

## Bankwest Club - Terms and Conditions

VenuesLive Management Services (WA) Pty Ltd operates Optus Stadium (Stadium) and the Stadium Park as agent for and on behalf of the Western Australian Sports Centre Trust trading as VenuesWest (Operator). The Operator accepts applications for Club Seats at Bankwest Club (Club Membership) on these Terms and Conditions. By submitting an Application each Applicant agrees to be bound by these Terms and Conditions.

### 1. Applications, Offer and Acceptance

- a. Applications will constitute an offer by the Applicant and will only be accepted in accordance with these Terms and Conditions.
- b. Club Membership, and access to and use of the Club Membership Benefits, remains subject to payment of the Annual Fee in each Year.
- c. The receipt of a completed Application Form does not constitute acceptance of an Application by the Operator.
- d. The Operator will notify each Applicant in writing whether an Application has been successful (Confirmation) or otherwise.
- e. Applications from any persons who have been banned from any venue within or outside Australia, or who have been banned by any sporting club or association within or outside Australia, will not be processed until the applicable ban has been lifted or expired.
- f. Club Membership runs from 1 January to 31 December.
- g. If an Applicant receives a Confirmation during a calendar Year the Annual Fee payable for the first Year of the Club Membership will be pro-rated to reflect the number of months available to the Club Member in that Year.
- h. The Annual Fee will be adjusted for CPI on the CPI Review Date, Year on Year, using the CPI published as at 30 September in the previous year.
- i. Subject to clause 1(j) the Annual Fee will be payable by the Club Member:
  - i. in the first year of the Club Membership following receipt of a Confirmation issued further to clause 1(c), and an invoice issued by the Operator; and
  - ii. in each subsequent Year of the Club Membership on or before 1 December of the preceding Year, further to an invoice issued by the Operator.
- j. The Club Member may elect to pay the Annual Fee by equal monthly instalments following receipt of a Confirmation, or in any subsequent Year of the Term, by written notification to the Operator on or before 1 December of the preceding Year. The Club Member will be required to complete a Monthly Payment application form, authorising the Operator to deduct the monthly instalment amounts, plus the Processing Fee, on the first day of each month during each Year of the Club Membership, from the credit/debit card details provided by the Club Member. The Operator will continue to deduct the monthly instalment amounts for each remaining Year of the Club Membership, until such time as the Club Member notifies the Bankwest Club Member services that they wish to cease paying by monthly instalments.

### 2. Club Membership Benefits

For each Club Seat held, a Member will receive the right to:

- a. access a Club Seat in the area shown on the Seating Plan;

- b. attend and use one Club Seat for each of the Regular Events, at no additional charge. For Concerts, access to the Club Seats may be unavailable due to the position of the stage, and therefore the Member will be allocated an alternative reserved seat in the Stadium;
- c. subject to paying the applicable ticket fee as determined by the AFL, attend and use one Club Seat for each AFL Finals Series Match;
- d. attend and use one Club Seat for each Special Event, upon booking in advance in accordance with the relevant procedures and payment of the applicable ticket price. For Special Events, the Club Member may be allocated their regular Club Seat or an alternative reserved seat in the Stadium;
- e. access to and use of the Club Hospitality during the Regular Events, AFL Finals Series Matches and Special Events (where access is secured by the Operator), however access to Club Hospitality for Concerts and Special Events may not be available if Club Members are allocated seats in a different location of the Stadium;
- f. membership of each of the AFL Clubs, and the associated benefits received by the equivalent AFL Club members, which includes the right to purchase one ticket to any AFL Finals Series Match held at the Stadium for each Club Seat held in accordance with clause 2(c); and
- g. membership benefits equivalent to those of a Perth Scorchers standard member.

### 3. Term

- a. The Club Membership commences on the date set out in the Confirmation, and subject to clause 1(g) and clause 3(b) is for a term of five (5) years. The Operator may offer to renew the Club Membership in the final year of the Club Membership, but is not obliged to do so. Any offer to renew the Club Membership may include changes to these Terms and Conditions, including the Club Membership Benefits, the Annual Fee and the location of Club Seats.
- b. A Club Member may apply to the Operator to cancel a Club Membership, prior to expiry of the Term. Termination of a Club Membership will only be effective on (i) the Operator's re-sale of the applicable Club Seat, where the Club Member will remain liable for payment of the Annual Fee until such time as the Operator has secured the resale of the applicable Club Seat; and (ii) payment by the Club Member of the Transfer Fee. If the Club Member has elected to pay the Annual Fee by monthly instalments, payment of the Transfer Fee will be via deduction from the credit/debit card details provided by the Club Member in the Monthly Payment application form.

### 4. Authorised use of Club Membership, Club Member Associates and Transferability

- a. Where a Club Member holds multiple Club Seats under the one Club Membership, the Club Member may nominate, by notice to the Operator in writing, one person per Club Seat who will be entitled to exercise the Club Member Benefits in relation to that Club Seat (Club Member Associate). Club Member Associates will be bound by the obligations set out in these Terms and Conditions, except for payment of the Annual Fee and Additional Costs in relation to each Club Seat, which remains the sole liability of the Club Member

in accordance with clauses 1(i) and 1(j) and clause 6.

- b. A Club Member or Club Member Associate may allow an Authorised Person to use their Club Membership to attend an Event, but the Club Member remains responsible for the conduct of the Authorised Person at the Event and their compliance with these Terms and Conditions. An Authorised Person must not be a person who, at the time of the Event, is banned from attending any venue by any venue or sporting club.
- c. A Club Member must be over the age of 18, however a Club Member Associate or Authorised Person may be under the age of 18.
- d. A Club Member may not transfer ownership of any Club Seats without the Operator's prior approval, which if approved will be subject to payment of the Transfer Fee and may be subject to conditions. If a Club Member has elected to pay the Annual Fee by monthly instalments, payment of the Transfer Fee will be via deduction from the credit/debit card details provided by the Club Member in the Monthly Payment application form.

**5. No Guarantee of Events**

- a. The Operator does not guarantee the number or type of Events to be held at the Stadium in any Year of the Term, or that the number or type of Events will be the same as those held in previous years of the Term.
- b. The Operator is not liable for the cancellation, postponement or abandonment of any of the Events and no Annual Fee refund or other compensation is payable by the Operator in those circumstances.
- c. The Operator is not responsible if the Club Seats are not used for an Event and no Annual Fee refund or other compensation is payable by the Operator in those circumstances.
- d. Excluded Events do not form part of the Club Membership.

**6. Annual Fee and Additional Costs**

- a. The Annual Fee for each Club Seat must be paid in accordance with clause 1(i) or 1(j).
- b. Further to clause 7(b) the Club Member must pay any costs incurred by the Operator in replacing, repairing or making good any damage to the Stadium or the Stadium Park due to an act or omission of the Club Member, Club Member Associate or any Authorised Person, and any other costs incurred by the Operator in relation to the Club Member's use of the BankWest Club (Additional Costs, as further defined), within 14 days of a tax invoice issued by the Operator. Where a Club Member has elected to pay the Annual Fee by monthly instalments, payment of the Additional Costs will be via deduction from the credit/debit card details provided by the Club Member in the Monthly Payment application form.
- c. Failure by a Club Member to pay the Annual Fee in accordance with clause 1(i) or 1(j) (ie. where a monthly instalment amount is declined from the Club Member's credit/debit card), will result in the immediate suspension of the Club Membership. The Club Member will be notified and will be required to pay the outstanding Annual Fee (including interest and late charges) plus a \$20.00 administration fee in order to reinstate the Club Member's access to and use of the Club Membership Benefits. If an outstanding

payment of the Annual Fee remains unpaid for more than 14 days the provisions of clause 11 will apply.

- d. Failure by a Club Member to pay the Additional Costs (if any) in any year of the Term may, at the Operator's discretion, result in suspension of the Club Membership until the outstanding Additional Costs (including interest and late charges) have been paid. If the Club Membership is suspended the Club Member will be notified and will be required to pay the outstanding Additional Costs (including interest and late charges) plus a \$20.00 administration fee in order to reinstate the Club Member's access to and use of the Club Membership Benefits. If the Club Membership has been suspended, and an outstanding payment of the Additional Costs remains unpaid for more than 14 days, the provisions of clause 11 will apply.

**7. Damage or Loss**

- a. The Club Member bears the risk of loss or damage to any personal items brought into the Stadium or Stadium Park by the Club Member, Club Member Associate or an Authorised Person.
- b. If the Club Member, or any Club Member Associate or Authorised Person, causes any loss of or damage to the Bankwest Club or the Stadium (including the replacement of lost or stolen items) it must pay the Operator the cost the Operator incurs in replacing, repairing or making good any such loss or damage (including excessive cleaning).

**8. Compliance with Regulations and Directions**

- a. The Club Member must, and must ensure that any, Club Member Associate or Authorised Person must, at all times:
  - i. comply with the Regulations, including the Conditions of Entry and any specific regulations or conditions for an Event;
  - ii. behave in a responsible, orderly and considerate manner and at all times, and not cause a public nuisance, safety threat or adversely affect the enjoyment of other attendees at the Stadium or any of the participants of the Events;
  - iii. comply with the directions of the Operator, including the directions of customer service staff in relation to the responsible service of alcohol and the removal of guests from the Bankwest Club and the Stadium; and
  - iv. observe and make themselves familiar with the security procedures and all emergency evacuation procedures of the Stadium and the Stadium Park.
- b. The Operator may refuse any person admission to the Stadium or the Bankwest Club, and may direct any person to leave the Stadium, including the Club Member, Club Member Associate or an Authorised Person, for improper, threatening or abusive behaviour.
- c. The Club Member must not, and must ensure that any Club Member Associate or Authorised Person must not use the Club Membership in any advertising, promotional, marketing or other commercial purposes, including in any hospitality programme, competition or trade promotion, and/or to enhance the demand for goods and services, and must not engage in any Ambush Marketing of the Stadium or an Event in its use of the Club Membership.
- d. The Club Member, and each Club Member Associate or Authorised Person, must not sell or offer for sale, on the internet or via any

other medium, any element of the Club Membership Benefits. This includes, without limitation, selling the use of the Club Membership Benefits for an Event, or selling of any of the Sporting Club Memberships provided under the Club Membership Benefits.

#### **9. Privacy**

- a. The Operator generally collects information (including personal information) for the purposes of processing the Applications and payment of Annual Fee, as well as administering Optus Stadium products and services (including the Bankwest Club). To review or download the Optus Stadium Privacy Policy please visit [www.optusstadium.com.au](http://www.optusstadium.com.au).
- b. In order for Club Members or Club Member Associates to use the Sporting Club Memberships, the Operator is required to disclose personal information of the Club Member or Club Member Associate to the AFL Clubs and Perth Scorchers.

#### **10. Liability**

- a. The Club Member and any Club Member Associate or Authorised Person uses the Club Member Benefits at their sole risk.
- b. Subject to any liability arising from the Operator's own negligent acts or omissions, the Operator is not liable to the Club Member, Club Member Associate or any Authorised Person in respect of any loss or damage the Club Member, Club Member Associate or any Authorised Person may incur from using the Club Membership, including any failure or omission on the part of a third-party, or other Club Members, Club Member Associates, Authorised Persons or any other patrons of the Stadium and you release the Operator from any such liability.
- c. Save for any liability which cannot be limited by any Laws, the Operator's liability (if any) to the Club Member, and any Club Member Associate or Authorised Person, under and in relation to this Agreement and use of the Club Membership Benefits, whether in contract or tort (including negligence) is limited in aggregate to a sum equal to the Annual Fee received by the Operator from the Club Member.
- d. The Club Member is liable for and shall indemnify, defend and hold harmless the Indemnified Persons from and against all actions, suits, losses, damages, charges, claims, costs, penalties, fines, demands and expenses (on a full indemnity basis), including without limitation legal and other professional fees, that the Indemnified Persons may sustain whether directly or indirectly, that are made by any person (including the Club Member, any Club Member Associate or Authorised Person), in connection with, arising or alleged to arise from, wholly or in part (i) any accident, injury or death of any person or damage to the property of any person in or about the Stadium, including the Bankwest Club; or (ii) any damage (other than fair wear and tear) to the Stadium, or the property, supporting infrastructure, equipment or amenities at the Bankwest Club or any other part of the Stadium, caused directly or indirectly by any act or omission of the Club Member, any Club Member Associate or Authorised Person, or breach of any Law by the Club Member, any Club Member Associate or Authorised Person relevant to performance of this Agreement. The provisions of this clause shall survive expiry or termination of this Agreement.

#### **11. Cancellation and Suspension of Club Membership**

- a. The Operator may cancel a Club Membership, with immediate effect on notice to the Club Member, if:
  - i. the Annual Fee or Additional Costs (if any) remain unpaid;
  - ii. the Club Seats are used by any person who has been banned from any venue within or outside Australia, or who has been banned by any sporting club or association within or outside Australia; or
  - iii. the Club Member, Club Member Associate or any Authorised Person does not comply with any of these Terms and Conditions, including any breach of clause 8 (Compliance with Regulations and Directions).
- b. Cancellation of the Club Membership results in cancellation of all Club Membership Benefits, including the Sporting Club Memberships.
- c. Upon cancellation by the Operator, no part of the Annual Fee(s) will be refunded and no compensation is payable to the Club Member.
- d. Any unpaid balance of the Annual Fee (including interest and late charges) and Additional Costs (if any) remain payable by the Club Member, if the Club Membership is cancelled by the Operator and the Operator may take further action to recover such sums without further notice to the Club Member.
- e. Club Seats granted to a Member in a personal capacity will be cancelled on the death of the Club Member. In the event of cancellation for death any unpaid balance of the Annual Fees (if any) will be waived, however any Additional Costs incurred prior to cancellation will remain due and payable.
- f. Save in respect of clause 11(e) above cancellation of the Club Membership is without prejudice to any right of the Operator to recover the Annual Fee(s) and Additional Costs (if any) otherwise payable over the remainder of the Term of the Agreement.
- g. If the Club Membership is cancelled by the Operator, the outstanding balance of the Annual Fee(s) due over the Term will become immediately due and payable by the Club Member.
- h. This clause 11 survives termination or expiration of this Agreement

#### **12. General**

- a. These Terms and Conditions may be updated by the Operator from time to time.
- b. Any notices must be given in writing, and may include an email where an email address is provided.
- c. The Operator may transfer, assign or otherwise dispose of its rights or obligations under these Terms and Conditions to VenuesWest, or any other person acting as agent of, or the obligations of which are supported by, VenuesWest, and which is able to perform the Operator's obligations under this Agreement of required by VenuesWest to do so, without the consent of the Club Member agrees to do all things and execute any document which may be necessary to give effect to any such transfer and/or disposal of rights or obligations.
- d. To the extent that a Force Majeure Event prevents the Operator from performing its obligations under this Agreement the performance of such obligations will be suspended for the period of the delay due to such a Force Majeure Event.

- e. The Operator will not be liable to the Applicant for any delay or failure to perform its obligations if such failure or delay is due to a Force Majeure Event.
- f. This Agreement is not intended to create, and will not be construed as creating, any partnership or joint venture as between the parties. Neither the Client nor any Client Associate is to be deemed an employee, agent or partner of the Operator.
- g. If a provision of this Agreement is invalid, illegal or unenforceable it must, to the extent that it is invalid, illegal or unenforceable, be treated as severed from this Agreement, without affecting the validity and enforceability of the remaining provisions. Application of the Civil Liability Act 2002 (WA):

### 13. Definitions & Interpretations

**Additional Costs** has the meaning given in clause 6(b), and includes where applicable the Transfer Fee.

**Agreement** has meaning given in clause 1(l).

**AFL Clubs** means the Fremantle Football Club and the West Coast Eagles Football Club.

**AFL Premiership Season Matches** means the home and away matches of the AFL Clubs, when played at the Stadium, but excluding any AFL Finals Series Matches.

**AFL Finals Series Matches** means matches played during the AFL final series involving the AFL Clubs, played at the Stadium.

**Ambush Marketing** means any marketing, promotion or advertising relating to the Stadium, the Stadium Park, an Event or the Event Parties, that has not been authorised by the Operator, including any activity or circumstance where a party attempts to associate, market or display that party's name, logo, brand, products or services with the Stadium, the Stadium Park, an Event or the Event Parties.

**Annual Fee** means the fee payable for each Club Seat for each year of the Term (as adjusted each year for CPI), and as advised by the Operator.

**Applicant** means a person or body corporate completing the Application Form.

**Application** means an offer for Club Membership made by an Applicant pursuant to these Terms and Conditions.

**Application Form** means the online application form accessed via the Optus Stadium website.

**Authorised Person** means a person authorised by a Club Member or the Club Member Associate to use the Club Seats for an Event.

**BBL Matches** means those matches of the T20 Big Bash League (BBL) designated by Cricket Australia as a "home match" for the Perth Scorchers, including any BBL match that forms part of the BBL finals series, when played at the Stadium.

**Club Member or Member** means an Applicant who is allocated a Club Seat or Club Seats by the Operator in accordance with this Agreement.

**Club Member Associate** has the meaning given in clause 4(a).

**Club Membership Benefits** means the rights and benefits set out in clause 2.

**Club Seats** means the seats located in the area as shown on the Seating Plan.

**Club Hospitality** means the hospitality facilities located at the Club Terrace on Level 3 of the Southern Stand of the Stadium.

**Conditions of Entry** mean the conditions of entry to the Stadium, which are available at [www.optusstadium.com.au](http://www.optusstadium.com.au), or such other website URL as advised by the Operator.

**Concert** mean a musical performance held at the Stadium or Stadium Park.

**Confirmation** means the written notification provided by the Operator in accordance with clause 1(c).

**CPI** means the Consumer Price Index for Perth; Capital City; all groups 6401.0 as compiled and published by the Australian Bureau of Statistics.

**CPI Review Date** means 1 January in each Year of the Term.

**Events** mean the Regular Events and Special Events but do not include the Excluded Events.

**Event Parties** means any third party officially associated with an Event, including hirers, performers, athletes, media personnel, sponsors and officials.

**Excluded Events** means the Major Events, private events, and any event where the Operator is unable to provide access to, or the right to purchase a ticket to a Club Seat for Club Members.

**Force Majeure Event** means any event which is beyond the control of a party, including one or more, or a combination, of the following:

- a. lightning, natural disasters, cyclones, earthquakes and tsunamis;
- b. civil riots (other than immediately before, during or after an Event which involve attendees in connection with their attendance at the Stadium or the Stadium Park), rebellions, revolutions, insurrections, military and usurped power, act of sabotage, act of public enemy and war (declared or undeclared), civil war or terrorism (or proximate threat thereof);
- c. nuclear or biological contamination, ionising radiation or contamination by radioactivity;
- d. epidemic or pandemic;
- e. fire or explosion;
- f. interruption of any Utility;
- g. direction from State Entities (other than VenuesWest in its capacity as principal under the Operator Agreement); or
- h. a requirement of Law,

which (either separately or together) directly causes the Operator or the Client to be unable to comply with all or a material part of its obligations in accordance with this Agreement, to the extent the event or its consequence was not caused or contributed to by party claiming the Force Majeure Event.

**Indemnified Persons** means the Operator, Operator Personnel, VenuesWest, VenuesWest Personnel, and the State Associates.

**Law** means any Commonwealth, Western Australian and local government legislation, including statutes, ordinances, instruments, codes (but excluding any building codes or non-mandatory standards), requirements, regulations, by-laws and other subordinate legislation, common law and principles of equity

**Major Events** means (a) a major international sporting event, such as the Olympic Games, Commonwealth Games, FIFA World Cup, the ICC Cricket World Cup and T20 World Cup, the IRB Rugby World Cup, Rugby League World Cup or the World Athletics Championships, and all the respective equivalent disability sports, or any similar event

which is introduced by any international sport governing body; (b) a major civic event that utilises the seating bowl or pitch which is, in the State's opinion (acting reasonably), of significant importance from an international, national or state perspective; or (c) any other event which is designated or identified as, or covered by the definition of, a major or similar event, under any applicable law relating to major events (or similar).

**One Day International Match** means a cricket match of one day's scheduled duration played between two international teams under the sole control of Cricket Australia, when played at the Stadium.

**Operator Personnel** means an employee, officer, agent, subcontractor, consultant, supplier, contractor, volunteer, sponsor, invitee, client or visitor of the Operator.

**Other Sporting Events** means rugby league, rugby union, football or other sports, played at the Stadium where the Operator has secured access for Club Members to their Club Seats without additional charge.

**Processing Fee** means a fee of \$10 payable by Members who elect to pay by monthly instalments in accordance with clause 1(j).

**Regular Events** means regular sporting events (including AFL Premiership Season Matches, Test Matches, One Day International Matches, T20 International Matches and BBL Matches), Other Sporting Events and Concerts held at the Stadium, but does not include Special Events or Excluded Events.

**Regulations** mean any regulations, guidelines, terms and conditions, policies and procedures as developed and updated by or on behalf of the Operator from time to time, including those relating to codes of conduct, dress codes, health and safety matters, quality, security and environment matters, and access to the Stadium and the Stadium Park.

**Seating Plan** means the seating plan of the Bankwest Club on Level 3 South of the Stadium, as shown in the plan accompanying these Terms and Conditions.

**Special Events** means motor-sport entertainment shows, mixed martial arts events, boxing and Major Events held at the Stadium, where the Operator using reasonable endeavours has secured for Club Members the right to purchase a ticket to the Event in a Club Seat, or elsewhere in the Stadium, but does not include Regular Events or Excluded Events.

**Sporting Club Memberships** means the membership rights referred to in clause 2(f) and 2(g).

**Stadium** means the stadium currently known as Optus Stadium, or such other name as advised by the Operator from time to time, and located at 333 Victoria Park Drive, Burswood WA 6100.

**Stadium Park** means the parkland precinct surrounding the Stadium.

**State Associates** means State Entities to the extent that they are carrying out activities, works or performing services at the Stadium and/or Stadium Park (including the Commissioner of Main Roads (Western Australia) constituted under the Main Roads Act 1930 (WA) and the Public Transport Authority of the State of Western Australia).

**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, and the term 'State Entity' means any one of them.

**T20 International Match** means a cricket match involving twenty scheduled overs per team played between two international teams under the sole control of Cricket Australia, when played at the Stadium.

**Test Match** means a cricket match of five days scheduled duration played between two international teams under the sole control of Cricket Australia, when played at the Stadium.

**Term** means the period described in clause 3.

**Terms and Conditions** means the terms and conditions set out herein.

**Transfer Fee** means a fee of \$250 per Club Seat, as increased by the Operator from time to time.

**VenuesWest** means The Western Australian Sports Centre Trust (ABN 47 894 195 015), trading as VenuesWest, and their respective officers, employees, agents, contractors and consultants.

**VenuesWest Personnel** means an employee, officer, agent, consultant, customer, supplier, worker, contractor, volunteer, work experience student, invitee or visitor of VenuesWest.

**Year** means a calendar year, 1 January to 31 December.

In this Agreement headings are only for convenience and do not affect interpretation and, unless the context requires otherwise, a reference to:

- a. a person includes an individual, a firm or a corporation;
- b. a clause, party, schedule or annexure is a reference to a clause of, and a party, schedule and annexure to, this Agreement;
- c. a party includes that party's legal personal representatives, successors, directors, officers, employees, and agents;
- d. "includes" means includes without limitation and "include" and "including" have corresponding meanings;
- e. all dollar amounts are exclusive of GST unless otherwise stated; and
- f. any reference to \$ or 'dollars' is to Australian dollars.