), which cannot be revoked prior to the Expiry Date, to use the Project IP to the extent required by Project Co to perform its obligations under this Agreement in accordance with the terms of this Agreement.
- (c) Project Co must:
 - (i) notify the State if it becomes aware of or reasonably considers that any of the Project IP has commercial application or may be commercially exploited by the State; and
 - (ii) give or procure all assistance reasonably requested by the State to protect, exploit and commercialise the relevant Project IP.

51.4 Verification

Project Co must, if required by the State:

- (a) verify the creation and ownership of all Project IP including by communicating, disclosing or making available for inspection, examination and copying all information, data, documents, records and materials reasonably required by the State for verification, audit, project management and operational purposes;
- (b) do all things necessary to give effect to the assignment of Project IP on the terms contained in Clause 51.3(a), 51.9(b) and 51.9(c); and
- (c) do all things necessary to sub-licence or ensure the grant of a licence of the Project IP described in Clause 51.9(d) to the State.

51.5 Project Co warranties

Project Co warrants that:

- (a) Project Co owns or is entitled to use Project Co's Background IP in the performance of the DBFM Works, the Services and the DBFM Project;
- (b) Project Co's Background IP and the validity and subsistence of Project Co's or third party's (as the case may be) right, title and interest to the relevant Project Co's Background IP are not the subject of any pending or threatened challenge or Claim (including for opposition, cancellation, verification or rectification) and there are no matters or facts which might give rise to such challenge or Claim;
- (c) Project Co is able to grant the licence to Project Co's Background IP as described in Clause 51.1(b) or Clause 51.1(c), whichever applies;
- (d) Project Co has obtained all authorisations and consents required so that Project IP can be assigned to the State, as described in Clause 51.3(a) or licensed to the State, as described in Clause 51.9(d);
- (e) use by the State, any State Associate or by another person at the direction or with the permission of the State, of Project Co's Background IP or Project IP in accordance with this Agreement will not infringe the Intellectual Property Rights of any third party or breach any Law; and

- (f) subject to Clause 51.1(c), neither the State nor any State Associate or any other person acting at the direction or with the permission of the State, is liable to pay any third party any licence or other fee in respect of the use of Project Co's Background IP or the Project IP.

51.6 Non-infringement

- (a) Project Co must perform the DBFM Works and the Services, and otherwise perform its obligations and exercise its rights under this Agreement, in a manner that does not infringe or misappropriate any Intellectual Property Rights of any person.
- (b) Without limiting Clause 51.6(a), if Project Co becomes aware that there is, or will be, or is likely to be an infringement or misappropriation of any Intellectual Property Rights of any person arising out of this Agreement, including by reason of the performance of the DBFM Works or the Services, or the State's use of the Stadium, Sports Precinct or Off-Site Infrastructure, Project Co must, at no cost to the State, use its best endeavours to, at the State's direction:
- (i) procure any necessary rights or licences; or
 - (ii) replace or modify any infringing resource, service or work,
- in each case in a manner acceptable to the State, such that the quality, performance or usefulness of the relevant resource, service or works is not degraded and the infringement or alleged infringement ceases.

51.7 Indemnity

- (a) Subject to Clause 51.7(d), Project Co indemnifies each Indemnified Person against any Liability suffered or incurred by the Indemnified Person arising out of or in connection with, any Claim brought or made by any third party that:
- (i) the performance of the DBFM Works or the Services;
 - (ii) the use of the Stadium, Sports Precinct or Off-Site Infrastructure only insofar as it relates to the scope of Project Co's obligations in respect of the Stadium, Sports Precinct and Off-Site Infrastructure; or
 - (iii) the grant or exercise of any licence of Intellectual Property Rights by Project Co under this Agreement,
- infringes the Intellectual Property Rights, Moral Rights or any other rights of any person (**Third Party IP Claim**), which indemnity is reduced to the extent that the relevant Claim is caused or contributed to by the use of the State's Background IP by Project Co in accordance with the terms of the licence of the Intellectual Property Rights.
- (b) The State may:
- (i) defend any Third Party IP Claim, at Project Co's reasonable expense, in such a manner as it may deem appropriate; or
 - (ii) direct Project Co to defend the Third Party IP Claim.
- (c) Project Co must, if directed by the State in accordance with Clause 51.7(b)(ii):
- (i) conduct the defence of any proceedings relating to the Third Party IP Claim diligently using competent counsel and in such a way as not to bring the reputation of the State into disrepute;
 - (ii) consult with the State and keep the State informed of all material matters relating to the Third Party IP Claim;
 - (iii) provide any information requested by the State in relation to the proceedings;
 - (iv) obtain the State's prior written approval (which must not be unreasonably withheld) before any settlement is made in respect of the Third Party IP

- Claim and which settlement must have regard to the State's interests;
and
- (v) comply at all times with any reasonable direction given by the State in connection with the defence or settlement of the Third Party IP Claim.
- (d) The indemnity in Clause 51.7(a), the obligations in Clauses 51.7(b) and 51.7(c) and the warranties in Clause 51.5 will not apply to the extent that the Third Party IP Claim arises from:
- (i) any combination, operation or use of any relevant Project Co's Background IP or Project IP in conjunction with any items not supplied by Project Co, recommended by Project Co in writing or sourced by Project Co;
 - (ii) any modification, update or development carried out by or for the State to any Project Co's Background IP or Project IP (to the extent that Project IP is licensed to the State) where such modification, update or development was not authorised or approved by Project Co in writing;
 - (iii) the State or its sublicensees or permitted users failing to use Project Co's Background IP or Project IP (to the extent that Project IP is licensed to the State) in accordance with this Agreement; or
 - (iv) subject to Project Co or its Subcontractors giving prior notice of the potential infringement of which Project Co or its Subcontractors is aware or should reasonably have been aware, compliance with the requirements or instructions of the State by Project Co or its Subcontractors where it is not reasonably possible to comply with such requirements or instructions without causing such infringement.
- (e) References to Project Co in Clause 51.7(d) include any Project Co Associate.

51.8 Moral Rights

- (a) Project Co must procure from all authors and holders of Moral Rights in Project Co's Background IP and the Project IP an unconditional, irrevocable consent in writing authorising the State (and its successors in title, and licensees and persons authorised by the State, its successors in title or licensees) to:
 - (i) use any or all of Project Co's Background IP or the Project IP without attribution of the author;
 - (ii) subject any or all of Project Co's Background IP or Project IP to derogatory treatment; and
 - (iii) falsely attribute the authorship of any or all of Project Co's Background IP or the Project IP.
- (b) The State may notify Project Co at any time that it requires a further written unconditional and irrevocable consent from an author or holder of Moral Rights in any or all of Project Co's Background IP or the Project IP for specific acts or omissions by the State in relation to that subject matter. Project Co must use its reasonable endeavours to procure and promptly provide such consent to the State.
- (c) On the performance of the DBFM Works or the Services, Project Co warrants that it has obtained all the written consents needed to allow the State to perform the acts and omissions specified in Clause 51.8(a) from the relevant authors and other holders of Moral Rights.
- (d) On request from the State, Project Co must immediately provide the State with copies of the consents referred to in Clause 51.8(a).

51.9 Subcontracts

- (a) Project Co must ensure that each Subcontract contains conditions that:
 - (i) the Subcontractor:

-
- (A) grants to Project Co an irrevocable, transferable, non-exclusive, worldwide royalty free licence (with the right to assign and to sub-license and permit further sub-licenses including to Project Co for the purpose of delivering the DBFM Project and performing the DBFM Works and the Services) to use and reproduce all Subcontractor Background IP to the extent necessary to enable Project Co to perform the DBFM Works and the Services;
 - (B) grants to the State an irrevocable, non-exclusive, transferable, worldwide royalty free licence (with the right to assign and to sub-license and permit further sub-licensees including to Project Co for the purpose of delivering the DBFM Project and performing the DBFM Works and the Services) to use and reproduce all Subcontractor Background IP to the extent necessary to enable the State or Project Co and any person claiming through them to use the product of the work or services performed under the Subcontract, including to exercise all or any Intellectual Property Rights assigned to Project Co under Clause 51.9(b) or 51.9(c); and
 - (C) must procure from each person involved in the performance of the works or services under the Subcontract, an unconditional, irrevocable written consent to the State and Project Co and any person claiming through them doing anything that would otherwise infringe any of their Moral Rights in the product of work or services performed by such person for the purpose of the Subcontract;
- (ii) the works or services to be executed under the Subcontract must be performed, where the Subcontractor is a natural person, only by the Subcontractor or persons who are employees of the Subcontractor acting within the terms of their employment or, where the Subcontractor is a body corporate, only by persons who are employees of the Subcontractor acting within the terms of their employment; and
 - (iii) the Subcontractor must do all things necessary to enable Project Co to verify the creation and ownership of all Intellectual Property Rights created or coming into existence under the Subcontract whether before or after the date of the Subcontract (including communicate, disclose or make available for inspection, examination and copying all information, data, documents, records and materials reasonably required by Project Co for verification, audit, project management and operational purposes) and to perfect the vesting of such rights in Project Co (including executing any transfer or other document).
- (b) Project Co must ensure, and procure that the relevant Project Co Associate ensures, that each Key Subcontract contains conditions that the Key Subcontractor assigns to Project Co free of any interest of any third party, by way of absolute assignment of future rights and separately upon them coming into existence, all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the Key Subcontract or the provision of any of the services or work to be performed under the Key Subcontract, whether before or after the date of the Key Subcontract, with the intent that such rights will, by virtue solely of the Key Subcontract, vest in Project Co immediately upon their creation.
 - (c) Project Co must use its best endeavours to ensure, and procure that the relevant Project Co Associate ensures, that each Subcontract that is not with a Key Subcontractor contains conditions that the Subcontractor assigns to Project Co free of any interest of any third party, by way of absolute assignment of future rights and separately upon them coming into existence, all Intellectual Property

Rights (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the Subcontract or the provision of any of the services or work to be performed under the Subcontract, whether before or after the date of the Subcontract, with the intent that such rights will, by virtue solely of the Subcontract, vest in Project Co immediately upon their creation.

- (d) If Project Co is not able to include, or cannot procure that the relevant Project Co Associate include, the conditions in Clause 51.9(c), Project Co must ensure, or procure that the relevant Project Co Associate ensures that the Subcontract contains conditions granting to Project Co a licence of the Project IP and that Project Co can licence that Project IP to the State on the terms contained in Clause 51.1(b). If the Subcontractor acts inconsistently with the licence to be granted under this Clause 51.9(d), at any time, Project Co must take all steps necessary to enforce the terms of the licence, for the benefit of the State, at Project Co's cost.

52 NOTICES

52.1 General Notices

- (a) **(Form of Notices):** Each communication (including each notice, consent, approval, request and demand) in accordance with or in connection with, this Agreement (in this Clause 52.1, '**Notices**'):
 - (i) must be in writing; and
 - (ii) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party.
- (b) **(Procedure for sending Notices):** Notwithstanding Clause 54.3, all Notices must be:
 - (i) delivered or posted by prepaid post to the address; or
 - (ii) except where a Notice relates to:
 - (A) a Claim in respect of a Dispute or a dispute under Clause 28B or Clause 45A;
 - (B) an Event of Default; or
 - (C) an Immediate Termination Event,
 (which in each case must be delivered in accordance with Clause 52.1(b)(i)), sent by email in the form of a .pdf file letter (or such other form agreed by the State) to the email address,

of the addressee set out in Schedule 1 (Contract Particulars) (or as otherwise notified by that party to each other party from time to time).
- (c) **(Date of receipt):** Subject to Clause 52.1(d), a Notice is taken to be received by the addressee:
 - (i) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
 - (ii) in the case of email, at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party sending the email from the recipient stated in Schedule 1 (Contract Particulars); and
 - (iii) in the case of delivery by hand, on delivery.
- (d) **(Next Business Day):** If the communication is taken to be received on a day which is not a Business Day or after 5.00pm, it is taken to be received at 9.00am on the next Business Day.

- (e) **(Notices sent by email):** In connection with communications sent by email:
- (i) only the letter in .pdf format attached to the email and any attachments to such letter which are referred to in the letter, will form part of the communication in accordance with this Clause 52.1. Any text in the body of the email or the subject line will not form part of the communication; and
 - (ii) Project Co must ensure that, in connection with any communications in accordance with or in connection with this Agreement:
 - (A) its firewall or mail server (or both) (as applicable):
 - (1) allows messages of up to 14 MB to be received;
 - (2) does not trap any messages in the spam filter which have been sent from any State domain; and
 - (3) automatically sends a receipt notification to the sender upon receipt of a message; and
 - (B) its systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.

52.2 Notice of Claims

Except if this Agreement expressly sets out the timeframes for the delivery of Notices, the State will not be liable upon any Claim by Project Co in connection with this Agreement or the DBFM Project unless Project Co gives the State:

- (a) a Notice in which Project Co states that it intends to submit a Claim and the event on which the Claim will be based and which must be given to the State no later than 15 Business Days from the earlier of when Project Co:
 - (i) first became aware; or
 - (ii) ought reasonably to have become aware,
 of the events on which the Claim is based; and
- (b) a Claim within 20 Business Days of giving Notice in accordance with Clause 52.2(a), which must include:
 - (i) detailed particulars concerning the events on which the Claim is based;
 - (ii) the legal basis for the Claim whether based on a term of this Agreement or otherwise, and if based on a term of this Agreement, clearly identifying the specific term;
 - (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
 - (iv) details of the amount claimed and how it has been calculated.

52.3 Continuing events

If the events upon which the Claim in accordance with Clause 52.2(b) is based or the consequences of the events are continuing, Project Co must continue to give information required by Clause 52.2(b) every 20 Business Days after the Claim in accordance with Clause 52.2(b) was submitted, until 21 Business Days after the events or consequences have ceased.

52.4 Project Co and Stadium Operator Notices

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

53 TAXES**53.1 GST**

- (a) **(Application of Clause)** This Clause applies as if the GST Law imposed GST, and was able to impose GST, in the circumstances prescribed in the GST Law, on property of any kind belonging to a State (as that expression is used in section 114 of the *Commonwealth of Australia Constitution Act 1900*).
- (b) **(Construction):** In this Clause 53.1:
- (i) words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
 - (ii) '**GST Law**' has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
 - (iii) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.
- (c) **(Nominated Entity):** The State confirms that the entity nominated to be responsible for the administration of the State's GST reporting obligations **(Nominated Entity)** is registered for GST as at Contractual Close. The parties acknowledge that the Nominated Entity will be responsible for administering the obligations in accordance with this Clause on behalf of the State.
- (d) **(Additional amount):** Unless otherwise expressly stated, and except in connection with a supply to which Clause 53.1(e) applies, all prices or other sums payable or consideration to be provided in accordance with this Agreement are exclusive of GST.
- (e) **(Non-Monetary Consideration):** Subject to Clause 53.1(j), if some or all of the consideration for a taxable supply made by a party in connection with this Agreement is not expressed as an amount of money **(Non-Monetary Consideration)** and also constitutes a taxable supply by the recipient, the parties agree that:
- (i) the Non-Monetary Consideration is GST inclusive and will not be increased on account of GST under Clause 53.1(f);
 - (ii) Project Co will, after consultation with and the approval of the State (such approval not to be unreasonably withheld or delayed), instruct at its own cost, a suitably qualified professional valuer to determine the GST inclusive market value of any Non-Monetary Consideration provided by the supplier and the recipient; and
 - (iii) Project Co will notify the State of the amount determined by the valuer within 15 days of the end of the Month in which this Agreement is entered or 15 days of the end of the Month in which the value is able to be determined (if it cannot be determined as at the date of this Agreement).
- (f) **(Payment of GST):**
- (i) Subject to Clause 53.1(e)(i), if GST is payable on any supply made by a party **(Supplier)** under or in connection with this Agreement, the recipient will pay to the Supplier an amount equal to the GST payable on the supply.
 - (ii) The recipient will pay the amount referred to in Clause 53.1(f)(i) in addition to and at the same time that the consideration for the supply is to be provided in accordance with this Agreement.
- (g) **(Gross-up of Non-Monetary Consideration Supplies):** If, at any time a Supplier has a GST liability for a tax period in connection with a taxable supply to which Clause 53.1(e) applies **(Non-Monetary Consideration Supplies)** that, due to a

difference in value between the Non-Monetary Consideration and the Non-Monetary Consideration Supplies, exceeds the input tax credit to which the supplier is entitled in respect of its acquisition of the recipient's taxable supplies which represented the Non-Monetary Consideration (**Acquisition**) for that tax period (the excess being the **Shortfall**):

- (i) the recipient must pay to the Supplier an amount equal to the Shortfall plus GST within 5 Business Days of being requested in writing by the Supplier to do so; and
 - (ii) the parties will do all things required, including issuing new invoices and adjustments notes (if necessary) to give effect to this Clause 53.1(g).
- (h) **(Tax invoices):**
- (i) The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under Clause 53.1(f) or Clause 53.1(g).
 - (ii) In the case of a supply to which Clause 53.1(e) applies, the Supplier must issue a tax invoice or adjustment note within 5 days after the time it is required to obtain the valuation referred to in Clause 53.1(e)(ii).
 - (iii) The recipient can withhold payment of any amount payable in accordance with this Clause 53.1 until the Supplier provides a tax invoice or an adjustment note, as appropriate.
- (i) **(Adjustment event):** If an adjustment event arises in connection with a taxable supply made by a Supplier in accordance with this Agreement, the amount payable by the recipient in accordance with this Clause 53.1 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier, or by the Supplier to the recipient, as the case requires.
- (j) **(Reimbursements):** Where a party is required in accordance with this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
- (i) the amount of the expense or outgoing less any input tax credits in connection with the expense or outgoing to which the other party is entitled; and
 - (ii) if the payment or reimbursement is subject to GST, an amount equal to that GST.
- (k) **(Completion Payment):** Notwithstanding any other provision of this Clause 53.1:
- (i) consistent with Clause 21A.3 that neither the Securitised Licence Structure nor the State Loan Agreement creates an Increased State Risk Allocation the parties agree that the State will not bear any net costs (including without limitation, funding costs arising from timing differences) in respect of GST payable on any taxable supply to which the Completion Payment relates;
 - (ii) the parties will use their reasonable endeavours to obtain and implement an agreement by the Commissioner to offset, in the parties' running balance accounts, Project Co's liability to pay GST on a taxable supply to which the Completion Payment relates and the State's entitlement to input tax credits for a creditable acquisition to which the Completion Payment relates. The setting off by the Commissioner of the amounts in the parties' running balance accounts will be taken to satisfy any obligation of the State to pay to Project Co an amount in respect of GST on the relevant taxable supply (whether or not the amount set off is equal to the whole of that GST);

- (iii) Project Co must, on or before the Completion Payment Date, issue the State a tax invoice for any taxable supply to which the Completion Payment relates;
- (iv) the State is not obliged to make a payment to Project Co in respect of GST pursuant to Clause 53.1(e) in respect of a supply to which the Completion Payment relates on the Completion Payment Date until it has (acting reasonably and in accordance with Clause 53.1(k)(ii) and Clause 53.1(k)(v)) received the benefit of an input tax credit for such GST (by the input tax credit being offset against a GST or other tax liability of the State, credited to the State's running balance account, being refunded to the State or a combination of the above);
- (v) Subject to Clause 53.1(k)(ix), if the State is denied an input tax credit by the Australian Tax Office, a Court or other appropriate Government Agency for all or part of the GST in respect of a Completion Payment, Project Co must reimburse the State for any relevant GST it has paid in excess of its input tax credit entitlement and indemnify the State for an amount equal to any penalty or interest as a result of claiming an input tax credit for the whole of the GST on that Completion Payment;
- (vi) if Clause 53.1(k)(v) applies, the State will cooperate with Project Co as reasonably required by Project Co to enable the State and Project Co to discuss with the Australian Tax Office the reasons for the denial of an input tax credit and will take reasonable steps, as reasonably directed by Project Co, to dispute the denial (provided that the obligation to dispute is not a condition precedent to the operation of Clause 53.1(k)(v)). Project Co indemnifies the State for its costs incurred in disputing any denial of an input tax credit;
- (vii) if as a result of Clause 53.1(k)(vi), the State's entitlement to an input tax credit is increased, the State will promptly pay to Project Co an amount equal to that increase together with any interest to which the State is entitled in relation to that amount;
- (viii) the State must take all reasonable steps to ensure it, the Nominated Entity (or the government entity which is treated as making the supplies and acquisitions under the State Project Documents for GST purposes) receives the benefit of the input tax credit from the Australian Taxation Office as quickly as possible, including:
 - (A) claiming the input tax credit in the GST return or "Business Activity Statement" for the first tax period in which the input tax credit can be properly reported;
 - (B) lodging the GST return or Business Activity Statement in which the input tax credit is reported no later than the due date for that GST return or Business Activity Statement;
 - (C) forwarding any queries or correspondence from the Commissioner in respect of that Business Activity Statement (but only to the extent that the queries or correspondence relates to the relevant input tax credit) to Project Co; and
 - (D) promptly informing Project Co of any delays or other related issues in respect of the input tax credit;
- (ix) the State acknowledges that Project Co has no obligation to make a payment under Clause 53.1(k)(v) to the extent that the State is denied an input tax credit by the Australian Tax Office, a Court or other appropriate Government Agency for the GST in respect of a Completion Payment because the State or the Nominated Entity has not met its obligations under Clause 53.1(k)(viii);

- (x) if at any time this Agreement is terminated, the obligation of the State to pay Project Co any amount in accordance with Clause 53.1(k)(iv) continues in full force and effect and is an obligation separate, independent and additional to the State's obligation to make a termination payment in accordance with Clause 44.5. Notwithstanding the termination of this Agreement, the State is obliged to use reasonable endeavours to obtain the input tax credit and to pay to Project Co each amount in accordance with Clause 53.1(k)(iv); and
- (xi) if at any time this Agreement is terminated, the obligation of Project Co to pay the State any amount in accordance with Clause 53.1(k)(v) continues in full force and effect.

53.2 General liability for Taxes

As between the State and Project Co:

- (a) save to the extent caused by an act or omission of Project Co or a Project Co Associate, other than an act or omission in accordance with this Agreement;
 - (i) the State is responsible for and will pay any land tax assessed on or in relation to the Site under the *Land Tax Assessment Act 2002 (WA)* and the *Land Tax Act 2002 (WA)*; and
 - (ii) the State is responsible for and will pay all duty assessed under the *Duties Act 2008 (WA)* on any transfer, or agreement to transfer receivables pursuant to the Receivables Purchase Deed or any document executed under it; and
- (b) Project Co bears the risk of, and must pay, all Taxes incurred or imposed in connection with:
 - (i) the execution, stamping, delivery and performance of any Project Document and each transaction effected or made in accordance with or in connection with it;
 - (ii) any amendment to, or any consent, approval, waiver, release, surrender or discharge of, or in accordance with, any Project Document; and
 - (iii) the DBFM Project,

except as provided in Clause 53.1 and 53.2(a).

54 GENERAL

54.1 Interest

- (a) If a party fails to pay any amount payable by that party to the other party within the time required in accordance with this Agreement, then it must pay interest on that amount in accordance with Clause 54.1(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 54.1(b) will be a party's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

54.2 Set off

- (a) Without limiting or affecting the State's rights in accordance with any other provision of this Agreement or at Law, the State may deduct from any monies due and payable to Project Co in accordance with this Agreement (except for the State Capital Contribution and amounts payable by the State in accordance with Clauses 21A.1 and 21A.2 and with the Monthly Service Payment to be exhausted before the State Loan Payment is reduced);
 - (i) any amount due and payable by Project Co to the State (whether in accordance with or relating to this Agreement or any other State Project Documents); or
 - (ii) any amount claimed by the State against Project Co (acting reasonably) arising out of or in connection with, any State Project Document and in good faith.
- (b) If an amount referred to in Clause 54.2(a)(i) becomes due and payable during the D&C Phase, without limiting or otherwise affecting the State's rights in accordance with any other provision of this Agreement or at Law, the State may deduct the amount, plus interest calculated at the Default Rate from the date that the amount became due and payable, from the Monthly Service Payments when payment of the Monthly Service Payment commences. If the Monthly Service Payment as calculated in accordance with Schedule 14 (Payment Schedule) is less than zero then the amount by which the Monthly Service Payment is less than zero will be deducted from the State Loan Payment otherwise payable for the Month.
- (c) If the State makes a deduction from any moneys due and payable to Project Co in accordance with Clause 54.2(a)(ii), to the extent that it is subsequently determined that the State is not entitled to payment of those amounts, in addition to the repayment of the amounts deducted, the State will pay Project Co interest at the Default Rate on such amount from the date of the relevant deduction.
- (d) Project Co must make all payments to the State free from any setoff or counterclaim and without deduction or withholding for or on account of any present or future Tax, unless Project Co is compelled by Law to make such a deduction or withholding.
- (e) If Project Co is compelled by Law to make a deduction or withholding, it must:
 - (i) remit the deducted or withheld amount to the relevant Authority within the time required by Law; and
 - (ii) provide to the State all information and documentation relating to that deduction or withholding, including any information or documentation required to obtain a credit for or repayment of the deducted or withheld amount from an Authority.

54.3 Online contract management

- (a) If the State establishes an online contract administration system for the DBFM Project, the State may direct Project Co to submit all documentation created in accordance with this Agreement including the D&C Documents (or specific items of Design Documentation) in accordance with such system.
- (b) Project Co must comply with any direction given by the State in accordance with Clause 54.3(a).

54.4 State review of Project Co performance

- (a) **(Review):** The State will from time to time during the Term review Project Co's performance in accordance with this Agreement and prepare a performance report in accordance with the State's requirements for reviewing the performance of contractors engaged by the State.

- (b) **(Performance report):** The State may provide the performance report to any Government Agency.
- (c) **(Liaise with Project Co):** In reviewing and reporting on Project Co's performance, the State will:
 - (i) liaise with Project Co;
 - (ii) notify Project Co of the form of the performance report including the criteria against which Project Co's performance will be assessed;
 - (iii) provide any other information or guidelines to Project Co relevant to the performance review and the preparation of the performance report; and
 - (iv) provide the proposed performance report to Project Co for its review.
- (d) **(Reasonable assistance):** Project Co:
 - (i) must provide all assistance reasonably required by the State in conducting a performance review and preparing a performance report in accordance with this Clause 54.4; and
 - (ii) may provide comments to the State on the proposed performance report.
- (e) **(Comments):** The State will:
 - (i) include any comments provided by Project Co in the completed performance report; or
 - (ii) respond to Project Co in connection with any comments Project Co has on the proposed performance report.

54.5 Priority Start – Building Policy

Project Co must comply and ensure that each Project Co Associate complies with the policy published by the Department of Training and Workforce Development titled 'Priority Start – Building' dated 1 March 2010.

54.6 Relationship of the parties

- (a) No duty of good faith is implied on the State in connection with its relationship with Project Co.
- (b) Neither the State Project Documents nor the relationship created by them, are intended to create, and will not be construed as creating, any partnership or joint venture as between the parties.
- (c) Project Co must not act as or represent itself to be the servant or agent of the State.

54.7 State's rights, duties, powers and functions

- (a) **(State's own interests):** Unless this Agreement expressly provides otherwise, nothing in this Agreement gives rise to any duty on the part of the State to consider interests other than its own interests when exercising any of its rights or performing any of its obligations in accordance with the State Project Documents.
- (b) **(State's powers, functions or duties):** Notwithstanding anything contained or implied in this Agreement to the contrary, the parties expressly agree that the State is not obliged to exercise a power, function or duty which is granted to or within the responsibility of any other Government Agency, or to influence, over-ride or direct any Government Agency in the proper exercise and performance of its legal duties and functions.
- (c) **(No fettering):** Nothing contained in this Agreement or contemplated by this Agreement has the effect of constraining the State or placing any fetter on the State's discretion to exercise or not to exercise any of its statutory rights, duties, powers or functions.

- (d) **(No Claim):** Subject to Clause 54.7(e), Project Co 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 54.7(a) to 54.7(d) do not limit any Liability of the State which the State would have had to Project Co 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 54.7(a) to 54.7(d).

54.8 Reasonable endeavours

If there is any statement in this Agreement 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.

54.9 Entire agreement

The State Project Documents constitute the entire agreement and understanding between the parties and supersede any prior agreement (whether in writing or not), negotiations, discussions, understandings and agreements between the parties in relation to the subject matter of this Agreement.

54.10 Counterparts

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

54.11 Governing law

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

54.12 Waiver and estoppel

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

54.13 Variations and waivers

No variation, modification or waiver of any provision in this Agreement, nor consent to any departure by any party from any such provision, will be of any effect unless it is in writing and signed by the parties or (in the case of a waiver) by the party giving it. Any such variation,

modification, waiver or consent will be effective only to the extent to or for which it may be made or given.

54.14 Amendments to Project Documents

- (a) This Agreement may only be varied by a deed executed by or on behalf of each party.
- (b) Subject to Clause 54.14(c), Project Co may not at any time after Contractual Close (other than when it is ancillary to the exercise of its rights in accordance with the State Project Documents):
 - (i) make or permit any amendment to, replacement of or waiver of a provision of;
 - (ii) terminate, surrender, rescind or accept repudiation of;
 - (iii) permit the novation, assignment or substitution of any counterparty's rights, obligation or interest in; or
 - (iv) enter into any agreement or arrangement which affects the operation or interpretation of,

any Project Document without the State's prior consent (which in connection with the Project Documents to which the State is not a party, will not be unreasonably withheld).
- (c) This Clause 54.14 does not apply to:
 - (i) Refinancing, which is to be dealt with in accordance with Clause 37; or
 - (ii) a transaction of the type referred to in Clause 46.6 which is to be dealt with in accordance with that Clause.

54.15 Joint and several liability

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

54.16 Indemnities

- (a) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination or expiration of this Agreement.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Agreement.
- (c) A party must pay on demand any amount it must pay in accordance with an indemnity in this Agreement.

54.17 Clauses to survive termination

- (a) All provisions of this Agreement which expressly or by implication from their nature are intended to survive termination, completion or expiration of this Agreement will survive such termination, completion or expiration, including any provision which is in connection with:
 - (i) the State's rights to setoff and to recover money;
 - (ii) confidentiality or privacy;
 - (iii) Intellectual Property Rights;
 - (iv) any obligation to make any Records available to the State;
 - (v) any indemnity, performance bond or other financial security given in accordance with this Agreement;
 - (vi) the State's rights in connection with Handover; or

- (vii) any right or obligation arising on termination of this Agreement.
- (b) Nothing in this Clause 54.17 prevents any other provision of this Agreement, as a matter of interpretation, also surviving the termination of this Agreement.
- (c) No right or obligation of any party will merge on completion of any transaction in accordance with this Agreement. All rights and obligations in accordance with this Agreement survive the execution and delivery of any transfer or other agreement which implements any transaction in accordance with this Agreement.

54.18 Costs and expenses

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

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

54.19 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 Agreement.

55 PERSONAL PROPERTY SECURITIES ACT

55.1 State's Personal Property

For the purposes of this Clause 55, '**State Personal Property**' means all personal property the subject of a Security Interest granted by Project Co in favour of the State under this Agreement.

55.2 Further assurance

If the State determines that this Agreement (or a transaction in connection with it) is or contains a Security Interest in respect of State Personal Property for the purposes of the PPS Law, the State may apply for registration under the PPSA for whatever collateral class it thinks fit and Project Co agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the State asks and considers necessary for the purposes of:

- (a) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
- (b) enabling the State to apply for any registration, complete any financing statement or give any notification, in connection with the Security Interest so that the State has the priority required by it; or
- (c) enabling the State to exercise rights in connection with the Security Interest .

55.3 No requirement for PPSA notices

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

55.4 Priority of State's interest

Subject to the Finance Side Deed, nothing in this Agreement will be taken or construed as an agreement or consent by the State to:

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

55.5 Notices to be given to the State

Project Co must notify the State in writing as soon as Project Co becomes aware of any of the following:

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

55.6 Negative undertakings

Other than pursuant to the Financiers' Securities (as that term is defined in the Finance Side Deed), Project Co must not:

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

55.7 Assistance with registration

- (a) Project Co must provide all necessary information and take all necessary action and execute all necessary documents as reasonably requested by the State to enable the State to perfect, within the time limit specified in the PPSA, any Security Interest in respect of State Personal Property including any Security Interest granted temporary perfection under the PPSA at any time.
- (b) Project Co must promptly provide all necessary information and take all necessary action (including obtaining any consent or agreement or giving any notice) to enable the State to register fully valid and effective financing statements or financing change statements with respect to any Security Interest in respect of State Personal Property.

55.8 Costs and expenses relating to PPSA and registration

Each party must pay its own costs in connection with complying with the requirements under this Clause 55.

55.9 Confidentiality for the purposes of the PPSA

- (a) Neither the State nor Project Co will disclose information of the kind mentioned in section 275(1) of the PPSA in response to a request under Section 275(1) of the

PPSA and Project Co will not authorise, and will ensure that no other party authorises, the disclosure of such information.

- (b) Clause 55.9(a) does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

55.10 Severability of provisions

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

Execution page

Executed as an agreement

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)

Witness address

Witness occupation

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:

Signature of Witness

The Hon. Dr Mike Nahan MLA

Witness name

Witness address

Witness occupation

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

sign here



Authorised Representative

print name

Graham Partridge

sign here



Authorised Representative

print name

David Etherton

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

Signature of witness

Full name of witness

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 – Contract Particulars

Schedule 2 – Financial Close Adjustment Protocol

Schedule 3 – Review Procedures

Schedule 4 – Change Compensation Principles

Schedule 5 – Design Development

Schedule 6 – Programming Requirements

Schedule 7 – Completion Criteria

Schedule 8 – Off-Site Infrastructure Works

Schedule 9 – Insurance

Schedule 10 – Termination Amounts

Schedule 11 – Site Plans

Schedule 12 – Design Specifications

Schedule 13 – Services Specifications

Schedule 14 – Payment Schedule

Schedule 15 – State Capital Contribution

Schedule 16 – Pro Forma Direct Deed

Schedule 17 – Confidential Provisions

Schedule 18 – FF&E List

Schedule 19 – Plans

Schedule 20 – Operating Phase Licence

Schedule 21 – Schedule of State Works and Surrounding Works

Schedule 22 – Commercial Opportunities

Schedule 23 – Commercial Opportunity Fee

Schedule 24 – Guidelines for Working in and Around the Rail Reserve

Schedule 25 – Subcontractor Deed of Novation

Schedule 26 – Operational Interface Agreement

Schedule 27 – Independent Certifier Agreement

Schedule 28 – Finance Side Deed

Schedule 29 – Builder Side Deed

Schedule 30 – FM Subcontractor Side Deed

Schedule 31 – General Security Agreement

Schedule 32 – Project Stakeholders

Schedule 33 – PCS Independent Certifier Agreement

Schedule 34 – Fair Wear and Tear

Schedule 35 – Construction Environmental Management Framework

Schedule 36 – Operational Environmental Management Framework

Schedule 37 – The new Perth Stadium Environmental Management Plan

Schedule 38 – Aboriginal Engagement Strategy

Schedule 39 – Aboriginal Heritage Management Plan

Schedule 40 – State Stakeholder Management Plan

Schedule 41 – Sponsorship Agreements Framework

Schedule 42 – State Obtained Authorisations for which a Compensable Extension Event may be granted

Authorisation
Endorsement by the Western Australian Planning Commission of a Management Plan for the purposes of paragraph (e) of the definition of "permitted development" in clause 16 of the Metropolitan Region Scheme that permits works contemplated by this Agreement as at Contract Close, as such works may be Modified in accordance with clause 33.
Reservation of relevant portions of lots 300 and 12057 under the <i>Land Administration Act</i> 1997 for purposes consistent with the works contemplated by this Agreement as at Contract Close, as such works may be Modified in accordance with clause 33.

Schedule 43 – Priced Options

Schedule 44 – Delayed Design and Procurement Schedule

Schedule 45 – Flood Parameters

Attachment 1 – Contractual Close Design Documentation

1 ORDER OF PRECEDENCE

The following order of precedence applies in the event of any inconsistency, ambiguity or discrepancy between the various documents comprising this Attachment 1:

- (a) Section 1: Design Issues List, including its attachments;
 - (b) Section 2: evaluation clarifications in respect of design only; and
 - (c) Section 3: Bid Design Documentation.
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Attachment 2 – Works Program

Attachment 3 – D&C Plans

Attachment 4 – Operating Phase Plans

Attachment 5 – Financial Model

Attachment 6 – Work Method Statement

Attachment 7 – DBFM Works Construction Value Schedule

