



PROJECT ALLIANCE AGREEMENT

[Insert name of Project]
No. **[Insert contract number]**

BETWEEN

MINISTER FOR INFRASTRUCTURE AND TRANSPORT or **COMMISSIONER OF
HIGHWAYS** or **RAIL COMMISSIONER**

(Principal)

AND

[Insert name of DNOP 1] [and **[Insert name of DNOP 2, if any]**]

([jointly,] Designer NOP)

AND

[Insert name of CNOP]

(Constructor NOP)

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Example

THIS AGREEMENT is made on _____ day of _____ 20__

PARTIES:

MINISTER FOR INFRASTRUCTURE AND TRANSPORT a body corporate established pursuant to the *Administrative Arrangements Act 1994* (SA), of 136 North Terrace, Adelaide, South Australia 5000 (the **Principal**)

or

COMMISSIONER OF HIGHWAYS a body corporate established pursuant to the *Highways Act 1926* (SA), of 50 Flinders Street, Adelaide, South Australia 5000 (the **Principal**)

or

RAIL COMMISSIONER a body corporate established pursuant to the *Rail Commissioner Act 2009* (SA) of 50 Flinders Street, Adelaide, South Australia 5000 (the **Principal**)

AND

[INSERT NAME OF DNOP 1] (ABN [insert]) of [insert address] [(DNOP 1) and **[INSERT NAME OF DNOP 2, IF ANY]** (ABN [insert]) of [insert address]] [(DNOP 2 and, jointly with DNOP 1,) Designer NOP)

AND

[INSERT NAME OF CNOP] (ABN [insert]) of [insert address] (the **Constructor NOP**).

BACKGROUND:

- A. [Pursuant to the [*Highways Act 1926* (SA)/*Rail Commissioner Act 2009* (SA)], the care, control and management of the [insert reference to relevant infrastructure] is vested in the Principal.] [The Principal is responsible for the care, control and management of certain road and rail lines in the [insert] area.]
- B. The Principal wishes to undertake the [insert appropriate Project name] Projects Alliance, which will include:
- (a) [insert details of Project];
 - (b) [insert details of Project - delete if not applicable]; and
 - (c) [insert details of Project - delete if not applicable],
- ([together,]the **Project**) and has selected the alliance procurement strategy to deliver the Project.
- C. Completion of the Project is scheduled for no later than [insert date].
-

- D. The Principal, Designer NOP, and Constructor NOP (the **Participants**) have agreed to form a project alliance to deliver the Project.
- E. The Participants have agreed to form the alliance in the manner and on the terms set out in this Agreement.
- F. The Participants agree to use their best endeavours to ensure that the Alliance Activities are carried out in a co-operative, co-ordinated and efficient manner so as to meet to achieve or exceed the Alliance Objectives in compliance with the Alliance Principles.

Example

IT IS AGREED:**1. DEFINITIONS**

The meanings of the terms used in this Agreement are set out below.

1.1 Act of Insolvency

Any of the following:

- 1.1.1 a NOP or its parent or ultimate holding company informs the Principal's Representative or any of its or the parent or ultimate holding company's creditors that it is insolvent or unable to pay its debts as they fall due;
- 1.1.2 a NOP or its parent or ultimate holding company enters into a composition or arrangement with its creditors or calls a meeting of creditors to enter into a composition or arrangement;
- 1.1.3 a mortgagee seeks to exercise a right of possession or control over the whole or part of a NOP or its parent or ultimate holding company's property;
- 1.1.4 a NOP or its parent or ultimate holding company takes or has instituted against it an action or proceedings whether voluntary or compulsory with the object of, or which may result in, the winding-up of the NOP or its parent or ultimate holding company;
- 1.1.5 a NOP or its parent or ultimate holding company has a winding-up order made against it or passes a resolution for winding-up;
- 1.1.6 a NOP or its parent or ultimate holding company goes into liquidation;
- 1.1.7 any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of the NOP or its parent or ultimate holding company; or
- 1.1.8 an act is done or an event occurs which, under the laws from time to time of a country having jurisdiction in relation to the NOP or its parent or ultimate holding company, has an analogous or similar effect to any of the events in clauses 1.1.1 to 1.1.7 of this definition.

1.2 Actual Completion Date

The date on which Completion of the Works is achieved by the Participants.

1.3 Actual Outturn Cost (AOC)

The aggregate of:

- 1.3.1 all Reimbursable Costs incurred by the NOPs in performing Alliance Activities;
 - 1.3.2 all Reimbursable Costs incurred by the Principal, or paid by the Principal, in performing Alliance Activities not paid to the NOPs;
 - 1.3.3 any other costs, loss, expense or damage that are expressed as, or to be, a Reimbursable Cost under this Agreement; and
 - 1.3.4 all Fees paid or payable by the Principal to the NOPs.
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1.4 **Adjustment Event**

Is limited to the following:

- 1.4.1 a Variation involving a Scope Change;
- 1.4.2 a Change of Law;
- 1.4.3 a Wilful Default by the Principal;
- 1.4.4 an Excepted Risk, and
- 1.4.5 any other matter (including, but not limited to, matters that may be recommended to the Principal by the ALT) that the Principal Determines (noting clauses 7.1 and 7.2) is an Adjustment Event.

1.5 **Adjustment Event Examples**

The document in Schedule 6.

1.6 **Agreement**

This agreement between the Participants including all the Schedules and Attachments to this Agreement.

1.7 **Alliance**

The Alliance named in item 1 of Schedule 1, which the Participants have created to undertake the Project.

1.8 **Alliance Activities**

The work (including without limitation all design and construction work), services, activities, efforts and undertakings required to be performed in order to bring the Works to Completion and to complete, satisfy or discharge each and every obligation under, or arising out of or in connection with, this Agreement.

1.9 **Alliance Development Agreement**

The Alliance Development Agreement entered into by the Participants in respect of the Project on the date specified in item 2 of Schedule 1 and means either or both the RFP Alliance Development Agreement and the ECI Alliance Development Agreement as the context requires.

1.10 **Alliance General Manager (AGM)**

The leader of the AMT and WPT referred to in the Alliance Management Framework.

1.11 **Alliance Leadership Team (ALT)**

The leadership team established under the Alliance Management Framework.

1.12 **Alliance Management Framework**

The alliance management framework included at Schedule 4.

1.13 **Alliance Management Team (AMT)**

The team responsible for the day to day management of the Alliance established under the Alliance Management Framework.

1.14 **Alliance Objectives**

The objectives set out in clause 4.

1.15 Alliance Principles

The principles set out in clause 4.

1.16 Associate

1.16.1 In relation to a person, any Related Entity of that person or any officer, employee, agent, contractor, consultant, nominee, secondee, licensee or advisor of that person or that Related Entity, and:

1.16.2 in the case of the Principal includes:

- (a) any officer, employee, agent, contractor, consultant, nominee, secondee or licensee of the Principal; and
- (b) any person who directly or indirectly provides advice to the Principal in connection with this Agreement, the Alliance Activities, the Works or the Project and any Associate of that person; and

1.16.3 in the case of a NOP includes:

- (a) a Related Entity or any officer, employee, agent, contractor, consultant, nominee, secondee or licensee of the NOP or Related Entity and anyone who is an associate under sections 10 to 17 of the *Corporations Act 2001* (Cth); and
- (b) any person who directly or indirectly provides advice to the NOP or Related Entity in connection with this Agreement, the Alliance Activities, the Works or the Project and any Associate of that person.

1.17 Authority

Any Commonwealth, State or municipal statutory or government body or organisation or any non-government body or organisation (and their respective departments, agencies, authorities or officers or representatives) that supply utilities or services to, or which have authority or jurisdiction over:

1.17.1 all or part of the Alliance Activities or the Works;

1.17.2 a Participant;

1.17.3 the Site; or

1.17.4 any land external to the Site on which Alliance Activities or the Works may be carried out.

1.18 Audit

Includes audit, inspection, investigation, review, surveillance and observation.

1.19 Best for Project

A Determination that:

1.19.1 is consistent with the Alliance Principles and the Value for Money Statement; and

1.19.2 ensures that the Works are fit for the Stated Purpose.

1.20 Business Day

A day that is not:

1.20.1 a Saturday or Sunday;

1.20.2 27, 28, 29, 30 or 31 December; or

1.20.3 a statutory public holiday in the State of South Australia.

1.21 Casual Staff

An employee of a Participant who does not have a firm commitment in advance from the employing Participant as to how long they will be employed for and the days (or hours) they will work.

1.22 Certificate of Completion

The certificate to be issued by the Principal as contemplated by clause 28.4.1.

1.23 Certificate of Milestone Achievement

The certificate to be issued by the Principal as contemplated by clause 13.14.1.

1.24 Change in Control

Any act, event or circumstance that results in or causes any variation, amendment or modification of the Control of a NOP, where **Control** has the meaning in section 50AA(1) of the *Corporations Act 2001* (Cth).

1.25 Change of Law

A change in a Regulatory Requirement which occurs in the Commonwealth of Australia and which necessitates:

1.25.1 a substantial and material change to the Works, Construction Plant or method of working, from what is specified in the Agreement;

1.25.2 the provision or expansion of services of an Authority in connection with the Works; or

1.25.3 a substantial and material increase or decrease in a fee or charge or payment of a new fee or charge; and which

1.25.4 has effect after the 14th day prior to the date of closing of the Request for Proposal for this Project; and

1.25.5 subject to clause 1.25A could not reasonably have been anticipated at that prior date, but not including:

1.25.6 a change in an existing Regulatory Requirement or a new Regulatory Requirement, in respect of income tax on taxable income (including as that term is used in the *Income Tax Assessment Act 1936* (Cth));

1.25.7 a variation to a, or the making of a new, workplace agreement under any Commonwealth, State or Territory law in Australia (including a Project Agreement);

1.25.8 subject to clause 1.25B a direction issued under the *Emergency Management Act 2004* (SA) in respect of COVID-19; or

1.25.9 a change in the way a Regulatory Requirement is interpreted or applied.

1.25A The Participants agree that any increase in superannuation guarantee percentage which comes into effect after the 14th day prior to the date

of closing of the Request for Proposal for this Project shall be deemed to have not been reasonably anticipated at that prior date.

1.25B The Participants agree that a direction issued under the Emergency Management Act 2004 (SA) in respect of COVID-19 that requires all work on the Site to cease shall constitute a Change of Law.

1.26 Chargeable Rate

Has the meaning referred to in Schedule 3.

1.27 Commencement Date

The date that the Agreement is executed by all parties.

1.28 Commercial Framework

The commercial framework included in Schedule 3.

1.29 Completion

The state of the Works being complete, without any Defects or omissions, except for Defects not known. This includes:

1.29.1 the supply to the Principal of:

- (a) all Subcontractor and Sub-Alliance Participant's warranties, operation and maintenance manuals, licences, access codes, as-built drawings or work-as-executed drawings required by the Agreement or required for the use and maintenance of the Works;
- (b) certificates, authorisations, approvals and consents from Authorities and service providers;
- (c) those certificates required for the occupation, use and maintenance of the Works; and
- (d) all other documents required to be provided under this Agreement;

1.29.2 all testing required by the Agreement;

1.29.3 the provision of all training required by the Agreement; and

1.29.4 all other requirements specified in the Agreement.

1.30 Completion Report

The report outlined in Schedule 7 required as a condition precedent to Completion.

1.31 Concept Design

The design prepared by the NOPs and included in Schedule CC1.

1.32 Confidential Information

All information including computer programs, designs, Records, documents, information (including accounting and costing details), models, patterns, photographs or tape recordings (audio or video) as well as discussions and negotiations in connection with the processes leading to the Agreement, the Agreement itself, the Alliance Activities, the Works and the Project.

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- 1.33 **Consequential Loss**
Loss of production, loss of revenue, loss of profit or anticipated profit or loss of business reputation, but does not include any payment entitlement of the NOPs under this Agreement to their Fee.
- 1.34 **Construction Plant**
Those things (including appliances, plant, equipment and vehicles) used in performing the Alliance Activities but which do not form part of the Works.
- 1.35 **Constructor NOP**
Has the meaning referred to in the Parties section of this Agreement.
- 1.36 **Contract Scope and Contract Requirements (CSCR)**
The document included in Attachment 1 which defines the scope of Works and standard of Alliance Activities.
- 1.37 **Contract Staff**
A person engaged under a contract for services and not engaged under a contract of service or employment contract.
- 1.38 **Cost Overrun**
Has the meaning referred to in Schedule 3.
- 1.39 **Cost Underrun**
Has the meaning referred to in Schedule 3.
- 1.40 **Date for Completion**
The date stated in item 3 of Schedule 1.
- 1.41 **Deed of Guarantee**
A guarantee to be executed in accordance with clause 9.
- 1.42 **Default**
A Wilful Default or an Act of Insolvency.
- 1.43 **Default Notice**
A notice issued under clause 32.1 or 32.5.
- 1.44 **Defect**
Any Alliance Activities or Works which are defective, incomplete, omitted or non-complying with a requirement specified in this Agreement, but excluding defects:
- 1.44.1 caused by fair wear and tear; or
 - 1.44.2 arising out of or in connection with a failure to perform operations and maintenance activities in accordance with operations and maintenance manuals properly prepared and accredited prior to Completion, provided that such operations and maintenance manuals are not defective, non-complying or incomplete or do not omit works or services required by the Agreement.
- 1.45 **Defects Liability Period**
- 1.45.1 In respect of the Works, the period which commences at 4:00 pm on the Actual Completion Date and expires on the later of the:
-

- (a) end of the period specified in item 4 of Schedule 1; and
- (b) rectification/repair of all known Defects.

1.45.2 A separate Defects Liability Period may arise under clause 29.4.

1.46 Designer NOP

Has the meaning given to such term in the Parties section of this Agreement.

1.47 Determination

Any approach, determination, decision, outcome, solution or resolution in respect of the Alliance Activities, the Works or this Agreement.

1.48 Direction

A direction from the Principal to the Participants in respect of the Alliance Activities, the Works or this Agreement.

1.49 Dispute

Any real or perceived conflict, difference of opinion, dispute or unresolved issue in connection with the Alliance Activities, the Works, the Alliance or this Agreement.

1.50 DIT

The South Australian Government Department for Infrastructure and Transport.

1.51 DIT Master Specification

The DIT master specification available from http://www.dpti.sa.gov.au/contractor_documents as at the Commencement Date.

For the avoidance of doubt, any changes that may occur to the DIT Master Specification after the Commencement Date, save for any changes made in accordance with clause 13.21, will not form part of the DIT Master Specification for the purposes of this Agreement.

1.52 Documentation or Document

Originals and copies, in machine or computer readable, electronic or printed form, of all files, records, reports, correspondence, documents, drawings, plans, methodologies and other materials or information for or used in connection with the performance of the Alliance Activities and the Works by any Participant, whether coming into existence before, on or after the Commencement Date, including without limitation:

- 1.52.1 statutory records, registers, books of account, company annual returns and income tax, fringe benefits tax, sales tax and payroll tax returns and prescribed payments books, returns and records;
- 1.52.2 all sales and purchasing records and invoices; and
- 1.52.3 all trading and financial records,

but in any event excluding any documentation or information created for the purpose of internal corporate governance purposes or compliance requirements or best practice guidelines not otherwise required for the performance of the Alliance Activities or the Works.

1.53 Engaged Persons

Any individual engaged by a Participant to perform any works, services or activities forming part of the Alliance Activities.

1.54 Enhancements

Any enhancement, adaptation, change, modification or development of any Intellectual Property Rights.

1.55 Estimation Request

A request made of the ALT by the Principal for the ALT to determine what recommendations of the type referred to in clause 15.1.2 would be made by the ALT if a Direction of the type referred to in clause 16.1 as described in such request were made by the Principal.

1.56 Excepted Risks

Any of the following: war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), terrorism, ionising radiation or contamination by radioactivity, civil war, rebellion, revolution, insurrection or martial law.

1.57 Existing Intellectual Property Rights

All Intellectual Property Rights owned or held by any of the Participants as at the Commencement Date or created by a Participant independently of the performance of the Alliance Activities.

1.58 Fee

The amount comprising the NOP's entitlement to a contribution to their corporate overhead and profit as calculated and otherwise defined in the Commercial Framework.

1.59 Final Certificate

The certificate issued by the Principal pursuant to clause 29.5.

1.60 First Alliance Participant

Has the meaning given to such term in clause 42.4.

1.61 Full time Staff

An employee of a Participant who is engaged to work an average 40 ordinary hours per week or any other amount specified by a contract of employment or agreement for a full time employee.

1.62 Future Claim

A claim for Loss exceeding \$100,000 (excluding GST) made by a third party against a Participant after the Principal issues the Final Certificate and arising out of or in connection with the Alliance Activities.

1.63 Future Defect

Means:

1.63.1 a Defect which was not known prior to the expiry of any Defects Liability Period relating to that Defect but was known prior to the Principal issuing the Final Certificate; or

1.63.2 a Defect which will cost in excess of \$100,000 (excluding GST) to repair or rectify and which was not known prior to the Principal issuing the Final Certificate.

1.64 Good Design and Construction Practices

Practices followed when work is undertaken in accordance with all of the following:

- 1.64.1 in a sound, competent and proficient manner;
- 1.64.2 with due skill, care and diligence;
- 1.64.3 with due expedition and without unnecessary or unreasonable delay;
- 1.64.4 in a manner which allows for the Agreement to be efficiently performed;
- 1.64.5 using materials of new merchantable quality which are fit for the Stated Purpose;
- 1.64.6 to the standard expected of a person experienced and competent in the performance of works or services similar to Alliance Activities;
- 1.64.7 in accordance with all applicable Laws; and
- 1.64.8 consistently with best practice for the engineering, design, procurement, supply, construction, testing and commissioning of works similar to the Works.

1.65 Good Faith

Acting fairly, reasonably, honestly and doing all proper and reasonable things to enable each other Participant to perform the Alliance Activities to give effect to the spirit and intent of this Agreement and not to impede or restrict the performance of any other Participant's responsibilities under this Agreement.

1.66 GST

Any goods or services tax imposed by legislation enacted by the Commonwealth of Australia including (without limitation) a tax imposed by the GST Act and any related Acts of the Commonwealth of Australia.

1.67 GST Act

A New Tax System (Goods and Services Tax) Act 1999 (Cth).

1.68 GST Amount

The amount calculated by multiplying the monetary consideration payable by the recipient (as defined in the GST Act) (excluding the amount payable as GST) for the relevant Taxable Supply by the prevailing GST rate.

1.69 Industrial Action

Employee and industrial relations matters affecting the Site, the Alliance Activities or the Project, including but not limited to:

- 1.69.1 a strike, lockout, demarcation or industrial dispute; and
- 1.69.2 any claim relating to the employment agreements and other employment arrangements applicable to a NOP.

1.70 Industrial Relations Law

All workplace, employment or industrial relations related Law.

1.71 Information Management System (IMS)

The system for transmission of documents specified in clause 12.

1.72 Intellectual Property Rights

Any and all current and future intellectual property rights and interests including any:

- 1.72.1 patents, trademarks, service marks, rights in designs, trade names, copyrights, utility models, eligible layout rights and topography rights, inventions, discovery, trade secrets, know how, software and improvements;
- 1.72.2 applications for, or rights to apply for registration of any of them;
- 1.72.3 rights under licences and consents in relation to any of them; and
- 1.72.4 other forms of protection of a similar nature or having equivalent or similar effect to any of them, in the Commonwealth of Australia and the world, whether registered or unregistered for the duration of the rights and interests.

1.73 Joint Venture [or NOT USED]

Has the meaning in clause 36.

1.74 Joint Venture Bank Account [or NOT USED]

The Joint Venture's bank account as notified in writing by the Designer NOP to the Principal from time to time.

1.75 Key Performance Indicator (KPI)

Has the meaning in Schedule 5.

1.76 Key Performance Score (KPS)

The average Performance Score for a Key Result Area calculated in accordance with the Performance Spectrum.

1.77 Key Result Area (KRA)

Has the meaning in Schedule 5.

1.78 Labour Conditions

The employment agreements and other employment arrangements applicable to a NOP's personnel for or in connection with the performance of Alliance Activities.

1.79 Law

Includes, from time to time, all applicable:

- 1.79.1 legislation, ordinances, regulations, bylaws, local laws, orders or proclamations;
- 1.79.2 Regulatory Requirements;
- 1.79.3 principles of law or equity;
- 1.79.4 all applicable standards, codes, guidelines and industry standards to the extent that such standards, codes and guidelines are relevant to the Alliance Activities or the Works;
- 1.79.5 directions or notices issued by any Authority; and
- 1.79.6 fees, rates, taxes, levies and charges payable in respect of the things referred to in clauses 1.79.1 to 1.79.5 of this definition, as amended from time to time, whether or not existing at the Commencement Date.

1.80 Loss

Includes any loss, cost, expense, damage or liability (including any fine or penalty) whether direct, indirect or consequential (including revenue loss and pure economic loss), present or future, fixed or unascertained, actual or contingent and whether arising under contract (including any breach of this Agreement), in equity (including breach of an equitable duty, breach of confidentiality or breach of fiduciary duty), under statute (including breach of statutory duty, to the maximum extent possible), in tort (including for negligence or negligent misrepresentation) or otherwise (including in restitution).

1.81 Management Plans

The plans and procedures described in Schedule 8.

1.82 Milestone

Any portion or portions of the Works or stage of the Alliance Activities which:

1.82.1 is defined as a Milestone at item 5 of Schedule 1; or

1.82.2 the Principal Determines to be a Milestone in accordance with clause 13.

1.83 Milestone Achievement

The state of the Works comprising a Milestone being complete, without any Defects or omissions, except for Defects not known.

This includes:

1.83.1 the supply to the Principal of:

- (a) all Subcontractor and Sub-Alliance Participant's warranties, operation and maintenance manuals, licences, access codes, as-built drawings or work-as-executed drawings required by the Agreement or required for the use and maintenance of the relevant Works;
- (b) certificates, authorisations, approvals and consents from Authorities and service providers;
- (c) those certificates required for the occupation, use and maintenance of the relevant Works; and
- (d) all other documents;

1.83.2 all testing required by the Agreement;

1.83.3 the provision of all training required by the Agreement; and

1.83.4 all other requirements specified in the Agreement.

1.84 Milestone Achievement Report

The report outlined in Schedule 7 required as a condition precedent to Milestone Achievement.

1.85 Minimum Conditions of Satisfaction (MCOS)

The minimum level of performance for each KRA and KPI specified in Schedule 5.

-
- 1.86 **Moral Rights**
Has the meaning in the *Copyright Act 1968* (Cth).
- 1.87 **No Dispute**
The Participants' commitments to, and agreement with, each other set out in clause 6.
- 1.88 **Non-Owner Participants (NOPs)**
The Designer NOP and Constructor NOP collectively and individually.
- 1.89 **Non-Wages Personnel**
Any Full time Staff, Part time Staff, Casual Staff or Contract Staff or any other person employed or engaged by a Participant to perform an element of the Alliance Activities, other than Wages Personnel.
- 1.90 **Non-Wages Personnel Category**
The categories of Non-Wages Personnel described in clauses 2.3.2 to 2.3.5 of the Commercial Framework.
- 1.91 **Non-Wages Personnel Hourly Rate**
The actual TFR for Non-Wages Personnel (or an annualised equivalent where the person is part time, casual or a contractor) divided by 2080 plus, where applicable, any allowances (expressed as an hourly rate) or hourly overtime rate approved by the ALT.
- 1.92 **NOP Existing Intellectual Property Rights**
The Intellectual Property Rights owned or held by the NOPs at the Commencement Date.
- 1.93 **NOP Key Personnel**
The persons nominated in Schedule AC6.
- 1.94 **NOP Percentage**
Has the meaning referred to in Schedule 3.
- 1.95 **Notice**
Any requirement, claim, approval, agreement or other communication.
- 1.96 **Parent Company**
Means the parent company identified in item 6 of Schedule 1.
- 1.97 **Participants**
The Principal and the NOPs.
- 1.98 **Part time Staff**
An employee of a Participant who is engaged to work an average of less than 40 ordinary hours per week (unless specifically on a contract of employment or agreement for a full time employee).
- 1.99 **Performance Adjustment**
Has the meaning referred to in Schedule 3.
- 1.100 **Performance Score**
The score for an individual KPI as set out in the Performance Spectrum.
-

1.101 Performance Spectrum

Has the meaning referred to in Schedule 5.

1.102 Principal

Has the meaning referred to in the Parties section of this Agreement.

1.103 Principal's Existing Intellectual Property Rights

The Intellectual Property Rights owned or held by the Principal at the Commencement Date, including (without limitation) Intellectual Property Rights developed pursuant to the RFP Alliance Development Agreement and the ECI Alliance Development Agreement.

1.104 Principal's Representative

The person identified as such at item 7 of Schedule 1 or nominated by the Principal in accordance with clause 7.9 (together with any person(s) to whom the Principal's Representative may have delegated any of its contractual functions and powers as contemplated by clause 7.10).

1.105 Procurement and Contracting Strategy

The document satisfying the requirements of Schedule 8.

1.106 Project

Has the meaning referred to in Background B.

1.107 Project Control and Reporting Plan

The plan described in Schedule 8.

1.108 Project Program

The program, included in Schedule CC2, in the form of a critical path network, demonstrating the methodology to bring the Works to Completion by the Date for Completion, developed and updated in accordance with the CSCR.

1.109 Records

All information and Documentation prepared or created by the Participants for the purposes of performing Alliance Activities.

1.110 Regulatory Requirement

Any legislation, ordinances, regulations, bylaws, local laws, orders, proclamations, approval, authorisation, code of conduct, government policy, consent, exemption, filing, licence, notarisation, permit, registration, waiver and conditions attaching to any of them (as applicable) by any Authority and includes any renewal of, or variation to, any of them.

1.111 Related Entity

A related entity of a Participant as that term is defined under section 9 of the *Corporations Act 2001* (Cth) and includes a subsidiary and a related party as those terms are defined in the *Corporations Act 2001* (Cth).

1.112 Required Rating

A Standard and Poor's credit rating of at least A-.

1.113 Reimbursable Costs

Subject to specific exclusions contained in this Agreement, the direct costs reasonably, properly and actually incurred by the Participants on or after the

date of this Agreement in performing the Alliance Activities that would not have been incurred, but for the Participants' performance of the Alliance Activities, but excluding corporate overhead component not specific to the Alliance Activities and any profit or mark-up of any kind, as described in the Commercial Framework.

1.114 Reimbursable Cost Multiplier (RCM)

The multiplier for the Non-Wages Personnel categories to be applied in accordance with the Commercial Framework.

1.115 Risk/Reward Regime

The regime of adjustment to the payment due to the NOPs described in Schedule 5.

1.116 Safety Management Plan

Has the meaning given in Schedule 8.

1.117 Scope Change

A Direction issued by the Principal in accordance with clause 16.1 or as a result of an Estimation Request (as applicable) other than any such Direction that will result in the Participants incurring additional, or making a saving in respect of (as applicable), Reimbursable Costs of less than \$5 000.

1.118 Senior Representative

In respect of each Participant, the person identified as such in item 8 of Schedule 1 (or such other person as may be nominated by a Participant from time to time by written notice to the other Participants).

1.119 Site

Any lands or areas made available by the Principal to the Participants for the purposes of performing Alliance Activities or the Works and any land which the Participants enter in or on, or occupy, for the purposes of Alliance Activities or the Works.

1.120 Specialist Non-Wages Personnel

A person with a subject specific skill set unique to the engineering or design or construction challenge or solution relevant for the task the subject of the Project or who has demonstrated a level of expertise, capability or experience required by the Project as identified in Schedule AC6.

1.121 Stated Purpose

The intended purpose of the Works described in the CSCR.

1.122 Sub-Alliance

A works or services agreement or other arrangement as approved by the Principal that is structured on an alliance charter and cost reimbursable incentivised commercial framework basis similar to the Alliance which the Participants have entered into with a Sub-Alliance Participant for the performance of any part of the Alliance Activities or the Works.

1.123 Sub-Alliance Participants

Any person engaged as a sub-alliance participant under a Sub-Alliance to perform any part of the Alliance Activities or the Works pursuant to a Sub-Alliance agreement.

1.124 Subcontract

A subcontract, sub-alliance, supply, consultancy, work or services agreement or other arrangement which the Participants have entered into with a Subcontractor for the performance of any part of the Alliance Activities or the Works.

1.125 Subcontractor

Any person engaged as a subcontractor to perform any part of the Alliance Activities or the Works pursuant to a Subcontract and includes an agent, consultant, manufacturer, operator, professional advisor and any other provider of goods, materials, services or work (save where used in clause 39, in which case "Subcontractor" has the meaning in that clause).

1.126 Target Outturn Cost (TOC)

The estimated cost of all Reimbursable Costs, Fee, risk and contingency provisions required to bring the Works to Completion in accordance with this Agreement (identified as such in Schedule AC1 and the aggregate TOC is referred to in item 9 in Schedule 1).

1.127 Temporary Works

Works performed as part of the Alliance Activities which do not form part of the Works.

1.128 Term

Has the meaning in clause 3.5.

1.129 Testing

The testing, commissioning, examining, inspecting, certifying or measuring necessary to confirm that the Alliance Activities and the Works comply with the requirements of this Agreement.

1.130 Total Fixed Remuneration (TFR)

The full time equivalent salary or contract amount payable to each Non-Wages Personnel by their employer for:

1.130.1 Full time Staff and Part time Staff is exclusive of any employment on cost, allowance or accrual;

1.130.2 Casual Staff is exclusive of any employment on cost, allowance or accrual other than the applicable casual loading for annual leave, personal leave, notice of termination and redundancy benefits; and

1.130.3 Contract Staff is the cost or rate as set out in the applicable contract for services and exclusive of any other on cost, allowance or accrual,

on the basis stated in the applicable letter of engagement, letter of employment, employment contract or contract for services.

1.131 Union Official

Any officer, official, delegate or representative of an employee organisation registered under Industrial Relations Law.

1.132 Utility Services

Any infrastructure directly associated with:

1.132.1 transmitting electricity or telecommunications; or

1.132.2 transporting gases, liquids or solids (including water, sewerage, fuel and wastes).

1.133 Value for Money Report

A report to be developed for the Principal by the Alliance to report on matters including the extent to which the Participants, the performance of the Alliance Activities, and the Works have satisfied the objectives and required outcomes set out in the Value for Money Statement.

1.134 Value for Money Statement

The statement of the Principal's value for money objectives and required outcomes for the Project and the Works included in Schedule 2.

1.135 Variation

Any of the matters referred to in clauses 16.1.1 to 16.1.9.

1.136 Wages Personnel

Any person employed by a NOP and governed by a relevant industrial instrument or agreement and not employed or engaged under a contract for services, contract of service or employment contract.

1.137 Wider Project Team (WPT)

The Project team referred to in the Alliance Management Framework.

1.138 Wilful Default

Any of the following:

1.138.1 an intentional or reckless act or omission by a Participant, or any of its officers or directors, or any of a Participant's officers or representatives appointed to the ALT or AMT, which the Participant, or any of its officers, directors, or any of a Participant's officer(s) or representative(s) appointed to the ALT or AMT knew or ought reasonably to have known:

- (a) was wrongful;
- (b) would likely have harmful consequences; or
- (c) was in breach of an Alliance Principle;

1.138.2 a failure by a Participant to pay monies within 20 Business Days of their becoming due under this Agreement including under any indemnity under this Agreement, or within such longer period as directed by the ALT;

1.138.3 an intentional or reckless act or omission by a Participant or any of its officers or directors or any of its representatives appointed to the ALT or AMT which:

- (a) is a breach of any Regulatory Requirements; or
- (b) prevents a non-defaulting Participant from performing a role, responsibility or function or discharging an obligation under any Regulatory Requirements;

1.138.4 a fraudulent act or omission by a Participant or any of its officers or representatives appointed to the ALT or AMT;

1.138.5 a repudiation of this Agreement by a Participant;

- 1.138.6 a refusal of, or failure by, a Participant to comply with any of the following obligations under this Agreement:
- (a) to effect and maintain, or to comply with, a required insurance policy or an event described in clause 23.8;
 - (b) a refusal of, or failure to comply with its Audit obligations;
 - (c) an intentional or reckless refusal of, or failure honour its confidentiality and conflict of interest obligations;
 - (d) a failure by a NOP to comply with clause 42.12 (No Assignment);
 - (e) a failure by a NOP to comply with clause 42.17 (Change in NOP Participation);
 - (f) a failure by a NOP to comply with clause 42.19 (Change in Control);
 - (g) an intentional or reckless refusal of, or failure to act in Good Faith.

However, an innocent act, omission, mistake or error of judgement, whether negligent or not, by a Participant or any of its personnel acting in Good Faith is not a Wilful Default.

1.139 Workplace Relations Management Plan

The plan as set out in Schedule 8.

1.140 Works

The asset or physical work described in Attachment 1 which the Participants must deliver to the Principal under this Agreement, as amended by any Variation (save where used in clause 39, in which case "Works" has the meaning in that clause).

2. INTERPRETATION

2.1 In this Agreement, unless the context requires otherwise:

2.1.1 a reference to any legislation includes:

- (a) all legislation, regulations, proclamations, ordinances, by-laws and instruments issued under that legislation; and
- (b) any modification, consolidation, amendment, re-enactment or substitution of that legislation;

2.1.2 any word importing:

- (a) the singular includes the plural;
- (b) the plural includes the singular; and
- (c) a gender includes every other gender;

2.1.3 words referring to individuals include corporations, unincorporated associations, partnerships, trusts and joint ventures;

2.1.4 a reference to a party includes that party's administrators, successors and permitted assigns;

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- 2.1.5 where the day on or by which something is to be done is not a Business Day, that thing may be done on or by the next Business Day;
- 2.1.6 where a word or phrase is given a defined meaning, then any other grammatical form of that word or phrase has the same meaning;
- 2.1.7 a reference to two or more persons means all of them together;
- 2.1.8 a reference to a clause, subclause, schedule, attachment or appendix is a reference to a clause, subclause, schedule, attachment or appendix of this Agreement;
- 2.1.9 a reference to a clause number includes its sub-clauses;
- 2.1.10 the word “or” is not exclusive;
- 2.1.11 clause headings are for reference only and do not form part of this Agreement;
- 2.1.12 the words “including” or “includes” shall not be interpreted as a word of limitation;
- 2.1.13 “dollars” or “\$” is a reference to Australian currency;
- 2.1.14 Measurements of physical quantities must be in Australian legal units of measurement within the meaning of the *National Measurement Act 1960* (Cth), as amended from time to time;
- 2.1.15 a reference to time is a reference to the time applicable to the State of South Australia,
- 2.1.16 a reference to any agreement or document is to that agreement or document as amended, notated, supplemented, varied or replaced from time to time;
- 2.1.17 the Background forms part of this Agreement;
- 2.1.18 where documents that have been provided by the Principal to a NOP are to be incorporated into this Agreement by reference, they will be identified by their Aconex document reference number and Aconex document revision and the associated transmittal correspondence number (Aconex being a cloud based information management system being used in connection with this Project);
- 2.1.19 where documents/correspondence provided by a NOP to the Principal are to be incorporated into this Agreement by reference, they will be identified by their proponent correspondence number and corresponding date as generated by Aconex and, where available, the Aconex document reference number and Aconex document revision.
- 2.2 The ALT must promptly notify the Principal of any ambiguity, discrepancy or inconsistency in the documents comprising this Agreement, together with the ALT's recommendation to resolve the ambiguity, discrepancy or inconsistency. The Principal will Determine the resolution of any ambiguity, discrepancy or inconsistency in the documents comprising this Agreement.
- 2.3 In the event of any inconsistency, ambiguity or discrepancy between any of the documents comprising this Agreement, the following shall apply:
- 2.3.1 If the inconsistency, ambiguity or discrepancy is in respect of the level of service/performance to be provided by the Works or the standard of the Works, the requirement that delivers the greatest level of
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service/performance, or is of the highest standard, shall apply, unless specified in the CSCR that the CSCR will take precedence.

- 2.3.2 If there is any ambiguity, discrepancy or inconsistency between this Agreement (excluding the Schedules and Attachments to this Agreement), and the Schedules and Attachments to this Agreement not resolved by the application of clause 2.3.1 then the provisions of this Agreement (excluding the Schedules and Attachments to this Agreement) prevail to the extent of any such ambiguity, discrepancy or inconsistency.
- 2.3.3 If there is any ambiguity, discrepancy or inconsistency in this Agreement not resolved by the application of clauses 2.3.1 or 2.3.2:
- (a) the ALT will make a recommendation to the Principal as to how to resolve the ambiguity, discrepancy or inconsistency, in a manner consistent with the commitments given by the Participants under clause 4; and
 - (b) following consideration of a recommendation by the ALT as to how to resolve an ambiguity, discrepancy or inconsistency under clause 2.3.3(a), the Principal will direct the Participants as to how to resolve the ambiguity, discrepancy or inconsistency and the provisions of clause 7 will apply.

2.4 **Principal as Client and a Participant**

- 2.4.1 The NOPs acknowledge that the Principal is entering into this Agreement with two distinct roles. One is as the client for the performance of the Works and the second is as one of the Participants in the Alliance for the performance of the Works.
- 2.4.2 Notwithstanding the alliance relationship established under this Agreement, the NOPs acknowledge that, where the Principal is exercising its rights (including the Principal's powers under clause 7) and performing its obligations under this Agreement in its role as client for the performance of the Works (rather than as a Participant in the alliance) the Principal will not be subject to the commitments made under clauses 4 and 5.

3. **THE AGREEMENT**

Entire Agreement

- 3.1 The agreement between the Participants is made up solely of the documents in this Agreement. This Agreement:
- 3.1.1 supersedes all prior understandings, representations, communications, agreements, dealings, and negotiations made between the Participants in relation to the subject matter of the Agreement; and
 - 3.1.2 contains the entire agreement between the parties with respect to its subject matter.
- 3.2 The Agreement must be read as a whole, and anything included in, or reasonably to be inferred from, one or more documents included in, or referenced by, the Agreement must be read as included in all other documents, unless the context requires otherwise.

- 3.3 The parties acknowledge each having received a USB containing copies of those documents that have been incorporated by reference into this Agreement at the time of signing this Agreement.

Modification of Agreement

- 3.4 Subject to clause 7.4, this Agreement may be amended or modified by unanimous agreement of the Participants, but changes will not be binding upon the Participants unless they are in writing and signed by all Participants or their representative authorised for that purpose.

Term

- 3.5 The Term of this Agreement commences on the Commencement Date and continues until the earlier of:
- 3.5.1 the Principal issuing the Final Certificate and each and every obligation under this Agreement is complete, satisfied or discharged; or
 - 3.5.2 this Agreement is terminated in accordance with clause 31 or 32.

Other Agreements

- 3.6 The NOPs agree not to enter into any agreement, arrangement or understanding which may affect the rights, obligations or liabilities of any Participant in connection with this Agreement, without the prior approval of the ALT.

Acknowledgements

- 3.7 The Participants acknowledge that the Principal has entered into the Agreement relying on each NOP's representations:
- 3.7.1 of their skill, judgement, expertise and commitment to exercise due skill, care and diligence in the performance of the Alliance Activities;
 - 3.7.2 of their ability to perform the Alliance Activities and to design, develop, complete and commission the Works having proper regard to the environment and the safety and health of all persons engaged in performing the Alliance Activities;
 - 3.7.3 of their Fee being valid, correct and accurate; and
 - 3.7.4 that the Reimbursable Costs invoiced will not include any element of corporate overhead costs or expense or any profit.
- 3.8 The NOPs acknowledge having received the information referred to in Attachment 3.

4. ALLIANCE CHARTER

Alliance Purpose

- 4.1 The Participants have formed the Alliance for the purpose of successfully completing the Project and satisfying the objectives and required outcomes set out in the Value for Money Statement.

Alliance Principles

- 4.2 The Participants agree that in performing the Alliance Activities:
- 4.2.1 all Participants win, or all Participants lose, based on achieved Project outcomes, and "win-lose" outcomes are not acceptable;

- 4.2.2 all Participants will achieve MCOS for each KRA and Alliance Objective;
- 4.2.3 Participants have a peer relationship where each Participant has an equal say in decisions of the ALT;
- 4.2.4 subject to the terms of this Agreement, risks and responsibilities are shared and managed collectively by the Participants, rather than allocated to individual Participants;
- 4.2.5 disputes are avoided by adopting a no blame culture;
- 4.2.6 risks and rewards are shared among Participants;
- 4.2.7 Participants provide 'best-in-class' resources;
- 4.2.8 Participants will act consistently according to these Alliance Principles;
- 4.2.9 Participants are committed to developing a culture that promotes and drives collaboration, innovation and outstanding performance;
- 4.2.10 Participants empower the ALT and the AMT to make decisions and take actions;
- 4.2.11 all financial and commercial transactions are fully open book;
- 4.2.12 Participants are committed to developing a 'communication culture' and being transparent in all of their dealings with each other;
- 4.2.13 Participants share all information in accordance with this Agreement and do not hold back ideas;
- 4.2.14 communication between all Participants is open, straight and honest so as to enable informed decision making;
- 4.2.15 each Participant is committed to ensuring that each other Participant understands any documentation prepared in respect of the Project;
- 4.2.16 the Participants will require ethical and responsible behaviour at all times;
- 4.2.17 learnings of the Participants are identified and shared and capability is developed; and
- 4.2.18 decisions are made, and processes and systems are adopted, on a Best for Project basis, subject to the Principal's Determinations.

Alliance Objectives

- 4.3 The Participants' objective is to meet or exceed MCOS for each KRA defined in Schedule 5.

5. COMMITMENTS AND OBLIGATIONS

The Participants' Obligations

- 5.1 The Participants must design and construct the Works so that the Works are fit for the Stated Purpose at Completion.
- 5.2 In performing the Alliance Activities, the Participants must:
 - 5.2.1 achieve the objectives and required outcomes set out in the Value for Money Statement;

- 5.2.2 ensure that the Works at Completion satisfy the requirements of this Agreement;
 - 5.2.3 perform Alliance Activities in a manner consistent with this Agreement and at all times in accordance with the Alliance Principles;
 - 5.2.4 take collective responsibility for managing all of the risks in performing Alliance Activities and the Works;
 - 5.2.5 manage and mitigate all of the risks involved in bringing the Works to Completion;
 - 5.2.6 at all times exercise their skill, judgement, expertise and commitment in the performance of the Alliance Activities;
 - 5.2.7 establish an integrated collaborative team environment to encourage open, honest and efficient working;
 - 5.2.8 comply with the No Dispute commitments and obligations;
 - 5.2.9 encourage innovation and innovative thinking;
 - 5.2.10 develop and maintain a high standard of consultation and communication with Project stakeholders and immediate community groups;
 - 5.2.11 create positive peer relationships in an environment of mutual support, appreciation and encouragement;
 - 5.2.12 manage and minimise the impact upon the road network, adjoining businesses and commuters;
 - 5.2.13 at all times be suitably qualified and experienced and exercise Good Design and Construction Practice in the performance of Alliance Activities;
 - 5.2.14 perform the Alliance Activities in accordance with the Project Program; and
 - 5.2.15 comply with all Laws.
- 5.3 Each Participant acknowledges all requirements specified in this Agreement and agrees to comply with those requirements.
- 5.4 Where required by the *Building Work Contractors Act 1995 (SA)*, the Constructor NOP shall hold an appropriate Builders Licence. Evidence of compliance with this clause shall be submitted to the Principal's Representative on request.

Good Faith

- 5.5 The Participants must act in Good Faith in performing their obligations and responsibilities under this Agreement.

6. NO DISPUTE

- 6.1 The Participants will work co-operatively together to identify, resolve and avoid all Disputes.
- 6.2 The Participants may notify each other of any Dispute, or potential Dispute, arising out of or in connection with this Agreement.

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- 6.3 If the AMT is unable to resolve a Dispute acting in accordance with the Alliance Principles, it must be promptly elevated to the ALT for resolution.
- 6.4 The ALT will deal proactively with any Dispute on a Best for Project basis and will Determine whatever action it believes is necessary to resolve the Dispute (which may include, after consultation with the Principal, the appointment of an independent expert, mediator or adjudicator to assist the ALT to unanimously resolve any Dispute). If any ALT member comes to the view, acting reasonably, that the ALT will not reach unanimous agreement on an issue being considered by the ALT in a timely manner, that ALT member shall be entitled to refer such issue to each Participant's Senior Representative for Determination and the ALT agrees to be bound by (and adopt as their own) any decision reached by the Participants' Senior Representatives in respect of any such matter.
- 6.5 The rights, entitlements, obligations and liabilities set out in this Agreement shall exclusively govern the Participants' rights, entitlements, obligations and liabilities in relation to the Alliance Activities and the Works.
- 6.6 Subject to clause 6.8, and to the extent permitted by Law, only an act or omission of a Participant in performing, or failing to perform, the Alliance Activities which amounts to a Wilful Default or an Act of Insolvency will give rise to enforceable obligations, entitlements, rights or remedies under this Agreement or otherwise at law or in equity.
- 6.7 Subject to clause 6.8, and to the extent permitted by Law, the Participants release and discharge each other from any effects, claims, actions, proceedings, or Loss under this Agreement or otherwise at Law or in equity of any act or omission in performing, or failing to perform, the Alliance Activities which does not amount to a Wilful Default or an Act of Insolvency in respect of which the Participants may have otherwise had recourse at Law under this Agreement or otherwise at Law or in equity but for this release and discharge.
- 6.8 The Participants agree that:
- 6.8.1 the No Dispute commitments and obligations in clauses 6.6 and 6.7 will not apply in relation to:
- (a) any Loss to property of the Principal or the Crown in right of the State of South Australia that does not form part of the Works or is unrelated to the Works;
 - (b) any Loss to a Participant's Construction Plant, equipment or motor vehicles; or
 - (c) death of or injury to persons employed by a Participant; and
- 6.8.2 a Participant's liability to another Participant for Loss described under subclauses 6.8.1(a), 6.8.1(b) or 6.8.1(c) shall be limited to the amount recoverable (if any) by the relevant insured Participant under an insurance policy required to be effected under clause 23.
- 6.9 The Participants acknowledge and agree that clause 6.8 is intended to enable a Participant's Construction Plant insurer (clause 23.5.1), motor vehicle insurer (clause 23.5.2), compulsory third party motor vehicle insurer (clause 23.5.3), or workers compensation insurer (clause 23.5.4) to exercise a right of subrogation or statutory right of recovery, to the extent it is permitted to do so, against a Participant or a Participant's insurer.
- 6.10 Except to the extent that Consequential Loss is covered and is recovered, or would have been recovered but for an act or omission, by a Participant under a
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policy of insurance referred to in clause 23 of this Agreement, in which case that Participant will be liable, no Participant will be liable to another Participant for any Consequential Loss sustained by a Participant, whether caused by that Participant's breach of this Agreement, negligence or otherwise.

- 6.11 The Participants acknowledge and accept that nothing in this clause 6 will prevent any Authority from taking any action necessary to enforce a Law or Regulatory Requirement and any Authority doing so, or purporting to do so, is not a Wilful Default of the Principal.

Survival of Clause

- 6.12 This clause 6 survives any expiry or termination of this Agreement.

7. PRINCIPAL - DETERMINATIONS, RESERVED POWERS AND DIRECTIONS

Determinations

- 7.1 Notwithstanding clause 5.5, the Principal may, when making any Determination reserved to the Principal under the Agreement, act in its absolute and unfettered discretion.
- 7.2 No:
- 7.2.1 Determination by the ALT, or any of the Principal's ALT representatives; or
 - 7.2.2 Records contemplated by the Agreement, and nothing contained in or set out in or implied by any such Records;
can limit, restrict, modify, constrain or place any fetter on the exercise by the Principal of any:
 - 7.2.3 discretion, right, entitlement or power (express or reserve) under any Law; or
 - 7.2.4 Determination by the Principal under the Agreement.

Reserved Powers

- 7.3 Determinations in respect of the following matters are reserved to the Principal:
- 7.3.1 any Determination reserved to the Principal under the Agreement;
 - 7.3.2 appointment of the Principal's ALT, AMT and WPT representatives in accordance with Schedule 4;
 - 7.3.3 appointment of independent advisors under clause 10.1;
 - 7.3.4 issuing the Certificate of Completion in accordance with clause 28;
 - 7.3.5 issuing the Final Certificate in accordance with clause 29.5;
 - 7.3.6 a Variation in accordance with clause 16;
 - 7.3.7 an Adjustment Event in accordance with clause 15;
 - 7.3.8 publication or disclosure in accordance with clause 34.11;
 - 7.3.9 a suspension of the Alliance Activities or the Works under clause 30;
 - 7.3.10 termination of the Agreement in accordance with clause 31 or 32;
 - 7.3.11 urgent protection of the Works, other property, people or the environment; and

- 7.3.12 any other matter which the Principal Determines, after consultation with the ALT, or the ALT unanimously agrees, should be reserved to the Principal.

Directions

- 7.4 The Principal may (without limitation) Direct the Participants in writing to:
- 7.4.1 change the design, specifications or requirements of the whole or any part of the Works;
 - 7.4.2 change the Works or any part of the Works;
 - 7.4.3 increase, decrease or omit any part of the Works;
 - 7.4.4 change the character or quality of any part of the Works;
 - 7.4.5 change the levels, lines, positions or dimensions of all or any part of the Works;
 - 7.4.6 change the timing of the performance of all or any part of Alliance Activities;
 - 7.4.7 change the means, methods or techniques of the performance of all or any part of Alliance Activities;
 - 7.4.8 execute additional Alliance Activities;
 - 7.4.9 demolish or remove material or work no longer required by the Principal; or
 - 7.4.10 decrease or omit any part of Alliance Activities or the Works for any purpose including engaging a third party to perform Alliance Activities or the Works independently of the Project.
- 7.5 Any Direction given under clause 7.4 must clearly indicate that it is a Direction given by the Principal under clause 7.4 of the Agreement.

Urgent works

- 7.6 A Direction under clause 7.4 is not required in the event that urgent works are required to be undertaken.

Not Invalid

- 7.7 No Direction given by the Principal will invalidate the Agreement and, unless the Direction is a Scope Change, there will be no change to the Commercial Framework.

Principal's Representative

- 7.8 The Principal may perform its obligations under the Agreement through a representative appointed in writing by the Principal from time to time.
- 7.9 The Principal has initially selected the person identified in Schedule 1 as the Principal's Representative for the purposes of the Agreement. The Principal may, from time to time, change the Principal's Representative by giving notice in writing to the NOPs.
- 7.10 The Principal's Representative may delegate any of its contractual functions and powers to others by written notice to the NOPs.
- 7.11 The NOPs will provide all assistance necessary to enable the Principal's Representative to efficiently and effectively exercise the Determinations, rights and entitlements and perform its role and responsibilities under the Agreement.

8. LEADERSHIP AND MANAGEMENT

General

- 8.1 The Participants must comply with Schedule 4.

Personnel

- 8.2 The Principal's ALT members are those persons nominated in item 10 of Schedule 1.
- 8.3 The NOP's ALT members are those persons nominated in Schedule AC6.
- 8.4 The NOPs must provide the NOP Key Personnel to the Project. The NOPs will not (unless the person has died, become seriously ill, or has resigned from the employment of a NOP) remove any of their people appointed to the AMT or any of the NOP Key Personnel without the ALT's consent or the approval of the Principal. Where a NOP removes or replaces any of their people appointed to the AMT or any of the NOP Key Personnel without either the ALT's consent or the approval of the Principal, the Principal may Determine that the costs of removing or replacing such personnel (including any costs incurred in familiarising the personnel with the Project or the Works) will not be a Reimbursable Cost.
- 8.5 The Participants must ensure that all persons employed in connection with the performance of Alliance Activities and the Works:
- 8.5.1 are careful, skilled, qualified and experienced in their respective trades and professions and exercise Good Design and Construction Practice;
 - 8.5.2 are registered and licensed as necessary under any Regulatory Requirements for the purposes of, or incidental to, the performance of the Alliance Activities;
 - 8.5.3 have been inducted by the Participants in accordance with the Participants' induction program; and
 - 8.5.4 comply with this Agreement.
- 8.6 If the Principal, ALT or AGM is of the reasonable opinion that a person does not or has not met the requirements of clause 8.5, that person may be removed from the Site and that person must not have any further involvement in the performance of the Alliance Activities.
- 8.7 If any of the NOP Key Personnel die, become seriously ill, resign from the employment of a NOP, or become the subject of a Determination under clause 8.6, subject to the ALT's determination on a Best for Project basis, the employer of the respective NOP Key Personnel must replace them with a person of at least equivalent experience, ability and expertise as approved by the ALT and AGM.

Alliance Team Integration Plan

- 8.8 The Participants must develop and implement an Alliance Team Integration Plan which describes the activities and processes that the Participants will use to ensure that their employees, agents and subcontractors act in accordance with the Alliance Principles.

Performance Measurement

- 8.9 In consultation with the ALT, the Principal will develop assessment criteria and the Participants' performance against these criteria will be monitored and measured monthly.
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- 8.10 The Participants must provide reasonable assistance with the collection, collation and analysis of data to be compared to the assessment criteria.

9. SECURITY

Deed of Guarantee

- 9.1 The Constructor NOP must provide security in accordance with this clause 9.
- 9.2 The Constructor NOP must, if required by the Principal, within 14 days of receipt of a written request from the Principal, procure that the Parent Company execute the Deed of Guarantee in the form shown in Schedule 11.
- 9.3 If during the duration of the Agreement, the Parent Company ceases to be the parent company of Constructor NOP, Constructor NOP must procure a substitute deed of guarantee in favour of the Principal by a party Determined as acceptable by the Principal or equivalent security in substitution as Determined by the Principal. Upon the provision of the substitute Deed of Guarantee or equivalent security as Determined by the Principal:
- 9.3.1 the substituted guarantor will be released and discharged from any and all liabilities in respect of that Deed of Guarantee and the Principal acknowledges that it will not make and releases and discharges the substituted guarantor from any claim the Principal has or may have against the substituted guarantor; and
- 9.3.2 the Principal will simultaneously return the substituted Deed of Guarantee to the substituted guarantor.
- 9.4 The Deed of Guarantee will provide that the obligations and liabilities of the Guarantor under the Deed of Guarantee will not exceed the obligations and liabilities of the Constructor NOP arising out of the Agreement or its non-performance.
- 9.5 Any agreement between the provider of the Deed of Guarantee and the Principal with respect to any amounts to be paid to the Principal under the Deed of Guarantee is without prejudice to the Principal's right to make continuing claims against the Constructor NOP in relation to any matters which are covered by the Deed of Guarantee.

Unconditional Undertaking

- 9.6 Within 14 days of the Commencement Date (and as a condition precedent to the commencement of work on the Site), the Constructor NOP must provide to the Principal an irrevocable unconditional undertaking for the aggregate value of 5% of the TOC which will be returned as follows:
- 9.6.1 4% will be returned within:
- (a) 20 Business Days after the issuance of a payment certificate by the Principal in respect of the interim Performance Adjustment payment as contemplated by paragraph 6.5 of Schedule 3, where the interim Performance Adjustment results in a payment due by the Principal to the NOPs; or
- (b) 20 Business Days after the payment by the Constructor NOP of its share of the interim Performance Adjustment payment evidenced by a payment certificate issued by the Principal as contemplated by paragraph 6.5 of Schedule 3, where the

interim Performance Adjustment results in a payment due by the NOPs to the Principal (and, to the extent that any such payment is not made, the Principal may make a demand in respect of such amount as contemplated by clause 9.9 below); and

- 9.6.2 the remaining 1% will be returned upon the expiry of the initial Defects Liability Period, provided, however, that in the event that repair or rectification works performed under clause 29 are subject to a separate Defects Liability Period under clause 29.4 as at the expiry of the initial Defects Liability Period then an amount equal to the value of any such repair or rectification works as Determined by the Principal (capped at the 1% then provided) must continue to be provided to the Principal until the issue of the Final Certificate.
- 9.7 The irrevocable unconditional undertaking must be:
- 9.7.1 in the form shown as “DIT Example Unconditional Undertaking”,
- 9.7.2 from an Australian financial institution that is regulated by the Australian Prudential Regulation Authority with the Required Rating and as approved by the Principal.
- 9.8 If during the performance of the Alliance Activities the rating of the unconditional undertaking or the financial institution issuing the unconditional undertaking falls below the Required Rating, the Constructor NOP must immediately inform the Principal and comply with any Determination of the Principal to provide an appropriate replacement irrevocable unconditional undertaking from an Australian financial institution that is regulated by the Australian Prudential Regulation Authority with the Required Rating, or security in a form Determined by the Principal, within a period Determined by the Principal which may be not less than 5 Business days and not greater than 20 Business Days.
- 9.9 The Principal may immediately make a demand under the unconditional undertaking provided by the Constructor NOP referred to in clause 9.6:
- 9.9.1 for any amounts owed to it if, in the reasonable opinion of the Principal, an amount is owed by the Constructor NOP to the Principal under the Agreement; or
- 9.9.2 for the full amount of the unconditional bank guarantee if a replacement irrevocable unconditional undertaking from an Australian financial institution that is regulated by the Australian Prudential Regulation Authority with the Required Rating or security in a form Determined by the Principal with the Required Rating is not provided to the Principal within the period Determined by the Principal in accordance with clause 9.8 and hold that amount as security in accordance with this Agreement.
- 9.10 The Constructor NOP agrees that if at any time a claim for payment is made against an unconditional undertaking by the Principal, the Constructor NOP must, if requested to do so by the Principal, provide additional security such that the aggregate value of the unconditional undertaking(s) remains equal to the amounts specified in clause 9.6.

- 9.11 Any security provided by the NOPs in accordance with clause 9, and not wholly or partially converted, called upon, drawn down or returned by the Principal, will be returned by the Principal within one month after the expiry of the Term.

Survival of Clause

- 9.12 This clause 9 survives any expiry or termination of this Agreement.

10. ASSURANCE

Appointment of Advisors

- 10.1 The Principal may appoint advisors including:
- 10.1.1 probity advisors;
 - 10.1.2 financial advisors, auditors or investigators;
 - 10.1.3 construction, engineering or technical reviewers/verifiers;
 - 10.1.4 estimators; and
 - 10.1.5 technical experts or advisors.
- 10.2 Any advisor appointed by the Principal:
- 10.2.1 is independent of the Alliance;
 - 10.2.2 is accountable to, and will report directly and solely to, the Principal;
 - 10.2.3 will be paid by the Principal and such cost or expenses will not:
 - (a) be a Reimbursable Cost; or
 - (b) be aggregated into the TOC or AOC; and
 - 10.2.4 to the extent permitted by Law does not, and will not, under any circumstances owe Participants any duty of care or any other legal duty, liability or obligation to a NOP.

Probity

- 10.3 The Participants must ensure that the standards of probity and degree of transparency within the Alliance will satisfy the requirements of the Principal and the South Australian Government. The Participants will cooperate fully with any probity or financial adviser, auditor or investigator appointed by the Principal so as to achieve this goal.

Audit

- 10.4 At any time the Principal, the South Australian Auditor-General or any person authorised by Law may at any time Audit any Records held, prepared or maintained by the Participants, Subcontractors, Sub-Alliance Participants, any Alliance Activities or any matter in connection with the Alliance Activities or the Works for the purpose of:
- 10.4.1 conducting efficient and effective financial and performance Audits of the Participants' performance of the Alliance Activities and the Works; and
 - 10.4.2 validating the Participants' compliance with the Agreement.
- 10.5 The Participants must provide reasonable cooperation and whatever access or facilities are necessary to conduct any Audit, as required by the Principal or the South Australian Auditor-General.

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- 10.6 A NOP will not be entitled to any Reimbursable Costs associated with the conduct of an Audit where any such Audit identifies that the NOP has committed a Wilful Default.
 - 10.7 To the extent permitted by Law, any Records provided for an Audit will be treated as Confidential Information in accordance with clause 25.
 - 10.8 Nothing in this Agreement derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987* (SA).
 - 10.9 The Audit powers described in clause 10.4 to 10.8 apply notwithstanding that the Certificate of Completion has been issued, the Agreement has been terminated, or whether an Audit is carried out under this Agreement or otherwise.

Benchmark Alliance Performance

- 10.10 A fundamental obligation of the Alliance is to satisfy the objectives and required outcomes set out in the Value for Money Statement to help demonstrate, ensure and deliver value for money.
- 10.11 If requested by the Principal, the Participants must provide reasonable assistance to enable the Principal to benchmark the performance of this Alliance against the performance of other alliances or similar projects.
- 10.12 The Participants, to effectively demonstrate that these value for money outcomes are and will be achieved, have agreed that the Principal may benchmark the performance of the Alliance against the performance of other alliances.
- 10.13 The Participants agree that for the purposes of benchmarking the performance of the Alliance or the Participants they will, in a manner consistent with the Alliance Principles, fully, frankly and honestly disclose information relating to the actual outturn performance of the Alliance, the Alliance Activities or the Works other than that information which the ALT Determines, in consultation with the Principal, is Confidential Information.
- 10.14 Where the ALT Determines, in consultation with the Principal, that information is Confidential Information the ALT shall Determine an acceptable and appropriate manner to mask and/or protect the confidential nature of the information but will still be obliged to share the information for the purposes of benchmarking the AOC performance of all aspects of the Alliance.

Survival of Clause

- 10.15 This clause 10 survives any expiry or termination of this Agreement.

11. ALLIANCE RECORDS AND REPORTING

Records

- 11.1 The Participants must prepare and maintain all Records required under this Agreement.
 - 11.2 The Principal has obligations to maintain Records to substantiate the expenditure of public monies with respect to the performance of Alliance Activities and the Works.
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- 11.3 The Principal retains an irrevocable right of access to Records for the purposes of Auditing Records or to substantiate the expenditure of public monies with respect to the performance of Alliance Activities and the Works.
- 11.4 The Participants must:
- 11.4.1 ensure that the Records are properly and accurately created, managed and Audited on an open book basis;
 - 11.4.2 not destroy or discard Records except with the Principal's prior written consent;
 - 11.4.3 ensure that the Records are available for Audit and verification by the Principal upon reasonable notice being provided to validate the Participants' compliance with this Agreement;
 - 11.4.4 provide all other reasonable assistance requested by the Principal for the purposes of Auditing the Records with respect to the performance of Alliance Activities and the Works; and
 - 11.4.5 upon reasonable notice being given, provide the Principal with copies of all Records that the Principal Determines it requires for the purposes of undertaking any Audit in connection with the expenditure of public monies with respect to the performance of Alliance Activities and the Works.
- 11.5 The Principal does not assume or owe Participants any duty of care to the Alliance to review Records for errors, omissions or compliance with the requirements of this Agreement or by Law.
- 11.6 An inspection of Records will not:
- 11.6.1 limit or relieve the Participants of any obligation or liability under this Agreement;
 - 11.6.2 limit any right of the Principal under this Agreement;
 - 11.6.3 constitute acceptance by the Principal of the performance of the Alliance's obligations under this Agreement; or
 - 11.6.4 be considered as a representation or acknowledgement by the Principal of that document's compliance with this Agreement.

Reporting

- 11.7 The AGM must, at periods required by the Principal, comply with the Project Control and Reporting Plan and provide the Principal with reports, approved by the ALT, that:
- 11.7.1 include a work status report that identifies against relevant Milestones the progress of the key elements of the Alliance Activities and the Works;
 - 11.7.2 report on the Participants' compliance with or departures from the Community Engagement and Media Management Plan referred to in Schedule 8;
 - 11.7.3 identify the status of the Participants' performance in each KRA and KPI against the Principal's requirements for each KRAs and KPIs;
 - 11.7.4 identify key issues;
 - 11.7.5 recommend actions and provides the status of previous recommendations on key issues;
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- 11.7.6 track "actual and forecast against planned or budget" cost, time (including updates to the Project Program), KRA, payment due under the Commercial Framework, risk management, scope, scope changes, environment, community and 'team health' performance;
- 11.7.7 include monthly earned value reports, which include:
- (a) a reconciliation, as at the date of the report, of the AOC of performing the Alliance Activities against the TOC;
 - (b) any innovations or breakthroughs which have been made or opportunities which have been realised, or are forecast to be realised, by the Participants in performing the Alliance Activities;
 - (c) the Participants' risk management performance in performing the Alliance Activities as against the Commercial Framework; and
 - (d) any material errors or mistakes which have been made in the development of the TOC and identified by the Participants;
- 11.7.8 provide a monthly report of the Participants' performance in respect of all health and safety Laws in a format and with details required by the Principal;
- 11.7.9 provide a monthly report on employment status which addresses numbers of direct and indirect employees, construction labour, apprentices and indigenous employees;
- 11.7.10 provide a monthly cashflow statement covering a 12 month forward rolling period; and
- 11.7.11 provide any other information required by the Principal necessary to validate compliance with this Agreement.
- 11.8 The AGM must notify all incidents, near misses or hazards required by and in accordance with this Agreement and the Management Plans.
- 11.9 The Participants will provide the Principal with an annual Project report and an annual Project plan at times, and incorporating requirements, advised by the Principal.

Value for Money Report

- 11.10 The Participants must progressively during the performance of the Alliance Activities collect and report to the Principal the Records that may be required by the Alliance for the preparation of the Value for Money Report.

12. TRANSMISSION OF DOCUMENTS

- 12.1 For the purpose of this clause 12 only, **Document** means all documentation that is, or is required to be, transmitted between the Participants or to the Principal in connection with this Agreement, including notices, Determinations, Directions, requests, recommendations, agreements, Documentation, claims and general correspondence.
- 12.2 The Principal has implemented an IMS for the management of Documents and the facilitation of collaboration on the Project. All Participants must use the IMS
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to transmit any Document to any other Participant or to the Principal (including persons appointed by the Principal).

- 12.3 A Document will be deemed to have been received by 4.00 pm on the Business Day following its transmission.
- 12.4 If requested by the Principal or specified in the CSCR, a Participant must provide a paper copy of a Document via post or hand delivered to an address to be advised by the Principal, in addition to the electronic transmission of Documents by the IMS. The paper copies are for record keeping purposes only. A Participant is not obliged to act upon, or respond to, a paper copy of a Document.
- 12.5 The control of Document revision status must be undertaken electronically using the IMS.
- 12.6 The IMS is a secure web portal system and requires broadband access as a minimum to operate. Access to the IMS will be provided to those personnel nominated by the Participants. The Principal will arrange for training to be provided to the Participants' personnel in the use of the IMS.
- 12.7 Each Participant must fully complete the fields within the IMS when uploading the individual Documents in accordance with instructions provided by Principal.
- 12.8 On or before the Commencement Date, the Principal will notify the Participants of the company to be engaged to implement, operate and provide training for the IMS.

13. ALLIANCE ACTIVITIES AND THE WORKS

Commencement

- 13.1 The Alliance Activities must not commence prior to a date Determined by the Principal, which in any case will be no earlier than the Commencement Date.

General

- 13.2 The Participants are responsible for the care and control of the Works and the Site from the date of the commencement of Alliance Activities on the Site until 4.00 pm on the Actual Completion Date.
- 13.3 Except where this Agreement provides otherwise, the Participants must supply everything necessary for the proper performance of the Alliance Activities and the Works.
- 13.4 If progress falls behind the Project Program or if progress is not being maintained to a level that would allow Completion to occur by the Date for Completion, the Participants must take all measures as may be necessary and practicable (including working overtime, shift work, using additional Construction Plant or labour or other measures) to minimise any delays and to ensure that the Participants achieve Completion by the Date for Completion (for the avoidance of doubt any such measures do not require a Direction from the Principal).

Subcontracts and Sub-Alliances

- 13.5 The ALT must develop a Procurement and Contracting Strategy which describes the process that the Participants must follow when entering into Subcontracts and Sub-Alliances to ensure value for money and compliance with

- South Australian Government procurement policies, procedures and probity principles.
- 13.6 Any Participant entering into a Subcontract or Sub-Alliance for any part of the Alliance Activities must:
- 13.6.1 do so in accordance with the Procurement and Contracting Strategy;
 - 13.6.2 obtain the ALT's prior written consent to entering a Subcontract or Sub-Alliance for any part of the Alliance Activities which exceeds or is outside any appropriate level of authorisation in the Procurement and Contracting Strategy;
 - 13.6.3 do so in its own right as principal and as agent for and on behalf of the Participants, for the purposes of the Agreement;
 - 13.6.4 ensure that any such arrangement does not impose payment terms in excess of 30 days from receipt of a payment claim or invoice, issued under a Subcontract, materials supply agreement, or Sub-Alliance agreement, as the case may be;
 - 13.6.5 supervise and manage a Sub-Alliance Participant's performance to ensure that the Subcontractor or Sub-Alliance Participant discharges its obligations to the Participants in accordance with the Subcontract or Sub-Alliance; and
 - 13.6.6 ensure that the Subcontract or Sub-Alliance contains provisions which are consistent with clause 22 of this Agreement.
- 13.7 Any Participant entering into a Subcontract or Sub-Alliance is not solely responsible for the acts or omissions of the Subcontractor or Sub-Alliance Participant itself under the Subcontract or Sub-Alliance. Instead, the Participants remain collectively responsible for and collectively assume the risk of such acts or omissions.
- 13.8 A Subcontract or Sub-Alliance will not relieve the Participants of their obligations under this Agreement.
- 13.9 The Participants will obtain written warranties in favour of the Principal from Subcontractors and Sub-Alliance Participants, to the extent such warranties are relevant, that any:
- 13.9.1 materials incorporated into the Works are correctly designed, fabricated and installed to the standards set out in this Agreement or, if not set out, then to good industry standards and codes of practice; and
 - 13.9.2 design and any materials incorporated into the Works are of the required quality and fit for the Stated Purpose.

Milestones

- 13.10 A Milestone may be specified as such in this Agreement or the Principal may Determine that any portion of the Alliance Activities or the Works will be a Milestone.
- 13.11 The interpretations of:
- 13.11.1 Alliance Activities;
 - 13.11.2 Defects Liability Period; and
 - 13.11.3 the Works,

shall apply separately to each Milestone as may be set out in this Agreement or Determined by the ALT. The Principal, prior to Determining that any part of the Alliance Activities or the Works will be a Milestone, will Determine the impact of the creation of the Milestone on the Commercial Framework.

- 13.12 The Participants must perform the Alliance Activities to achieve Milestone Achievement by the applicable Milestone date.
- 13.13 When the AMT is satisfied that Milestone Achievement has been achieved in relation to a Milestone, the AMT must prepare and deliver a Milestone Achievement Report to the ALT and the Principal with a statement that:
- 13.13.1 Milestone Achievement has been achieved for the Milestone; and
- 13.13.2 the Milestone Achievement Report complies with the requirements of this Agreement.
- 13.14 The ALT must meet as soon as practicable after receipt of the Milestone Achievement Report to consider whether Completion has been achieved and:
- 13.14.1 if the ALT considers that Milestone Achievement has been achieved, the ALT must recommend to the Principal that it issues the Certificate of Milestone Achievement; or
- 13.14.2 if the ALT considers that Milestone Achievement has not been achieved, the ALT must notify the AMT of those matters or things which need to be addressed before Milestone Achievement can be achieved and the process in clauses 13.13 and 13.14 will be repeated until the ALT recommends that the Principal issues the Certificate of Milestone Achievement.
- 13.15 As soon as is reasonably practicable after the receipt of the ALT's recommendation in regard to Milestone Achievement, the Principal must consider the ALT's recommendation, and:
- 13.15.1 if the Principal Determines that Milestone Achievement has been achieved, the Principal must issue a Certificate of Milestone Achievement stating the date of Milestone Achievement; or
- 13.15.2 if the Principal Determines that Milestone Achievement has not been achieved, the Principal must notify the ALT of those matters or things which need to be addressed before Milestone Achievement can be achieved and the ALT must address those matters or things and resubmit the recommendation in regard to Milestone Achievement to the Principal for further consideration.
- 13.16 The Participants acknowledge and agree that the Principal cannot Determine Milestone Achievement prior to receipt of a recommendation from the ALT that Milestone Achievement has been achieved.
- 13.17 As a precondition to Milestone Achievement, the NOPs must provide the Principal with all Records required under this Agreement.

Standard of Alliance Activities and Works

- 13.18 The Participants must ensure that the Alliance Activities and the Works:
- 13.18.1 are fit for the Stated Purpose at Completion;
- 13.18.2 comply with the CSCR;
- 13.18.3 are performed using design and construction practices which are not of a lesser standard than that used on comparable Australian projects;

- 13.18.4 are performed with due skill, care and diligence;
- 13.18.5 are performed with due expedition and without unnecessary or unreasonable delay;
- 13.18.6 are performed to the standard expected of persons experienced and competent in the performance of works or services similar to Alliance Activities;
- 13.18.7 are performed so as to avoid Defects;
- 13.18.8 satisfy the objectives and required outcomes set out in the Value for Money Statement;
- 13.18.9 are performed so as to satisfy the time, cost and quality parameters set out in the Agreement; and
 - 13.18.10 are designed and constructed having regard to Good Design and Construction Practice.
- 13.19 Unless the Principal Determines otherwise, the Works must be substantially in accordance with the Concept Design.

DIT Master Specification

- 13.20 Where the DIT Master Specification is applicable to any Alliance Activity or part of the Works the:
 - 13.20.1 Participants must satisfy the obligations of the Contractor specified in the DIT Master Specification; and
 - 13.20.2 Principal may act as though it is the Superintendent specified in the DIT Master Specification.
- 13.21 If the DIT Master Specification is amended after the Commencement Date at the Direction of the Principal then such amendment shall constitute a Variation.
- 13.22 The Principal may waive the Participants' obligation to comply with an amendment to the DIT Master Specification.

Management Plans

- 13.23 The Participants must prepare all maintenance and/or operating plans and manuals which are necessary for Principal to operate and maintain the Works and provide these plans and manuals to the Principal prior to Completion. These plans and manuals must be sufficiently detailed for the Principal to operate and maintain the Works without further clarification.
- 13.24 The Management Plans must:
 - 13.24.1 incorporate the management plan requirements set out in Schedule 8; and
 - 13.24.2 be provided to the Principal within 20 days of the Commencement Date; and
 - 13.24.3 be approved by the Principal, the ALT or the AGM, as the case may be, in accordance with Schedule 8.
- 13.25 Alliance Activities must not commence on Site until all Management Plans are approved in accordance with this Agreement, or until the requirement for such approval is waived by the Principal. If the Principal does not approve a Management Plan the Principal must provide reasons for any Management Plan/s it does not approve.

- 13.26 The Participants will amend the Management Plan/s to address the Principal or ALT's reasons and resubmit the Management Plan/s for approval.
- 13.27 In performing Alliance Activities the Participants must strictly comply with, and not deviate from, the Management Plans approved in accordance with clause 13.24 unless such deviation is Determined as acceptable by the Principal or the ALT, as the case may be in accordance with Schedule 8, in advance of any such deviation.
- 13.28 The Participants will update and revise the Management Plans when necessary to do so as a result of any change in equipment, systems or procedures in performing the Alliance Activities or when directed by the ALT. All updates and revisions to Management Plans must be prepared and approved in accordance with clause 13.24.

Design Documents

- 13.29 The NOPs have provided those design documents set out in Schedule CC1 to the Principal which shall be developed in accordance with the CSCR. For the avoidance of doubt, the Principal's receipt of such documents does not constitute an acceptance of any departures from the requirements of the CSCR contained in such documents.

14. SITE

Access

- 14.1 The Participants must not commence the Alliance Activities on the Site until the date of possession of the Site, being the date specified in item 11 of Schedule 1, or such other date as Determined by the Principal.
- 14.2 The Participants must provide for access to or occupation of any part of the Site, or any other lands in the ordinary care, custody or control of a Participant as is necessary or appropriate for the performance of the Alliance Activities.
- 14.3 To the extent that the Participants do not have rights of access to the Site or any other lands in the ordinary care, custody or control of a Participant, the Participants will:
- 14.3.1 arrange such access as is necessary or appropriate for the performance of the Alliance Activities on a Best for Project basis; and
 - 14.3.2 do all things which may be necessary to obtain such access including entering into an agreement governing the basis upon which such access will be granted.
- 14.4 The NOPs acknowledge and accept that the Principal may elect to arrange such access prior to the Commencement Date and the NOPs will accept and be jointly liable for such conditions of access arranged by the Principal as the case may be.

Non-exclusive access

- 14.5 The Participants are not entitled to exclusive access to the Site while performing the Alliance Activities.
- 14.6 The Principal may have work associated with the Project undertaken by utility service Authorities or other contractors on or adjacent to the Site.
- 14.7 The Principal, any contractor engaged by the Principal either in connection with the Project or otherwise, any Authority and any person authorised in writing by

the Principal (and any of their employees, agents, consultants and contractors) may at any reasonable time have access to any part of the Site or place where Alliance Activities, materials and equipment to be incorporated into the Works are being prepared or stored for any purpose.

14.8 The Participants must:

- 14.8.1 provide reasonable access to;
- 14.8.2 take all reasonable steps to co-ordinate and liaise with; and
- 14.8.3 not unreasonably obstruct the activities of,
those persons identified in clause 14.6 and 14.7 on or adjacent to the Site.

Continuing Road Operations

14.9 In performing the Alliance Activities the Participants will:

- 14.9.1 work to prevent if possible, or minimise if not possible, any unplanned impact on the road network or road operations; and
- 14.9.2 immediately inform the relevant road Authority or infrastructure manager of any Alliance Activities or Works that have the potential to create any unplanned impact upon a road network or road operations.

Industrial Relations

14.10 The NOPs:

- 14.10.1 before the Commencement Date, have informed themselves of all matters relevant to the engagement of labour in connection with the performance of the Alliance Activities, and at the Site;
- 14.10.2 must ensure that all labour engaged by a NOP, Subcontractors or Sub-Alliance Participants in connection with the performance of the Alliance Activities are paid in accordance with rates of pay and conditions to attract and keep quality labour; and
- 14.10.3 must ensure that all labour engaged by a NOP, Subcontractors or Sub-Alliance Participants in connection with the performance of the Alliance Activities are engaged in such a manner which allows the NOPs and the Principal to comply with its obligations under the Agreement.

14.11 Each Participant acknowledges that it is:

- 14.11.1 responsible for the management of employee and industrial relations matters in connection with the performance of the Alliance Activities including, but not limited to, the resolution of all Industrial Action and all employee and industrial relations matters pertaining to all personnel performing the Alliance Activities; and
- 14.11.2 fully and solely responsible for ensuring the prompt payment of all salaries, wages, commissions, allowances and other remuneration to all labour and employees engaged in connection with the performance of the Alliance Activities and for the deduction and payment of the applicable taxes, levies and charges and for the remittance of such sum to tax or other Authorities.

14.12 The Participants must:

- 14.12.1 comply with and ensure that all Engaged Persons, Subcontractors or Sub-Alliance Participants comply with all Industrial Relations Laws and upon request, provide the Principal with evidence of such compliance;

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- 14.12.2 comply with and ensure that all Engaged Persons, Subcontractors or Sub-Alliance Participants engaged in the performance of the Alliance Activities comply with the Workplace Relations Management Plan and upon request, provide the Principal with evidence of such compliance;
 - 14.12.3 cooperate with and ensure that all Engaged Persons, Subcontractors or Sub-Alliance Participants cooperate with contractors carrying out any related works, stakeholders or other persons on the Site in order to maintain a stable industrial relations environment;
 - 14.12.4 upon request by the Principal, attend meetings convened by the Principal for the purpose of discussing employee and industrial relations matters;
 - 14.12.5 prepare and submit to the Principal a monthly industrial relations performance report in accordance with the requirements of the Workplace Relations Management Plan;
 - 14.12.6 immediately advise the Principal in writing of any act, fact or circumstance associated with the activities of the Participant or any other person relevant to the ability of the Participant to perform the Alliance Activities in a manner consistent with this clause; and
 - 14.12.7 immediately notify the Principal of the particulars concerning any change to the Labour Conditions.
- 14.13 The Participants must undertake such monitoring and Auditing of the Alliance Activities as is necessary to ensure that at all times the Alliance Activities are being performed in compliance with all Industrial Relations Laws, the requirements of the Agreement and the Workplace Relations Management Plan.
- 14.14 The Participants must:
- 14.14.1 take all reasonable measures to prevent the occurrence, and minimise the continuance, of Industrial Action;
 - 14.14.2 advise the Principal immediately of any actual or potential Industrial Action;
 - 14.14.3 immediately inform the Principal of any request or demand by any Union Official to enter the Site; and
 - 14.14.4 immediately provide the Principal with a copy of any right of entry notice received from any union in relation to the Site.
- 14.15 The Participants must ensure that:
- 14.15.1 any entry to the Site by a Union Official complies with Industrial Relations Law; and
 - 14.15.2 the Union Official complies with the Safety Management Plan when on Site.
- 14.16 The NOPs acknowledge and accept that the Audit rights, entitlements or powers in clauses 10.4 to 10.9 includes the right, entitlement or power to Audit any industrial agreements to assure the Principal that the NOPs comply with clauses 14.10 to 14.15.
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15. ADJUSTMENT EVENTS

Determination of Adjustment Events

- 15.1 If the ALT Determines that an Adjustment Event has occurred (or, in the case of an Estimation Request, would occur if the matters the subject of the Estimation Request were undertaken):
- 15.1.1 the Participants will take every reasonable measure available to the Participants to mitigate any adverse or prejudicial effects or optimise any improvement or positive effect, of the acts, events or circumstances giving rise to the Adjustment Event; and
 - 15.1.2 the ALT may Determine any reasonable modifications which need to be made to the Commercial Framework and make a recommendation to the Principal for the Principal's Determination of:
 - (a) the facts and circumstances supporting the ALT's Determination of the Adjustment Event (or potential Adjustment Event in the case of an Estimation Request);
 - (b) any impact of the facts and circumstances of the Adjustment Event (or potential Adjustment Event in the case of an Estimation Request) on the objectives and required outcomes set out in the Value for Money Statement;
 - (c) any reasonable modification to the TOC; and
 - (d) any reasonable modifications to the Commercial Framework.
- 15.2 The ALT in determining any reasonable modification in clause 15.1.2, must ensure that any reasonable modifications are Best for Project and, in respect of determining a reasonable modification to the TOC in clause 15.1.2(c) no modification may be made in respect of any Adjustment Events unless the aggregate of all additional Reimbursable Costs incurred and/or saved (as applicable) as a result of such Adjustment Events reaches a net amount (whether positive or negative) of at least \$200 000 (and thereafter all further Reimbursable Costs incurred and/or saved as a result of any Adjustment Event may be reflected in a reasonable adjustment to the TOC).
- 15.3 If the Principal Determines to accept the ALT's recommendation made in accordance with clause 15.1.2, then the Principal will issue a notice accepting the ALT's recommendation (and in the case of an Estimation Request, Directing that the matters the subject of the Estimation Request be undertaken) and the ALT will ensure that the recommendation is immediately implemented. The NOPs acknowledge and accept that the Principal may in its discretion engage an advisor to assist the Principal in making its Determination.
- 15.4 If the Principal Determines not to accept the ALT's recommendation made in accordance with clause 15.1.2 then:
- 15.4.1 the Principal will provide the Principal's reasons for not accepting the recommendation; and
 - 15.4.2 the ALT must consider the reasons provided and resubmit its recommendation to the Principal for its Determination.
- 15.5 The process described in this clause will be repeated until:
- 15.5.1 the Principal Determines to accept a recommendation from the ALT;
 - 15.5.2 the ALT elects to withdraw the recommendation; or
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- 15.5.3 in the case of an Estimation Request, the Principal Determines not to go ahead with the matters the subject of the Estimation Request.
- 15.6 Examples of Adjustment Events are provided in the Adjustment Event Examples and these are intended to aid and inform the ALT and the Principal in making their determination as to whether or not an Adjustment Event has occurred and any reasonable modification to the TOC, by providing illustrative yet non-exhaustive examples of events and/or circumstances which do and do not constitute Adjustment Events and their impact on the TOC (where applicable).

16. VARIATIONS

- 16.1 The Principal may Direct the Participants to:
- 16.1.1 change the design or specification of the whole or any part of the Works;
 - 16.1.2 change the Alliance Activities or any part of the Alliance Activities;
 - 16.1.3 change the conduct, order or program of the Works or Alliance Activities;
 - 16.1.4 increase, decrease or omit any part of the Works or Alliance Activities;
 - 16.1.5 change the character or quality of any part of the Works;
 - 16.1.6 change the levels, lines, positions or dimensions of all or any part of the Works;
 - 16.1.7 change the means, methods or techniques in relation to the performance of all or any part of the Works under this Agreement;
 - 16.1.8 execute additional work or perform additional services under this Agreement; or
 - 16.1.9 demolish or remove material or infrastructure no longer required by the Principal,
- and the Participants must promptly comply with that Direction.
- 16.2 No Direction will invalidate this Agreement.
- 16.3 The Principal may, in respect of a proposed Direction of the type referred to in clause 16.1, issue to the ALT an Estimation Request. Neither the issuance of an Estimation Request nor responding to it shall constitute an Adjustment Event.
- 16.4 The ALT must promptly, and in all cases within 10 Business Days of receipt of the Direction or Estimation Request (as applicable), Determine whether the subject of the Direction or the matters contained in the Estimation Request (as applicable) would constitute an Adjustment Event and notify the Principal of this Determination (and, if it would, the provisions of clause 15 shall apply).
- 16.5 The Principal and the ALT must use their best endeavours to minimise any delays in the Alliance Activities arising from any Direction given by the Principal under this clause 16.
- 16.6 The ALT may, at any time during the period of the Alliance Activities, recommend to the Principal a Variation.
- 16.7 Any recommendation given under clause 16.6 must also state:

- 16.7.1 any impact on the objectives and required outcomes set out in the Value for Money Statement;
- 16.7.2 any reasonable modification to the TOC; and
- 16.7.3 any reasonable modifications to the Commercial Framework, resulting from the proposed Variation and confirm that if the recommendation is implemented the Works will be fit for the Stated Purpose and will satisfy the performance requirements nominated by the Principal.
- 16.8 The NOPs acknowledge and accept that the Principal may consider the ALT's recommendation in its discretion.
- 16.9 If the Principal accepts the ALT's recommendation, the Principal will issue a notice to proceed with the recommendation and the ALT will ensure that the notice is immediately complied with (and, for the avoidance of doubt, the provisions of clause 15 shall not apply to any Variation recommended under clause 16.6).
- 16.10 The NOPs acknowledge and accept that the Principal may place conditions, in its discretion, on any acceptance of the ALT's recommendation.
- 16.11 If the Principal does not accept the ALT's recommendation, that recommendation must be withdrawn by the ALT and the Alliance shall continue to perform the work under this Agreement as if the recommendation had not been made by the ALT.

17. PAYMENT

TOC is Fixed

- 17.1 The TOC is fixed and not subject to alteration or escalation, except where the Principal makes a Determination that an Adjustment Event has occurred and that a reasonable modification to the TOC results from the Adjustment Event.

Determination of Payment Due

- 17.2 Regardless of the event, circumstance or degree of difficulty encountered in performing the Alliance Activities, the NOPs' only entitlement to payment from the Principal for, and such payments are limited to the sum of:
 - 17.2.1 reimbursement of Reimbursable Costs;
 - 17.2.2 the Fee;
 - 17.2.3 the Performance Adjustment;
 - 17.2.4 any other amount which the Principal is liable to pay a NOP under the Agreement; and
 - 17.2.5 GST in accordance with the GST Act.
- 17.3 The payment due to the NOPs must be determined in accordance with Schedule 3.
- 17.4 Should any monetary amount be recovered by a Participant from a third party as a result of a right of indemnity arising under any insurance policy or any other right in favour of that Participant in connection with the Alliance Activities or the Works, that amount will be credited against the AOC.
- 17.5 The NOPs shall pay to the Principal any payments determined in accordance with Schedule 3.

- 17.6 If an Audit identifies:
- 17.6.1 that any payments to a Participant are less than, or exceed, the Participant's entitlements:
- (a) the Principal will pay the Participant any shortfall;
 - (b) the Participant will reimburse the Principal any excess; or
 - (c) the NOPs will adjust or redistribute any payments amongst themselves as Determined by the NOPs in consultation with the ALT, as the case may be, plus any GST paid or payable in respect of the shortfall or excess in accordance with the Agreement;
- or
- 17.6.2 that the Principal's Reimbursable Costs advised by the Principal to the AGM are less than or exceed the actual Reimbursable Costs incurred by the Principal that should be allocated against the TOC in accordance with the Agreement, the Principal will re-calculate and adjust the AOC and take into account the difference.

18. PAYMENT CLAIM

- 18.1 The AMT will, on the 7th of each month (or the next Business Day where the 7th is not a Business Day), or such other date agreed by the ALT, prepare and submit a payment claim to the AGM, which sets out:
- 18.1.1 the Reimbursable Costs incurred by each NOP in performing Alliance Activities and the Works;
 - 18.1.2 each NOP's entitlement to a Fee based on the Reimbursable Costs included in the payment claim; and
 - 18.1.3 each NOP's entitlement to a Performance Adjustment (if applicable).
- 18.2 The payment claim must include:
- 18.2.1 all invoices, accounts, time sheets and other documentation (including any additional documentation requested by the ALT or AGM) in support of the payment claim; and
 - 18.2.2 a statutory declaration by a representative of each NOP in the form set out in Schedule 10.
- 18.3 The AMT will not submit more than one payment claim per month and will endeavour to submit payment claims within 5 Business Days after the end of the month in which that payment claim should have been submitted.
- 18.4 The AGM will, within 2 Business Days of the submission of the payment claim, review the payment claim and:
- 18.4.1 if the AGM determines that the payment claim is true, correct and fully substantiated, recommend the payment claim to the ALT; or
 - 18.4.2 if the AGM does not determine that the payment claim is true, correct and fully substantiated, the AGM must return the payment claim to the AMT and request a revised payment claim that is true, correct and fully substantiated.

Payment Schedule

- 18.5 The ALT, or a representative nominated by the ALT, will within 5 Business Days after the AGM's recommendation, recommend to the Principal a payment schedule to be issued to each of the NOPs which:
- 18.5.1 identifies the payment claim to which the payment schedule relates;
- 18.5.2 certifies:
- (a) the ALT's recommendation of the sum of the Reimbursable Costs incurred by the NOPs in performing the Alliance Activities; and
 - (b) each NOP's entitlement to a Fee.
- 18.6 Where the Principal Determines that the ALT's recommended payment schedule is a bona fide, fair and reasonable amount payable in accordance with this Agreement, the Principal will, within 5 Business Days, issue a payment schedule from the Principal to the Participants.
- 18.7 Where the Principal does not Determine that the ALT's recommended payment schedule is a bona fide, fair and reasonable amount payable in accordance with this Agreement within the 5 Business Day period referred to in clause 18.6 the Principal must, within 5 Business Days of the 5 Business Day period referred to in clause 18.6:
- 18.7.1 return the recommended payment schedule to the ALT with reasons; and
- 18.7.2 inform the ALT in writing of the amount (if any) the Principal does accept is a bona fide, fair and reasonable amount payable in accordance with this Agreement, and
- 18.7.3 the ALT must provide a replacement payment schedule for the amount (if any) informed in clause 18.7.2 as being accepted by the Principal as a bona fide, fair and reasonable amount payable in accordance with this Agreement and the Principal will, within 5 Business Days of receipt of the replacement payment schedule, issue a payment schedule to the Participants.
- 18.8 At its sole and unfettered discretion, the Principal may issue a payment schedule at any time to correct an error or omission.

Recipient Created Tax Invoices

- 18.9 For the purposes of this clause only:
- 18.9.1 **Recipient** means the Principal.
- 18.9.2 **Recipient Created Tax Invoice** means a tax invoice issued by the Recipient in accordance with clause 18.10.
- 18.9.3 **Suppliers** means the NOPs.
- 18.9.4 **Supplies** means the Alliance Activities and the Works.
- 18.10 The Recipient may issue tax invoices in respect of the specified Supplies.
- 18.11 The Suppliers will not issue tax invoices in respect of the Supplies.
- 18.12 The Suppliers acknowledge that they are registered for GST when they enter into this Agreement and that they will notify the Recipient if they cease to be registered.

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- 18.13 The Recipient acknowledges that it is registered for GST when it enters into this Agreement and that it will notify the Suppliers if it ceases to be registered for GST or if it ceases to satisfy any of the requirements of the determination at Schedule 1 of *Goods & Service Tax Ruling GSTR 2000/10 – Recipient Created Tax Invoices*.
- 18.14 The Recipient shall be responsible for issuing Recipient Created Tax Invoices, and adjustment notes in respect of adjustment events known to the Recipient. Recipient Created Tax Invoices will accompany payment schedules.
- 18.15 The Suppliers shall notify the Recipient of details of any adjustment event not otherwise known to the Recipient.
- 18.16 Where the NOPs are required to make a payment to the Principal pursuant to Schedule 3, the Principal shall issue a tax invoice to the NOPs.

Payment by the Principal

- 18.17 The Principal will, within 5 Business Days after issuing a Recipient Created Tax Invoice, pay to each of the NOPs the amount stated in the relevant Recipient Created Tax Invoice by electronic funds transfer to a bank account nominated by each of them.
- 18.18 Any payment to be made to the Designer NOP pursuant to this Agreement shall be paid to the Joint Venture Bank Account and payment to such account shall be good and sufficient discharge of the Principal's obligation to make the relevant payment to the Designer NOP and the Principal shall not be responsible for how any such monies shall be allocated as between DNOP 1 and DNOP 2.
- 18.19 Payments by the Principal under this Agreement are:
- 18.19.1 payment on account only;
 - 18.19.2 not evidence that the whole or any part of the Alliance Activities or the Works have been performed in accordance with this Agreement; and
 - 18.19.3 subject to adjustment as a result of Audit, the discovery of an error or the application of the Performance Adjustment regime.

Principal's Reimbursable Costs

- 18.20 On a date agreed by the ALT, the Principal will prepare and submit to the AGM a payment statement incorporating an account of costs including all supporting documentation identifying the sum of the actual Reimbursable Costs incurred by the Principal in performing Alliance Activities during the period of the payment statement.
- 18.21 The AGM will:
- 18.21.1 review the actual Reimbursable Costs incurred by the Principal and:
 - (a) if the AGM Determines that the said actual Reimbursable Costs are true and correct, the AGM will recommend these amounts to the ALT; or
 - (b) if the AGM Determines that additional supporting documentation is necessary, the AGM will request that the ALT request that the Principal provide such reasonable supporting documentation within a reasonable time; and
 - 18.21.2 ensure that the actual Reimbursable Costs incurred by the Principal are accounted for and form part of AOC.
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- 18.22 Any supporting documentation requested by the ALT must be provided by the Principal within a reasonable time having regard to the nature of the request and the circumstances of the review and the request.

Audit of AD Phase costs

- 18.23 The parties acknowledge that a maximum ECI: AD Approved Proposal Payment Amount was specified in the ECI Alliance Development Agreement
- 18.24 Subject to clauses 18.25 and 18.26 (inclusive) the parties agree that an Audit will be undertaken by the Principal's external financial auditors to determine the actual amount of the ECI: AD Phase Costs incurred by the NOPs, and that the provisions of the Commercial Framework will apply on completion of the Audit.
- 18.25 The audit powers described in clauses 10.4 to 10.8 of this Agreement will apply to the Audit undertaken under clause 18.24.
- 18.26 The Audit of the amount in clause 18.24 shall constitute the AD Phase Audit (as defined in the ECI Alliance Development Agreement) undertaken on completion of the ECI: AD Phase to determine the actual amount of the ECI: AD Phase Costs incurred.

19. GST

- 19.1 Terms defined in the GST Act have the same meaning when used in this clause 19 or in the definition of GST Amount in clause 1.68, unless expressly stated otherwise.
- 19.2 Unless expressly stated otherwise, any sum payable or amount used in the calculation of a sum payable under this Agreement has been determined without regard to GST and must be increased on account of any GST payable under this clause.
- 19.3 Each NOP must be and must remain registered for GST purposes.
- 19.4 Each NOP indemnifies the Principal for any cost, Loss, expense, damage, interest or penalty the Principal suffers if the NOP is not registered for GST or fails to comply with the GST Act.
- 19.5 If any GST is payable on any Taxable Supply made under this Agreement to the recipient by the supplier, the recipient must pay the GST Amount to the supplier on the earlier of:
- 19.5.1 the time of making payment of any monetary consideration on which the GST is calculated; and
 - 19.5.2 the issue of an invoice relating to the Taxable Supply.
- 19.6 The recipient must pay the GST Amount in the same manner as making payment of any monetary consideration on which the GST is calculated. The supplier must provide as a precondition for payment by the recipient of the GST Amount, a Tax Invoice or a document that the Principal will treat as a Tax Invoice.
- 19.7 If a Participant is required to pay, reimburse or indemnify the other for the whole or any part of any Loss or other amount that the other party has incurred or will incur in connection with this Agreement, the amount must be reduced by the amount for which the other party (or representative member if this is not the other Participant) can claim an Input Tax Credit, partial Input Tax Credit, or other like offset.

20. SECURITY OF PAYMENT

- 20.1 If a Participant or Subcontractor receives an application for adjudication or notice or judgement debt application under the *Building and Construction Industry Security of Payment Act 2009* (SA) from a Subcontractor, the Participants or Subcontractor (as applicable) must immediately provide the Principal and the AGM with a copy.
- 20.2 If the Principal becomes aware that a Subcontractor is entitled to suspend any works or services which forms part of the Alliance Activities or the Works under the *Building and Construction Industry Security of Payment Act* (SA), the Principal may Determine to pay the Subcontractor such money as is or may be owing to the Subcontractor in respect of works or services forming part of the Alliance Activities. Any amount paid by the Principal will be a Reimbursable Cost and the Participant will have no entitlement to payment for that work for services performed by the Subcontractor which is the subject of the payment.

21. TITLE TO UNFIXED MATERIALS, PLANT AND EQUIPMENT

- 21.1 Title in all unfixed materials and equipment that will form part of the Works supplied directly by a Participant, and not a Subcontractor or Sub-Alliance Participant, the value of which is included in a monthly payment claim, shall, upon payment, immediately pass to the Principal unencumbered and free of any security interests held or claimed by any third parties.
- 21.2 Payment for any unfixed materials and equipment is subject to the ALT being satisfied that:
- 21.2.1 the Participant has paid for the materials and equipment and that clear and unencumbered title will pass upon payment; and
- 21.2.2 the unfixed materials and equipment are properly stored, labelled and identified as the property of the Principal and, to the extent practicable, that they are adequately insured noting the interests of all Participants.
- 21.3 If a Participant wishes to be paid for materials or equipment not incorporated into the Works which are supplied by a Subcontractor or Sub-Alliance Participant the Participant must obtain from the Subcontractor or Sub-Alliance Participant security in the form of an unconditional bank undertaking in favour of the Principal or cash equal to the amount claimed for the materials. Security provided will be released upon delivery of the relevant materials to the Site and the Subcontractor or Sub-Alliance Participant providing evidence and documentation which establishes that unencumbered ownership has passed to the Principal.
- 21.4 The NOPs must ensure that in respect of each Subcontract valued in excess of \$5 000 000 (excluding GST), if a NOP:
- 21.4.1 receives or retains from a Subcontractor or Sub-Alliance Participant security in cash, or converts security to cash; or
- 21.4.2 receives payment under the Agreement for, or on account of, work done or materials, plant, equipment or other goods supplied by a Subcontractor or Sub-Alliance Participant and does not pay that Subcontractor or Sub-Alliance Participant the whole amount the NOP received or to which the Subcontractor or Sub-Alliance Participant is entitled,
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the NOP must hold the cash received in a joint account in the name of the NOP and the Principal in a bank Determined by the Principal.

Survival of Clause

21.5 This clause 21 survives any expiry or termination of this Agreement.

22. PERSONAL PROPERTY SECURITIES ACT

- 22.1 In this clause 22, capitalised expressions have the meaning given to them in the *Personal Property Securities Act 2009* (Cth) (**PPSA**).
- 22.2 Each NOP grants to the Principal a Security Interest in any item of unfixed plant and materials for which the NOP receives any payment from the Principal prior to their incorporation into the Works, or which are supplied or owned by the Principal.
- 22.3 The NOPs consent to the Principal registering any one or more Financing Statements or Financing Change Statements in respect of any Security Interest created by or contemplated under this Contract, and undertakes to do all things reasonably required by the Principal to enable the Principal to do so.
- 22.4 The NOPs must promptly do anything required by the Principal to ensure that any Security Interest granted to the Principal is a perfected Security Interest and must ensure that:
- 22.4.1 all prior Security Interests in any such item of unfixed plant and materials are discharged promptly upon payment by the Principal of the amount claimed for them; and
- 22.4.2 any further Security Interest will only arise in respect of the item if it is approved in writing by the Principal, is solely for the purpose of ongoing manufacture or improvement off-Site, and will be subordinated to the Security Interest of the Principal to the extent of all payments made by the Principal for the unfixed plant or materials.
- 22.5 The NOPs agree not to cause (directly or indirectly) the registration of a Financing Change Statement, or the discharge of any registration of a Security Interest under this clause 22 in respect of any item of unfixed plant and materials or to make any Amendment Demand without the Principal's prior written consent.
- 22.6 To the extent permitted by law, the parties agree that the following provisions of the PPSA will not apply to this Contract:
- 22.6.1 section 95 (notice of removal of accession);
- 22.6.2 section 125 (obligation to dispose of or retain collateral);
- 22.6.3 section 130 (notice of disposal);
- 22.6.4 subsection 132(3)(d) (contents of statement of account after disposal);
- 22.6.5 subsection 132(4) (statement of account if no disposal);
- 22.6.6 section 135 (notice of retention);
- 22.6.7 section 142 (redemption of collateral); and
- 22.6.8 section 143 (reinstatement of security agreement).

- 22.7 For the purposes of section 157 of the PPSA, each NOP waives its right to receive notice of any verification statement in relation to the registration of a Financing Statement or a Financing Change Statement.
- 22.8 For the purposes of section 275(6) of the PPSA, the Participants agree that no Participant will, or is entitled to, disclose information of the kind specified in section 275(1) of the PPSA.
- 22.9 Each NOP indemnifies the Principal for and in respect of all Loss suffered or incurred by the Principal in respect of any Security Interest not being perfected or not having first priority or not being fully enforceable in accordance with the terms of this Agreement.

Survival of Clause

- 22.10 This clause 22 survives any expiry or termination of this Agreement.

23. INSURANCE

Construction Risks

- 23.1 The Principal will, on or about the Commencement Date, effect and maintain until the expiry of the Defects Liability Period (which shall include any separate Defects Liability Period(s) arising under clause 29.4 up to a cap of 24 months), the following insurance policies for the performance of Alliance Activities:
- 23.1.1 the Construction Risks - Material Damage Annual Insurance Policy;
- 23.1.2 the Construction Risks - First Excess General Liability Annual Insurance Policy;
- 23.1.3 the Construction Risks - Second Excess General Liability Annual Insurance Policy; and
- 23.1.4 the Construction Risks - General Liability Annual Insurance Policy, in each case, substantially in the form as the relevant policy documents in Attachment 2, the policy numbers and dates of which (including any renewals) will be notified by the Principal.
- 23.2 Attached to this Agreement at Attachment 2 are copies of policy wordings including policy schedules. The Participants have reviewed and accepted the terms of these insurance policies for the purposes of the performance of the Alliance Activities in accordance with this Agreement.

Professional Indemnity

- 23.3 The Principal will, on or about the Commencement Date, effect a Project specific first party alliance professional indemnity insurance policy (**PI Policy**) for the performance of the Alliance Activities. It is intended that the PI Policy will:
- 23.3.1 provide cover for the professional services performed by the Participants under this Agreement;
- 23.3.2 identify all Participants as a named insured under the PI Policy; and
- 23.3.3 be maintained for 6 years after the Actual Completion Date.
- 23.4 The PI Policy will be substantially in the form of the draft professional indemnity policy attached to this Agreement at Attachment 2.

Other Insurances

- 23.5 Each Participant must effect and maintain from the Commencement Date until the expiry of the Term:
- 23.5.1 insurance for Construction Plant to the extent supplied by the relevant Participant to be used by the Participants in performing Alliance Activities and the Works which:
 - (a) provides cover against Loss of or damage to Construction Plant to the replacement value of the Construction Plant; and
 - (b) notes the interest of each Participant in respect of the policy for their respective insurable interest (if any);
 - 23.5.2 comprehensive motor vehicle insurance for an occurrence in respect of any motor vehicles provided by a Participant and used by a Participant or an employee at any time in connection with the Alliance Activities for the market value of a motor vehicle and include for any third party property damage, or personal injury or death in accordance with all relevant law, to a limit of indemnity of not less than \$20 million;
 - 23.5.3 compulsory third party motor vehicle insurance in respect of all registrable vehicles used in the performance of the Alliance Activities or the Works, where relevant;
 - 23.5.4 all other insurances as required by Law; and
 - 23.5.5 all other insurances as may be recommended by the ALT and Determined by the Principal.
- 23.6 During the Term each NOP must continually assess the adequacy of the insurances effected pursuant to this clause 23 in terms of the completeness of their listing, the adequacy of the sum insured, limit of liability, scope of coverage, conditions or exclusions of those insurances in respect of how they may or may not respond to any loss, damage or liability, and take out any difference in condition, difference in cover or difference in limit insurance that is reasonably necessary, the cost of which shall be a Reimbursable Cost.
- 23.7 In respect of the insurance policies to be effected by the Principal, the Principal will use its best endeavours to ensure that each insurance policy provides that:
- 23.7.1 insofar as the policy may cover more than one insured, all insuring agreements and endorsements will operate in the same manner as if the Participants held a separate policy of insurance covering each party comprising the insured and that a failure by one insured to disclose all material circumstances or to observe and fulfil the terms and conditions of a policy will not prejudice the rights of any other insured to indemnity under the policy;
 - 23.7.2 the relevant insurance policies indemnify the Participants against any recovery actions or proceedings, whether by way of subrogated actions or proceedings or statutory rights of recovery; and
 - 23.7.3 the insurer waives all rights, remedies or the relief arising out of or in connection with this Agreement or the policy to which it might otherwise become entitled by way of subrogation against any insured and that a failure by an insured to disclose all material circumstances or to observe and fulfil the terms and conditions of the policy will not prejudice the insurance in regards to any other insured.

Wilful Default

- 23.8 In respect of any insurance policy to be effected by a Participant under clause 23.5, any act or omission by a Participant, or any of a Participant's officers, employees, agents or any other person for whom a Participant is solely responsible, including:
- 23.8.1 any misrepresentation, non-disclosure of material circumstances or breach of the duty of utmost good faith; or
 - 23.8.2 a failure to observe and fulfil the terms and conditions of any such insurance policy,
that causes, in whole or in part:
 - 23.8.3 a Participant's rights or entitlements in respect of any such insurance policy to be adversely affected or prejudiced; or
 - 23.8.4 the insurance policy to be cancelled or avoided, or the benefits under the insurance policy to be reduced,
- will be a Wilful Default for the purposes of this Agreement.

Survival of Clause

- 23.9 This clause 23 survives any expiry or termination of this Agreement.

24. INSURANCE CLAIMS**Claims Procedures**

- 24.1 The NOPs must immediately notify the Principal in writing of any event which in the opinion of a reasonable person in the position of a NOP may give rise to a claim under an insurance policy taken out by the Principal as required by this Agreement or of any other matter or thing for which those policies require notice to be given. A notice must include reasonable particulars of the occurrence, incident, matter or thing.
- 24.2 Claims made against insurance policies taken out by the Principal as required by this Agreement must be submitted to the Principal for lodgement by the Principal with the insurer. The NOPs must give all assistance and provide all information to the Principal and the insurer as may be reasonably practicable in all the circumstances.
- 24.3 If an event occurs which in the opinion of a reasonable person in the position of a NOP may give rise to a claim involving the Principal under any policy of insurance required to be taken out by the NOPs in accordance with clause 23, that NOP must notify the Principal in writing and must ensure that the Principal is kept fully informed of subsequent action or developments concerning the claim.

Claim Proceeds

- 24.4 In relation to any claim brought under an insurance policy effected by the Principal, all claims proceeds under such policies, except those paid directly by insurers to third parties, must be made payable, and paid, to the Principal. The Principal must apply the claim proceeds by:
- 24.4.1 paying or reimbursing Reimbursable Costs to the NOPs in accordance with this Agreement;

- 24.4.2 crediting against Reimbursable Costs; or
 - 24.4.3 paying into an account in the joint names of all Participants from which withdrawals will be made on the Determination of the ALT.
- 24.5 If, after Completion, a Participant receives payment under an insurance policy effected in accordance with this Agreement that reimburses any Loss that was reimbursed or is reimbursable under this Agreement then that Participant must pass on that payment to the Principal and the Principal's Representative must within a further 20 Business Days:
- 24.5.1 arrange for an Audit under clause 10.4 to take into account the amount received under the policy; and
 - 24.5.2 procure that the Principal issue further payments to the NOPs, if required by an Audit in accordance with clause 10.4.

Insurance Policies are Primary

- 24.6 The Participants intend that any insurance policy required under this clause is to be primary to, and not secondary or subordinate to, any other indemnity or payment required to be granted or made by the Principal under, or in connection with, this Agreement.
- 24.7 The Participants acknowledge that if a claim is made under an insurance policy by the Principal, it is their intention that the insurer cannot require the Principal to exhaust any indemnities referred to in this Agreement before the insurer considers or meets the relevant claim.

No Release

- 24.8 The Participants acknowledge that whether an insurance policy responds or not (irrespective of the reason for that failure to respond) does not in any way release the Participants from any of their obligations under this Agreement.

Survival of Clause

- 24.9 This clause 24 survives any expiry or termination of this Agreement.

25. CONFIDENTIALITY AND CONFLICT OF INTEREST

Confidentiality

- 25.1 Subject to this Agreement, the party (**receiving party**) to whom Confidential Information is disclosed by another party (**disclosing party**) must not disclose Confidential Information to any person without first obtaining the disclosing party's written consent.
- 25.2 There will be no breach of the obligations of the receiving party under this Agreement if the Confidential Information is legally required to be disclosed or the circumstances of its disclosure are permitted by this Agreement.
- 25.3 The receiving party may disclose Confidential Information to its officers, employees, agents, Subcontractor, Sub-Alliance Participant or Associate (**Authorised Persons**) if:
- 25.3.1 an Authorised Person needs to know the Confidential Information for the performance of his or her duties under this Agreement;
 - 25.3.2 the receiving party first notifies the proposed disclosure to the disclosing party; and

- 25.3.3 the receiving party first makes the Authorised Person aware of the confidential nature of the Confidential Information and requires the Authorised Person to treat it confidentially.
- 25.4 If requested by the Principal, the Authorised Person must execute confidentiality undertakings in favour of the Principal to comply with this clause.
- 25.5 Despite anything else in this Agreement, it is a condition of any permitted disclosure that the receiving party must notify the disclosing party promptly if the receiving party becomes aware of any unauthorised disclosure by a third party.
- 25.6 The receiving party must give the disclosing party all assistance reasonably required by that party in connection with any proceedings which it may institute against any persons for the disclosure.
- 25.7 The receiving party indemnifies the disclosing party against any Loss or damage which the disclosing party may suffer or for which the disclosing party may become liable as a result of:
- 25.7.1 any disclosure or use of Confidential Information in breach of this Agreement by the receiving party; or
- 25.7.2 any unauthorised disclosure or use by an Authorised Person of Confidential Information.
- 25.8 Notwithstanding anything else in this Agreement, the Participants may disclose Confidential Information:
- 25.8.1 to Parliament, the Governor, Cabinet or a Parliamentary or Cabinet committee or subcommittee;
- 25.8.2 where required by Law to do so;
- 25.8.3 to any agency, Authority, instrumentality, Minister or Officer of the Crown in right of the State of South Australia to whom it is customary for the Participant to disclose information such as the Confidential Information (whether or not the Participant is legally obliged to do so);
- 25.8.4 to the Australian Competition and Consumer Commission (**ACCC**) if the Principal reasonably suspects, or is notified by the ACCC that it reasonably suspects, that there is Cartel Conduct or unlawful collusion in connection with the supply of Goods or Services under this Agreement; or
- 25.8.5 for the purposes of prosecuting or defending any legal proceedings.

Corporate Conflict of Interest

- 25.9 Each Participant must:
- 25.9.1 disclose the full particulars of any actual, potential or possible conflict of interest which arises or may arise in connection with this Agreement, whether that conflict concerns the Participants or any person employed or retained by the Participants;
- 25.9.2 not allow itself to be placed in a position of conflict of interest or duty in regard to any of its rights or obligations under this Agreement without the prior consent of the other Participants; and
- 25.9.3 comply with all reasonable Directions of the Principal requiring it to resolve or otherwise deal with any conflict of interest.

Personal Conflicts of Interest

- 25.10 The Participants must ensure that each representative appointed to the AMT or the ALT fully discloses any personal conflict of interest in respect of any action, decision or determination to be taken or made by the ALT or AMT.
- 25.11 A representative's employment by a Participant, or a directorship of or shareholding in a Participant, by itself, will not amount to a personal conflict of interest.
- 25.12 The ALT, in the absence of a relevant representative, will determine, adopting best corporate governance practices, whether the representative has a personal conflict of interest and the Best for Project solution to resolve it.
- 25.13 Where a representative, on the grounds of a personal conflict of interest, is excluded from any discussion or determination arising out of or in connection with the acts, events or circumstances creating a personal conflict of interest, then any such discussion or determination cannot proceed at the:
- 25.13.1 AMT until the person who is excluded on the ground of a personal conflict of interest excuses him or herself and is replaced by an appropriate person on a Best for Project basis; and
- 25.13.2 ALT until the quorum can be formed by representatives from each Participant not affected by the personal conflict of interest attending the ALT meeting.
- 25.14 Each representative appointed to the AMT or the ALT must execute a conflict of interest declaration if requested by the Principal.

Survival of Clause

- 25.15 This clause 25 survives any expiry or termination of this Agreement.

26. MEDIA RELEASES AND ENQUIRIES

- 26.1 A NOP must obtain the Principal's written consent to:
- 26.1.1 any press release or promotional advertisement that it, or its Subcontractor or Sub-Alliance Participants, wish to make or place concerning the Alliance Activities or the Works; and
- 26.1.2 the release for publication in any media, of any information concerning the Alliance Activities or the Works.
- 26.2 A NOP must refer any media enquiries concerning the Alliance Activities or the Works to the Principal.
- 26.3 A NOP must not respond to any media enquiry without the Principal's prior written consent.
- 26.4 A NOP must ensure that all Subcontractor and Sub-Alliance Participants comply with this clause and obtain the Principal's Representative's prior written consent (through the NOP) before doing anything which, if done by the NOP, would require the Principal's Representative's prior written consent.
- 26.5 The Principal may give or refuse its consent, in its absolute discretion.

27. INTELLECTUAL PROPERTY

New Intellectual Property Rights

- 27.1 Subject to clause 27.3 all rights, title and interests in all new Intellectual Property Rights created for or in connection with the Participants' performance of the Alliance Activities or the Works will vest immediately in the Principal. Any Subcontract or Sub-Alliance which does not directly and immediately vest ownership of new Intellectual Property Rights upon creation in the Principal requires the prior consent of the ALT.
- 27.2 The Principal grants to the NOPs a non-exclusive, personal, sub licensable, royalty free licence to use the Intellectual Property Rights created under clause 27.1 for the purposes referred to in clauses 27.5.1 to 27.5.4.

Existing Intellectual Property Rights and Enhancements

- 27.3 All Existing Intellectual Property Rights and any subsequent Enhancements made to any Existing Intellectual Property Rights for or in connection with the Alliance Activities or the Works, will remain the property of each Participant, as applicable.

Licence of Intellectual Property Rights

- 27.4 The Principal grants to the NOPs for the Term of the Alliance a non-exclusive, personal, sub-licensable, royalty free licence to use the Principal's Existing Intellectual Property Rights and any Enhancements which are required by the Alliance for the performance of Alliance Activities.
- 27.5 Each NOP grants to the Principal and each other NOP (as the case may be) a non-exclusive, irrevocable, perpetual, transferable (with the ability to grant sub licences), royalty free licence to use the NOP's Existing Intellectual Property Rights and any Enhancements which are required for the:
- 27.5.1 performance of the Alliance Activities;
 - 27.5.2 use, operation, support, maintenance and enjoyment of the Works;
 - 27.5.3 purposes of Project; and
 - 27.5.4 purposes of roadwork as that term is defined in the *Highways Act 1926* (SA).

Third Party Intellectual Property Rights

- 27.6 The Participants will, where necessary for the operation of the Works or in any agreement with a third party which relates to Intellectual Property Rights, acquire a perpetual, non-exclusive, royalty free, transferable licence in favour of the Principal to use a third party's Intellectual Property Rights which, unless otherwise determined by the ALT, will be on the best commercial terms in favour of the Principal reasonably available, including a right to sublicense.
- 27.7 The Participants acknowledge and accept that any Intellectual Property Rights created in any signalling infrastructure design or works are likely to be retained by the original manufacturer, designer or contractor. The Participants will use their best endeavours to secure a non-exclusive, irrevocable, perpetual, sub-licensable and royalty free licence to use any such Intellectual Property Rights in respect of the Participants, for the purposes of the performance of their obligations under the Agreement.
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Indemnity

27.8 Each Participant (the **indemnitor**) shall indemnify each other Participant against all Loss that each other Participant may sustain or incur as a result of any design, materials, documents and methods of working provided by the indemnitor infringing or causing any other Participant to infringe directly or indirectly, a third party's Intellectual Property Rights.

Moral rights

27.9 In addition to the Participants' other obligations in relation to Moral Rights under this clause 27.9, the Participants must use their best endeavours to obtain from each of their Associates or other persons, irrevocable and unconditional consents that are sufficient to ensure that each Participant (and their Associates and other persons) (**Recipients**) can reproduce, transmit, communicate, adapt and publish any Alliance Activities provided by that Participant to Recipients under the Agreement (and any changes to the Alliance Activities), in a manner that is consistent with the rights granted under the Agreement, anywhere in the world and in any form required by the applicable Recipient.

27.10 The Participants agree and irrevocably consent to waive their rights to make or bring any claim, demand, action, suit or proceeding in relation to any purported or actual infringement by any of the Participants, their Associates or any other party of any moral rights of a Participant, including rights subsisting in the design created or to be created by the Participants or their Associates under the Agreement, whether such infringement occurs before or after the Commencement Date.

Survival of Clause

27.11 This clause 27 survives any expiry or termination of this Agreement.

28. COMPLETION

28.1 The Participants must perform the Alliance Activities to achieve Completion by the Date for Completion.

28.2 When the AMT is satisfied that Completion has been achieved, the AMT must prepare and deliver a Completion Report to the ALT and the Principal with a statement that:

28.2.1 the Works have achieved Completion; and

28.2.2 the Completion Report complies with the requirements of this Agreement.

28.3 The ALT must meet as soon as practicable after receipt of the Completion Report to consider whether Completion has been achieved and:

28.3.1 if the ALT considers that Completion has been achieved, the ALT must recommend to the Principal that it issues the Certificate of Completion; or

28.3.2 if the ALT considers that Completion has not been achieved, the ALT must notify the AMT of those matters or things which need to be addressed before Completion can be achieved and the process in clauses 28.2 and 28.3 will be repeated until the ALT recommends that the Principal issues the Certificate of Completion.

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- 28.4 As soon as is reasonably practicable after the receipt of the ALT's recommendation in regard to Completion, the Principal must consider the ALT's recommendation, and:
- 28.4.1 if the Principal Determines that the Works have achieved Completion, the Principal must issue a Certificate of Completion stating the date of Completion; or
- 28.4.2 if the Principal Determines that the Works have not achieved Completion, the Principal must notify the ALT of those matters or things which need to be addressed before the Works can achieve Completion and the ALT must address those matters or things and resubmit the recommendation in regard to Completion to the Principal for further consideration.
- 28.5 The Participants acknowledge and agree that the Principal cannot Determine Completion prior to receipt of a recommendation from the ALT that Completion has been achieved.
- 28.6 As a precondition to Completion, the NOPs must provide the Principal with all Records required under this Agreement.

29. DEFECTS LIABILITY PERIOD

- 29.1 During the applicable Defects Liability Period, the Participants:
- 29.1.1 must, whenever reasonably requested by the Principal, jointly inspect the Site with the Principal and/or provide assistance to identify Defects;
- 29.1.2 must promptly (and within any time reasonably specified by the Principal) repair or rectify any Defects which become evident;
- 29.1.3 are responsible for the care of any Construction Plant or Temporary Works on the Site; and
- 29.1.4 are responsible for any loss or damage to the Works and any property of the Principal, a Participant or any third party arising out of or in connection with the repair or rectification of any Defects.
- 29.2 Notwithstanding clause 29.1, the Principal or the ALT after consultation with the Principal may at any time prior to issuing the Final Certificate, Direct the Participants to attend to the rectification of any Defect in the Works.
- 29.3 The cost to rectify, repair, reinstate or make good any loss, damage or Defect or to take care under this clause 29 will be a Reimbursable Cost.
- 29.4 Repair and rectification work performed under this clause 29 shall be subject to a separate Defects Liability Period commencing at 4:00 pm on the date of completion of the repair or rectification and expiring at the end of the period specified in item 12 of Schedule 1. The separate Defects Liability Period shall only apply to the defective work in question. This clause 29 shall apply in respect of the rectification work and the Defects Liability Period for that rectification work.
- 29.5 At the expiry of the Defects Liability Period, including any separate Defects Liability Period applying under clause 29.4, the Principal must issue a Final Certificate stating that the Defects Liability Period has expired.
- 29.6 The Participants acknowledge and agree that all title in the Works vests in the Principal.
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30. SUSPENSION OF THE WORKS

- 30.1 Except to the extent necessary to avoid an event having an adverse, or being likely to have an adverse, impact on the environment, public health or safety or to avoid a breach of a Law, the Participants will not suspend the whole or any part of the work under this Agreement without a Direction from the Principal.
- 30.2 If the Principal considers that suspension of the whole or part of the work under this Agreement is necessary or appropriate for any reason, the Principal may Direct that the Participants suspend the progress of the whole or part of the Alliance Activities for such time as the Principal decides and the Participants will promptly suspend that part of the Alliance Activities.
- 30.3 The Principal may Direct that the Participants must recommence the whole or the relevant part of Alliance Activities at any time.
- 30.4 If the Principal requires a suspension under this clause, the ALT must Determine whether the compensation set out in the Commercial Framework payable to the NOPs should be amended to take into account the effect of the suspension.
- 30.5 The Participants must use all reasonable endeavours to mitigate Loss during the period of any suspension.

31. TERMINATION FOR CONVENIENCE

Notice of Termination

- 31.1 Despite any other provision of the Agreement, the Principal may Determine by notice in writing to the NOPs to terminate the Agreement for the Principal's convenience at any time without giving any reason or being required to justify such action and regardless of the conduct of the Participants.
- 31.2 Termination of the Agreement will be effective immediately upon service of the notice in clause 31.1.

Compliance with Notice of Termination

- 31.3 Upon receipt of a notice of termination under clause 31.1, the Participants must immediately:
- 31.3.1 cease all Alliance Activities; and
- 31.3.2 comply with any Determinations by the Principal to bring about an immediate winding down and cessation of the Alliance Activities, such winding down to include but not be limited to:
- (a) the protection and return of property in the possession or control of the Participants in which the Principal has, or may acquire, an interest;
 - (b) termination, assignment, transfer or novation to the Principal (at the Principal's Determination) of all rights, benefits and obligations of any Subcontracts;
 - (c) giving the Principal possession of all materials and other things on or about the Site which are owned or leased by the Participants and which are reasonably required by the Principal for Completion of the Works;

- (d) giving the Principal ownership and possession of all items reasonably required by the Principal for Completion of the Works which have formed, or will form, part of any payment made or to be made by the Principal;
- (e) vacating the Site of all Associates, Construction Plant and other belongings of the NOPs;
- (f) giving to the Principal any Records which the Participants or any of their Associates have prepared as at termination as required by the Agreement. The Participants agree that the Principal may use any such Records as it Determines; and
- (g) execution by a Participant of any Documents which the Principal Determines is required to close out the Alliance or with respect to other matters arising out of, or in connection with, the termination of the Agreement.

Termination Payments

- 31.4 Subject to any rights the Principal has arising out of or in connection with the Agreement, including but not limited to a right to withhold or set off payment and recover all amounts to which any of the NOPs may be liable under the Agreement if the Agreement is terminated under clause 31.1, the Principal will pay to the NOPs:
- 31.4.1 payments due to them for work executed to the Principal's reasonable satisfaction in accordance with this Agreement to the date of termination (including amounts payable on account of the Fee);
 - 31.4.2 the reasonable costs of demobilisation (including the removal of Temporary Works or Construction Plant);
 - 31.4.3 the reasonable costs unavoidably incurred and payable by the NOP in the expectation of completing the Works (other than any damages payable to any Subcontractor or Sub-Alliance Participant in connection with the termination of any Subcontract); and
 - 31.4.4 the reasonable costs of complying with any Directions given by the Principal upon, or subsequent to, termination.
- 31.5 Other than payment entitlements under clause 31.4 (if any), the NOPs will not otherwise be entitled to, and release and discharge the Principal from, any Loss arising out of or in connection with the Agreement, the Alliance Activities and the Works, the termination or purported termination by the Principal of the Agreement under this clause 31 (or the effects of the termination or purported termination), which the NOPs would have had but for its release in this clause 31.5 save and except for any entitlement to be indemnified by the Principal in accordance with clause 27.8.
- 31.6 The Participants agree that the Participants must take all reasonable steps to mitigate the Loss referred to in clause 31.4. For the avoidance of doubt, any monies received from the Principal and retained by the Participants in respect of accruals or otherwise must be returned to the Principal to the extent not applied to the payment of those amounts referred to in clause 31.4.

Completion of the Works

- 31.7 Without prejudice to any of the Principal's rights, entitlements or powers under the Agreement, the Principal may, upon termination of the Agreement under

clause 31.1, itself or by third parties, continue to perform and complete any uncompleted Alliance Activities and the Works.

32. WILFUL DEFAULT AND INSOLVENCY

Wilful Default

- 32.1 If, prior to expiry of the Term, a NOP commits a Wilful Default (**Defaulting NOP**), the Principal, after consultation with the ALT, may Determine to issue a written notice to the Defaulting NOP (**Default Notice**):
- 32.1.1 specifying details of the Wilful Default; and
 - 32.1.2 requiring the Defaulting NOP to rectify the Wilful Default within 20 days of receipt of the written notice by the Defaulting NOP.

Failure to Remedy a Wilful Default

- 32.2 If the Defaulting NOP fails to remedy the Wilful Default identified in the Default Notice within 20 days of receipt of the written notice in clause 32.1, the Principal, after consultation with the ALT, may Determine at any time thereafter, by giving written notice to the Defaulting NOP, to exercise one or more of the following rights:
- 32.2.1 partly or wholly suspend any payment, or any entitlement to payment, of any Reimbursable Cost, Fee or Performance Adjustment due to the Defaulting NOP under the Agreement until the Wilful Default has been remedied;
 - 32.2.2 terminate the Defaulting NOP's entitlement to payment of any Reimbursable Cost, Fee or Performance Adjustment which may otherwise accrue to the Defaulting NOP under the Agreement on and from the date of the notice;
 - 32.2.3 exclude the Defaulting NOP from further participation in the performance of the Agreement; or
 - 32.2.4 terminate this Agreement by notice in writing to the NOPs.
- 32.3 Any notice issued to the Defaulting NOP under clause 32.2 will be effective immediately and is without prejudice to the non-defaulting Participants' rights under the Agreement or at Law.
- 32.4 Notwithstanding any Wilful Default by the Defaulting NOP, the non-defaulting Participants will continue to perform the Alliance Activities and the Works.

Act of Insolvency

- 32.5 If, prior to expiry of the Term an Act of Insolvency occurs in respect of a NOP or its parent or ultimate holding company (**Defaulting NOP**), the Principal, after consultation with the ALT may:
- 32.5.1 Determine at any time thereafter by giving written notice to the Defaulting NOP (**Default Notice**), to exercise one or more of the following rights:
 - (a) partly or wholly suspend any payment, or any entitlement to payment, of any Reimbursable Cost, Fee or Performance Adjustment due to the Defaulting NOP under the Agreement until Completion;

- (b) terminate the Defaulting NOP's entitlement to payment of any Reimbursable Cost, Fee or Performance Adjustment which may otherwise accrue to the Defaulting NOP under the Agreement on and from the date of the notice; or
- (c) exclude the Defaulting NOP from further participation in the performance of the Agreement.

32.5.2 Determine at any time thereafter to terminate this Agreement by notice in writing to the NOPs.

32.6 Any notice issued to a Defaulting NOP under clause 32.2 or 32.5 will be effective immediately and is without prejudice to the non-defaulting Participants' rights under the Agreement or at Law, including the Principal's right to terminate the Agreement under clause 32.2.4, or 32.5.2.

Exclusion

32.7 If the Principal Determines to exclude a Defaulting NOP from further participation in the Alliance:

32.7.1 the non-defaulting Participants in their absolute and unfettered discretion may:

- (a) suspend until Completion any payment, or any entitlement to payment, of any Reimbursable Cost, Fee or Performance Adjustment to the Defaulting NOP whether or not the entitlement to payment arose on or before the date of the Default Notice;
- (b) terminate any future entitlement to payment of any Reimbursable Cost, Fee or any Performance Adjustment to the Defaulting NOP occurring, or that may otherwise occur but for this clause 32.7.1(b), after the date of the Default Notice;
- (c) determine how the remaining Alliance Activities will be performed (including employing and paying other persons to replace the Defaulting NOP in the performance of the Alliance Activities or electing to perform the remaining Alliance Activities themselves); and
- (d) at no cost to the non-defaulting Participants, use all Temporary Works, Construction Plant and materials provided by the Defaulting NOP to perform the remaining Alliance Activities; and

32.7.2 the Defaulting NOP:

- (a) must promptly, as and when required by the ALT, assign, transfer or novate (as directed by the non-defaulting Participants) to the non-defaulting Participants without payment the benefit of any Subcontracts or Intellectual Property Rights owned or held by the Defaulting NOP under any Subcontracts required by the non-defaulting Participants for the performance of any part of Alliance Activities or the Works;
- (b) must promptly, as and when required by the ALT, deliver to the Principal any Records or information prepared by, or on behalf of, the Participants under the Agreement prior to the Default;

- (c) must, as and when directed by the ALT (and not before), remove from the Site, at no cost to the non-defaulting Participants, any Temporary Works, Construction Plant and other property provided by the Defaulting NOP. If the Defaulting NOP fails to do so then, not less than 14 days after written notice to it of the intention to do so (but without being responsible for any Loss or damage) the non-defaulting Participants may remove and/or sell any such Temporary Works, Construction Plant or other property and the proceeds of such sale shall be available to be set-off in accordance with clause 42.3;
- (d) shall no longer be entitled to be represented on the ALT or the AMT or otherwise participate in the Alliance or the Project;
- (e) shall have no interest in the Alliance, the Agreement, Alliance Activities, the Works or the Project from the date of the Default Notice;
- (f) waives any objection to any determination under clause 32.7.1(c);
- (g) releases and discharges the non-defaulting Participants from any Loss arising out of or in connection with any such determination under clause 32.7.1(c) which it would have had but for this release and discharge;
- (h) will promptly do such acts and things and execute such documents as may be necessary for the continued performance of the Alliance Activities; and
- (i) notwithstanding clause 32.7.2(h), will execute such deeds and documents that the Principal Determines are necessary for the completion of the Alliance Activities or the Works by the non-defaulting Participants.

Termination

32.8 Upon receipt of a notice of termination under clauses 32.2.4 or 32.5.2, the provisions of Schedule 9 shall apply and the Participants must immediately:

32.8.1 cease all Alliance Activities; and

32.8.2 comply with any Determinations by the Principal to bring about an immediate winding down and cessation of the Alliance Activities, such winding down to include:

- (a) the protection and return of property in the possession or control of the Participants in which the Principal has, or may acquire, an interest;
- (b) termination, assignment, transfer or novation to the Principal (at the Principal's Determination) of all rights, benefits and obligations of any Subcontracts;
- (c) giving the Principal possession of all materials and other things on or about the Site which are owned or leased by the Participants and which are reasonably required by the Principal for Completion of the Works;

- (d) giving the Principal ownership and possession of all items reasonably required by the Principal for Completion of the Works which have formed, or will form, part of any payment made or to be made by the Principal;
- (e) vacating the Site of all Associates, Construction Plant and other belongings of the NOPs;
- (f) giving to the Principal any Records which the Participants or any of their Associates have prepared prior to or as at termination as required by the Agreement. The Participants agree that the Principal may use any such Records in its discretion; and
- (g) execution by a Participant of any Documents which the Principal Determines is required to close out the Alliance or with respect to other matters arising out of, or in connection with the termination of the Agreement.

Termination Payments

- 32.9 Subject to any rights the Principal has arising out of or in connection with the Agreement, including a right to withhold or set off payment and recover all amounts to which any of the NOPs may be liable under the Agreement, if the Agreement is terminated under clauses 32.2.4 or 32.5.2, the Principal will pay the non-defaulting NOPs but excluding the Defaulting NOP, or the non-defaulting NOPs must pay the Principal, as the case may be, an amount agreed, calculated or determined in accordance with Schedule 9.
- 32.10 Other than payment entitlements under clause 32.9 (if any), the non-defaulting NOPs will not otherwise be entitled to, and release and discharge the Principal and the Crown in right of the State of South Australia from any Loss arising out of or in connection with the Agreement, the Alliance Activities and the Works, the termination or purported termination by the Principal of the Agreement under this clause 32 (or the effects of the termination or purported termination), which the non-defaulting NOPs would have had but for its release in this clause 32.10 save and except for any entitlement to be indemnified by the Principal in accordance with clause 27.8.
- 32.11 The Participants agree that the Participants must take all reasonable steps to mitigate the costs referred to in clause 32.9.

Completion of the Works

- 32.12 Without prejudice to any of the Principal's rights, entitlements or powers under the Agreement, the Principal may, upon terminating the Agreement under clauses 32.2.4 or 32.5.2, itself or by third parties, continue to perform and complete any uncompleted Alliance Activities and the Works.

Indemnity and Release

- 32.13 Notwithstanding any other provision of the Agreement, the Defaulting NOP shall be liable for, and shall indemnify each non-defaulting Participant for:
- 32.13.1 any Loss suffered or incurred by the relevant non-defaulting Participant arising out of or in connection with:
- (a) the relevant Wilful Default or Act of Insolvency by the Defaulting NOP;
 - (b) the exclusion of the Defaulting NOP under this clause 32; or

- (c) the termination of this Agreement under this clause 32;
- 32.13.2 the Defaulting NOP's share of any Performance Adjustment for the period prior to the relevant Wilful Default or the Act of Insolvency which the ALT or the Principal Determines or may Determine, is payable by the Defaulting NOP to the Principal; and
- 32.13.3 the Defaulting NOP's share of any Performance Adjustment increased or foregone or reduced for the period after the relevant Wilful Default or the Act of Insolvency which the ALT or the Principal Determines, or may Determine, is payable by the relevant Defaulting NOP to the Principal as if:
 - (a) the Defaulting NOP had not been excluded from further participation in the Alliance; and
 - (b) the Commercial Framework in place at the time of the Wilful Default or the Act of Insolvency remained in place and continued to operate with respect to the Defaulting NOP until Completion.
- 32.14 The Defaulting NOP releases and discharges each non-defaulting Participant from any Loss arising out of or in connection with:
 - 32.14.1 a Wilful Default notified under clause 32.1;
 - 32.14.2 an Act of Insolvency notified under clause 32.5;
 - 32.14.3 any exercise by the Principal of any of the rights in clauses 32.2 or 32.5; and
 - 32.14.4 the indemnity in clause 32.13, which the Defaulting NOP would have had but for its release in this clause 32.14.
- 32.15 For the purpose of this clause 32 any reference to the ALT, the Alliance or each Non-Defaulting Participant excludes:
 - 32.15.1 the Defaulting NOP; and
 - 32.15.2 any representatives of the Defaulting NOP appointed to the ALT in accordance with Schedule 4.

Wilful Default by the Principal

- 32.16 If one or more NOPs genuinely and honestly believe that the Principal has committed a Wilful Default, the NOPs may give a unanimous written notice to the Principal specifying details of the Wilful Default and requiring the Wilful Default to be remedied within 20 day's of the date of the notice.
- 32.17 Where the Principal commits a Wilful Default, the NOPs shall:
 - 32.17.1 be entitled to claim from the Principal the damages arising directly from the Wilful Default;
 - 32.17.2 not be entitled to make any other claim, including in respect of Performance Adjustments; and
 - 32.17.3 continue to perform the Alliance Activities in accordance with the Agreement.

33. FUTURE DEFECTS AND CLAIMS

- 33.1 If, at any time prior to the date being 10 years after Completion, a Future Defect becomes evident the Principal may Direct the Participants to attend to the repair or rectification of the Future Defect.
- 33.2 If, at any time prior to the date being 10 years after Completion but after the Principal issues the Final Certificate, a Future Claim is made the Principal may Direct the Participants to resolve the claim in a manner consistent with this Agreement.
- 33.3 The Participants must comply with any Direction given by the Principal pursuant to clauses 33.1 or 33.2 promptly and within any time reasonably specified in writing by the Principal.
- 33.4 Within 40 Business Days after the repair or rectification of the Future Defect or the resolution of a Future Claim (as the case may be), the ALT must recalculate (after taking into account the cost of the repair or rectification of the Future Defect or the resolution of a Future Claim (as the case may be)) each Participants' entitlement (if any) to payment of:
- 33.4.1 Reimbursable Costs;
 - 33.4.2 Fee;
 - 33.4.3 any Cost Overrun Payment and/or Cost Underrun Payment; and
 - 33.4.4 GST in accordance with the GST Act.
- in accordance with Schedule 3, and provide a recommendation to the Principal accordingly.
- 33.5 The Principal must independently consider and apply the Commercial Framework to the ALT's calculation. If the Principal considers the calculation to be incorrect, it must advise the ALT accordingly and the ALT must provide a replacement recommendation which is correct.
- 33.6 When the Principal Determines that the ALT's recommendation is correct, it must issue a payment certificate and any necessary payments as evidenced by such payment certificate shall be made.

Survival

- 33.7 This clause 33 survives any expiry or termination of this Agreement.
- 33.8 The parties agree that the provisions of this Agreement (including without limitation the Commercial Framework) will, to the extent necessary to give effect to this clause 33, survive expiry or termination of this Agreement.

34. SOUTH AUSTRALIAN GOVERNMENT POLICIES AND STATUTORY REQUIREMENTS

Industry Participation Policy

- 34.1 Agencies and private parties contracting to the Government of South Australia are required to comply with the South Australian Industry Participation Policy (**SAIPP**) and the supporting procedural and reporting requirements.
- 34.2 The Participants must implement the Participants' Tailored Industry Participation Plan (**TIPP**) approved by the Industry Advocate (**IA**) in Attachment AC7.

- 34.3 The Participants must provide an Industry Participation Report (**IPP Report**) in respect of each Industry Participation Reporting Period to the Principal within two weeks of the end of each period, in the format provided by the Office of the Industry Advocate.
- 34.4 An Industry Participation Reporting Period is:
- 34.4.1 the period between the Commencement Date and the first anniversary of the Commencement Date;
 - 34.4.2 each subsequent 6 month period during the Term;
 - 34.4.3 if the Agreement ends on a date other than an anniversary of the Commencement Date, the period from the conclusion of the preceding Industry Participation Reporting Period until the date of termination or expiry of the Agreement;
 - 34.4.4 for short-term projects of strategic importance to the State, the period notified by IA to the Participants in writing; and
 - 34.4.5 where the term of the Agreement is for a period less than 6 months, the term of the Agreement.
- 34.5 The Participants must attend any meeting scheduled by the IA during the term of the Agreement to review how the TIPP is being implemented and advanced, and for this purpose, the Participants must provide all information reasonably requested by the IA. The IA must give the Participants not less than 10 Business Days' notice of any such meeting.
- 34.6 The IA may, by written notice require that the Participants within a reasonable time specified in the notice, provide information or documents to enable the IA to assess the Participants' compliance with this clause 34.
- 34.7 If the IA reasonably believes that the Participants are not complying with the requirements of this clause 34, the IA may by notice in writing direct that the Participants comply with those requirements.
- 34.8 Upon receipt of the notice, if the Participants are of the opinion that its noncompliance is reasonable and justified, the Participants may provide a response to the IA outlining that opinion and the reasons for it.
- 34.9 The Participants' failure to comply, in whole or in part, with the commitments contained within the TIPP will be a factor taken into account in the award of future contracts for the Government of South Australia.
- 34.10 In this clause, IA means the person from time to time appointed by the Governor to the position of Industry Advocate under section 5 of the *Industry Advocate Act 2017* (SA).

Disclosure

- 34.11 The Participants agree to disclosure of this Agreement in accordance with Department of Premier and Cabinet Circular 27 (PCO27) "Disclosure of Government Contracts", available from: http://www.premcab.sa.gov.au/dpc/publications_circulars.html. The Participants' attention is drawn to the *Freedom of Information Act 1991* (SA).

Public Sector

- 34.12 The Participants must conduct themselves in a manner that does not invite, directly or indirectly, the Principal's officers, employees or agents or any public sector employee (as defined in the *Public Sector Act 2009* (SA)) to behave

unethically, to prefer private interests over the Principal's interests or to otherwise contravene the Code of Ethics for the South Australian Public Sector.

- 34.13 The Participants must not engage any former public sector employee, either directly or through a third party, who has, within the last three years, received a separation package from the South Australian Government, where such engagement may breach the conditions under which the separation package was paid to the former public sector employee.

Code of Practice for the South Australian Construction Industry

- 34.14 The NOPs shall comply with the *Code of Practice for the South Australian Construction Industry* (the **Code**) during the term of the Agreement.
- 34.15 Failure to comply with the Code will be taken into account by the South Australian Government and its agencies when considering a future tender from the NOP and may result in such tender being passed over and/or a change in the status of the NOP on any State Government register of contractors.
- 34.16 The NOPs shall ensure that all subcontracts contain a requirement to comply with the Code.

Independent Commissioner Against Corruption

- 34.17 The Principal is a public authority for the purposes of the *Independent Commissioner Against Corruption Act 2012 (SA)* (**ICAC Act**). For the term of this Agreement the NOPs are considered public officers under the ICAC Act and must comply with the ICAC Act and the directions and guidelines published by the Independent Commissioner Against Corruption.

35. LEGISLATIVE REQUIREMENTS - HEALTH AND SAFETY

- 35.1 The Participants will satisfy and comply with, and ensure that their Associates satisfy and comply with:
- 35.1.1 all Laws relating to the Alliance Activities and the Works; and
- 35.1.2 the health and safety requirements in the CSCR.
- 35.2 The Principal:
- 35.2.1 appoints the Constructor NOP, and the Constructor NOP accepts the appointment, as the Principal Contractor for the purposes of the performance of Alliance Activities;
- 35.2.2 gives all necessary authority to the Constructor NOP to enable it to manage or control any workplace to the extent necessary to discharge the duties imposed on a Principal Contractor for the purposes of performing the Alliance Activities; and
- 35.2.3 subject to clause 35.3, the Constructor NOP acknowledges and agrees that, for the purposes of performing the Alliance Activities, it will accept that appointment and be responsible for, and bear the responsibility of, all obligations as the Principal Contractor.
- 35.3 The Constructor NOP must with respect to the performance of Alliance Activities do the following:
- 35.3.1 exercise and fulfil the functions and obligations of an employer, the Principal Contractor, and a person with management and control of the Site under the health and safety Laws; and

-
- 35.3.2 provide the ALT and the AGM with a copy of any document, notice or report that the Constructor NOP, as Principal Contractor, is required to author or receive.
- 35.4 The Participants must:
- 35.4.1 do, or refrain from doing, anything necessary to allow the Constructor NOP to fulfil and exercise its obligations and functions as Principal Contractor in respect of the performance of Alliance Activities including complying with any reasonable direction of the Constructor NOP which is made in its capacity as Principal Contractor and the Constructor NOP will take into account the comments of the ALT when performing its role as the Principal Contractor;
- 35.4.2 to the extent that any decision of the ALT is inconsistent with any applicable health and safety Laws, comply with any reasonable direction of the Constructor NOP which is made in its capacity as Principal Contractor to the extent necessary to comply with any Laws; and
- 35.4.3 the Participants will use best endeavours to ensure that all contractors on Site are obliged to comply with any reasonable directions of the Constructor NOP which are made in its capacity as Principal Contractor.
- 35.5 If the Constructor NOP:
- 35.5.1 for any reason, is no longer capable of discharging its obligations as 'Principal Contractor'; or
- 35.5.2 is excluded from the Alliance in accordance with clause 32.7,
- the Principal will revoke the appointment of the Constructor NOP and will appoint a replacement Principal Contractor.
36. **JOINT VENTURE [OR NOT USED]**
- 36.1 DNOP 1 and DNOP 2 confirm that they have formed an unincorporated joint venture (Joint Venture) to undertake their obligations under this Agreement and agree that:
- 36.1.1 any duty or obligation, if any, created by any agreement (whether written or otherwise) evidencing the Joint Venture will be subordinate to their obligations under this Agreement;
- 36.1.2 each of DNOP 1 and DNOP 2 will be jointly and severally liable for any and all obligations of the Designer NOP under this Agreement;
- 36.1.3 as provided for in Schedule AC2.1 (subject to the cap indicated therein), any costs or expenses incurred by either of DNOP 1 and DNOP 2 in the establishment, administration, operations or conduct of the Joint Venture, other than procurement obligations or liabilities entered into by either of them on behalf of the Participants in accordance with this Agreement, will be Reimbursable Costs;
- 36.1.4 DNOP 1 and DNOP 2 shall together comprise a single Participant being the Designer NOP such that an act, omission, Default, Change in Control, Act of Insolvency, or breach by either DNOP 1 or DNOP 2
-

shall be deemed to have occurred in respect of the Designer NOP as a whole;

- 36.1.5 any failure by DNOP 1 and DNOP 2 to establish the Joint Venture (or any termination of the Joint Venture) will not affect their liabilities under this Agreement, including as provided in clauses 36.1.2, clause 36.1.4 and clause 43.1, and in that event an obligation of the Principal to make a payment to DNOP 1 and DNOP 2 as the Designer NOP will be satisfied if the Principal makes the payment to either of DNOP 1 or DNOP 2.

37. CONSTRUCTION INDUSTRY TRAINING FUND

Attention is drawn to the *Construction Industry Training Fund Act 1993 (SA)* which imposes a levy of 0.25% of the value of building and construction works in South Australia. The Principal will pay the levy, calculated in accordance with the requirements of *the Act*.

38. RESPECTFUL BEHAVIOURS

- 38.1 The NOPs acknowledge the Principal's zero tolerance towards men's violence against women in the workplace and the broader community.
- 38.2 The NOPs agree that, in performing the Alliance Activities, their personnel will at all times:
- 38.2.1 act in a manner that is non-threatening, courteous and respectful; and
- 38.2.2 comply with any instructions, policies, procedures or guidelines issued by the Principal regarding acceptable workplace behaviour.
- 38.3 If the Principal believes that any NOP's personnel are failing to comply with the behavioural standards specified in this clause, then the Principal may in its absolute discretion:
- 38.3.1 prohibit access by that NOP's relevant personnel to the Site; and
- 38.3.2 direct the relevant NOP to withdraw that NOP's relevant personnel from the Alliance Activities.

39. COMPLIANCE WITH THE CODE FOR THE TENDERING AND PERFORMANCE OF BUILDING WORK 2016

- 39.1 In this clause 39:

ABCC	means the body referred to in subsection 29(2) of the Act.
ABC Commissioner	means the Australian Building and Construction Commissioner referred to in subsection 15(1) of the Act.
Act	means the <i>Building and Construction Industry (Improving Productivity) Act 2016 (Cth)</i> .

Building Code	means the <i>Code for the Tendering and Performance of Building Work 2016</i> , which is available at https://www.legislation.gov.au/Details/F2017C00125 .
Building Contractor	has the same meaning as in the Act.
Building Industry Participant	has the same meaning as in the Act.
Building Work	has the same meaning as in subsection 3(4) of the Building Code.
Commonwealth Funded Building Work	means Building Work in items 1-8 of Schedule 1 of the Building Code.
Exclusion Sanction	has the same meaning as in subsection 3(3) of the Building Code.
Subcontractor	means a Building Contractor or Building Industry Participant who the Contactor has entered, or proposes to enter, into a subcontract with to undertake any of the Works.
Works	means Commonwealth Funded Building Work that is the subject of this Contract.

39.2 The NOPs declare as at the Commencement Date in relation to Works that it and its Subcontractors are not subject to an exclusion sanction.

39.3 The NOPs:

39.3.1 declare as at the Commencement Date in relation to the Works; and

39.3.2 must ensure during the term of this Agreement in relation to the Works: that it and its Subcontractors will comply with the Building Code.

39.4 Compliance with the Building Code does not relieve the NOPs from responsibility to perform this Agreement, or from liability for any defect in the Works arising from compliance with the Building Code.

39.5 The NOPs must notify the ABCC of any breach or suspected breach of the Building Code as soon as practicable but no later than 2 working days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.

39.6 The NOPs acknowledge the powers and functions of the ABC Commissioner and the ABCC under the Act and the Building Code and will ensure that it and its Subcontractors comply with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including but not limited to requests for entry under section 72 of the Act, requests to interview any person under section 74 of the Act, requests to produce records or documents under sections 74 and 77 of the Act and responding to requests for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.

39.7 The NOPs must only enter into a subcontract for any of the Works where:

-
- 39.7.1 the Subcontractor is not covered by, and does not have Related Entities covered by, an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code; and
 - 39.7.2 the Subcontractor is not subject to an exclusion sanction or is excluded from undertaking work funded by a state or territory government unless approval to do so is provided by the ABC Commissioner.
 - 39.8 The NOPs must ensure as far as is reasonably practicable that Subcontractors that are engaged by the NOPs in respect of the Works take remedial action to rectify non-compliant behaviour.
 - 39.9 The NOPs must only enter into a subcontract for any of the Works where:
 - 39.9.1 the Subcontractor has submitted a declaration of compliance, including the further information outlined in Attachment A to the declaration of compliance, in substantively the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code (located in Part 4 in the document titled *Model Clauses Type B-Indirectly Funded* available on the ABCC website (www.abcc.gov.au)); and
 - 39.9.2 the subcontract with the Subcontractor contains clauses in substantively the same form as the model contract clauses applicable to contractors and subcontractors in relation to the Building Code (located in Part 5 in the document titled *Model Clauses Type B-Indirectly Funded*
 - 39.10 The NOPs must only use products in building work that comply with the relevant Australian standards published by, or on behalf of, Standards Australia.
 - 39.11 The NOPs must ensure that any agreement entered into in relation to the Works with a Subcontractor requires the Subcontractor to only use products in relation to the Works that comply with the relevant Australian standards published by, or on behalf of, Standards Australia.

40. WORKPLACE GENDER EQUALITY

- 40.1 This clause applies if the NOPs are relevant employer(s) within the meaning of the *Workplace Gender Equality Act 2012* (Cth) (**WGE Act**).
- 40.2 The NOPs must comply with their obligations under the WGE Act and remain compliant until the expiry or termination of the Agreement.
- 40.3 The NOPs must take reasonable steps to ensure that any Subcontractors comply with the WGE Act if that Subcontractor is a relevant employer within the meaning of the WGE Act.

41. COMMONWEALTH WORK HEALTH AND SAFETY ACCREDITATION SCHEME

- 41.1 The Constructor NOP must maintain accreditation under the Work Health and Safety Accreditation Scheme (**WHS Accreditation Scheme**) while the Works are carried out.
 - 41.2 The WHS Accreditation Scheme is established by the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) and specified in the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019* (Cth).
-

- 41.3 The Constructor NOP must comply with all conditions of WHS Accreditation Scheme accreditation.

42. MISCELLANEOUS

Joint and Several Liability

- 42.1 If a NOP consists of more than one person, the obligations of that NOP under this Agreement are joint and several and each person constituting the NOP acknowledges and agrees that it will be causally responsible for the acts and omissions of the other as if those acts or omissions were its own. By way of example, if a NOP consists of two persons and one of those commits a Wilful Default or Act of Insolvency then both will be jointly and several liable for the consequences of the Wilful Default or Act of Insolvency.

Costs

- 42.2 Each Participant is responsible for its own costs in relation to the negotiation, preparation and execution of this Agreement.

Set-off

- 42.3 The Principal may Determine to set-off from any money which is payable to a NOP under this Agreement any amount due from that NOP to the Principal under this Agreement.
- 42.4 Each NOP (**First Alliance Participant**), subject to ALT approval, may set-off from any money which is payable to any other NOP under this Agreement any amount due from the other NOP to the First Alliance Participant under this Agreement.

Governing Law and Jurisdiction of Courts

- 42.5 The Agreement is governed by and is to be construed in accordance with the Laws in force in the State of South Australia.
- 42.6 The Participants submit themselves to the exclusive jurisdiction of the Courts having jurisdiction in the State of South Australia.
- 42.7 Any proceedings brought in a Federal Court must be instituted in the Adelaide registry of that court, and the Participants undertake not to apply to transfer any proceedings to a registry of the Federal Court located in another State or Territory, or to the courts of another State or Territory.

Severance

- 42.8 Each word, phrase, sentence, paragraph and clause of this Agreement is severable.
- 42.9 If a court determines that a part of this Agreement is unenforceable, invalid, illegal or void that court may sever that part.
- 42.10 Severance of any part of this Agreement will not affect any other part of this Agreement.

Indemnities

- 42.11 Each indemnity given by the Participants under this Agreement is a continuing obligation separate and independent from the Participants' other obligations under this Agreement and notwithstanding anything else in this Agreement is intended to be enforceable and to survive the termination of this Agreement or

the expiry of the Term. An indemnified party must take all reasonable steps to mitigate any amounts payable pursuant to the indemnity. Despite any other provision in this Agreement, a party's liability under an indemnity will be reduced proportionally to the extent that the indemnified party caused or contributed to the relevant Loss.

No Assignment

- 42.12 A NOP must not assign, encumber or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Principal. The Principal may, without the consent of the NOPs, assign or transfer any of its rights or obligations under this Agreement to another Minister, agency or instrumentality of the Crown in right of the State of South Australia.

Relationship between the Participants

- 42.13 By entering into this Agreement and forming the Alliance, the Participants do not intend to create, nor is it to be construed as creating a partnership, joint venture or fiduciary relationship between the Participants.
- 42.14 Each of the Participants is an independent entity and for the purposes of this Agreement, the employees or agents of one of the Participants will not be considered to be the employees or agents of another, unless deemed by Law, and the Participants shall each pay all costs associated with their respective employees.
- 42.15 Except as may be set out in this Agreement or Determined by the ALT, the Participants do not confer a right in any of the Participants to enter into any commitment on behalf of another or to otherwise act as an agent.

Waiver

- 42.16 A Participant's:
- 42.16.1 failure to exercise, or delay in exercising, a power or right does not operate as a waiver of that power or right;
 - 42.16.2 waiver or exercise of a power or right does not preclude its future exercise or the exercise of any other power or right; and
 - 42.16.3 waiver of any power or right will not be effective unless it is in writing and signed by the representative of the Participant waiving its rights.

Change in NOP Participation

- 42.17 The NOPs must not, without the Principal's prior written consent on the ALT's recommendation, change the NOPs' share of any entitlements under the Commercial Framework.

Notices

- 42.18 All notices, Determinations, requests, recommendations, agreements or other communications authorised or required to be made under the Agreement, must be sent via the IMS in accordance with clause 12 of this Agreement.

Change in Control

- 42.19 Subject to clause 42.21 each NOP must obtain the Principal's prior written consent (which must not be unreasonably withheld) to any Change in Control in respect of it, or any of the providers of a Deed of Guarantee to be provided under clause 9.

- 42.20 Subject to clause 42.21 each NOP will provide the Principal with reasonable prior notice of any Change in Control of that NOP.
- 42.21 Where the Change in Control has occurred as a result of a Change in Control of a corporation listed on a stock exchange, and the NOP the subject of that Change in Control is unable, or it is not practicable for the NOP, to comply with clauses 42.19 and 42.20 the NOP must:
- 42.21.1 provide the Principal with notice of the Change in Control of that NOP as soon as possible following the Change in Control; and
 - 42.21.2 obtain the Principal's written consent (which must not be unreasonably withheld) to any Change in Control which has occurred in respect of it, or any of the providers of a Deed of Guarantee to be provided under clause 9.
- 42.22 The NOP the subject of the Change in Control will provide the Principal with any Records requested by the Principal and attend any meetings (including, where reasonably requested by the Principal with any third party acquiring or exercising control over the NOP) arising out of or in connection with the Change in Control.
- 42.23 The NOPs acknowledge and accept that if the Principal does not consent to a Change in Control of a NOP the Principal reserves the power to Determine to exclude the NOP from the Alliance.
- 42.24 Each NOP agrees that it will use its best endeavours to procure any third party involved in the Change in Control to execute any Records Determined to be required by the Principal (which may include an appropriate parent company undertaking or guarantee) to enable the Principal to Determine whether the Change in Control will have any prejudicial effect on the Principal's interests, the Alliance or the Alliance Activities.
- 42.25 In the event of any Change in Control of a NOP, the NOP the subject of the Change in Control agrees that it will use its best endeavours to make all necessary administrative arrangements, making suitable arrangements for GST so as to minimise any adverse impact on the Alliance or the Project.
- 42.26 Any costs incurred by a NOP arising out of or in connection with a Change in Control and performing its obligations under clauses 42.19 to 42.25 will not be a Reimbursable Cost.

Financial Difficulties

- 42.27 A NOP must immediately notify the Principal and the other Participants in writing if it becomes reasonably likely that it may not be able to satisfy any of its financial obligations in relation to the Agreement from the financial resources available, or likely to be available to it, at the time the financial obligation is due.

Change in NOP

- 42.28 The Participants agree to immediately notify each other of any changes made to their staffing or composition.

Change in NOP Participation

- 42.29 The NOPs must not, without the Commissioner's prior written consent on the ALT's recommendation, change the NOPs' share of any Performance Adjustment entitlements under the Agreement.

Counterparts

42.30 This Agreement may be executed in counterparts, which when taken together are one instrument.

Example

EXECUTED AS AN AGREEMENT

SIGNED by a duly authorised officer for and on behalf of the **PRINCIPAL** in the presence of:

.....
Witness signature

.....
Authorised officer signature

.....
Witness name

.....
Authorised officer name

.....
Date

.....
Date

SIGNED for and on behalf of **[INSERT]** in accordance with section 127 of the *Corporations Act 2001* (Cth) by two directors or by one director and the company secretary:

.....
Director signature

.....
Director/Company Secretary signature

.....
Director name

.....
Director/Company Secretary name

.....
Date

.....
Date

SIGNED for and on behalf of **[INSERT]**
under a power of attorney dated 11 January
2021:

.....
Attorney signature

.....
Attorney name

.....
Date

.....
Attorney signature

.....
Attorney name

.....
Date

SIGNED by **[INSERT]** in accordance with
section 127 of the *Corporations Act 2001*
(Cth) by two directors or by one director and
the company secretary

.....
Director signature

.....
Director name

.....
Date

.....
Director/Company Secretary signature

.....
Director/Company Secretary name

.....
Date

SCHEDULE 1 – PROJECT PARTICULARS

Example



[Insert name of Project]
No. **[Insert number]**

**PAA SCHEDULE 1:
PROJECT PARTICULARS**

EXAMPLE

Item	Term	Information
1	Alliance Name:	
2	RFP Alliance Development Agreement date: ECI Alliance Development Agreement date:	
3	Date for Completion:	
4	Defects Liability Period:	
5	<u>Milestones:</u> Milestone 1 –	
	Milestone 2 –	
	Milestone 3 –	
	Milestone 4 –	
	Milestone 5 –	
	Milestone 6 –	
	Milestone 7 –	
	Milestone 8 –	
	Milestone 9 –	
	Milestone 10	
	Milestone 11	
6	Parent Company:	
7	Principal's Representative:	
8	Constructor NOP's Senior Representative	
	DNOP 1's Senior Representative	
	DNOP 2's Senior Representative	
9	TOC	

10	Principal's ALT Members:	
11	Site Access Date	(a)
12	Separate Defects Liability Period	

Example

SCHEDULE 2 – VALUE FOR MONEY STATEMENT

Example



[Insert name of Project]
No. **[Insert number]**

PAA SCHEDULE 2:

VALUE FOR MONEY STATEMENT

EXAMPLE

The Principal's value for money objectives and required outcomes in respect of the Works are set out in the following documents (which forms part of the CSCR):

Document no.	Document name	Aconex document ref. no.	Aconex document ref. no.	Aconex transmittal no.
F01.02.01	Business Requirements –			
F01.02.02	Business Requirements –			
F01.02.03	Business Requirements –			
F01.02.04	Business Requirements –			

Example

SCHEDULE 3 – COMMERCIAL FRAMEWORK

Example



[Insert name of Project]

No. [Insert number]

PAA SCHEDULE 3:

COMMERCIAL FRAMEWORK

Example

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Example

1. DEFINITIONS AND INTERPRETATION

- 1.1 Terms defined in the Agreement have the same meaning in this Commercial Framework.
- 1.2 A reference to a clause is a reference to a clause in this Commercial Framework unless specified otherwise.
- 1.3 The parties agree that the provisions of the Commercial Framework will survive expiry or termination of the Agreement.

2. REIMBURSABLE COSTS

- 2.1 Reimbursable Costs include the costs set out in this clause 2. To be paid a Reimbursable Cost, the Participants must comply with all requirements specified in this clause 2. Reimbursable Costs progress payments are subject to payment requests being accompanied by a summary of the Project schedule against the payment schedule. That summary should show the original, actual, and the forecast TOC/AOC budget against the Project schedule.

Principles of Reimbursable Costs

- 2.2 Reimbursable Costs must be determined by the application of the following principles:
 - 2.2.1 all costs and expenses directly, reasonably and properly incurred in performing the Alliance Activities shall be Reimbursable Costs as approved by the AGM or ALT (as the case may be) in accordance with the Agreement and policies approved by the ALT under the Agreement;
 - 2.2.2 subject to clause 4, no Participant will receive any contribution to corporate overhead costs or expenses or derive profit, mark up or unreasonable advantage from the utilisation of people, plant, equipment or resources for the Alliance Activities;
 - 2.2.3 the Participants cannot recover anything that is not a bona fide specific cost or expense directly, reasonably and properly incurred by the Participants in performing the Alliance Activities;
 - 2.2.4 the Participants can only recover a maximum of 100% of any bona fide specific cost or expense directly, reasonably and properly incurred by the Participants in performing the Alliance Activities. It is recognised that accrued costs are considered as reimbursable provided that they are supported by an invoice, delivery docket or a genuine documented estimate of physical work completed;
 - 2.2.5 The NOPs have no entitlement to recover any Fee on a Reimbursable Cost incurred by and paid for by the Principal in carrying out Alliance Activities; and
 - 2.2.6 No NOP may claim any Reimbursable Cost more than 30 days in advance of that cost or expense becoming due and payable by the NOP and no Fee will be payable on any Reimbursable Cost unless and until that cost or expense has been paid by the NOP.

Non-Wages Personnel Costs

2.3 The Reimbursable Costs for Non-Wages Personnel engaged by a Participant to perform Alliance Activities will be calculated as follows:

Reimbursable Costs for Non-Wages Personnel =

(i) in respect of non-overtime hours:

(Chargeable Rate {i, j} x Applicable RCM {j} x Actual Hours {i, j});

(ii) in respect of allowances approved in accordance with clause 2.6:

(Chargeable Rate {i, Allowances} x Actual Hours {i, j}); and

(iii) in respect of overtime hours:

(Chargeable Rate {i, Overtime} x Actual Hours {i, j})

where:

2.3.1 Chargeable Rate {i, j} is the Chargeable Rate for each Non-Wages Personnel {i} engaged by a NOP to perform Alliance Activities, determined based on the applicable Non-Wages Personnel Category {j} (as indicated in clauses 2.3.2 to 2.3.5);

2.3.2 Chargeable Rate {i, Full time Staff} is the actual TFR for each person {i} in the Full time Staff category divided by 2080 hours per annum;

2.3.3 Chargeable Rate {i, Part time Staff} is the actual TFR for each person {i} in the Part time Staff category divided by 2080 hours per annum;

2.3.4 Chargeable Rate {i, Casual Staff} is the actual TFR for each person {i} in the Casual Staff category divided by 2080 hours per annum or the equivalent annualised amount where the actual TFR is not, or will not be an annual amount;

2.3.5 Chargeable Rate {i, Contract Staff} is the actual TFR for each person {i} in the Contract Staff category divided by 2080 hours per annum or the equivalent annualised amount where the actual TFR is not, or will not be an annual amount;

2.3.6 Chargeable Rate {i, Allowances} is where any allowance is approved by the ALT in accordance with clause 2.6 the actual allowance cost payable to each Non-Wages Personnel {i} converted to a rate in \$/hour (for the purposes of this calculation, overtime hours are excluded), or another basis as approved by the ALT, exclusive of any employment on cost, allowance or accrual;

2.3.7 Chargeable Rate {i, Overtime}, is where overtime is approved by the ALT in accordance with clause 2.6, the actual overtime cost payable to each Non-Wages Personnel {i} converted to a rate in \$/hour, or another basis as approved by the ALT, exclusive of any employment on cost, allowance or accrual;

2.3.8 the Applicable RCM {j} is the multiplier specified in Table AC4 in Schedule AC4 for the relevant Non-Wages Personnel Category {j} for each NOP;

2.3.9 Actual Hours {i, j} is for all Non-Wage Personnel Categories except for overtime, the actual number of hours that each Non-Wages

Personnel {i} under the Non-Wages Personnel Category {j} spent performing Alliance Activities to a maximum of 40 hours per week and 2080 hours per annum (this is the calculation of hours applicable to clauses 2.3(i) and 2.3(ii) above), and for overtime is the number of actual overtime hours spent in performing Alliance Activities as approved by the ALT (this is the calculation applicable to clause 2.3(iii) above). For the purposes of this clause 2.3 a reference to a 'week' is a rolling period of seven consecutive days; and

- 2.3.10 The Participants acknowledge and accept that for the purposes of clause 2.3:
- (a) NOP operates under a maximum hours a week and hours per annum as set out in Schedule AC3; and
 - (b) The Principal operates under a maximum of 37.5 hours a week and 1950 hours per annum.
- 2.4 The allowance for any annual increase to the total annual Reimbursable Costs for Non-Wages Personnel (including superannuation and salary packaged benefits) must not exceed the applicable annualised wage price index (published by the Australian Bureau of Statistics, the “**Annualised Wage Price Index**”) for the total annual Reimbursable Costs for Non-Wages Personnel (including superannuation and salary packaged benefits). Any annual increase in excess of the applicable Annualised Wage Price index per annum must be approved by the ALT. Once approved by the ALT all increases to any staff and labour cost must be advised to the AGM prior to the increased salary or labour cost being invoiced to the Principal.
- 2.5 No NOP has an overtime recovery entitlement except as recommended by the AGM and approved by the ALT in accordance with the relevant Alliance policy as approved by the ALT under the Agreement. The ALT must be satisfied that the NOP has provided evidence to substantiate the proper and reasonable basis for the overtime entitlement payable to the nominated staff member and that it is consistent with other similar projects (which projects must have been approved by the Principal as being similar) and standard operating procedure for the NOP and is value for money to the Principal.
- 2.6 Any allowance payable to nominated personnel will not be a Reimbursable Cost unless:
- 2.6.1 the AGM considers the procedures and policies for the Alliance approved by the ALT and recommends that an allowance should be payable to a nominated staff member;
 - 2.6.2 the AGM submits its recommendation to the ALT for approval prior to incurring or paying the allowance to the nominated staff member;
 - 2.6.3 the ALT determines that the allowance is for extreme or special circumstances in accordance with the policy approved by the ALT; and
- the NOP has provided evidence to substantiate that the percentage or amounts payable to the nominated staff member is consistent with other similar projects (which projects must have been approved by the Principal as being similar) and is standard operating procedure for the NOP and is value for money to the Principal. The aggregated amount of all allowances payable to the Constructor

NOP as a Reimbursable Cost in accordance with this clause 2.6 will be capped at the amount set out in Schedule AC2.2.

Reimbursable Cost Multiplier

- 2.7 The RCM for each Non-Wages Personnel category are set out in Schedule AC4.
- 2.8 Subject to the Principal's Determination, each RCM is fixed for the Term.
- 2.9 Each RCM has been calculated upon the following basis:
- 2.9.1 the employment related on-costs incorporated into the RCM for each NOP have been calculated, in part, by reference to payment of the following allowances or expenses:
- (a) annual leave - an annual leave accrual capped at an entitlement of 20 days per annum;
 - (b) sick and personal leave - a sick and personal leave accrual based on each NOP's long term (5 year) actual historical sick and personal leave liability;
 - (c) workers compensation - a workers compensation accrual based on the actual premium payable demonstrated by the latest premium notice;
 - (d) payroll tax - a payroll tax accrual based on the effective payroll tax rate as prescribed in accordance with the *Payroll Tax Act 2009 (SA)*;
 - (e) public holidays - a public holidays accrual capped at the number of days gazetted as South Australian public holidays;
 - (f) long service leave - a long service leave accrual based on each NOP's long term (10 year) actual historical long service leave liability;
 - (g) superannuation - a superannuation accrual based on an employee's actual statutory entitlement; and
 - (h) the RCM for the Designer NOP (but not the Constructor NOP) also includes other business unit employee related on-costs that are business as usual components of the Designer NOP's RCM.
- 2.9.2 the RCM for Casual Staff and allowances is limited to the recovery of an accrual for:
- (a) superannuation;
 - (b) workers compensation; and
 - (c) payroll tax; and
- 2.9.3 the RCM for overtime is limited to the recovery of an accrual for:
- (a) workers compensation; and
 - (b) payroll tax.
- 2.10 Non-Wages Personnel costs in respect of the Principal will be calculated on the basis of the relevant individual's base costs as established by employment or

payroll records, excluding all costs other than base salary and overtime which are directly applicable to remuneration (e.g. accrual costs or statutory on-costs) multiplied by the RCM set out in Schedule AC4.

Designer NOP Additional Reimbursable Costs

2.11 If the Designer NOP wishes to recover any Reimbursable Costs it incurs in performing the Alliance Activities other than Non-Wages Personnel Reimbursable Costs they must be pursuant to Sub-schedule AC2.1 and be agreed by the ALT prior to the cost or expense being incurred. The ALT must be satisfied that the cost or expense:

- 2.11.1 is not otherwise reimbursed through any applicable RCM;
- 2.11.2 is consistent with other similar projects (which projects must have been approved by the Principal as being similar);
- 2.11.3 is standard operating procedure for the Designer NOP; and
- 2.11.4 represents value for money to the Principal.

Wages Personnel

2.12 The actual direct labour cost incurred by a NOP employing Wages Personnel to perform Alliance Activities will be calculated in accordance with:

- 2.12.1 the relevant industrial instrument or agreement by which a Wages Personnel person is employed by a NOP, as validated by a financial auditor appointed by the Principal; and
- 2.12.2 any relevant policies approved by the ALT (including those referred to at clause 2.49),

as the case may be, for the actual hours worked by each Wages Personnel person performing Alliance Activities.

Mobilisation and De-Mobilisation

- 2.13 As approved by the ALT, the cost of mobilising and de-mobilising the AMT and WPT to the Site and all relevant Site accommodation in accordance with the mobilisation policy determined by the ALT will be a Reimbursable Cost.
- 2.14 Establishment, maintenance and operation of the Site, any Site accommodation, warehousing or other facilities, including all transportation, facilities, utilities, consumables and dedicated telecommunications services and the like, incurred by a Participant necessary to perform the Alliance Activities will be a Reimbursable Cost.

Materials and Equipment

- 2.15 Equipment, materials, goods and consumables purchased by the Participants specifically for the Alliance Activities will be a Reimbursable Cost.
- 2.16 All equipment, materials, goods and consumables valued at over \$1000 when acquired must be documented on an Alliance asset register that is issued to the ALT monthly. Subject to clause 21 of the Agreement all equipment, materials, goods and consumables procured by the Participants for the performance of Alliance Activities shall be procured on behalf of the Principal and title in all such equipment, materials, goods and consumables shall vest in the Principal.

Construction Plant and Temporary Works

- 2.17 The actual cost of Construction Plant and Temporary Works will be a Reimbursable Cost subject to the following:
- 2.17.1 the costs are on an audited actual cost basis;
 - 2.17.2 there is no “profit on profit” or “Fee on Fee” provided or supplied by one of the Participants to perform the Alliance Activities; and
 - 2.17.3 prior to their provision to the Alliance or use on the Site or the Works, the rates and/or actual costs are agreed to by the ALT.
- 2.18 The hire rate to the Project for all Participant owned Construction Plant will be the lesser of the:
- 2.18.1 published internal rate currently being utilised by the Participant; or
 - 2.18.2 best external hire rate for a similar piece of equipment for a similar period of hire.

Participants must provide evidence of the published internal hire rate referred to in clause 2.18.1.

- 2.19 Any unique or Alliance specific Construction Plant and Temporary Works to be developed or acquired for the performance of Alliance Activities shall form the basis of a business case to be presented to the ALT for its approval. Any such business case must identify the merits and advantages of the solution being recommended by the AMT, any applicable financing arrangements, the intended ownership of the specific plant and equipment, usage charges, depreciation allowance and/or buy back arrangement being offered by one of the Participants or any third party and the treatment of these details in the build-up of the TOC and aggregation of AOC. All unique or Alliance specific plant and equipment valued must be maintained on an alliance asset register and must be procured in accordance with the Procurement and Contracting Strategy.
- 2.20 All Construction Plant and Temporary Works equipment and materials valued at over \$1000 when acquired must be documented on an Alliance asset register that is issued to the ALT monthly. Subject to clause 21 of the Agreement, all Construction Plant and Temporary Works equipment and materials procured by the Participants for the performance of the Alliance Activities shall be procured on behalf of the Principal and title in all such Construction Plant and Temporary Works equipment and materials shall vest in the Principal.
- Residual revenue from sale at end of project of Construction Plant and Temporary Works equipment and materials purchased by Alliance will be included (as a deduction) in the AOC.

Subcontracts, Subcontractors and Sub-Alliances

- 2.21 For each Subcontractor or Sub-Alliance Participant directly engaged by the Participants in accordance with the Procurement and Contracting Strategy from third party sources to perform elements or parts of the Alliance Activities, payments made to the Subcontractor or Sub-Alliance Participant in accordance with the relevant Subcontract or Sub-Alliance will be a Reimbursable Cost subject to the:
- 2.21.1 rates being as submitted by the Participant in the TOC;

- 2.21.2 rates demonstrating value against a market tested rate for a similar service; or
- 2.21.3 engagement of the Subcontractor or Sub-Alliance Participant having been approved by the ALT.

Regulatory Requirements

- 2.22 Subject to clause 3.1 the costs and expenses to meet any Regulatory Requirements in relation to the Alliance Activities and the Works will be a Reimbursable Cost.

Insurances

- 2.23 Premiums for insurance policies effected by the NOPs in accordance with:
 - 2.23.1 clauses 23.5.1, 23.5.2 and 23.5.3 of the Agreement will be included in the relevant cost or rate to be calculated in accordance with clauses 2.17 or 2.19 as the case may be;
 - 2.23.2 clause 23.5.4 of the Agreement will not be a Reimbursable Cost;
 - 2.23.3 clause 23.5.5 of the Agreement will be a Reimbursable Cost as agreed by the ALT at the time the insurance is recommended by the ALT and accepted by the Principal; and
 - 2.23.4 clause 23.6 of the Agreement will be a Reimbursable Cost.
- 2.24 The costs of the administration under any policy of insurance forming part of the insurance regime under:
 - 2.24.1 clauses 23.1 and 23.3 of the Agreement will be a Reimbursable Cost;
 - 2.24.2 clause 23.5 of the Agreement, other than clause 23.5.4, will not be a Reimbursable Cost; and
 - 2.24.3 clause 23.5.5 of the Agreement will be as agreed by the ALT at the times the insurance is recommended by the ALT and accepted by the Principal.
- 2.25 The costs of claims and excesses or deductibles under any policy of insurance forming part of the insurance regime under:
 - 2.25.1 clauses 23.1 and 23.3 of the Agreement will be a Reimbursable Cost;
 - 2.25.2 clause 23.5 of the Agreement, other than clause 23.5.4, will be a Reimbursable Cost; and
 - 2.25.3 clause 23.5.5 of the Agreement will be as agreed by the ALT at the times the insurance is recommended by the ALT and accepted by the Principal
- 2.26 Any funds reimbursed to a Participant for an act, event or circumstance arising out of or in connection with the Alliance Activities under any policy of insurance forming part of the insurance regime agreed by the ALT must be credited by the Participant against the AOC provided that the costs, Loss, expense or damage arising from the act, event or circumstance were paid or payable as a Reimbursable Cost under the Agreement.

Legal and Litigation Expenses

- 2.27 Subject to clauses 2.28 and 3.1, any sums paid or received (in which case they are credited to the AOC) by way of judgment, award, compromise or otherwise

and any sums paid defending or prosecuting civil lawsuits or claims brought by a third party (excluding any Authority) arising out of the Alliance Activities or the Works, or any legal service otherwise necessary or expedient for the Alliance Activities or the Works (including any sums received after Final Certificate), will be a Reimbursable Cost.

- 2.28 Any legal or litigation expense incurred by the Alliance or a Participant will only be a Reimbursable Cost if it is incurred in accordance with the:
- 2.28.1 procedures and protocols agreed by the ALT; and
 - 2.28.2 prior written approval of the ALT.

Specialist Non-Wages Personnel Travel Costs

- 2.29 The treatment as Reimbursable Costs of any travel, relocation or accommodation costs or expenses for Specialist Non-Wages Personnel allocated to, or working on the Project and travelling to the Alliance place of work (and subsequently returning from the Alliance place of work to the normal place of work) will be restricted to those such costs and expenses determined and calculated on the basis that the:

- 2.29.1 AGM determines that there is a need for Specialist Non-Wages Personnel (whether local, intrastate, interstate or overseas);
- 2.29.2 AGM submits a recommendation, which identifies the total engagement cost/benefit analysis for the Specialist Non-Wages Personnel, to the ALT for approval prior to the earlier of confirming the selection of the Specialist Non-Wages Personnel or the arrival of the Specialist Non-Wages Personnel in Adelaide, as relevant;
- 2.29.3 ALT determines, on a case by case basis, that the nominated person is a Specialist Non-Wages Personnel; and
- 2.29.4 NOP has provided evidence to substantiate the cost, expense or allowance payable to, or in respect of, the nominated person is consistent with other similar projects (which projects must have been approved by the Principal as being similar) and standard operating procedure for the NOP and are value for money to the Principal.

To the extent that any Specialist Non-Wages Personnel travel, relocation or accommodation costs or expenses are, in whole or in part, treated, accounted or paid as an allowance to a Specialist Non-Wages Personnel, the Specialist Non-Wages Personnel travel, relocation or accommodation costs or expenses shall be adjusted in accordance with clause 2.4.

A schedule is to be submitted at the Request for Proposal stage where the relevant Specialist Non-Wages Personnel who will incur travel expenses shall be nominated and the proposed costs capped.

Other Non-Wages Personnel Costs

- 2.30 Any costs relating to a Non-Wages Personnel individual:
- 2.30.1 who is directly involved in performing the Alliance Activities; and
 - 2.30.2 under the direct control and direction of the AGM,

where it can be demonstrated on a historical basis and as part of standard operating procedure that the Non-Wages Personnel individual, or that category of Non-Wages Personnel, are:

2.30.3 not ordinarily performing or fulfilling a project focussed or specific role; and

2.30.4 the costs of the Non-Wages Personnel individual, or that category of Non-Wages Personnel, are not recovered as part of corporate overhead recovery,

will be a Reimbursable Cost.

Outbound Alliance Travel

2.31 An outbound Alliance travel policy will be developed for personnel travel away from the nominated Alliance place of work for Alliance specific travel needs. All outbound Alliance specific travel expenses including transfers, accommodation, meals and per diems incurred in accordance with the outbound Alliance specific travel policy (prepared after consideration of the Participants' individual policies and procedures) recommended by the AGM and accepted by the ALT will be a Reimbursable Cost.

Defects

2.32 Any costs to rectify or make good any Loss, rework non-conformance or Defects or to take care of the Alliance Activities, the Works and the Site will be a Reimbursable Cost.

Training and Inductions

2.33 All Alliance specific training costs and Site inductions (including occupational health and safety inductions) agreed or recommended by the ALT will be a Reimbursable Cost.

Safety

2.34 All personal protective or site safety equipment, occupational health and safety requirements and the cost or expense to provide and maintain a safe working environment and to take all practicable steps to ensure the safety of all persons performing or affected by any aspect of the Alliance Activities will be a Reimbursable Cost. All materials and equipment, the costs of which are Reimbursable Costs claimed under this clause 2.34, must be included in the materials and equipment register as detailed in clause 2.16.

Taxes and Duties

2.35 To the extent determined by the ALT, all taxes, duties, excises, levies (excluding the Construction Industry Training Levy), assessments and other charges of any kind levied by any Authority on, or in connection with, the Alliance Activities and the Works will be a Reimbursable Cost.

2.36 All fringe benefits tax benefits or related benefits:

2.36.1 must be transparent and disclosed to the Principal; and

2.36.2 which are beyond reasonable benefit limits must be approved by the Principal.

2.37 Any NOP who has obtained a benefit from the receipt of a research and development tax concession in the performance of the Alliance Activities must equally share the benefit of the research and development tax concession with the Participants.

Replacement of Bus Services

- 2.38 All costs relating to the provision of replacement bus and other transportation services required for affected road users during road closures, together with communications and staff costs relating to the road closures, will be Reimbursable Costs.
- 2.39 NOT USED
- 2.40 NOT USED

IT Costs

- 2.41 Subject to clause 2.42, the following information technology (IT) costs will be a Reimbursable Cost:

- 2.41.1 IT support for staff on the Site, including corporate software and systems and Alliance specific software and hardware;
- 2.41.2 IT system administrator which is Alliance specific;
- 2.41.3 use, purchase or upgrade of software and licences within Site office, including corporate and Alliance specific (e.g. payroll and accounting);
- 2.41.4 IT network and hardware including desktops, printers, monitors, servers, telephones, mobile phones and associated data plans et cetera;
- 2.41.5 installation of Site based or Alliance specific LAN/WAN; and
- 2.41.6 IT operating costs, including phone charges, internet charges and consumables,

to the extent that these IT costs are not otherwise reimbursed or accrued as part of any RCM or form part of the standard operating corporate overhead of the NOP as calculated as forming part of the Fee.

Residual revenue from sale at end of project of all items, the cost of which are Reimbursable Costs over \$1000 covered under this clause 2.41, purchased by the Alliance will be included in the AOC.

- 2.42 IT personnel, software, network, hardware and operating costs must:
- 2.42.1 be procured in accordance with the IT Management Plan and the Procurement and Contracting Strategy as approved by the ALT;
 - 2.42.2 in respect of specialist software packages, be pre-approved by the ALT on the recommendation of the AGM on a Best for Project basis; and
 - 2.42.3 in respect of items valued at over \$1000, be recorded on the Alliance asset register.
- 2.43 For the purposes of clause 2.41 and 2.42, the ALT should refer to clause 2.11 as guidance for determining whether these IT costs should be reimbursed.

Credit and Rebates

- 2.44 All cash, trade and industry discounts and rebates obtained by one of the Participants shall be credited against the AOC including any annual or company

discounts from Subcontractors, suppliers, vendors, bulk discounts and company/inter-company discounts and rebates.

- 2.45 All tax credits, rebates, exemptions or concessions and the like or minimisation of customs duty received, collected or credited by a Participant for Alliance Activities shall be credited against the TOC and the AOC. All other credits or rebates received, collected or credited by a Participant for the Alliance Activities will be credited against the AOC.

Related Entity Transaction

- 2.46 The cost of any transaction with a Related Entity will be a Reimbursable Cost on the basis that the transaction with a Related Entity:

- 2.46.1 will be treated as an external supply;
- 2.46.2 must be procured on a Best for Project basis;
- 2.46.3 must be competitively market tested or validated by alternative appropriate methods which may include the independent estimator; and
- 2.46.4 must be approved by the ALT on the recommendation of the AGM.

Other Reimbursable Costs

- 2.47 Subject to clause 3.1, all other costs or expenses that the ALT determines are Reimbursable Costs shall be submitted to the Principal for approval.
- 2.48 The costs and expenses incurred by Participants in undertaking specified independent design certification and independent construction verification will be a Reimbursable Cost.

ALT Approval of Policy and Procedures

- 2.49 Subject to clause 3.1, there will be no payment of an item, cost or expense with respect to which a policy or procedure is to be produced pursuant to the Agreement as Reimbursable Costs unless and until the ALT has approved a policy or procedure or the ALT has expressly approved the item, cost or expense prior to the NOP incurring the item, cost or expense.

Guarantee or Undertaking

- 2.50 The costs and expenses of providing and maintaining the Deed of Guarantee and unconditional undertaking in accordance with clause 9 of the Agreement will be a Reimbursable Cost.

Mandated TOC Allowances

- 2.51 Costs and expenses incurred by Participants in undertaking special media events to an aggregate amount of \$500,000.00, provided that such special media events are determined as such and approved by the ALT, will be a Reimbursable Cost.

Impacts of Land Acquisition/Easements

- 2.52 All costs resulting from time related and/or any other impacts (including scope changes) to the Project Program and/or productivity resulting from:

2.52.1 land acquisition (and any associated site preparation works including any demolition, services disconnection and/or property boundary modification); and/or

2.52.2 obtaining easements,

that may be required in connection with the Works will be a Reimbursable Cost.

Sustainability

2.53 All costs relating to registration necessary to achieve sustainability ratings, including but not limited to verification, certification and entering into an agreement with the Infrastructure Sustainability Council of Australia, will be a Reimbursable Cost.

Utility Services

2.54 All costs incurred in respect of Utility Services forming part of the Works, including those costs resulting from Utility Service relocation including protection, staging, interruption, loss of productivity, rework, inefficiency or delay of the Works caused by the presence of and/or any work required in connection with Utility Services, will be a Reimbursable Cost.

2.55 All costs incurred in connection with the management and coordination of the Principal Utility Services (as defined in the Project Scope forming part of the CSCR), from the date of the Agreement, and all costs incurred in connection with the management and coordination of all Utility Services forming part of the Works.

2.56 All costs incurred in connection with time related and/or other impacts (including scope changes) of the Principal Utility Services will be a Reimbursable Cost.

Statutory Approvals

2.57 All costs incurred after the Commencement Date resulting from statutory approvals specified in the CSCR to be obtained by the Participants and required for the Project will be a Reimbursable Cost.

ECI AD Phase Maximum Price

2.58 The ECI: AD Approved Proposal Payment Amount paid under the ECI Alliance Development Agreement, subject to an Audit undertaken pursuant to clause 18.22 (inclusive) of the Agreement, will be a Reimbursable Cost

2.59 If the ECI: AD Phase Audit determines that the actual costs incurred by the Participant in the delivery of the accepted RFP Proposal exceeds the ECI: AD Approved Proposal Payment Amount paid under the ECI Alliance Development Agreement, then the ECI: AD Approved Proposal Payment Amount shall constitute the Reimbursable Cost and the TOC will not be adjusted.

2.60 If the amount determined pursuant to the ECI: AD Phase Audit is less than ECI: AD Approved Proposal Payment Amount paid under the ECI Alliance Development Agreement:

- 2.60.1 the amount determined by the AD Phase Audit shall constitute the Reimbursable Cost;
- 2.60.2 the Designer NOP shall repay the difference between the amount of costs determined by the ECI: AD Phase Audit and the ECI: AD Approved Proposal Payment Amount paid under the ECI Alliance Development Agreement to the Principal (if the latter amount has been paid by the Principal); and
- 2.60.3 the TOC will not be adjusted.

ALLIANCE PRELIMINARIES COSTS (IF REQUIRED)

- 2.61 Alliance Preliminaries Costs comprising cost items described by the NOPs in Schedule AC7 of the Agreement, which include (without limitation) on site overheads, IT costs, environmental management, security, insurances, travel, survey establishment including temporary benchmarks shall be Reimbursable Costs.

SURPLUS PLANT, MATERIALS AND EQUIPMENT (IF REQUIRED)

- 2.62 All plant, materials, equipment and any other item purchased for the Alliance Activities which are "surplus" to the Principal's requirements:
 - 2.62.1 must be notified to the Principal as soon as practicable that there is a "surplus"; and
 - 2.62.2 shall at the Principal's Determination be realised or sold at fair market value and the proceeds of the sale shall be credited, without deduction or set-off, to the Principal and not against any previously incurred Reimbursable Costs.
 - 2.62.3 The Principal may retain at its discretion any plant, materials, equipment and any other item purchased for the Alliance Activities which are "surplus" to requirements.

3. NON-REIMBURSABLE COSTS

- 3.1 The Participants acknowledge and agree that the following items, costs and expenses are not Reimbursable Costs:
 - 3.1.1 any amount paid or payable by or on behalf of a Participant to a supplier to the extent that the Participant is entitled to claim and retain an Input Tax Credit in respect of that payment;
 - 3.1.2 any contribution to corporate overhead costs or expenses or any profit or unreasonable advantage from the utilisation of people, plant, equipment or resources;
 - 3.1.3 any off Site administrative or support function which is not:
 - (a) directly involved in performing the Alliance Activities; and
 - (b) under the direct control and direction of the AGM;
 - 3.1.4 labour and salary costs of the ALT representatives in their performance of ALT duties under the Agreement;

- 3.1.5 any and all Loss suffered or incurred by a Defaulting Participant arising out of or in connection with a Default or an indemnity provided under clause 32.13 of the Agreement;
- 3.1.6 costs incurred by a NOP as a result of an Audit where the Audit identifies that a NOP has committed a Wilful Default;
- 3.1.7 any and all Loss suffered or incurred by the infringing Participant or indemnifying party arising out of or in connection with the infringement of a third party's Intellectual Property Rights;
- 3.1.8 any and all Loss suffered or incurred by the Principal arising out of or in connection with a failure by a NOP to comply strictly with the GST Act or the indemnity under clause 19.7 of the Agreement;
- 3.1.9 any fine, penalty or sanction imposed by a court or other Authority or under any Regulatory Requirement upon a Participant;
- 3.1.10 any legal expense defending or appealing against any action, fine, penalty or sanction, sought or imposed by a court or an Authority or under any Regulatory Requirement;
- 3.1.11 save where otherwise determined by the ALT, any taxes, duties, excises, levies or similar charges including:
- (a) corporate or personal income tax or capital gains tax imposed on a Participant;
 - (b) GST; and
 - (c) penalties and fines imposed on a Participant;
- 3.1.12 any cost or expense incurred by a Participant prior to the Commencement Date except for:
- (a) the ECI: AD Approved Proposal Payment Amount (as defined in the Alliance Development Agreement); and
 - (b) such other activities approved by the Principal;
- 3.1.13 subject to clauses 2.41 and 2.42, the equipment a person commonly brings to a project in order to perform their occupation (**standard tools of trade**);
- 3.1.14 any direct payments by the Principal to relevant Utility Service providers in respect of the Principal Utility Services (as defined in the Project Scope forming part of the CSCR);
- 3.1.15 any costs relating to the acquisition of land (and any associated site preparation works including any demolition, services disconnection and/or property boundary modification), and/or the obtaining of any easements, by the Principal (save for costs of the type referred to in clause 2.52);
- 3.1.16 any premiums for insurance policies effected by the Principal under clauses 23.1 and 23.3 of the Agreement will be paid by the Principal and will not be incorporated into the TOC. The NOPs have no entitlement to recover any Fee on these premiums;

- 3.1.17 any amounts that the Principal is contractually required to pay under the ARTC Licence other than those described in clauses 2.12 and 2.13 (such costs being payable directly by the Principal outside of the Alliance);
- 3.1.18 the cost of all plant, materials, equipment and any other item purchased by the Principal for the Alliance Activities which are "surplus" to the Principal 's requirements, and the Participants note that the Principal must be notified as soon as practicable that there is a "surplus" and any such plant, materials, equipment and other items:
- (a) shall at the Principal 's Determination be realised or sold at fair market value and the proceeds of the sale shall be credited, without deduction or set-off, to the Principal and not against any previously incurred Reimbursable Costs; and
 - (b) The Principal may retain at its discretion any plant, materials, equipment and any other item purchased for the Alliance Activities which are "surplus" to requirements;
- 3.1.19 any and all costs or expenses (including legal costs and expenses) arising out of or in connection with:
- (a) save as where otherwise specifically provided for in this Schedule 3, mobilising, recruitment and relocation of resources (including personnel) on the basis that the Participants "come as a fully resourced team";
 - (b) making resources redundant on the principle that the Participant seeks to utilise the employee in its 'home office' or seeks to engage the employee on a different basis (e.g. term contract) rather than making that employee redundant;
 - (c) payments in excess of an employee's contract of employment or statutory award or enterprise bargaining agreement entitlement;
 - (d) employee's employment entitlements increasing beyond accruals in a RCM, provisions for increase in leave entitlements due to increases in salary or leave escalation;
 - (e) finance, administration and cash flow fees, charges and costs;
 - (f) pre-existing medical conditions and medical examinations for current employees nominated for the Project;
 - (g) business development and professional development which is not specific to the Alliance;
 - (h) all corporate training, including cost of training and cost of time of attending the training;
 - (i) other than expressly approved by the ALT in accordance with clause 2.6 and calculated in accordance with clause 2.3, overtime or time in excess of an employee's standard working or normal hours;
 - (j) bonuses payable to any Participant's personnel on the principle that bonuses for corporate performance should be

- paid out of the corporate overheads and bonuses for project outcomes should be paid out of the Risk/Reward Regime;
- (k) other than expressly approved by the ALT in accordance with clause 2.6 and calculated in accordance with clause 2.3, project allowances, living away from home allowances or any other allowances;
 - (l) negotiation of any industrial agreements and attendance at any industrial agreement meetings on the principle that the NOP's "come as a fully resourced team";
 - (m) donations and sponsorships;
 - (n) professional library (including periodicals, books and publications);
 - (o) any duplication of information technology systems;
 - (p) IT support staff or system administrator from corporate head office;
 - (q) software development costs associated with corporate software;
 - (r) any alliance or corporate entertainment;
 - (s) all legal costs, unless the ALT authorises in accordance with clause 2.27 and 2.28;
 - (t) plant and equipment at rates in excess of either the actual cost to the NOP of owning or operating the plant and equipment or the best rate currently available in the market, whichever is Best for Project;
 - (u) senior executives or other personnel performing corporate support, corporate governance, corporate risk review or internal audit functions or activities;
 - (v) peer review (excluding Alliance technical reviews required to achieve MCOS) services or activities for the Alliance;
 - (w) subject to clauses 2.13 and 2.14, costs to relocate, establish, mobilise or demobilise non-specialist staff; and
 - (x) the performance of any Alliance Activities which are not directly referable to the Works;
 - (y) any expert determination, mediation or adjudication to resolve a Dispute under clause 6.4 of the Agreement or any resolution of any payment issue in accordance with Schedule 9 of the Agreement;
 - (z) any costs to engage alliance facilitators or coaches in excess of \$100,000.00;
 - (aa) subject to clauses 2.29 and 2.31, travel (including costs and expenses in connection with transfers, accommodation, meals and per diems); and

- (bb) any other cost, expense, taxes, duties, excise, levies or similar charges that the ALT determines are not a Reimbursable Cost.

Reimbursable Costs that do not form part of the TOC

- 3.2 The Participants acknowledge and accept that the following items, costs and expenses will be Reimbursable Costs, but have not been incorporated into the TOC and will not be incorporated into the TOC in the event of any adjustment to the TOC or the Commercial Framework for the purpose of any Adjustment Event:
- 3.2.1 any insurance deductibles paid or payable under any insurance policy in connection with the Agreement; and
- 3.2.2 legal and litigation expenses associated with defending claims on the Alliance in accordance with clauses 2.27 and 2.28.

Reimbursable Costs during delay

- 3.3 If the Constructor NOP is delayed (for any reason) in reaching Completion such that the Actual Completion Date is later than 16 May 2024, the period between such dates shall constitute a "Program Overrun".
- 3.4 A NOP will not be entitled to any Reimbursable Costs incurred during the first 14 calendar day period of Program Overrun, provided that if the aggregate value of Reimbursable Costs foregone by the NOPs pursuant to this clause equals \$600k the NOPs entitlement to Reimbursable Costs shall thereafter resume.

4. FEE

Calculation of Fee

- 4.1 The Fee payable by the Principal to the NOPs in accordance with the Agreement is calculated as the sum of the following:
- Constructor NOP Fee = C% of the Constructor NOP's Reimbursable Costs component of the TOC
- Designer NOP Fee = D% of the Designer NOP's Reimbursable Costs component of the TOC
- where:
- C and D are the percentages nominated in Schedule AC5.
- 4.2 Each Participant's Fee is a fixed amount subject only to adjustment in line with TOC adjustments and then only to the extent that any TOC adjustment involves adjustment to a Participant's Reimbursable Costs component of the TOC.
- 4.3 Each Participant's Fee will be paid by reference to the relevant Reimbursable Costs claimed as part of each payment claim issued under the Agreement until that Participant's Fee is paid in full.
- 4.4 In the event that the final Performance Adjustment payment becomes due prior to the entire Fee having been paid to a Participant, that Participant shall be entitled to payment of the balance of the Fee at the same time as the payment of the final Performance Adjustment.

- 4.5 Each NOP's NOP Percentage is the percentage of the Fee represented by that part of the Fee payable to that NOP in accordance with clause 4.1.

5. RISK/REWARD REGIME

General

- 5.1 Payment to the NOPs will include the Performance Adjustment, which may be positive or negative.
- 5.2 Subject to clause 5.3, the Performance Adjustment is the sum of the:
- 5.2.1 Cost Overrun Payment or Cost Underrun Payment; and
 - 5.2.2 total non-cost KRA Performance Adjustment.
- 5.3 The total Performance Adjustment payable by the NOPs to the Principal pursuant to clause 5.2 must not exceed an amount equivalent to the Fee.
- 5.4 The adjustment made to the payment due to each NOP will be commensurate with each NOP's NOP Percentage.

Cost Overrun or Cost Underrun

- 5.5 If the AOC is greater than the TOC:
- 5.5.1 $\text{Cost Overrun} = (\text{AOC} - \text{TOC})$, and
 - 5.5.2 a Cost Overrun Payment will be payable in accordance with clause 5.6.
- 5.6 As part of the Performance Adjustment the NOPs must pay to the Principal a Cost Overrun Payment equal to the sum of the amount which is the lesser of 50% of the Cost Overrun, and the Fee.
- 5.7 If the AOC is less than the TOC:
- 5.7.1 $\text{Cost Underrun} = (\text{TOC} - \text{AOC})$, and
 - 5.7.2 a Cost Underrun Payment will be payable in accordance with clause 5.8.
- 5.8 As part of the Performance Adjustment, the Principal must pay to the NOPs a Cost Underrun Payment equal to the sum of the amount which is the lesser of 50% of the Cost Underrun, and the Fee.
- 5.9 If the AOC is equal to the TOC there is no Cost Overrun or Cost Underrun.
- 5.10 As part of the Performance Adjustment and pursuant to clauses 5.6 and 5.8 the amount of any Cost Overrun Payment is payable by the NOPs to the Principal and the amount of any Cost Underrun Payment is payable by the Principal to the NOPs.

Non-Cost KRA Performance Adjustment

- 5.11 The non-cost KRA Performance Adjustment (as per Schedule 5) provides NOPs with incentives to exceed MCOS for the specific KRAs identified in Table 1 of this Schedule 3 where the Principal has determined that exceeding MCOS will improve the overall value for money outcome achieved by the Principal.

TABLE 1

Non-Cost KRA	Weighting (%)
Completion and Program	
Traffic Performance	
Workforce Participation	
Stakeholder & Community Management	
Alliance Resourcing	
Alliance Health	

Performance Spectrum

- 5.12 The non-cost KRA Performance Adjustment is based upon the Participants' performance in the non-cost KRAs Determined by the Principal and measured in accordance with specific Measures for each KPI within a KRA as defined within the Performance Spectrum at Schedule 5.
- 5.13 A Performance Spectrum is defined for each KPI with an associated Performance Score from -100 (Fail), to 0 (MCOS), to +100 (Exceptional). The Performance Spectrum is defined as follows:
- 5.13.1 **Exceptional** – performance that exceeds MCOS and meets the measures for Exceptional defined by the Principal for each KPI;
 - 5.13.2 **MCOS** – performance expected by the Alliance as defined by the measures for MCOS defined by the Principal for each KPI; and
 - 5.13.3 **Failure** – performance that fails to achieve the MCOS and represents the measures for Failure defined by the Principal for each KPI.
- 5.14 Where the KPS in each individual KRA is:
- 5.14.1 in the range of -100 (Fail) to less than MCOS (0), KRA Performance Adjustment will be payable by the NOPs to the Principal;
 - 5.14.2 equal to MCOS (0) no KRA Performance Adjustment is payable or receivable in respect of that KRA; or
 - 5.14.3 in the range of greater than 0 (MCOS) to +100 KRA Performance Adjustment will be payable by the Principal to the NOPs.
- 5.15 To incentivise the Participants to exceed the MCOS the Principal must establish the non-cost KRA Performance Reward Pool, the value which will be equal to \$4,915,090 million.
- 5.16 Total non-cost KRA Performance Adjustment equals the sum of KRA Performance Adjustment for each KRA (provided, however, that where the sum of the KRA Performance Adjustment for each KRA is a negative number, the total non-cost KRA Performance Adjustment shall be deemed to equal zero).
- 5.17 Each NOP shall be entitled to their NOP's Percentage (as defined in clause 4.5) of the total non-cost KRA Performance Adjustment.
- 5.18 For each non-cost KRA, where the Participants' performance is less than MCOS KRA Performance Adjustment will be calculated in accordance with the following:

$$\text{KRA(i) Performance Adjustment} = \frac{\text{KPS for KRA(i)}}{(100)} \times \text{Weighting KRA(i)} \times \$ \text{ million}$$

Where:

- 5.18.1 KPS is the Performance Score for a non-cost KRA calculated in accordance with Schedule 5 to the Agreement; and
- 5.18.2 Weighting KRA (i) is the weighting for a KRA as set out in Table 1 of this Schedule 3.
- 5.19 For each KRA, where the Participants' performance exceeds MCOS the KRA Performance Adjustment will be calculated in accordance with the following:

$$\text{KRA(i) Performance Adjustment} = \frac{\text{KPS for KRA (i)}}{(100)} \times \text{Weighting KRA(i)} \times \$ \text{ million}$$

Where:

- 5.19.1 KPS is the average Performance Score for a KRA calculated in accordance with the Performance Spectrum; and
- 5.19.2 Weighting KRA (i) is the weighting for a KRA as set out in Table 1 of this Schedule 3.

6. ENTITLEMENT AND LIABILITY

Payment Due

6.1 Subject to the issue of a payment schedule by the Principal in accordance with clause 18.6 of the Agreement, payment is due from the Principal to the NOPS or from the NOPS to Principal at the following times:

Stage of Agreement	Payment Due
Prior to the date of Completion:	<ul style="list-style-type: none"> • Reimbursable Costs; and • Fee.
Within the later of (i) 70 Business Days after the issue of the Certificate of Completion, and (ii) 10 Business Days of the Principal Determining that it has been provided with sufficient correct information to calculate	<ul style="list-style-type: none"> • Reimbursable Costs; • Fee; and • 90% of the interim Performance Adjustment if the adjustment is positive; or • 100% of the interim Performance

the interim Performance Adjustment:	Adjustment if the adjustment is negative.
Within the later of (i) 70 Business Days after the issue of the Final Certificate, and (ii) within 10 Business Days of the Principal Determining that it has been provided with sufficient correct information to calculate the final Performance Adjustment:	<ul style="list-style-type: none"> • Reimbursable Costs; • Fee; and • the final Performance Adjustment.

Calculation of the Interim Performance Adjustment at Completion

- 6.2 Within 40 Business Days after the issue of the Certificate of Completion, the ALT must Determine the:
- 6.2.1 TOC at the date of Completion (as adjusted) in accordance with the Agreement on or before the date of Completion;
 - 6.2.2 Participants' performance against the KRAs to Completion; and
 - 6.2.3 effect of any Performance Adjustment.
- 6.3 Within 60 Business Days after the issue of the Certificate of Completion, the ALT must calculate any Performance Adjustment and provide a recommendation to the Principal accordingly.
- 6.4 The Principal must independently consider and apply the Risk/Reward Regime to the ALT's calculation. If the Principal considers the calculation to be incorrect, it must advise the ALT accordingly and the ALT must provide a replacement recommendation which is correct.
- 6.5 When the Principal determines that the ALT's recommendation is correct, it must issue a payment certificate.

Calculation and Payment of Performance Adjustment at Expiry of the Defects Liability Period

- 6.6 Within 40 Business Days after the expiry of the final Defects Liability Period and issue of the Final Certificate, the ALT must Determine the:
- 6.6.1 TOC at the expiry of the final Defects Liability Period (as adjusted) in accordance with the Agreement;
 - 6.6.2 AOC to the expiry of the final Defects Liability Period;
 - 6.6.3 Participants' performance against the KRAs from the Commencement Date to the expiry of the final Defects Liability Period; and
 - 6.6.4 effect of any Risk/Reward Regime to the expiry of the final Defects Liability Period.
- 6.7 Within 60 Business Days after the expiry of the final Defects Liability Period the ALT must re-calculate any Performance Adjustment payment and provide a recommendation to the Principal accordingly.
- 6.8 The Principal must independently consider and apply the Risk/Reward Regime to the ALT's calculation. If the Principal considers the calculation to be incorrect,

it must advise the ALT accordingly and the ALT must provide a replacement recommendation which is correct.

- 6.9 When the Principal Determines that the ALT's recommendation is correct, it must issue a payment certificate.

Trend Analysis and Suspension of Fee

- 6.10 The ALT must ensure that appropriate procedures are put in place to allow an appropriate trending analysis of the Performance Adjustment.
- 6.11 Notwithstanding clause 6.1, if, at any time during the performance of the Alliance Activities, the ALT determines that the Participant's performance in any element which is subject to the Performance Adjustment is expected to be negative, the ALT must immediately:
- 6.11.1 direct the AGM to take whatever reasonable steps are available, on a Best for Project basis, to remedy the situation and improve the Participants' performance; and
 - 6.11.2 suspend the payment of (but not the entitlement to) the Fee to the NOPs to the extent necessary to cover the NOPs' liability to pay the Performance Adjustment, which suspension of payment will be effective for the period commencing on the date determined by the ALT and ending on the date the final Performance Adjustment payment is due or such earlier date recommended by the ALT and Determined by the Principal.

Payment Adjustments

- 6.12 The ALT must review all payments of Reimbursable Costs or Fee, Performance Adjustment, for any adjustment at the:
- 6.12.1 time of any audit, inspection or investigation carried out in accordance with the Agreement;
 - 6.12.2 issue of the Certificate of Completion; and
 - 6.12.3 issue of the Final Certificate.
- 6.13 The Participants acknowledge and accept that all entitlements and liabilities under this Schedule 3 are subject to audit, inspection, investigation and adjustment in accordance with clauses 10.4 to 10.9 of the Agreement.

7. ACKNOWLEDGEMENT

- 7.1 The Principal will pay (exclusive of GST) to the NOPs costs and expenses incurred by the NOPs in preparing the TOC during the Request for Proposal stage, the amount as submitted and agreed in accordance with the RFP: AD Agreement entered into between the Participants in connection with this Project.

SCHEDULE 4 – ALLIANCE MANAGEMENT FRAMEWORK

Example



[Insert name of Project]
No. **[Insert number]**

PAA SCHEDULE 4:

ALLIANCE MANAGEMENT FRAMEWORK

**ALT****1.1 ALT**

- 1.1.1 The Participants must establish the ALT. The ALT will:
- (a) establish and implement the strategic leadership and direction of the Alliance;
 - (b) establish and implement transparent governance and accountability structures for the Alliance; and
 - (c) remain accountable to the Principal for the performance of the Alliance.
- 1.1.2 The Principal is entitled to appoint 2 representatives to the ALT, and subject to paragraph 1.1.3, the Constructor NOP is entitled to appoint 2 representatives to the ALT, and the Designer NOP is entitled to appoint 1 representative to the ALT.
- 1.1.3 The Principal may by written notice to the Constructor NOP or the Designer NOP (as appropriate) change the number of representatives that the Constructor NOP or the Designer NOP (as appropriate) may appoint to the ALT (provided that the Constructor NOP and the Designer NOP shall each always be entitled to appoint at least 1 representative to the ALT).
- 1.1.4 Subject to paragraph 1.3.2(d), the Participants are entitled to remove and replace their representatives in their sole discretion by written notice to the other Participants.
- 1.1.5 Every ALT Determination must be made unanimously by those present at a quorate ALT meeting on a Best for Project basis.
- 1.1.6 Subject to Clause 7 of the Agreement, every ALT Determination is binding upon the Participants.
- 1.1.7 The ALT must comply with the accountabilities and responsibilities in Table 1 of this Schedule 4.

1.2 ALT Membership

- 1.2.1 A Participant's ALT representative is authorised to represent the Participant on any matter relating to the Alliance and this Agreement.
- 1.2.2 A decision by a Participant's ALT representative (or representatives acting jointly where there is more than 1 representative of a Participant at any ALT meeting) is binding on the Participant.
- 1.2.3 Each Participant is entitled to nominate by written notice to the other Participants an alternate representative to attend a specific ALT meeting in place of that Participant's representative (for the avoidance of doubt, any Participant that is entitled to appoint more than 1 representative to the ALT can appoint an alternate representative in respect of any of their representatives). Where an alternate representative attends an ALT meeting, that alternate representative has the powers and obligations of an ALT representative as though they are the Participant's ALT representative.
- 1.2.4 If a Participant believes that compliance with an ALT decision would cause the Participant to do or omit to do anything that contravenes any Law or the Participant's constituent statute, constitution, memorandum or articles of association, the Participant need not comply with the decision but must immediately give notice to the remaining Participants providing the details of the contravention and the Participant's Best for Project proposals to resolve any such contravention.

1.3 ALT Meetings

- 1.3.1 A quorum for an ALT meeting requires the attendance of at least:
- (a) one ALT representative appointed by the Principal; and
 - (b) one ALT representative appointed by each NOP.



1.3.2 Each Participant:

- (a) must ensure that each ALT alternate representative appointed by it that attends an ALT meeting fully briefs the non-attending ALT representative of that Participant on all matters arising from the ALT meeting;
- (b) acknowledges that their ALT representatives' continuous representation on, involvement in and attendance at ALT meetings is critical to the success of the Project;
- (c) must use their best endeavors to ensure that:
 - (i) during periods of critical activity and decision making, each ALT representative (as opposed to an alternate) attends each ALT meeting; and
 - (ii) thereafter each ALT representative (as opposed to an alternate) attends at least three out of every four ALT meetings; and
- (d) commits to a principle of not removing or replacing its ALT representative and not allowing substitutes, alternates or delegates to attend ALT meetings, other than in the event of a personal conflict of interest or in exceptional circumstances.

1.3.3 Where a NOP removes or replaces an ALT representative other than in the circumstances set out in paragraph 1.3.2(d) immediately above, the Principal may Determine that the costs of removing or replacing the ALT representative (including any costs incurred in familiarising a new ALT representative with the Alliance or the Works) will not be a Reimbursable Cost.

1.3.4 The following protocols will regulate the business of ALT meetings:

- (a) there will be a secretary appointed for the ALT;
- (b) The secretary will be provided by a NOP and the secretary will not be an ALT member or the AGM;
- (c) ALT meetings will be held at times determined by the ALT;
- (d) the Principal will be entitled to appoint one of its representatives on the ALT to be Chair of the ALT;
- (e) the ALT may invite third parties to ALT meetings to provide any assistance with or input into matters to be considered at the ALT meetings;
- (f) the Participants agree that the ALT may delegate any general administrative function to the ALT Chair, the Principal or an ALT representative;
- (g) the ALT will agree a schedule of future ALT meetings on a 3 to 6 month forward schedule;
- (h) whilst the ALT has a declared preference to meet in person, a representative may, provided adequate notice is provided to all ALT representatives, participate in an ALT meeting by video or telephone conference;
- (i) An ALT representative may not attend an ALT meeting by video or telephone conference for 3 ALT meetings in succession unless doing so is necessary in order to comply with government restrictions on meetings in person or travel to meetings;
- (j) ALT meetings shall be characterised by a commitment to a peer relationship amongst the ALT representatives where all participants have an equal say.

ALT Agenda

1.3.5 The ALT agenda will be determined in accordance with the following:



- (a) the AGM, after consultation with the AMT, shall provide the ALT with the ALT agenda and discussion papers for any item on the ALT agenda no later than 5 Business Days prior to the ALT meeting or as otherwise agreed by the ALT;
- (b) papers provided by the AGM will be clear, concise and contain recommendations;
- (c) a Participant may, within 3 Business Days of receipt of the ALT agenda, request the ALT to add a new item of business to the ALT agenda (but in respect of which discussion papers will not be submitted);
- (d) the ALT secretary shall add the new item of business to the ALT agenda and immediately distribute the amended ALT agenda to all ALT representatives; and
- (e) the Participant proposing the new item of business must, no later than 6 Business Days prior to the next ALT meeting, provide the ALT secretary with a discussion paper and any relevant information regarding the new item of business added to the ALT agenda in order that the discussion paper and any additional relevant information can be distributed as contemplated by paragraph 1.3.5(a) above.
- 1.3.6 The ALT agenda and discussion papers will be prepared on the principle that:
- (a) early, open and honest communication with 'no surprises' should be achieved; and
- (b) ALT representatives will not be expected to unanimously agree on any material issue not set out in the ALT agenda.

ALT Minutes

- 1.3.7 The secretary will attend all ALT meetings and prepare minutes to record all decisions and actions arising out of an ALT meeting.
- 1.3.8 The ALT Chair or AGM will distribute the minutes of an ALT meeting within 5 Business Days after the ALT meeting to which they relate. A participant must inform the ALT Chair of any objection it has to the minutes. The minutes will be accepted as part of the following ALT meeting. Any objection to the minutes will be minuted at this ALT meeting with minutes being amended and redistributed to the ALT.

Accountable for:	As tested by:	Responsible for the completion of the following tasks:
1. Development and deployment of an "Alliance Charter" for the Alliance	<ul style="list-style-type: none"> Creation of the Alliance Charter 	1.1. Create vision purpose for the Alliance
		1.2. Align on the governing Alliance Principles
		1.3. Deploy and sign off on Alliance purpose, Alliance Principles, Alliance Objectives, Alliance behaviours and working together commitments.
		1.4. Develop strategy to deploy strategic framework throughout the Alliance
		2.1. Endorsement of Alliance



TABLE 1: ALLIANCE LEADERSHIP TEAM ACCOUNTABILITIES AND RESPONSIBILITIES		
Accountable for:	As tested by:	Responsible for the completion of the following tasks:
2. Deployment of a transparent governance framework across the Alliance	<ul style="list-style-type: none"> Creation of Alliance systems and controls 	organisational structures
		2.2. Preparation of job description of AGM
		2.3. Appointment of AGM
		2.4. Performance management of AGM
		2.5. Endorsement of job descriptions of AGM and AMT members
		2.6. Endorse succession plans for key functions
		2.7. Establish ALT modus operandi (including meeting, management and leadership protocols)
		2.8. Approve limits of delegation and authority for AGM and
		2.9. AMT
		2.10. Endorse Alliance issue escalation and decision making processes.
		2.11. Resource the deployment of the management systems plans and controls necessary for the Alliance to achieve MCOS in KRAs and Alliance Objectives
		2.12. Endorse management system
		2.13. Approve the Alliance Management Plans systems and controls in accordance with the CSCR
		2.14. Initiate internal and third party management system audits, review reports and act on findings
3. Delivery and performance of obligations under the PAA	<ul style="list-style-type: none"> Audit against PAA checklists 	3.1. Monitor Alliance performance against checklists as set out in Appendix 2
4. The Alliance achieving MCOS or better in the KRAs and Alliance Objectives	<ul style="list-style-type: none"> Performance against KPIs 	4.1. Maintain team focus on KRAs.
		4.2. Adopt the reporting requirements required by the Principal
		4.3. Maintain future focus on Alliance Activities
5. Ensuring that reporting to the Principal is timely, accurate and comprehensive.	<ul style="list-style-type: none"> Audit against reporting Feedback from the Principal's Representative 	5.1. Ensure Alliance reporting meets the Principal's reporting requirements
		5.2. Monitor Principal satisfaction with reporting and respond to assure satisfaction



TABLE 1: ALLIANCE LEADERSHIP TEAM ACCOUNTABILITIES AND RESPONSIBILITIES		
Accountable for:	As tested by:	Responsible for the completion of the following tasks:
6. Structuring and resourcing the Alliance so as to be able to achieve MCOS in all KRAs	<ul style="list-style-type: none"> • Organisation charts • People in position • Job Descriptions 	6.1. Endorse organisational structures changes across the Project lifecycle
		6.2. Develop principles of selection, succession and access to people
		6.3. Ensure Best for Project resources are provided to meet the demands of the staffing plan and curve
7. Ensuring all ALT decision making is unanimous.	<ul style="list-style-type: none"> • Audit of minutes of ALT meetings 	7.1. Endorse which issues require resolution/decision by ALT
		7.2. Document outcomes of ALT issues resolution and decision making
8. Creating and sustaining a culture necessary to achieve Exceptional Performance in all nominated KRAs and Objectives	<ul style="list-style-type: none"> • Alliance health checks and surveys 	8.1. Monitor health of Alliance and act on any health issues
9. Implementation of the Principal's directions under the PAA	<ul style="list-style-type: none"> • Feedback from the Principal • Compliance 	9.1. Define ALT leadership style and its practical application in Project delivery (include in modus operandi – see 2.7 of this Table above).
10. Providing the leadership necessary for the Alliance to achieve MCOS in all KRAs	<ul style="list-style-type: none"> • Performance against KPIs. • AGM and AMT feedback 	10.1. Obtain feedback from AGM and AMT on ALT leadership performance
11. Ensuring that all actions, decisions and behaviours are consistent with Alliance Principles	<ul style="list-style-type: none"> • Alliance health check • ALT self and third party assessments against strategic framework 	11.1. Develop ALT behavioural checklist (include in modus operandi – see 2.7 of this Table above)
		11.2. Establish and deploy ALT health check process and plan
		11.3. Deployment of Alliance Principles
12. Approval of Defects that are identified prior to Completion	<ul style="list-style-type: none"> • Compliance with the PAA 	12.1. Review and agree the Defects required to be rectified prior to Completion
13. Approval of Special Media Events	<ul style="list-style-type: none"> • Costs considered reasonable by the Principal 	13.1. Review and agree the scope and expenditure for Special Media Events

2 AGM

- 2.1 The AGM will be appointed, removed and replaced by the ALT on a Best for Project basis.
- 2.2 The AGM will report directly to the ALT.
- 2.3 The ALT will conduct periodic performance and development reviews of the AGM's performance of its role in the Alliance.



2.4 The AGM must comply with the AGM accountabilities and responsibilities defined in Table 2.

TABLE 2: ALLIANCE GENERAL MANAGER ACCOUNTABILITIES AND RESPONSIBILITIES		
Accountable for:	As tested by:	Responsible for the completion of the following tasks:
1. Deployment of the Alliance Charter of Alliance Principles, Alliance Objectives, Alliance purpose and Alliance behaviours throughout the Alliance, such that Alliance team members at all levels of the Alliance (including sub-contractors) understand the elements of the Alliance Charter and their part in its delivery	<ul style="list-style-type: none"> • Display of Alliance Charter across the Site • Feedback from Alliance team members 	1.1. Display prominently elements of Alliance Charter at all Alliance worksites
		1.2. Inclusion of Alliance Charter in inductions
		1.3. Integrate Alliance Charter in job descriptions
		1.4. Monitoring performance of the Alliance against Alliance Charter
2. Development, endorsement and implementation of the organisational structure	<ul style="list-style-type: none"> • Organisational structure 	2.1. Develop organisational structure and update to reflect changes
		2.2. Develop staffing plans in accordance with organisational structures and schedule
		2.3. Resource the team according to the staffing plan
3. Development and deployment of AMT and AMT member job descriptions	<ul style="list-style-type: none"> • Job descriptions 	3.1. Develop job descriptions for AMT members
		3.2. Performance management of AMT members
4. Development and deployment of a performance management process for the WPT	<ul style="list-style-type: none"> • Performance management process 	4.1. Develop performance management process
		4.2. Ensure performance management process is deployed
5. Establishing succession plans for key members of the AMT and WPT	<ul style="list-style-type: none"> • Succession plan 	5.1. Develop succession plans for AMT members and critical discipline leads and supervisors
		5.2. Develop succession plans for critical discipline leads and supervisors
		5.3. Endorse succession plans
6. Development and effective deployment of Alliance issue escalation and decision making processes	<ul style="list-style-type: none"> • Issue resolution and escalation protocol • Audit of issue resolution 	6.1. Develop issue escalation and decision making protocol
		6.2. Deploy protocol (e.g. include in inductions etc)
		6.3. Test use of protocol
7. Deployment of management systems appropriate to the delivery of outstanding outcomes in all KRAs across the Alliance	<ul style="list-style-type: none"> • System audit. 	Identify and select the management system most appropriate to
		7.1. KRA delivery
		Ensure the management system is capable of integration with
		7.2. the Principal's systems



**TABLE 2:
ALLIANCE GENERAL MANAGER ACCOUNTABILITIES AND RESPONSIBILITIES**

		7.3. Deploy the management system across the Alliance
		7.4. Train Alliance team members in system use
		7.5. Monitor system compliance
8. Development and deployment of management plans appropriate to the delivery of outstanding outcomes in all KRAs	<ul style="list-style-type: none"> Management plans Audit of plans. 	8.1. Development of management plans
		8.2. Deploy plans
		8.3. Monitor plan compliance.
9. Development and deployment of a reporting regime to meet ALT and the Principal needs	<ul style="list-style-type: none"> Alliance (monthly) report 	9.1. Ensure reports meet the Principal's and the ALT's needs
		9.2. Develop reports for ALT meetings.
		9.3. Present reports at ALT meetings
		9.4. Amend reports based on ALT feedback
10. Ensuring that the relevant obligations of the AGM and AMT are delivered	<ul style="list-style-type: none"> Compliance with the PAA 	10.1. Deliver AGM obligations
		10.2. Deliver AMT obligations
		10.3. Monitor and report on delivery of AGM and AMT obligations
11. Establishment, deployment and reporting of KPIs, performance spectrum and measurement methodologies for Alliance performance in KRAs	<ul style="list-style-type: none"> KPI reports 	11.1. Collate and analyse and display and report performance data.
		11.2. Act on performance data
12. The Alliance team maintaining its focus on achieving targets in all KRAs endorsed by the ALT, over the life of the project	<ul style="list-style-type: none"> Performance in KRAs 	12.1. Establish performance in KRAs on meeting agendas at all levels of the organisation
		12.2. Obtain personal commitments to contribute to KRA delivery
		12.3. Recognise and reward commitments to contribute
13. Development and deployment of a 'culture development and maintenance plan' that supports the delivery of the Project across the Alliance	<ul style="list-style-type: none"> Culture development and maintenance plan 	13.1. Develop culture development and maintenance plan
		13.2. Deploy culture development and maintenance plan
		13.3. Monitor compliance with plan and act accordingly
14. The AMT and WPT being led in a manner consistent with the ALT defined leadership philosophy and appropriate to the team maintaining its focus on achieving outstanding outcomes in all KRAs	<ul style="list-style-type: none"> Feedback from ALT, AMT and WPT 	14.1. Develop and model leadership behaviours consistent with the Alliance strategic framework and leadership philosophy
		14.2. Coach and mentor and monitor AMT leadership behaviours
15. Timely communication of information relevant to the performance of the Project to all project personnel	<ul style="list-style-type: none"> Feedback from project personnel 	15.1. Dissemination of relevant information from ALT to AMT and WPT
		15.2. Development of internal



**TABLE 2:
ALLIANCE GENERAL MANAGER ACCOUNTABILITIES AND RESPONSIBILITIES**

		communications strategy and plan for the Alliance and its Subcontractors
		15.3. Deployment of the internal communications strategy and plan
		15.4. Monitor feedback from team and act accordingly
16. The Commercial Framework and Risk/Reward model is modelled and tested and the Risk/Reward establishment protocol established		16.1. Test and model Risk/Reward arrangements in a number of scenarios.
		16.2. Provide Risk/Reward calculations to ALT in accordance with the PAA
		16.3. Disseminate relevant information about the Risk/Reward model across the Alliance
		16.4. Integrate Alliance Charter in job descriptions
		16.5. Monitoring performance of the Alliance against Alliance Charter

3 AMT AND WPT

- 3.1 The AMT is an integrated project management team formed by the Participants to perform the Alliance Activities.
- 3.2 The AMT must comply with this PAA Schedule 4.
- 3.3 The ALT has, in consultation with the AGM, appointed each member of the AMT on a best person for the job basis to create an integrated project team. The AMT will comprise the AGM, plus at least one representative from each Participant. The NOPs will not remove any of their people appointed to the AMT or any of the NOP Key Personnel without the ALT's consent or the approval of the Principal.
- 3.4 Where a NOP removes or replaces any of their people appointed to the AMT or any of the NOP Key Personnel without either the ALT's consent or the approval of the Principal, the Principal may Determine that the costs of removing or replacing such personnel (including any costs incurred in familiarising the personnel with the Alliance or the Works) will not be a Reimbursable Cost.
- 3.5 The ALT may, as required by the progress of Alliance Activities, or as recommended by the AGM, alter the composition or size of the AMT.
- 3.6 The WPT has been appointed by the AGM in consultation with the AMT as an integrated project team to perform the Alliance Activities on a Best for Project basis.
- 3.7 The AMT must comply with the AMT accountabilities and responsibilities defined in Table 3.



TABLE 3: ALLIANCE MANAGEMENT TEAM ACCOUNTABILITIES AND RESPONSIBILITIES		
Accountable for:	As tested by:	Responsible for the completion of the following tasks:
1. Prominent display of the Alliance's Alliance Charter at the Site	<ul style="list-style-type: none"> Site observation 	1.1. Production of Alliance Charter documents
		1.2. Display of Alliance Charter at sites
2. Inclusion of the Alliance's Alliance Charter at all inductions	<ul style="list-style-type: none"> Induction material 	2.1. Develop induction package
		2.2. Deliver inductions
3. Integration of the Alliance's Alliance Charter into job descriptions of all Alliance personnel	<ul style="list-style-type: none"> Job descriptions 	3.1. Develop job descriptions for each member of the Alliance (in this format – accountabilities, responsibilities format).
		3.2. Manage individual performance against job descriptions and act accordingly
4. Development of staffing/resource plans in alignment with organisational structure, and then implementing the plans	<ul style="list-style-type: none"> Staffing plan 	4.1. Develop initial staffing plan
		4.2. Update staffing plan as appropriate.
		4.3. Identify resource needs and gaps
5. Deployment of job descriptions for AMT members	<ul style="list-style-type: none"> AMT member job descriptions 	5.1. Set first performance management review meeting
6. Development of performance management process	<ul style="list-style-type: none"> Performance management procedure 	6.1. Develop performance management process
		6.2. Gain endorsement from AGM
		6.3. Post-endorsement, deploy performance management process with their team
7. Development of succession plans for critical discipline leads and supervisors	<ul style="list-style-type: none"> Succession plans 	7.1. Develop succession plans
		7.2. Gain endorsement from AGM
		7.3. Deploy succession plans as needed
8. Development and deployment of an issue escalation and decision making protocol for the Alliance	<ul style="list-style-type: none"> Issue escalation and decision making protocol 	8.1. Develop issue escalation and decision making protocol
		8.2. Gain endorsement from AGM
		8.3. Deploy issue escalation and decision making protocol in inductions and display at the Site
9. The management system most appropriate to KRA delivery is selected and deployed across all Alliance Sites	<ul style="list-style-type: none"> Operating management systems 	9.1. Identify and select management systems.
		9.2. Check ability of management systems to integrate with the Principal's systems
		9.3. Gain endorsement of



**TABLE 3:
ALLIANCE MANAGEMENT TEAM ACCOUNTABILITIES AND RESPONSIBILITIES**

		management systems by AGM
		9.4. Deploy management systems across all Alliance Sites
10. Ensuring training of Alliance team members in use of the management system	<ul style="list-style-type: none"> Training register 	10.1. Conduct training needs analysis
		10.2. Develop training modules and materials
		10.3. Produce training plan
		10.4. Train people to plan
11. Development and deployment of management plans necessary to deliver the Project	<ul style="list-style-type: none"> Management plans cover KRAs and all other aspects of the Project 	11.1. Develop management plans format
		11.2. Gain endorsement of management plan format
		11.3. Develop management plans
		11.4. Gain endorsement of management plans by AGM or ALT (through AGM)
		11.5. Deploy management plans
		11.6. Report on management plan/s delivery
		11.7. Develop management plan audit schedule
12. Producing accurate, complete and timely sections for ALT monthly report	<ul style="list-style-type: none"> Quality and timeliness of ALT report section AGM and ALT feedback 	12.1. Develop draft and final sections of monthly alliance management report to ALT
		12.2. Amend reporting based on AGM/ALT feedback
13. Production of PAA obligations and check sheet, and delivery of AMT obligations	<ul style="list-style-type: none"> Obligations check sheet 	13.1. Review PAA
		13.2. Identify and record obligations of ALT, AGM, AMT and others on checklist
		13.3. Gain endorsement of checklist from AGM
		13.4. Deliver and report on delivery of AMT member and other obligations
		13.5. Collate and analyse and display and report performance data
14. Obtaining personal commitments to contribute to KRA delivery from all Alliance personnel	<ul style="list-style-type: none"> Personal commitments register. 	14.1. Include 'personal commitment' section in inductions.
		14.2. Produce personal commitments register
		14.3. Review personal commitments in team meetings and reset as delivered
		14.4. Update personal commitments register
15. Development and deployment of a culture development and maintenance plan	<ul style="list-style-type: none"> Culture development and maintenance plan Culture surveys (Alliance 	15.1. Gain endorsement of Alliance peak performance plan by ALT



**TABLE 3:
ALLIANCE MANAGEMENT TEAM ACCOUNTABILITIES AND RESPONSIBILITIES**

	health & climate surveys)	15.2. Deploy Alliance peak performance plan
		15.3. Report outcomes of Alliance peak performance plan
16. Development and deployment of an internal communications strategy and plan for the Alliance and its Subcontractors.	<ul style="list-style-type: none"> Internal communications strategy and plan Culture surveys 	16.1. Gain endorsement of internal communications strategy and plan by AGM/ALT
		16.2. Deploy internal communications strategy
		16.3. Collect, analyse and report data on effectiveness of internal communications strategy and plan

4 STRUCTURE OF NOPS

4.1 The NOPS must maintain the structure described in Appendix 1.

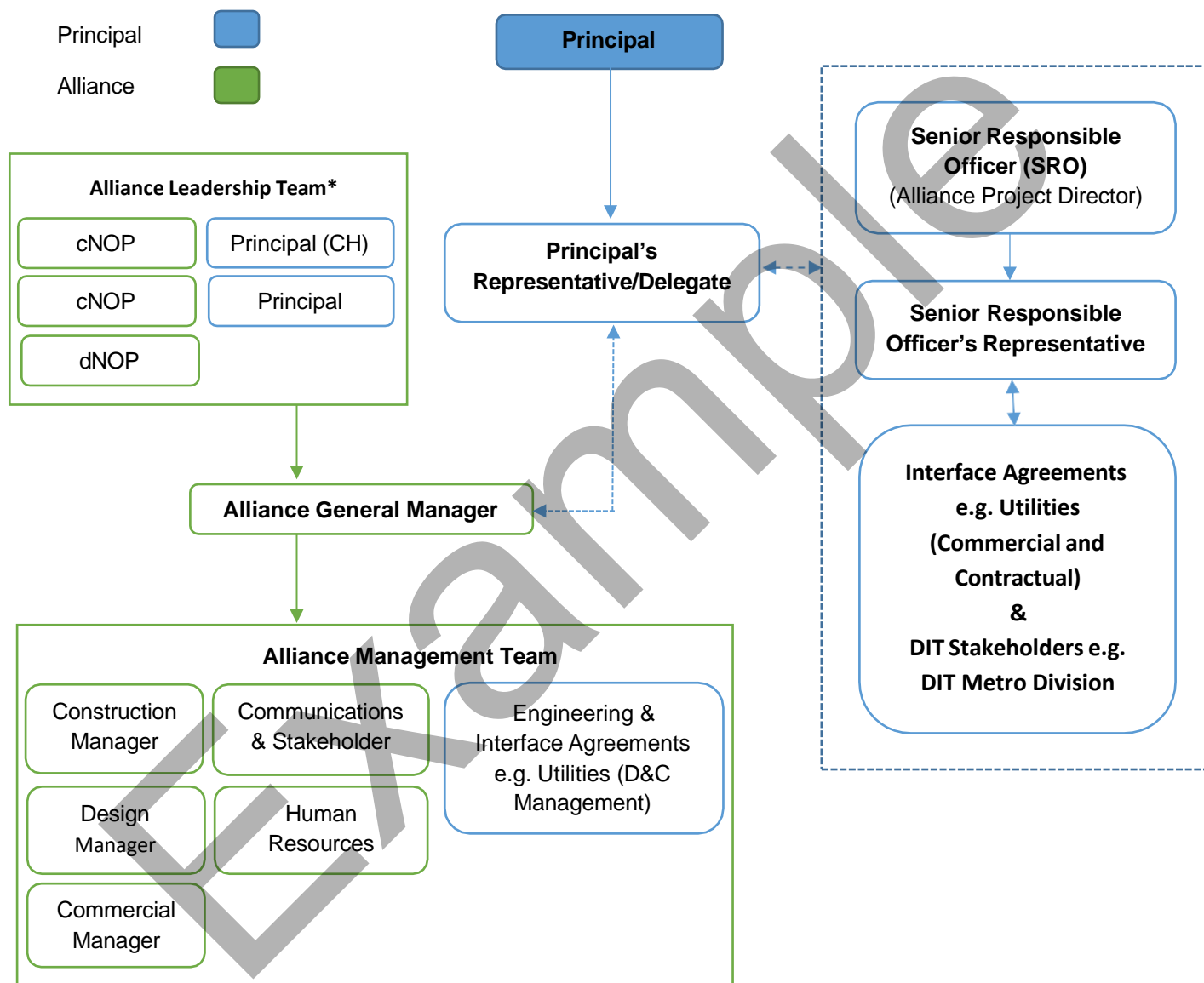
5 ALLIANCE

5.1 The Alliance leadership, strategy, performance and culture shall be developed in accordance with Schedule CC4 to the Agreement.



Appendix 1 – Governance Structure

Alliance Governance Structure



*Subject to adjustment as contemplated by paragraph 1.1.3



Appendix 2– Governance Checklists

Please grade the performance of the relevant governing body (*[ALT &/or AMT as appropriate]*) by selecting your assessment for each of the statement in the Assessment Criteria below. Completed assessments should be returned to *[insert name]* by *[insert date]*.

Appendix 2.0 Principal checklist on ALT	Needs Improvement	Meets requirements	High quality	N/A
ALLIANCE LEADERSHIP TEAM ACCOUNTABILITIES AND RESPONSIBILITIES CHECKLIST				
1. The governing body has established clearly defined governance policies and processes for the project.				
2. The governing body has ensured that Project goals align with DIT's strategic and operational objectives.				
3. The governing body has actively endorsed and approved project recommendations and changes.				
4. The governing body has defined and actively provided oversight in the project's gating processes.				
5. The governing body has actively been involved in the resolution and remediation of escalated project issues and risks.				
6. The governing body has actively been involved in defining key messages to be communicated to stakeholders.				
7. The governing body has provided oversight and guidance to ensure that the project team plans, measures, and achieves the expected project deliverables.				
8. The governing body and the project management team have open communications and constructive discussions.				
9. The governing body has provided leadership in enforcing, carrying out and/or communicating decisions.				
10. The governing body has approved project closure or termination.				
11. Overall, the governing body provided sufficient governance support to the project in terms of oversight, control, integration and decision-making.				
Membership and Skills				
12. The responsibilities and authority of the governing body are clearly defined, documented and well-understood by its members and key stakeholders.				
13. The membership of the governing body has the right mix of skills, experience and expertise.				
14. The governing body is made up of members that represent the interest of the primary stakeholders of the project: the users, the business, and the suppliers.				



15. The members of the governing body understand the project business case and its strategic alignment.				
16. The governing body has a clear understanding of issues important to the success of the project.				
17. The governing body spends most of its time on important issues.				
Information and Communication				
18. The governing body is provided with the right amount and level of information to monitor, make decisions, and measure the project(s) performance.				
19. The governing body is kept updated of trends and issues affecting the environment in which the project operates.				
20. The goals, expectations and concerns of the governing body has been effectively communicated to the project management team.				
21. The governing body fosters a climate that encourages serious enquiry and challenging discussion on all appropriate matters and issues.				
22. Communications of the governing body's activities to the authority it is accountable to are of an appropriate quality and the authority is kept well informed on a timely basis of the group's deliberations.				
Meeting Administration				
23. The governing body's meeting are well run and productive.				
24. Its work plan and/or meeting agenda is structured to address all key areas in its Terms of Reference.				
25. The agendas and supporting papers are of sufficient clarity and quality to make informed decisions.				
26. The governing body's meeting agenda are set to allow sufficient time to discuss the most complex and critical issues and project exceptions.				
27. The governing body's meeting minutes are appropriately maintained are of good quality.				
Additional Comments:				



Appendix 2.1:				
ALLIANCE LEADERSHIP TEAM ACCOUNTABILITIES AND RESPONSIBILITIES CHECKLIST	Needs Improvement	Meets requirements	High quality	N/A
1.1. Create vision purpose for the Alliance				
1.2. Align on the governing Alliance Principles				
1.3. Deploy and sign off on Alliance purpose, Alliance Principles, Alliance Objectives, Alliance behaviours and working together commitments				
1.4. Develop strategy to deploy strategic framework throughout the Alliance				
2.1. Endorsement of Alliance organisational structures				
2.2. Preparation of job description of AGM				
2.3. Appointment of AGM				
2.4. Performance management of AGM				
2.5. Endorsement of job descriptions of AGM and AMT members				
2.6. Endorse succession plans for key functions				
2.7. Establish ALT modus operandi (including meeting, management and leadership protocols)				
2.8. Approve limits of delegation and authority for AGM				
2.9. Approve limits of delegation and authority for AMT				
2.10. Endorse Alliance issue escalation and decision making processes.				
2.11. Resource the deployment of the management systems plans and controls necessary for the Alliance to achieve MCOS in KRAs and Alliance Objectives				
2.12. Endorse management system				
2.13. Approve the Alliance Management Plans systems and controls in accordance with the CSCR				
2.14. Initiate internal and third party management system audits, review reports and act on findings				
3.1. Monitor Alliance performance against checklist				
4.1. Maintain team focus on KRAs.				



4.2. Adopt the reporting requirements required by the Principal				
4.3. Maintain future focus on Alliance Activities				
5.1. Ensure Alliance reporting meets the Principal's reporting requirements				
5.2. Monitor Principal satisfaction with reporting and respond to assure satisfaction				
6.1. Endorse organisational structures changes across the Project lifecycle				
6.2. Develop principles of selection, succession and access to people				
6.3. Ensure Best for Project resources are provided to meet the demands of the staffing plan and curve				
7.1. Endorse which issues require resolution/decision by ALT				
7.2. Document outcomes of ALT issues resolution and decision making				
8.1. Monitor health of Alliance and act on any health issues				
9.1. Define ALT leadership style and its practical application in Project delivery (include in modus operandi – see 2.7 of this Table above)				
10.1. Obtain feedback from AGM and AMT on ALT leadership performance				
11.1. Develop ALT behavioural checklist (include in modus operandi – see 2.7 of this Table above)				
11.2. Establish and deploy ALT health check process and plan				
11.3. Deployment of Alliance Principles				
12.1. Review and agree the Defects required to be rectified prior to Completion				
13.1. Review and agree the scope and expenditure for Special Media Events.				



Appendix 2.2:				
ALLIANCE GENERAL MANAGER ACCOUNTABILITIES AND RESPONSIBILITIES	Needs Improvement	Meets requirements	High quality	N/A
1.1. Display prominently elements of Alliance Charter at all Alliance worksites				
1.2. Inclusion of Alliance Charter in inductions				
1.3. Integrate Alliance Charter in job descriptions				
1.4. Monitoring performance of the Alliance against Alliance Charter				
2.1. Develop organisational structure and update to reflect changes				
2.2. Develop staffing plans in accordance with organisational structures and schedule				
2.3. Resource the team according to the staffing plan				
3.1. Develop job descriptions for AMT members				
3.2. Performance management of AMT members				
4.1. Develop performance management process				
4.2. Ensure performance management process is deployed				
5.1. Develop succession plans for AMT members and critical discipline leads and supervisors				
5.2. Develop succession plans for critical discipline leads and supervisors				
5.3. Endorse succession plans				
6.1. Develop issue escalation and decision making protocol				
6.2. Deploy protocol (e.g. include in inductions etc)				
6.3. Test use of protocol				
Identify and select the management system most appropriate to				
7.1. KRA delivery				
Ensure the management system is capable of integration with				
7.2. the Principal' systems				
7.3. Deploy the management system across the Alliance				
7.4. Train Alliance team members in system use				
7.5. Monitor system compliance				
8.1. Development of management plans				
8.2. Deploy plans				



8.3. Monitor plan compliance				
9.1. Ensure reports meet the Principal' and the ALT's needs				
9.2. Develop reports for ALT meetings				
9.3. Present reports at ALT meetings				
9.4. Amend reports based on ALT feedback				
10.1. Deliver AGM obligations				
10.2. Deliver AMT obligations				
10.3. Monitor and report on delivery of AGM and AMT obligations				
11.1. Collate, analyse, display and report performance data				
11.2. Act on performance data				
12.1. Establish performance in KRAs on meeting agendas at all levels of the organisation				
12.2. Obtain personal commitments to contribute to KRA delivery				
12.3. Recognise and reward commitments to contribute				
13.1. Develop culture development and maintenance plan				
13.2. Deploy culture development and maintenance plan				
13.3. Monitor compliance with plan and act accordingly				
14.1. Develop and model leadership behaviours consistent with the Alliance strategic framework and leadership philosophy				
14.2. Coach and mentor and monitor AMT leadership behaviours				
15.1. Dissemination of relevant information from ALT to AMT and WPT				
15.2. Development of internal communications strategy and plan for the Alliance and its sub-contractors				
15.3. Deployment of the internal communications strategy and plan				
15.4. Monitor feedback from team and act accordingly				
16.1. Test and model Risk/Reward arrangements in a number of scenarios.				
16.2. Provide Risk/Reward calculations to ALT in accordance with the PAA				
16.3. Disseminate relevant information about the Risk/Reward model across the Alliance				
16.4. Integrate Alliance Charter in job descriptions				
16.5. Monitoring performance of the Alliance against Alliance Charter				



Appendix 2.3:				
ALLIANCE MANAGEMENT TEAM ACCOUNTABILITIES AND RESPONSIBILITIES	Needs Improvement	Meets requirements	High quality	N/A
Responsible for the completion of the following tasks:				
1.1. Production of Alliance Charter documents				
1.2. Display of Alliance Charter at Sites				
2.1. Develop induction package				
2.2. Deliver inductions				
3.1. Develop job descriptions for each member of the Alliance (in this format – accountabilities, responsibilities)				
3.2. Manage individual performance against job descriptions and act accordingly				
4.1. Develop initial staffing plan				
4.2. Update staffing plan as appropriate				
4.3. Identify resource needs and gaps				
5.1. Set first performance management review meeting				
6.1. Develop performance management process				
6.2. Gain endorsement from AGM				
6.3. Post-endorsement, deploy performance management process with their team				
7.1. Develop succession plans				
7.2. Gain endorsement from AGM				
7.3. Deploy succession plans as needed				
8.1. Develop issue escalation and decision making protocol				
8.2. Gain endorsement from AGM				
8.3. Deploy issue escalation and decision making protocol in inductions and display at the Site				
9.1. Identify and select management systems				
9.2. Check ability of management systems to integrate with the Principal's systems				
9.3. Gain endorsement of management systems by AGM				
9.4. Deploy management systems across all Alliance Sites				
10.1. Conduct training needs analysis				



10.2. Develop training modules and materials				
10.3. Produce training plan				
10.4. Train people to plan				
11.1. Develop management plans format				
11.2. Gain endorsement of management plan format				
11.3. Develop management plans				
11.4. Gain endorsement of management plans by AGM or ALT (through AGM).				
11.5. Deploy management plans.				
11.6. Report on management plan/s delivery				
11.7. Develop management plan audit schedule				
12.1. Develop draft and final sections of monthly alliance management report to ALT				
12.2. Amend reporting based on AGM/ALT feedback				
13.1. Review PAA				
13.2. Identify and record obligations of ALT, AGM, AMT and other on checklist				
13.3. Gain endorsement of checklist from AGM				
13.4. Deliver and report on delivery of AMT member and other obligations				
13.5. Collate, analyse, display and report performance data				
14.1. Include 'personal commitment' section in inductions.				
14.2. Produce personal commitments register				
14.3. Review personal commitments in team meetings and reset as delivered				
14.4. Update personal commitments register				
15.1. Gain endorsement of Alliance peak performance plan by ALT				
15.2. Deploy of Alliance peak performance plan				
15.3. Report outcomes of Alliance peak performance plan				
16.1. Gain endorsement of internal communications strategy and plan by AGM/ALT				
16.2. Deploy internal communications strategy				



16.3. Collect, analyse and report data on effectiveness of internal communications strategy and plan				
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Example

SCHEDULE 5 – RISK/REWARD REGIME

Example



[Insert name of Project]
No. **[Insert number]**

**PAA SCHEDULE 5:
RISK/REWARD REGIME**

EXAMPLE

ALLIANCE KRAs

Terms defined in the Agreement have the same meaning in the performance spectrum described in this Schedule 5 (**Performance Spectrum**).

A number of KRAs have been established for the Alliance. Where applicable, the KRA has also been allocated a weighting which determines its contribution towards the non-cost KRA Performance Adjustment. These are listed in the table below.

#	KRA Description	Regime Type	Weighting	KRA Description/Objective
1	Completion and Program	Non-Cost Performance	25%	Achieving the agreed cashflow is very important to the State and Commonwealth funding partners to give certainty on existing and future project commitments.
2	Traffic Performance	Non-Cost Performance	20%	Disruption to road and transport users are appropriate (planned) and well managed, with no unplanned disruptions.
3	Workforce Participation	Non-Cost Performance	25%	To ensure that the Tailored Industry Participation Plan commitments by the Participants are achieved or exceeded.
4	Stakeholder & Community Management	Non-Cost Performance	15%	Proactive engagement with the local community and key stakeholders (other than Small Businesses as defined in KPI 4-2) to mitigate Project and reputational impacts.
5	Alliance Resourcing	Non-Cost Performance	7%	To ensure that staff retention is a focus of the Alliance. The Alliance is incentivized to retain nominated key staff in for roles with agreed allocation of hours and durations in accordance with the approved Alliance organisation structure for each phase of the Project.
6	Alliance Health	Non-Cost Performance	8%	To encourage engagement and collaboration with key project stakeholders.
7	Benefits	Non-Cost Performance	0%	To encourage active management, ownership and reporting of benefits during the project.

Note that the Commercial Framework defines how Cost Overrun and Cost Underrun relating to the AOC against the TOC are subject to Performance Adjustment assessment.

KEY PERFORMANCE INDICATORS

KRA Measurement

KPIs are a method of performance measurement used to evaluate the success in achieving the applicable KRAs for the Alliance. A number of KPIs have been established with a specific focus on the non-cost performance KRAs.

The KPIs have been defined in a way that is understandable, meaningful, and measurable. In order to be evaluated, the KPIs are linked to measures (target values), so that the value of the measure can be assessed as meeting expectations or not.

The KPIs have also been designed to be independent to prevent a particular KPI being achieved at the expense of another.

Performance Spectrum

The required level of performance in relation to the KRAs (and associated KPIs) should, at the very minimum, meet the minimum standard acceptable to the Principal. This is referred to as the minimum condition of satisfaction (**MCOS**).

Therefore, in creating a “spectrum” of performance the Principal has defined:

- a) the MCOS performance level;
- b) a higher level of performance which is of value to it (if applicable); and/or
- c) lower levels of performance which are unacceptable.

The targets for each KPI not only set the criteria for acceptance of performance but also become drivers of behaviour.

The ALT is entitled to recommend a change the Performance Spectrum in relation to any KPI but any change will be subject to a final Determination by the Principal.

Sub-weighting

Each KRA may have separately identified and measurable components, each of which are given a sub-weighting.

In order to determine the overall score achieved in respect of a KRA, the scores achieved for each component will be multiplied by their sub-weighting and then aggregated.

The Performance Spectrum Definitions

The measurement scale for each KRA has been established by the Commissioner based on the following guidelines:

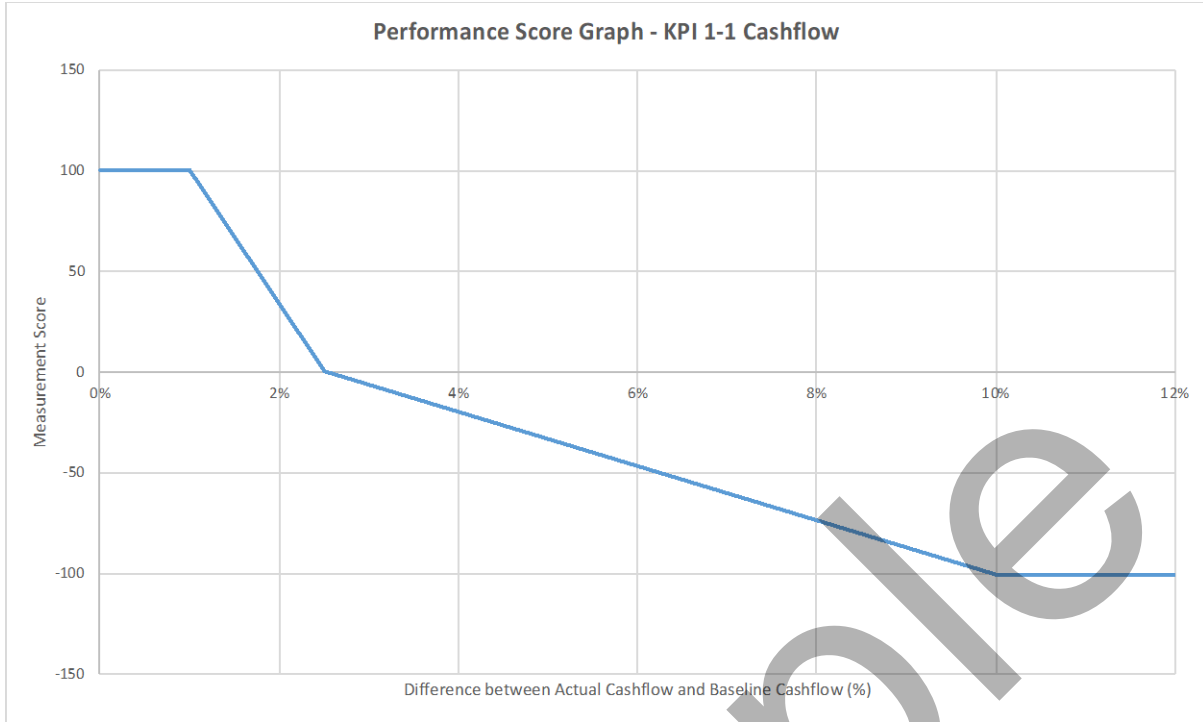
Exceptional (+61 to +100)	<ul style="list-style-type: none"> • Regarded as possible but at the time of setting the target don't know how to achieve it. • Will require new way(s) of thinking. • Committed to make it happen.
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Stretch (+31 to +60)	<ul style="list-style-type: none"> • Know how to achieve. • Would require systemic and repeated success.
Above MCOS (+1 to +30)	<ul style="list-style-type: none"> • Above expectations, but nothing exceptional.
Minimum Conditions of Satisfaction (0)	<ul style="list-style-type: none"> • Principal's minimum acceptable expectation of performance. • Level of performance that is commensurate with best in class performance.
Below MCOS (-1 to -30)	<ul style="list-style-type: none"> • Below expectations.
Poor (-31 to -60)	<ul style="list-style-type: none"> • Significant impact on Project. • Would require systemic and repeated failure • Unacceptable
Failure (-61 to -100)	<ul style="list-style-type: none"> • Significant (up to and including catastrophic) impact on Project • Regarded as possible, but at the time of setting the target wouldn't know how this could arise.

Completion and Program KRA

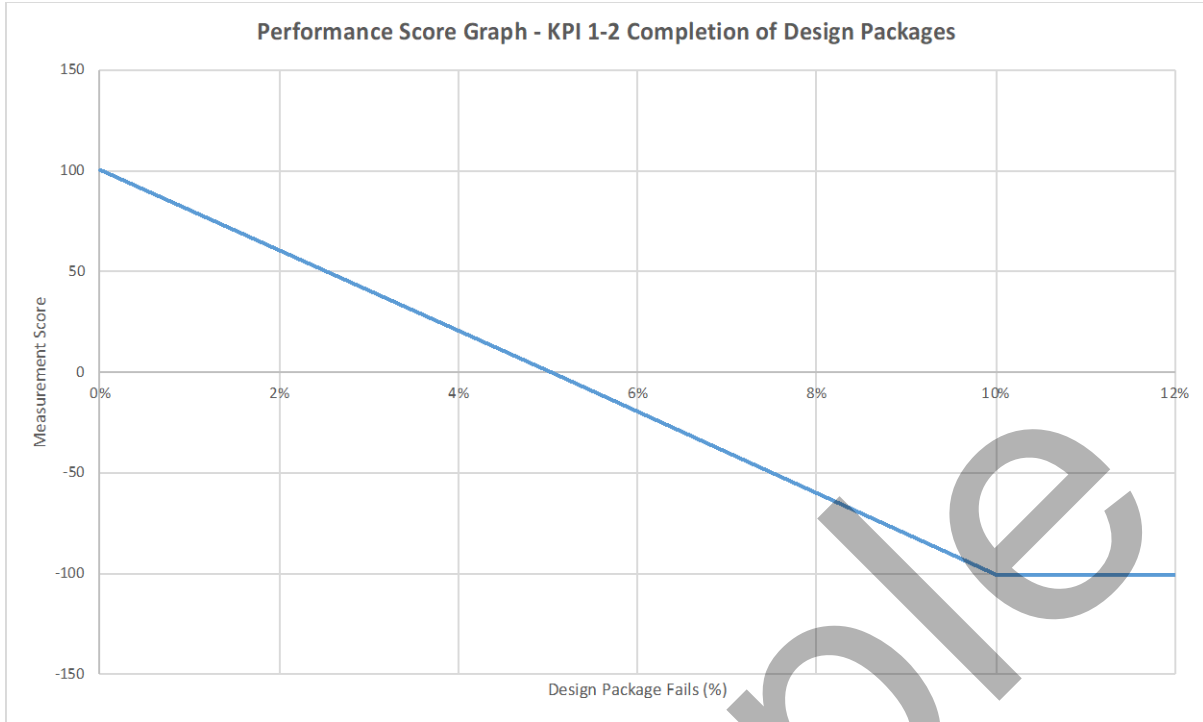
KRA 1	Completion and Program	Weighting: 25%	Regime Type: Non-Cost Performance
Measure (KPI)	KPI 1-1: Cashflow	Sub-Weighting: 60%	
Objective	Achieving the agreed cashflow is very important to the State and Commonwealth funding partners to give certainty on existing and future project commitments.		
Measurement Notes	<p>The cashflow to be assessed shall consist of all Participants' Reimbursable Costs and Fees as included in the TOC.</p> <p>The baseline cashflow (Baseline Cashflow) shall be the agreed cashflow at the Commencement Date which shall consist of projected monthly cashflow amounts from the Commencement Date to the date of Completion (Reporting Period).</p> <p>The Baseline Cashflow may be recalculated and adjusted:</p> <ul style="list-style-type: none"> (a) on or before the date being 5 months before the start of a Financial Year (in respect of all or part of that Financial Year); and/or (b) within 1 month of any Adjustment Event resulting in an adjustment to TOC in accordance with Agreement in respect of all or part of the remaining Reporting Period (subject to the below paragraph). <p>In the event that the Baseline Cashflow is recalculated as a result of an Adjustment Event as contemplated above, the recalculation shall only include the value and the effects of that Adjustment Event on the previously agreed Baseline Cashflow.</p> <p>For the purposes of this KRA, a Financial Year shall be each 12 month period, or part thereof, between July 1 and the following June 30 occurring during the Reporting Period.</p> <p>The Principal shall be provided with monthly cashflow reports which compares actual cashflow to Baseline Cashflow for the month.</p> <p>The actual cashflow for each relevant period (Actual Cashflow) shall be those amounts properly claimed in accordance with the terms of the Agreement during that period and shall be measured and subject to the Principal's financial auditor validation as deemed necessary.</p> <p><i>The Performance Score is calculated as follows:</i></p> <ol style="list-style-type: none"> 1. <i>The score achieved in respect of each Financial Year shall be determined as indicated below based on the degree to which the actual cashflow for that Financial Year deviates from the Baseline Cashflow for the same period.</i> 2. <i>The overall performance score for this KPI 1-1 shall be the average of the performance scores for each Financial Year provided, however, that each score shall be weighted according to how many calendar months (rounded to the nearest whole month) were included in the Financial Year to which that score relates.</i> 3. <i>By way of example, if the Commencement Date is 20 August 2019 and the date of Completion is 6 February 2022 and performance scores calculated as</i> 		

	<p>indicated below were as follows:</p> <p>(a) Financial Year 1 (20 August 2019 - 30 June 2020, 11 months) = 60</p> <p>(b) Financial Year 2 (1 July 2020 – 30 June 2021, 12 months) = 50</p> <p>(c) Financial Year 3 (1 July 2021 - 6 February 2022, 7 months) = 80</p> <p>then the overall performance score would be:</p> $[(60 \times 11) + (50 \times 12) + (80 \times 7)]/30 = 60 \frac{2}{3}$ <p>4. The performance score for each reporting period is calculated by interpolation when the score falls between two identified outcomes (where a specific score is not indicated for that range).</p> <p>5. For the avoidance of doubt, although the Baseline Cashflow shall be projected, and the Actual Cashflow reported, on a monthly basis, each relevant period is a Financial Year (or part thereof, as applicable) and the monthly amounts shall be aggregated as required to give the relevant Baseline Cashflow and Actual Cashflow for each relevant period.</p>		
<p>Outturn Performance Score (Traffic Light)</p>	<p>Fail to Below MCOS (-100) – (0)</p>	<p>MCOS 0</p>	<p>Above MCOS to Exceptional 0 – 100</p>
<p>Definition</p>	<p>Where there is a shortfall of Actual Cashflow compared to the Baseline Cashflow of between 2.5% (0) and 10% (-100) of the Baseline Cashflow amount</p> <p>Where the shortfall of Actual Cashflow compared to the Baseline Cashflow represents greater than 10% of the Baseline Cashflow amount the score is -100</p>	<p>Where there is a shortfall of Actual Cashflow compared to the Baseline Cashflow of 2.5% of the Baseline Cashflow amount</p>	<p>Where there is a shortfall of Actual Cashflow compared to the Baseline Cashflow of between 2.5% (0) and 1% (100) of the Baseline Cashflow amount</p> <p>Where the shortfall of the Actual Cashflow compared to the Baseline Cashflow is less than 1% of the Baseline Cashflow amount or where there the Actual Cashflow represents an overspend when compared to the Baseline Cashflow the score is 100</p>
<p>Measurement scale</p>	<p>-100 to 0</p>	<p>0</p>	<p>0 to 100</p>



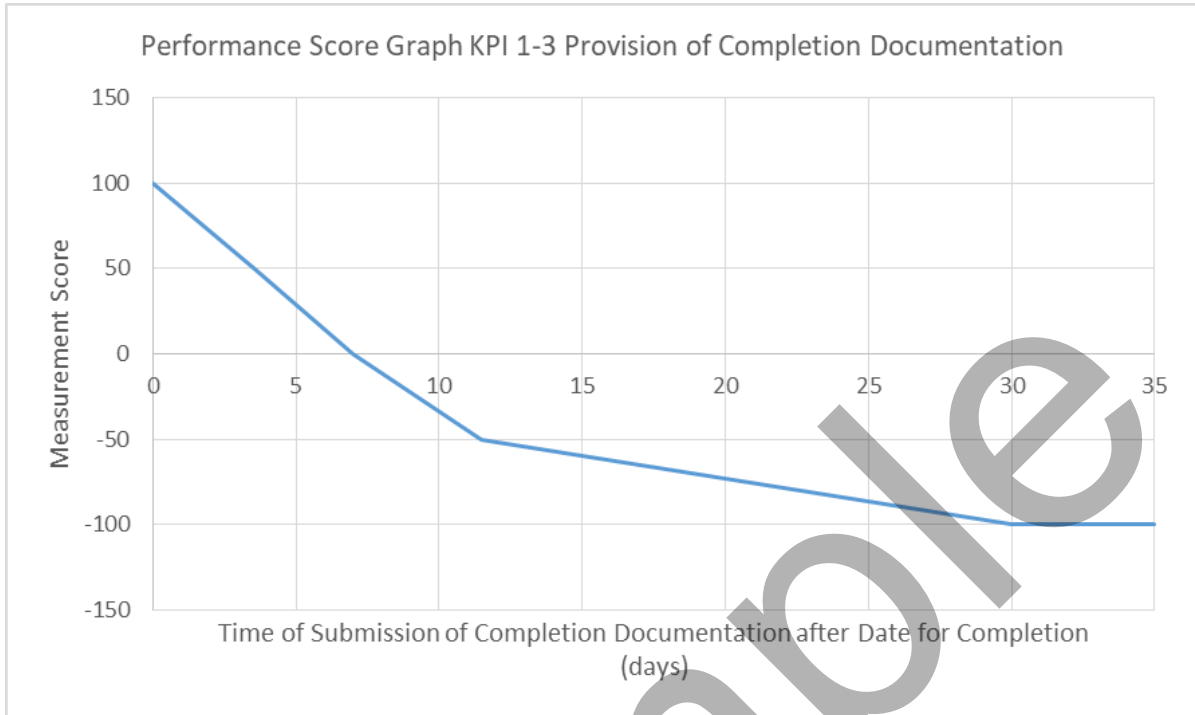
Example

KRA1	Completion and Program	Weighting: 25%	Regime Type: Non-Cost Performance
Measure (KPI)	KPI 1-2: Completion of design packages	Sub-Weighting: 20%	
Objective	<p>This KPI has been developed to ensure that the Participants' issued for construction (IFC) documentation for each permanent works design package required in connection with the Works (Design Package) are issued and Accepted prior to commencement of procurement of items required for, and/or construction of, the relevant Works associated with that Design Package.</p> <p>Acceptance of IFC documentation in respect of a Design Packages occurs when an appropriate signature is obtained from the relevant Engineering Authority.</p>		
Measurement Notes	<p>This KPI commences on the Commencement Date and continues until all IFC documentation in respect of all required Design Packages have been Accepted.</p> <p><i>The performance score for this KPI 1-2 is calculated as indicated below (and by interpolation when the score falls between two identified outcomes).</i></p> <p>The percentage below refers to the percentage of the total number of Design Packages where commencement of procurement of items required for, and/or construction of, the Works to which a Design Package relates has started prior to Acceptance of that Design Package (without prior ALT approval) (a Design Package Fail).</p> <p>For the purposes of this KPI:</p> <ul style="list-style-type: none"> (a) Commencement of procurement occurs when either a legally binding contract has been signed in respect of the purchase of any relevant items (where such relevant items are not required to be manufactured to order) or manufacture of any relevant items commences (where such items are required to be manufactured to order); and (b) The procurement of generic items (being items in regular use whose purchase is not dependent on any particular design forming a Design Package being approved) on a Good Faith basis shall be excluded. <p>Participants will be provided with monthly updates as regards the number of Design Package Fails during that month.</p>		
Outturn Performance Score (Traffic Light)	Fail to Below MCOS (-100) – (0)	MCOS 0	Above MCOS to Exceptional 0 – 100
Definition	<p>Unacceptable number of Design Package Fails being more than 5% (0) to 10% (-100)</p> <p>More than 10% Design Package Fails results in a score of -100</p>	<p>Expected number of Design Package Fails being 5% (0)</p>	<p>Less than expected number of Design Package Fails being less than 5% (0) to 0% (100)</p>
Measurement scale	-100 to 0	0	0 to 100



Example

KRA 1	Completion and Program	Weighting: 25%	Regime Type: Non-Cost Performance
Measure (KPI)	KPI 1-3: Provision of Completion Documentation	Sub-Weighting: 20%	
Objective	To ensure that the Participants' complete documentation requirements and Completion Documentation (as defined below) has been submitted (and not subsequently rejected by the Principal) in accordance with the Alliance contractual requirements and preferably well in advance of the Date for Completion.		
Measurement Notes	<p>This KPI measures the submission (without subsequently being rejected by the Principal) of all required Completion Documentation to the Principal.</p> <p><i>The performance score for this KPI is calculated by reference to the number of days prior to the Date for Completion on which all Completion Documentation required under the Agreement to be submitted to the Principal were submitted to the Principal (and where no such documents were subsequently rejected by the Principal).</i></p> <p>Completion Documentation consists of the completion documents specified in the CSCR and include:</p> <ul style="list-style-type: none"> a. Quality Records, Certificates & Reports including Lot Packages b. As constructed Drawings c. Training and Handover Documentation d. Inspection, Maintenance and Operation Manuals e. Road Safety Audit f. Services Design Model 		
Outturn Performance Score (Traffic Light)	Fail to Below MCOS (-100) – (0)	MCOS 0	Above MCOS to Exceptional 0 – 100
Definition	<p>The last of the Completion Documentation is submitted to the Principal between 7 days (0) and 30 days (-100) after to the Date for Completion (and no such documents are subsequently rejected by the Principal)</p> <p>Where the last of the Completion Documentation is submitted to the Principal more than 30 days after the Date for Completion the score is -100</p>	<p>The last of the Completion Documentation is submitted to the Principal 7 days after the Date for Completion (and no such documents are subsequently rejected by the Principal)</p>	<p>The last of the Completion Documentation is submitted to the Principal on or between 7 days (0) after the Date for Completion and the Date for Completion (100) (and no such documents are subsequently rejected by the Principal)</p> <p>Where the last of the Completion Documentation is submitted to the Principal prior to the Date for Completion (and no such documents are subsequently rejected by the Principal) the score is 100</p>
Measurement scale	-100 to 0	0	0 to 100

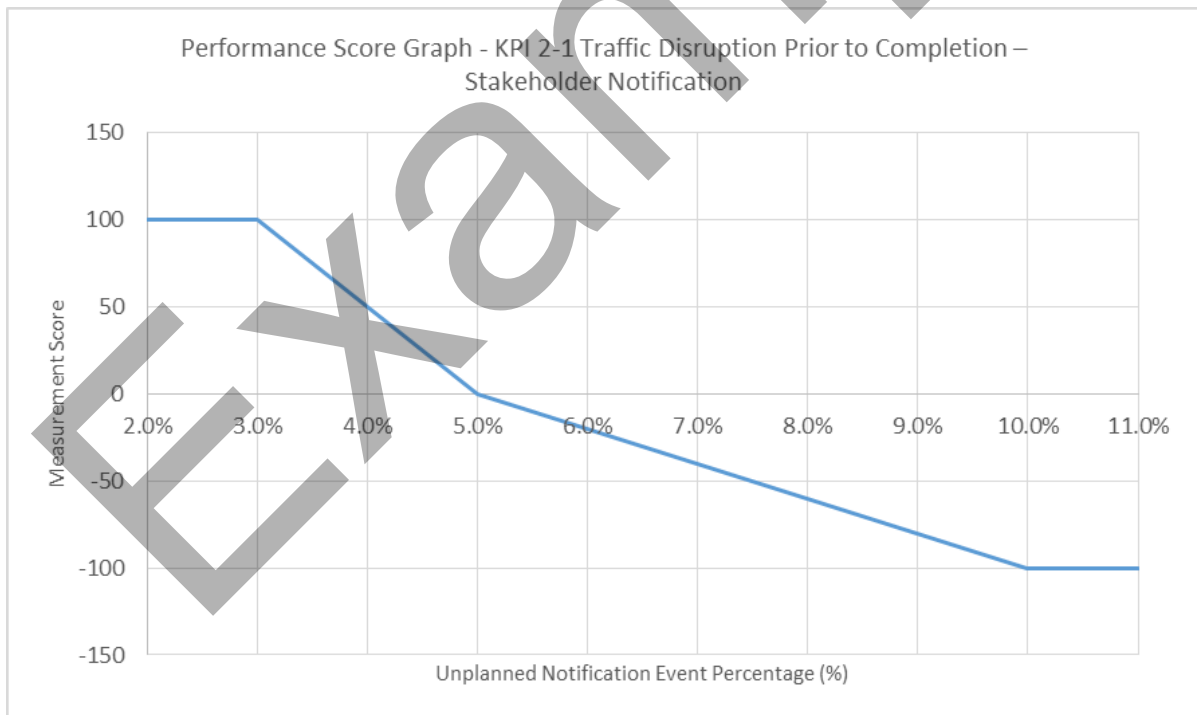


Example

Traffic Performance KRA

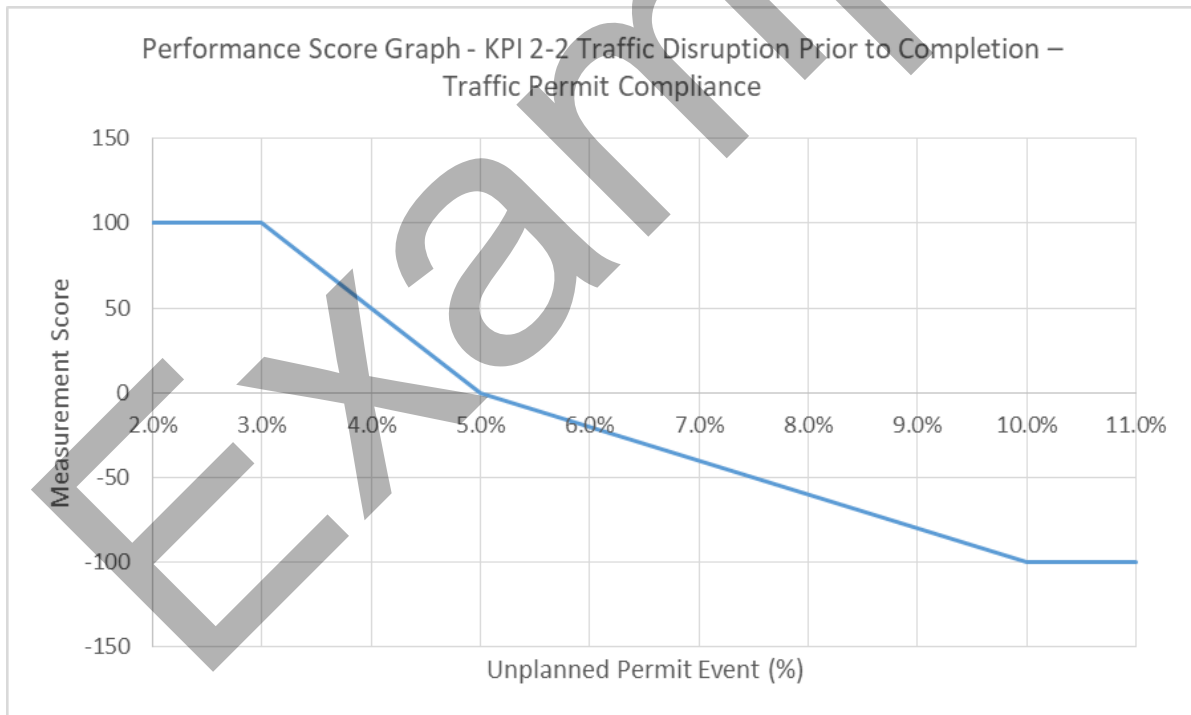
KRA 2	Traffic Performance	Weighting: 20%	Regime Type: Non-Cost Performance
Measure (KPI)	KPI 2-1: Traffic Disruption Prior to Completion – Stakeholder Notification	Sub-Weighting: 20%	
Objective	Disruption to road and transport users are appropriate (planned) and well managed, with no unplanned disruptions.		
Measurement Notes	<p>This KPI has been developed to ensure that the Participants thoroughly plan all traffic management requirements, and that any Unplanned Notification Events (as defined below) are avoided.</p> <p>The aim of this KPI is to ensure that road users are informed of restrictions which may or will have significant impacts to travel time and that such restrictions do not exceed any advertised periods so that road users can elect to take alternative routes during the relevant periods.</p> <p><i>The performance score for this KPI 2-1 is calculated as follows:</i></p> <ol style="list-style-type: none"> 1. <i>Planned Notification Events and Unplanned Notification Events shall be measured during the period from the Commencement Date until the date of Completion.</i> 2. <i>A Planned Notification Event is an event involving traffic disruption where a media release and/or stakeholder notification is required to be given in accordance with the CSCR and where:</i> <ol style="list-style-type: none"> (a) <i>appropriate notification is given as required by the CSCR; and</i> (b) <i>the works undertaken by the Participants in respect of such event comply with the terms of approval given in respect of such event by the Principal.</i> 3. <i>An Unplanned Notification Event is an event involving traffic disruption where a media release and/or stakeholder notification is required to be given in accordance with the CSCR and where:</i> <ol style="list-style-type: none"> (a) <i>appropriate notification is not given as required by the CSCR; and/or</i> (b) <i>the works undertaken by the Participants in respect of such event do not comply with the terms of approval given in respect of such event by the Principal.</i> 4. <i>Participants will be provided with monthly updates as regards the number of Planned Notification Events and Unplanned Notification Events completed during that month.</i> 5. <i>The performance score for this KPI 2-1 is calculated as indicated below (and by interpolation when the score falls between two identified outcomes).</i> 6. <i>The percentage below refers to the percentage of the total number of Planned Notification Events and Unplanned Notification Events represented by Unplanned Events.</i> 		

Outturn Performance Score (Traffic Light)	Fail to Below MCOS (-100) – (0)	MCOS 0	Above MCOS to Exceptional 0 – 100
Definition	Unplanned Notification Event percentage being from greater than 5% (0) to 10% (-100) An Unplanned Notification Event percentage of more than 10% results in a score of -100	Unplanned Notification Event percentage is 5% (0)	Unplanned Notification Event percentage being from 3% (100) to less than 5% (0) An Unplanned Notification Event percentage of less than 3% results in a score of 100
Measurement scale	-100 to 0	0	0 to 100



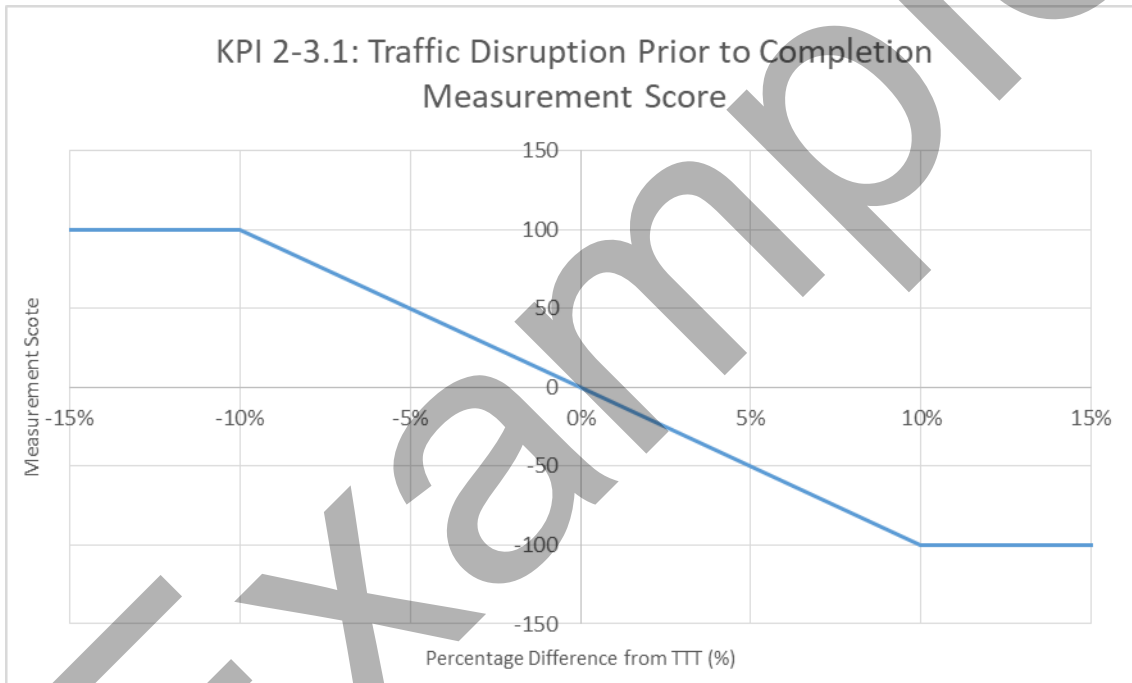
KRA 2	Traffic Performance	Weighting: 20%	Regime Type: Non-Cost Performance
Measure (KPI)	KPI 2-2: Traffic Disruption Prior to Completion – Traffic Permit Compliance	Sub-Weighting: 20%	
Objective	Traffic management, disruption to the public and implementation of traffic control devices (TCDs) are appropriate and well managed, in collaboration with the DIT Traffic Management Centre (TMC), with no unplanned disruptions.		
Measurement Notes	<p>This KPI has been developed to ensure that the Participants thoroughly plan and execute all traffic management requirements, and that any Unplanned Permit Events (as defined below) are avoided.</p> <p>The aim of this KPI is to ensure the coordinated and effective management of the DIT road network in collaboration with the DIT TMC. The KPI focuses on procedural compliance with DIT TMC processes, via the TMC online portal, for application of Permits to Work on DIT Roads and subsequent management of implementation and removal of TCDs in accordance with Approved Permits, to ensure the road network is effectively managed.</p> <p><i>The performance score for this KPI 2-2 is calculated as follows:</i></p> <ol style="list-style-type: none"> 1. <i>Planned Permit Events and Unplanned Permit Events shall be measured during the period from the Commencement Date until the date of Completion.</i> 2. <i>A Planned Permit Event is an event involving works on DIT roads where a TMC Permit is required and where:</i> <ol style="list-style-type: none"> (c) <i>The appropriate Permit is attained in accordance with the TMC procedure; and</i> (d) <i>Prior to actual set up of TCDs, the appropriate Notification is activated ('log on') via the TMC portal, and</i> (e) <i>The traffic management activities are in accordance with the Approved Permit conditions and Traffic Guidance Scheme, and</i> (f) <i>After removal of TCDs, the appropriate Notification is activated ('log off') via the TMC portal.</i> 3. <i>An Unplanned Permit Event is an event involving failure to comply with the DIT TMC procedure for Approval to Work on DIT Roads.</i> 4. <i>Participants will be required to seek feedback from the TMC regarding compliance.</i> 5. <i>Participants will be provided with monthly updates as regards the number of Planned Events and Unplanned Events completed during that month.</i> 6. <i>Each activation of an Approved Permit (Notification) shall constitute an Event.</i> 7. <i>The performance score for this KPI 2-2 is calculated as indicated below (and by interpolation when the score falls between two identified outcomes).</i> 8. <i>The percentage below refers to the percentage of the total number of Planned Permit Events and Unplanned Permit Events represented by Unplanned Permit Events.</i> 		

Outturn Performance Score (Traffic Light)	Fail to Below MCOS (-100) – (0)	MCOS 0	Above MCOS to Exceptional 0 – 100
Definition	Unplanned Permit Event percentage being from greater than 5% (0) to 10% (-100) An Unplanned Permit Event percentage of more than 10% results in a score of -100	Unplanned Permit Event percentage is 5% (0)	Unplanned Permit Event percentage being from 3% (100) to less than 5% (0) An Unplanned Permit Event percentage of less than 3% results in a score of 100
Measurement scale	-100 to 0	0	0 to 100



KRA 2	Traffic Performance	Weighting: 20%	Regime Type: Non-Cost Performance																				
Measure (KPI)	KPI 2-3: Traffic Disruption Prior to Completion – Travel Time	Sub-Weighting: 60%																					
Objective	Reduce impact to road user travel times as a result of Alliance Activities. Entirety																						
Measurement Notes	<p>This KPI has been developed to ensure that the Participants thoroughly plan all traffic management requirements, staging of Alliance Activities and have all necessary real time monitoring and engagement with the DIT Traffic Management Centre to minimise any impact to travel time of road users during the Works.</p> <p>The aim of this KPI is to ensure that traffic disruptions are planned, coordinated and managed effectively to reduce travel time delays to road users through the construction phase(s) of the Works.</p> <p>The performance score for this KPI 2-3 is calculated as follows:</p> <ol style="list-style-type: none"> 1. The reporting period (Reporting Period) commences with the commencement of speed restrictions as a result of Alliance construction activities and finishes at the time the road(s) achieve full speed. 2. During each calendar month (or part thereof) during the Reporting Period the actual travel time (ATT) per month travelling in both directions will be measured. 3. The ATT for each month (or part thereof – in which case the TTT figure shall be pro-rated accordingly) shall be compared against the target travel time (TTT) per month. 4. The TTT by road segment shall be as follows: <table border="1" data-bbox="352 1160 1402 1384"> <thead> <tr> <th data-bbox="352 1160 667 1211">Road Segment</th> <th data-bbox="670 1160 943 1211">From</th> <th data-bbox="946 1160 1270 1211">To</th> <th data-bbox="1273 1160 1402 1211">TTT (seconds)</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>			Road Segment	From	To	TTT (seconds)																
	Road Segment	From	To	TTT (seconds)																			
<ol style="list-style-type: none"> 5. Each of the above road segments shall be subject to a separate Reporting Period and calculated separately. 6. The measurement data will be captured in real time for road users traveling between a pair (or more, as appropriate) of Bluetooth devices along the above road segments. 7. For each month (or part thereof) during the Reporting Period deviation of the ATT from the relevant TTT shall be measured and a performance score applied to that month as indicated in the Outturn Performance Score and definition below. 8. An overall performance score for each road segment for this KPI2-3 shall be determined by aggregating the individual monthly scores achieved during the each Reporting Period and dividing them by the number of months (or part thereof) in that Reporting Period. 9. A final performance score shall be determined by aggregating each Reporting Period overall performance score and dividing them by number of Reporting Periods. 10. A report is to be provided by the Participants each month detailing the 																							

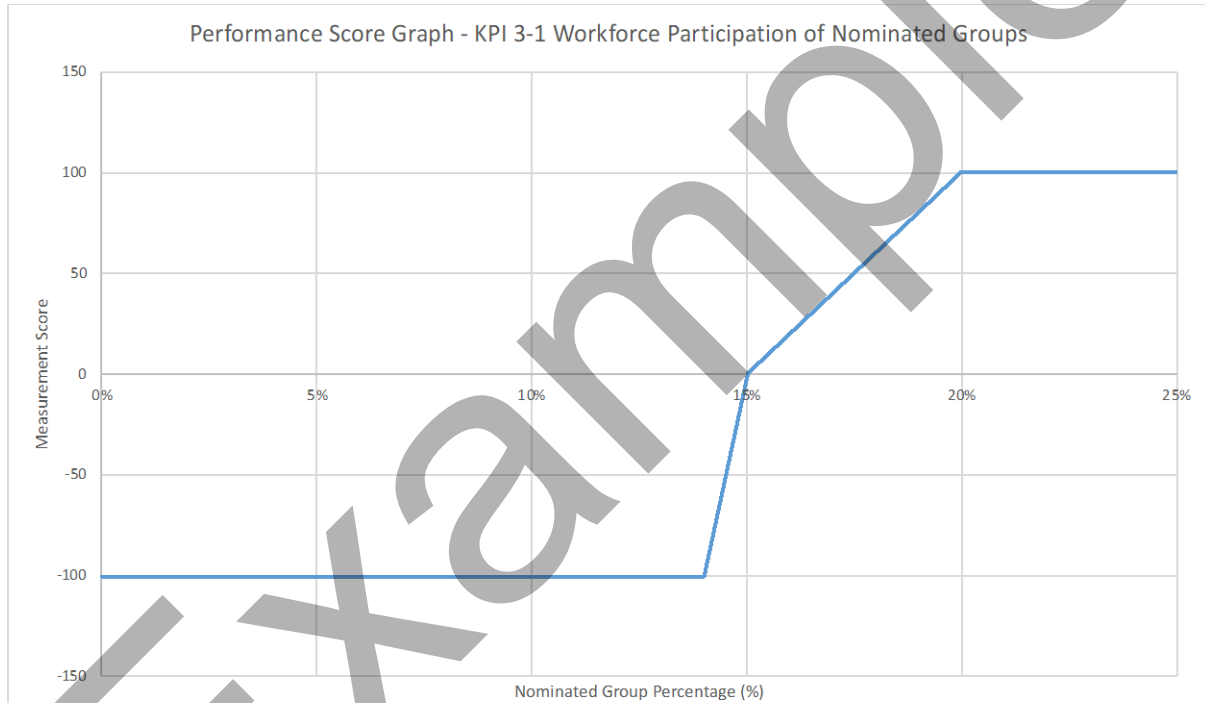
	performance for each road segment.		
Outturn Performance Score (Traffic Light)	Fail to Below MCOS (-100) – (0)	MCOS 0	Above MCOS to Exceptional 0 – 100
Definition	TTT(0) 1.1 TTT (-100)	TTT (0)	TTT (0) 0.9 TTT (100)
Measurement scale	-100 to 0	0	0 to 100



Workforce Participation KRA

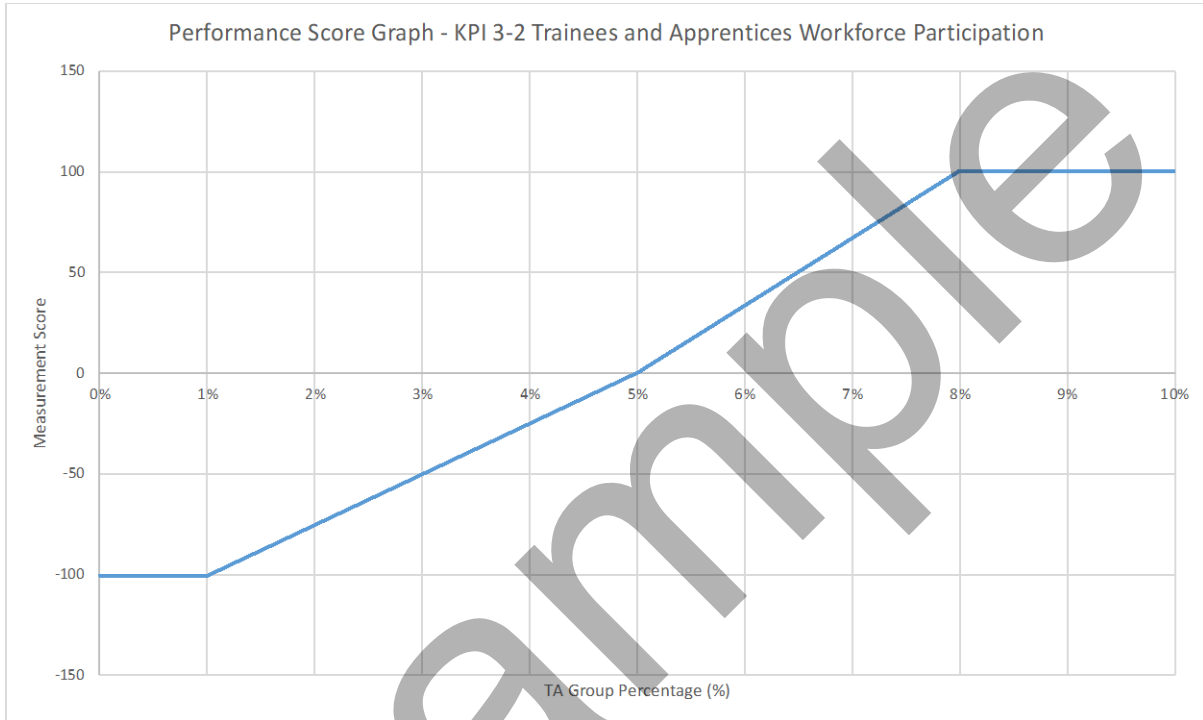
KRA 3	Workforce Participation			Weighting: 25%	Regime Type: Non-Cost Performance		
Measure (KPI)	KPI 3-1: Workforce Participation of Nominated Groups			Sub-Weighting: 40%			
Objective	To ensure that the Tailored Industry Participation Plan commitments by the Participants are achieved or exceeded.						
Measurement Notes	<p>The nominated groups (Nominated Groups) shall be as per the Tailored Industry Participation Plan with each nominated group defined by the Department of Innovation and Skills. In addition, and subject to approval by the Principal, the Barriers to Employment nominated group may also include Correctional Services pre-release candidates and the homeless. Actual performance calculated and reported by the Alliance (in accordance with the Industry Advocate Act 2017) shall be provided to the Principal and the South Australian Office of the Industry Advocate (OIA) for each reporting period.</p> <p><i>The performance score for this KPI3-1 is calculated as follows:</i></p> <ol style="list-style-type: none"> <i>Measurement will commence upon the Commencement Date and conclude on the date of Completion (Measurement Period).</i> <i>The reporting period shall be calendar months (or part thereof, where appropriate).</i> <i>Total labour force hours for undertaken in the performance of the Works within Australia will be measured.</i> <i>The aggregate of the total labour force hours worked and the aggregate of the hours worked by the Nominated Groups shall be calculated each calendar month.</i> <i>The percentage of labour force hours performed by the Nominated Groups shall be determined by dividing the aggregate hours worked by the Nominated Groups during the Measurement Period by the aggregate of the total labour force hours worked during the Measurement Period.</i> <i>The performance score for this KPI 3-1 is calculated as indicated below (and by interpolation when the score falls between two identified outcomes).</i> <i>For the avoidance of doubt, the performance score calculation is determined by reference to the entire Measurement Period in aggregate notwithstanding that the participation rate of the Nominated Groups is reported monthly.</i> 						
Outturn Performance Score (Traffic Light)	Fail (-100) – (-61) (Red)	Poor (-60) – (-31) (Red)	Below MCOS (-30) – (0) (Red)	MCOS 0 (Orange)	Above MCOS 0 – 30 (Green)	Stretch 31 – 60 (Green)	Exceptional 61 – 100 (Blue)

Definition	Nominated Groups percentage being from less than 15% (0) to 14% (-100) A Nominated Groups percentage of less than 14% results in a score of -100	Nominated Groups percentage is 15% (0)	Nominated Groups percentage being from greater than 15% (0) to 20% (100) A Nominated Groups percentage of more than 20% results in a score of 100
Measurement. scale	-100 to 0	0	0 to 100



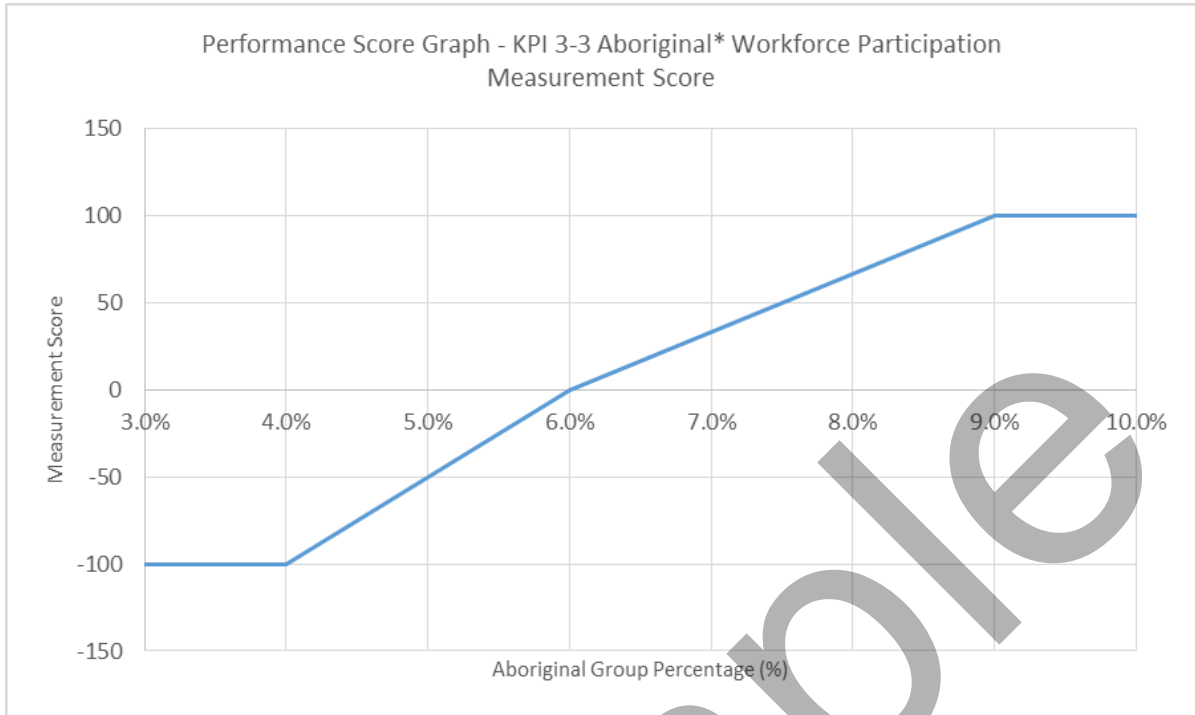
KRA 3	<u>Workforce Participation</u>	Weighting: 25%	Regime Type: Non-Cost Performance
Measure (KPI)	KPI 3-2: Trainees and Apprentices Workforce Participation	Sub-Weighting: 10%	
Objective	To ensure that the Tailored Industry Participation Plan commitments regarding Trainees and Apprentices by the Participants are achieved or exceeded.		
Measurement Notes	<p>The Trainees and Apprentices group (TA Group) shall be as per the Tailored Industry Participation Plan with the TA group defined by the Department of Innovation and Skills and actual performance shall be assessed by the OIA for each reporting period. Subject to approval from the Principal, the TA Group may also include trainees and apprentices not specifically engaged on the Project.</p> <p><i>The performance score for this KPI 3-2 is calculated as follows:</i></p> <ol style="list-style-type: none"> <i>Measurement will commence upon the Commencement Date and conclude on the date of Completion (Measurement Period).</i> <i>The reporting period shall be calendar months (or part thereof, where appropriate).</i> <i>Total labour force hours undertaken in the performance of the Works within Australia will be measured.</i> <i>The aggregate of the total labour force hours worked and the aggregate of the hours worked by the TA Group shall be calculated each calendar month.</i> <i>The percentage of labour force hours performed by the TA Group shall be determined by dividing the aggregate hours worked by the TA Group during the Measurement Period by the aggregate of the total labour force hours worked during the Measurement Period.</i> <i>The performance score for this KPI 3-2 is calculated as indicated below (and by interpolation when the score falls between two identified outcomes).</i> <i>For the avoidance of doubt, the performance score calculation is determined by reference to the entire Measurement Period in aggregate notwithstanding that the participation rate of the TA Group is reported monthly.</i> 		
Outturn Performance Score (Traffic Light)	Fail to Below MCOS (-100) – (0)	MCOS 0	Above MCOS to Exceptional 0 – 100
Definition	TA Group percentage being from less than 5% (0) to 1% (-100) A TA Group percentage of less than 1% results in a score of -100	TA Group percentage is 5% (0)	TA Group percentage being from greater than 5% (0) to 8% (100) A TA Group percentage of more than 8% results in a score of 100

Measurement scale	-100 to 0	0	0 to 100
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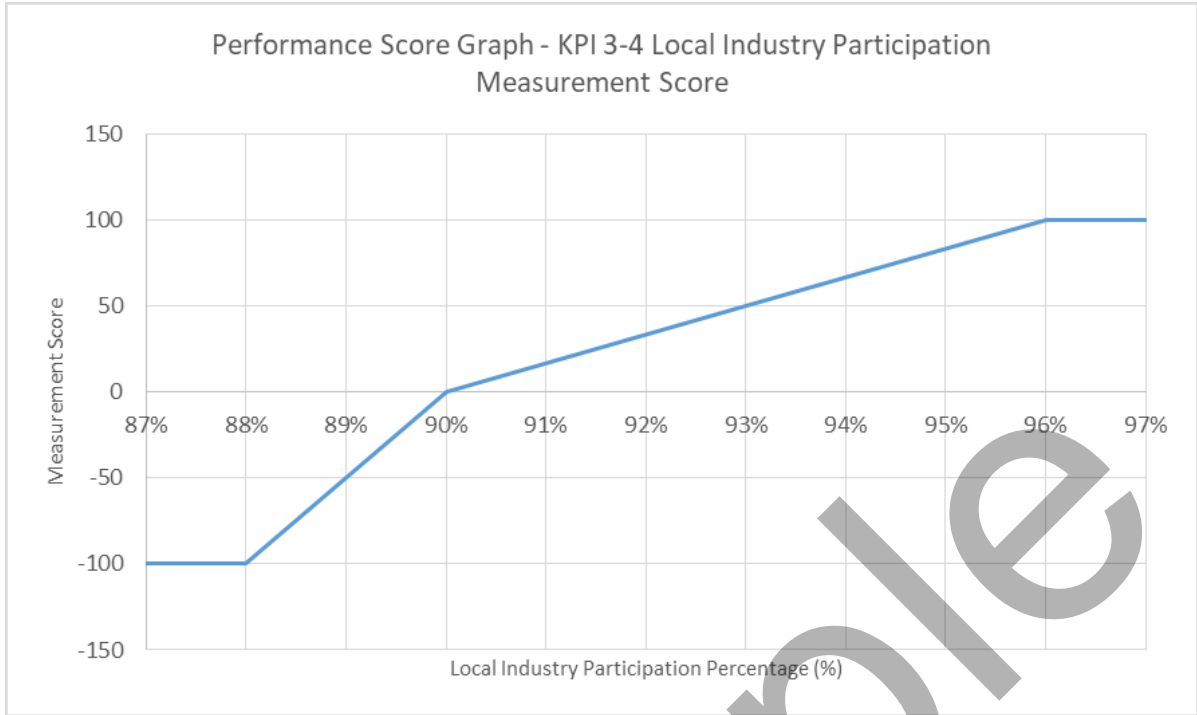
EXAMPLE

KRA 3	<u>Workforce Participation</u>	Weighting: 25%	Regime Type: Non-Cost Performance
Measure (KPI)	KPI 3-3: Aboriginal* Workforce Participation	Sub-Weighting: 25%	
Objective	To promote diversity and equal opportunity and develop a culturally safe and inclusive workplace that recognises and respects the values, cultures and traditions of Aboriginal people.		
Measurement Notes	<p>The Aboriginal group (Aboriginal Group) shall consist of persons who formally identify themselves as someone with Aboriginal or Torres Strait heritage or affiliation but Aboriginal jobseekers as defined by the Department of Innovation and Skills and as referred to in the TIPP shall be excluded from this group. Actual performance shall be assessed by the OIA for each reporting period.</p> <p><i>The performance score for this KRA 3-3 is calculated as follows:</i></p> <ol style="list-style-type: none"> <i>Measurement will commence upon the Commencement Date and conclude on the date of Completion (Measurement Period).</i> <i>The reporting period shall be calendar months (or part thereof, where appropriate).</i> <i>Total labour force hours undertaken in the performance of the Works within Australia will be measured.</i> <i>The aggregate of the total labour force hours worked and the aggregate of the hours worked by the Aboriginal Group shall be calculated each calendar month.</i> <i>The percentage of labour force hours performed by the Aboriginal Group shall be determined by dividing the aggregate hours worked by the Aboriginal Group during the Measurement Period by the aggregate of the total labour force hours worked during the Measurement Period.</i> <i>The performance score for this KRA 3-3 is calculated as indicated below (and by interpolation when the score falls between two identified outcomes).</i> <i>For the avoidance of doubt, the performance score calculation is determined by reference to the entire Measurement Period in aggregate notwithstanding that the participation rate of the Aboriginal Group is reported monthly.</i> 		
Outturn Performance Score (Traffic Light)	Fail to Below MCOS (-100) – (0)	MCOS 0	Above MCOS to Exceptional 0 – 100
Definition	Aboriginal Group percentage being from less than 6% (0) to 4% (-100) An Aboriginal Group percentage of less than 3% results in a score of -100	Aboriginal Group percentage is 6% (0)	Aboriginal Group percentage being from greater than 6% (0) to 9% (100) An Aboriginal Group percentage of more than 8% results in a score of 100
Measurement scale	-100 to 0	0	0 to 100



Example

KRA 3	<u>Workforce Participation</u>	Weighting: 25%	Regime Type: Non-Cost Performance
Measure (KPI)	KPI 3-4: Local Industry Participation	Sub-Weighting: 25%	
Objective	To ensure that the Tailored Industry Participation Plan commitments regarding Local Industry Participation outside the Region are achieved or exceeded.		
Measurement Notes	<p>The Local Industry Participation (as defined by the OIA) should be as per or in excess of that required by the Tailored Industry Participation Plan and actual performance shall be assessed by the OIA each reporting period.</p> <p><i>The performance score for this KPI 3-4 is calculated as follows:</i></p> <ol style="list-style-type: none"> <i>Measurement will commence upon the Commencement Date and conclude on the date of Completion (Measurement Period).</i> <i>The reporting period shall be calendar months (or part thereof, where appropriate).</i> <i>The percentage level of Local Industry Participation during the Measurement Period shall be determined in accordance with the guidelines issued by the OIA.</i> <i>The definition of the Region is included in the TIPP.</i> <i>The performance score for this KPI 3-4 is calculated as indicated below (and by interpolation when the score falls between two identified outcomes).</i> <i>For the avoidance of doubt, the performance score calculation is determined by reference to the entire Measurement Period in aggregate notwithstanding that the reporting period is monthly.</i> 		
Outturn Performance Score (Traffic Light)	Fail to Below MCOS (-100) – (0)	MCOS 0	Above MCOS to Exceptional 0 – 100
Definition	Local Industry Participation percentage being from less than 90% (0) to 88% (-100) A Local Industry Participation percentage of less than 88% results in a score of -100	Local Industry Participation percentage is 90% (0)	Local Industry Participation percentage being from greater than 90% (0) to 96% (100) A Local Industry Participation percentage of more than 96% results in a score of 100
Measurement scale	-100 to 0	0	0 to 100

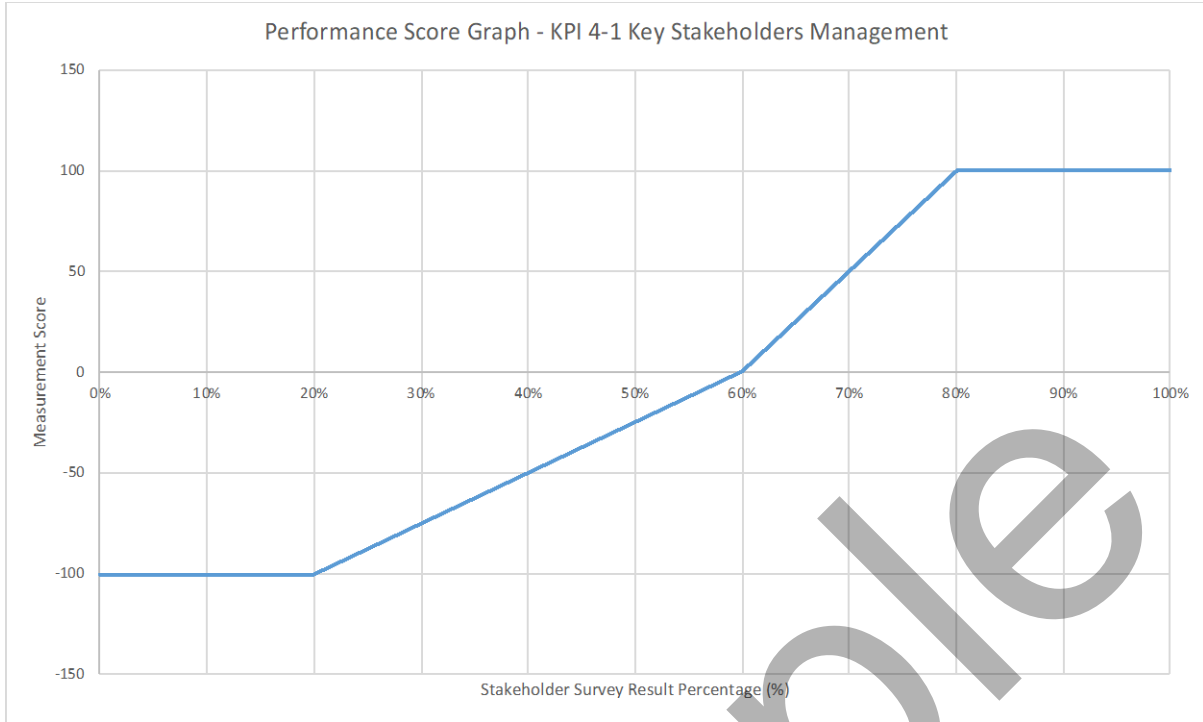


Example

Stakeholder & Community Management

KRA 4	Stakeholder & Community Management	Weighting: 15%	Regime Type: Non-Cost Performance
Measure (KPI)	KPI 4-1: Key Stakeholders Management	Sub-Weighting: 50%	
Objective	Proactive engagement with the local community and key stakeholders to mitigate Project and reputational impacts.		
Measurement Notes	<p>Every 3 months from the Commencement Date until 3 months after the date of Completion (or as otherwise agreed by the ALT), surveys will be conducted with relevant key Project stakeholders on:</p> <ul style="list-style-type: none"> a) the effectiveness of communications and relations with key Project stakeholders as a result of the Works; b) commitments made and honoured; and c) the impact of the Alliance Activities on key Project stakeholders. <p>The key Project stakeholders for this KPI are:</p> <ul style="list-style-type: none"> a) DIT Traffic Operations b) DIT Public Transport Operations and Planning c) City of Onkaparinga d) Renewal SA e) Emergency Services at Aldinga (CFS, SA Ambulance) f) McLaren Vale Grape, Wine and Tourism Association g) Sea Link h) Resource Co i) On the Run (OTR) j) Aldi k) Other Businesses within project footprint l) Other community within an agreed catchment <p>The list of key Project stakeholders may be updated from time to time should program wide stakeholders change. The survey will be developed in consultation with independent, qualified market research consultants and applied in such a manner so as to minimise the chance of bias in the results.</p> <p>Key Project stakeholders for this KPI will be surveyed using the following 6-point satisfaction scale for each survey question:</p> <ul style="list-style-type: none"> • Totally satisfied - 100% 		

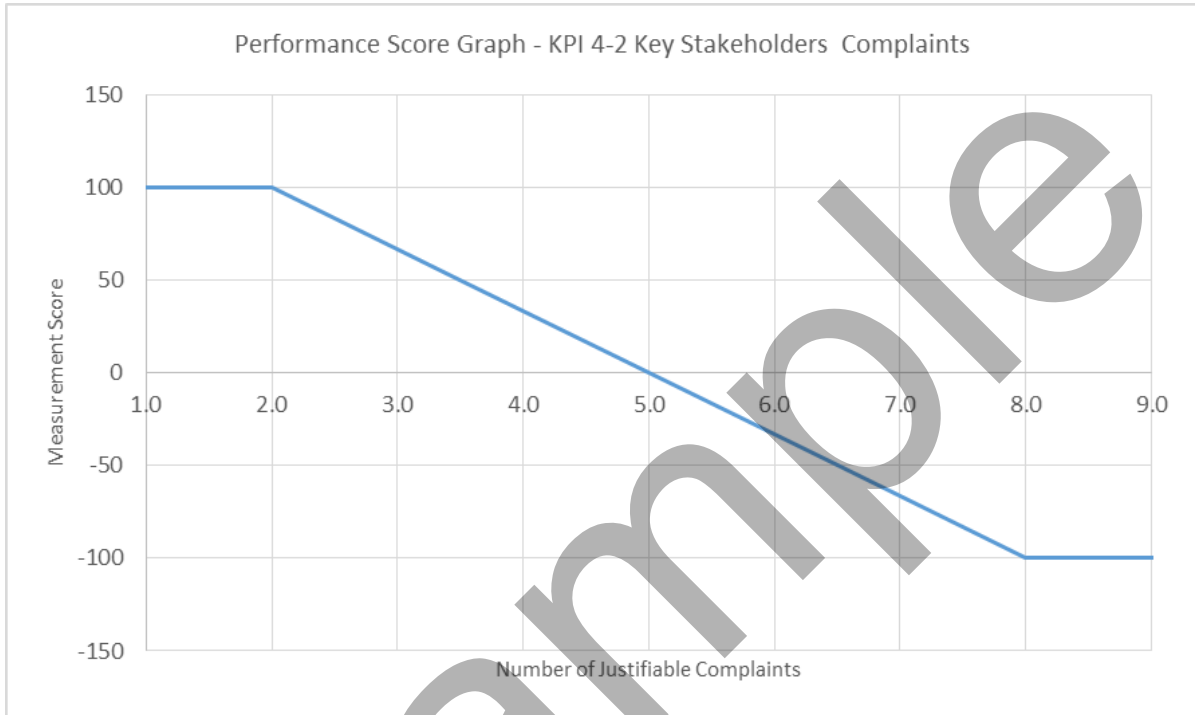
	<ul style="list-style-type: none"> • Very satisfied - 80% • Somewhat satisfied - 60% • Somewhat dissatisfied - 40% • Very dissatisfied - 20% • Totally dissatisfied - 0% <p>The stakeholder survey result (expressed in percentage terms, the SSR percentage) is defined as the average of the unweighted scores for each question answered by each person surveyed in respect of every survey undertaken.</p> <p>Survey questions specific to this measure and details of other survey requirements will be developed by the Alliance with the guidance of a recognised, independent, qualified market research company and submitted by the ALT for approval.</p> <p>Survey results are to be comprehensively documented on a 3 monthly basis (or frequency as otherwise agreed by the ALT) and are to be provided to the Principal.</p> <p><i>The performance score for this KPI 4-1 is calculated as indicated below (and by interpolation when the score falls between two identified outcomes).</i></p>		
<p>Outturn Performance Score (Traffic Light)</p>	<p>Fail to Below MCOS (-100) – (0)</p>	<p>MCOS 0 (Orange)</p>	<p>Above MCOS to Exceptional 0 – 100</p>
<p>Definition</p>	<p>An SSR percentage being from less than 60% (0) to 20% (-100)</p> <p>An SSR percentage of less than 20% results in a score of -100</p>	<p>SSR percentage is 60% (0)</p>	<p>SSR percentage being from greater than 60% (0) to 80% (100)</p> <p>An SSR percentage of more than 80% results in a score of 100</p>
<p>Measurement scale</p>	<p>-100 to 0</p>	<p>0</p>	<p>0 to 100</p>



Example

KRA 4	Stakeholder & Community Management	Weighting: 15%	Regime Type: Non-Cost Performance
Measure (KPI)	KPI 4-2: Key Stakeholders Complaints	Sub-Weighting: 50%	
Objective	To ensure that the Alliance Activities are well planned and executed to minimise justifiable complaints and to ensure that mitigation measures are implemented and the response time to justifiable complaints are prompt and proactively closed out.		
Measurement Notes	<p>Definition of 'justifiable complaint':</p> <ul style="list-style-type: none"> relates to the activities of the Alliance; is a reasonable complaint about an unreasonable action undertaken by a Participant(s) in connection with the Works; and must be in writing. <p>A written complaint includes email, however does not include social media complaints and if received via more than one source is only measured once.</p> <p>Each justifiable complaint received from a different source about the same matter or connected series of matters shall be counted.</p> <p>Each justifiable complaint from the same source about different matters or connected series of matters shall be counted.</p> <p>The performance score for this KPI 4-2 is calculated as follows:</p> <ol style="list-style-type: none"> The reporting period (Reporting Period) for this KPI is from the Commencement Date until the date of Completion. During each full calendar month during the Reporting Period the number of justifiable complaints received by the Alliance from those key stakeholders referred to in KPI 4-1 will be determined and a performance score applied to that month as indicated in the table below. The performance score for each monthly period is calculated by interpolation when the score falls between two identified outcome. An overall performance score for this KPI 4-3 shall be determined by aggregating the individual monthly scores achieved during the Reporting Period and dividing them by the number of full months in the Reporting Period. 		
Outturn Performance Score (Traffic Light)	Fail to Below MCOS (-100) – (0)	MCOS 0 (Orange)	Above MCOS to Exceptional 0 – 100
Definition	Number of justifiable complaints received in a month being from 5 (0) to 8 (-100) Receiving more than 8 justifiable complaints in a month results in a	Receiving 5 justifiable complaints in a month (0)	Number of justifiable complaints received in a month being from 5 (0) to 2 (100) Receiving less than 2 justifiable complaints in a month results in a score of 100

	score of -100		
Measurement scale	-100 to 0	0	0 to 100

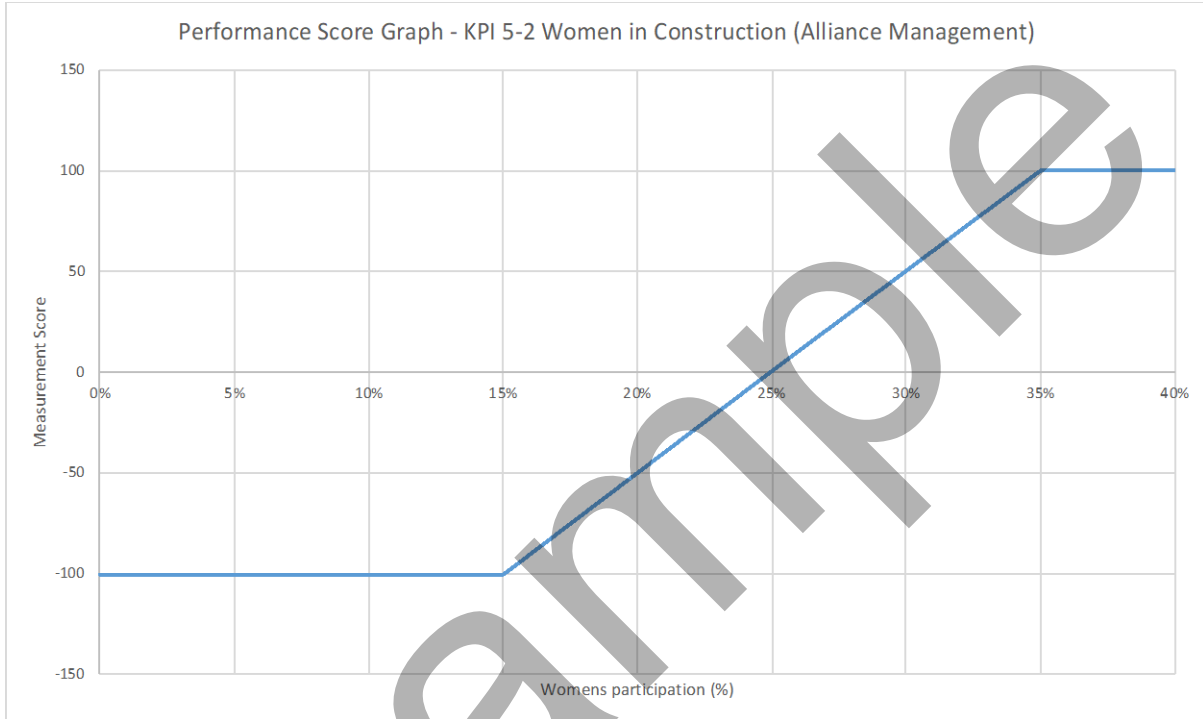


Example

Alliance Resourcing KRA

KRA 5	Alliance Resourcing	Weighting: 7%	Regime Type: Non-Cost Performance
Measure (KPI)	KPI 5-1: Women in Construction (Alliance management)	Sub-Weighting: 50%	
Objective	To promote diversity and equal opportunity and develop a culturally safe and inclusive workplace that recognises and respects women in the construction industry.		
Measurement Notes	<p><i>The performance score for this KPI 5-2 is calculated as follows:</i></p> <ol style="list-style-type: none"> <i>1. Measurement will commence upon the Commencement Date and conclude on the date of Completion (Measurement Period).</i> <i>2. The reporting period shall be calendar months (or part thereof, where appropriate).</i> <i>3. Total Alliance management hours undertaken by those in Alliance management positions in the performance of the Works within Australia will be measured. Alliance management positions means those positions identified in the personnel organisation structure charts submitted in Schedule CC3 as such charts may be amended from time to time provided, however, that any amendments may not result in a decrease in the total number of positions identified by such charts as at the date of award.</i> <i>4. The aggregate of the total Alliance management hours worked and the aggregate of the hours worked by women, in each case in respect of Alliance management positions, shall be calculated each calendar month.</i> <i>5. The percentage of Alliance management hours performed by women in Alliance management positions shall be determined by dividing the aggregate hours worked by women in Alliance management positions during the Measurement Period by the aggregate of the total Alliance management hours worked in respect of Alliance management positions during the Measurement Period.</i> <i>6. The performance score for this KPI 5-2 is calculated as indicated below (and by interpolation when the score falls between two identified outcomes).</i> <i>7. For the avoidance of doubt, the performance score calculation is determined by reference to the entire Measurement Period in aggregate notwithstanding that the reporting period is monthly.</i> 		
Outturn Performance Score (Traffic Light)	Fail to Below MCOS (-100) – (0)	MCOS 0 (Orange)	Above MCOS to Exceptional 0 – 100
Definition	<p>Women's participation percentage being from less than 25% (0) to 15% (-100)</p> <p>A Women's participation percentage of less than 15% results in a score of -100</p>	<p>Women's participation percentage is 25% (0)</p>	<p>Women's participation percentage being from greater than 25% (0) to 35% (100)</p> <p>A Women's participation percentage of more than 35% results in a score of 100.</p>

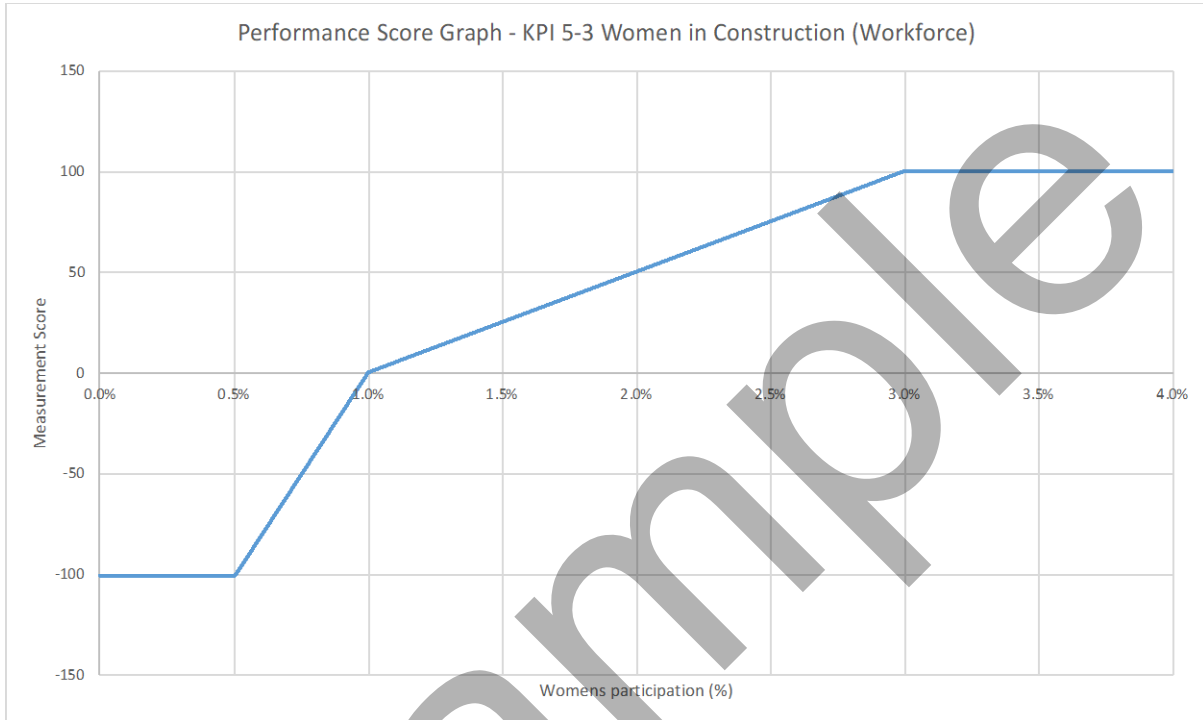
Measurement scale	-100 to 0	0	0 to 100
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EXAMPLE

KRA 5	Alliance Resourcing	Weighting: 7%	Regime Type: Non-Cost Performance
Measure (KPI)	KPI 5-2 Women in Construction (Workforce)	Sub-Weighting: 50%	
Objective	To promote diversity and equal opportunity and develop a culturally safe and inclusive workplace that recognises and respects women in the construction industry.		
Measurement Notes	<p><i>The performance score for this KPI 5-3 is calculated as follows:</i></p> <ol style="list-style-type: none"> <i>1. Measurement will commence upon the Commencement Date and conclude on the date of Completion (Measurement Period).</i> <i>2. The reporting period shall be calendar months (or part thereof, where appropriate).</i> <i>3. Total labour force hours undertaken by those in workforce positions in the performance of the Works within Australia will be measured. Workforce positions means those positions the Reimbursable Costs of which are reflected in the TOC under any line item appearing under Item 4 (Construction).</i> <i>4. The aggregate of the total labour force hours worked and the aggregate of the hours worked by women, in each case in respect of workforce positions, shall be calculated each calendar month.</i> <i>5. The percentage of labour force hours performed by women in workforce positions shall be determined by dividing the aggregate hours worked by women in workforce positions during the Measurement Period by the aggregate of the total labour force hours worked in respect of workforce positions during the Measurement Period.</i> <i>6. The performance score for this KPI 5-3 is calculated as indicated below (and by interpolation when the score falls between two identified outcomes).</i> <i>7. For the avoidance of doubt, the performance score calculation is determined by reference to the entire Measurement Period in aggregate notwithstanding that the reporting period is monthly.</i> 		
Outturn Performance Score (Traffic Light)	Fail to Below MCOS (-100) – (0)	MCOS 0 (Orange)	Above MCOS to Exceptional 0 – 100
Definition	Women's participation percentage being from less than 1% (0) to 0.5% (-100) A Women's participation percentage of less than 0.5% results in a score of -100	Women's participation percentage is 1% (0)	Women's participation percentage being from greater than 1% (0) to 3% (100) A Women's participation percentage of more than 3% results in a score of 100.

Measurement scale	-100 to 0	0	0 to 100
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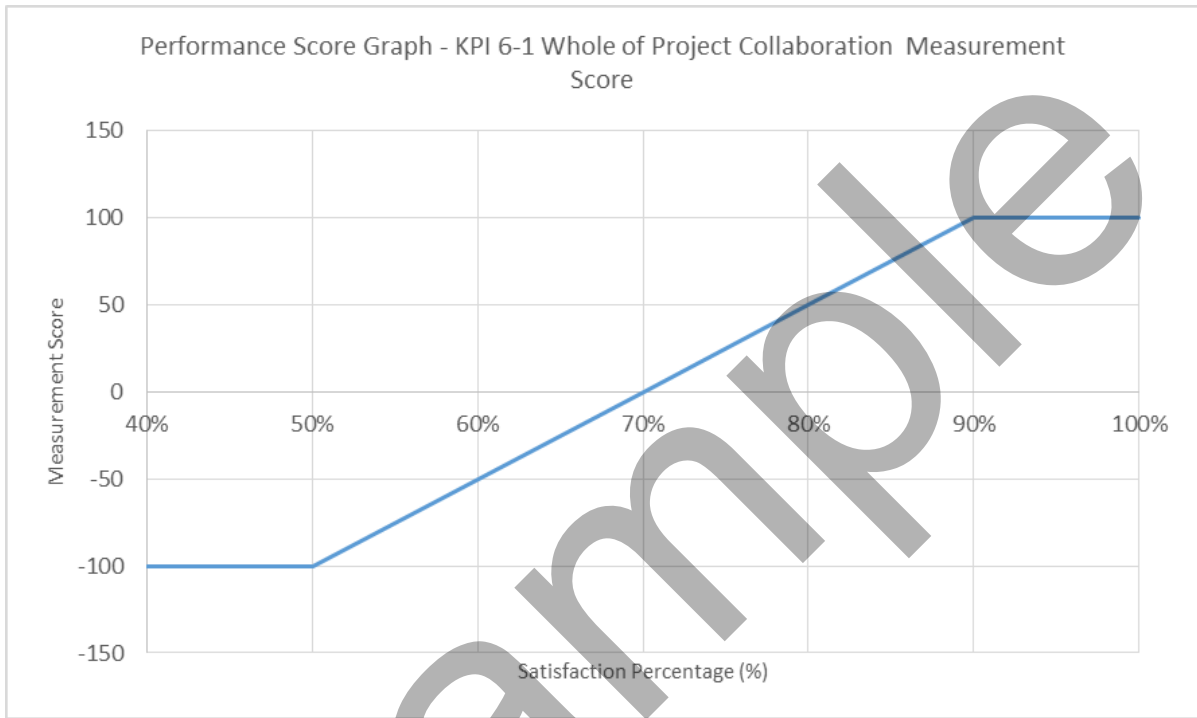


Example

Alliance Health KRA

KRA 6	Alliance Health	Weighting: 8%	Regime Type: Non-Cost Performance
Measure (KPI)	KPI 6-1: Whole of Project Collaboration	Sub-Weighting: 100%	
Objective	To encourage engagement and collaboration with key project stakeholders.		
Measurement Notes	<p>Every 6 months from the date of this Agreement until the Actual Completion Date, surveys will be taken of up to 20 external stakeholders, with a particular focus on DIT personnel supporting the Alliance, on how effectively the Alliance has positively impacted the outcome of the whole Project through their interface management and coordination.</p> <p>Independent, qualified market research consultants will be engaged by the Alliance to undertake the surveys. The survey structures and methodologies will be undertaken and applied in such a manner to minimise bias in the results.</p> <p>Survey questions and other survey requirements specific to this measure will be developed by Alliance Leadership Team in consultation with the Principal. The ALT will recommend survey questions to the Principal for its Determination. This process will be repeated until such time the Principal accepts the ALT recommended survey questions.</p> <p>NOP staff members will be surveyed using the following 6-point satisfaction scale for each survey question:</p> <ul style="list-style-type: none"> • Totally satisfied 100% • Very satisfied 80% • Somewhat satisfied 60% • Somewhat dissatisfied 40% • Very dissatisfied 20% • Totally dissatisfied 0% <p>The average Project survey result is defined as the average of the unweighted scores for each answered question by each person surveyed.</p> <p>Survey results will be documented on a 6 monthly basis and will be provided to Principal and the ALT.</p>		
Outturn Performance Score (Traffic Light)	Fail to Below MCOS (-100) – (0)	MCOS 0 (Orange)	Above MCOS to Exceptional 0 – 100
Definition	Satisfaction percentage being from less than 70% (0) to 50% (-100) Satisfaction percentage of less than 50% results in a score of -100	Satisfaction percentage is 70% (0)	Satisfaction percentage being from greater than 70% (0) to 90% (100) Satisfaction percentage of more than 90% results in a score of 100.

Measurement scale	-100 to 0	0	0 to 100
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EXAMPLE

Benefits KRA

KRA 7	Benefits	Weighting: 0%	Regime Type: Non-Cost Performance
Measure (KPI)*	KPI 7-1: Benefit Management and Reporting	Sub-Weighting: NA%	
Objective	To encourage active management, ownership and reporting of benefits during the project.		
Measurement Notes	<p>This KPI 7-1 and the associated Outturn Performance Score definition is subject to agreement between the Principal and ALT.</p> <p>The aim of this KPI is to bring benefit outcomes to the forefront of decision making and track the progress of benefit achievement through:</p> <ul style="list-style-type: none"> reports and records progress of benefits development and realisation for all project phases within the reporting period; encouraging workplace behaviour to support benefit realisation; and ensuring any follow-up or corrective actions are taken during development and delivery to maximise benefits opportunities. <p>The reporting period (Reporting Period) for this KPI is from the Commencement Date until the Actual Completion Date.</p> <p>A report is to be developed by the Alliance for the Principal detailing how the project has achieved or contributed to the benefits outlined in below <i>table 1 Benefit Management Reporting Criteria</i>. The measures of the benefits within the Reporting Period, frequency and the contents of the report shall be agreed between the Alliance and the Principal.</p>		
Outturn Performance Score (Traffic Light)	Fail to Below MCOS (-100) – (0)	MCOS 0 (Orange)	Above MCOS to Exceptional 0 – 100
Definition	TBA	TBA	TBA
Measurement scale	-100 to 0	0	0 to 100

Table 1 Benefit Management Report Criteria¹

Benefit Profile	Description	Sub-benefit	Measure	Baseline (example)	Target (example)	Examples for the Reporting Period
1	Reduced number of crashes	1.1	Fatality rate (rate of fatalities per 100M VKT)	Stage 1 - There were 221 reported crashes, resulting in 2 fatalities (Head On crashes). The fatality and serious injury (FSI) crash ratio for the project area is 6%. Stage 2 – There is 0 fatalities reported.	Reduce serious injuries casualties by at least 30% - to less than 80 fatalities per year by 2020 as per South Australia's Road Safety Strategy 2020. 0.04 fatalities per 100M VKT is expected following duplication based on crash rates.	Safe System Assessment. Address key safety issues of the current network within project boundaries.
		1.2	Injury rate (rate of injuries per 100M VKT)	Stage 1 – There were 221 reported crashes, resulting in 11 serious injuries. The fatality and serious injury (FSI) crash ratio for the project area is 6%. Stage 2 – There were reported 40 crashes, resulting in 6 serious injuries and 32 minor injuries.	Reduce serious casualties by at least 30% - to less than 800 serious injuries per year by 2020 as per South Australia's Road Safety Strategy 2020. 6.4 fatalities per 100M VKT is expected following duplication based on crash rates.	
		1.3	Number of reported crashes involving cyclists	Stage 1 – There were 4 reported crashes involving cyclists, i.e. 3 non FSI crashes and 1 non FSI "Hit Pedestrian" crashes. Stage 2 – There is 0 reported crashes involving cyclists	0 (zero) cycle accidents	Cyclist / pedestrians can safely cross [insert] Road. Connectivity to adjoining cycling / pedestrian networks.

¹ This table is in draft form and is intended as a tool to inform the agreement between the Principal and ALT.

Benefit Profile	Description	Sub-benefit	Measure	Baseline (example)	Target (example)	Examples for the Reporting Period
2	Improve Transport efficiency	2.1	AddInsight travel time	<p>Stage 1 2019 AM Peak: 664 PM Peak: 656 2036 AM Peak: 723 PM Peak: 676</p> <p>Stage 2 2019 AM Peak: 307 PM Peak: 301 2036 AM Peak: 305 PM Peak: 304</p>	<p>Stage 1 2019 AM Peak: 651 PM Peak: 639 2036 AM Peak: 667 PM Peak: 654</p> <p>Stage 2 2019 AM Peak: 279 PM Peak: 279 2036 AM Peak: 284 PM Peak: 284</p>	Benefit realisation assessment as required by Business Requirements Section 10 <i>Project Completion Outcomes</i> , sub-section <i>Project Close Out</i> .
3	Return on Investment	3.1	Benefit Cost Ratio	Nil	BCR > 1.0	
		3.2	Minimal operating expenditure (OPEX) burden	Current spend per annum for asset maintenance at this site per km per lane	No increase in OPEX above the expenditure per km, per lane prior to the project.	Engagement of the Road Asset Maintenance stakeholder in design development / review.
		3.3	Employment opportunities	From construction activities	Full time equivalent positions (FTEs) created over construction period of project	Resource histogram vs actuals
4	Minimise traffic and utility service interruptions during construction	4.1	Service continuity - vehicles	Single lane in each direction	Maintain single lane access for all movements at all times. Achieve MCOS or higher for KPI 2-3. Maintain safe on or off road space for cyclists during construction	
		4.2	Number of customers disrupted in the local area during the construction	Zero	Maximum 1 day disruption to essential services (electricity, gas, water, sewer) for each customer.	

Benefit Profile	Description	Sub-benefit	Measure	Baseline (example)	Target (example)	Examples for the Reporting Period
5	Improved amenity and environmental outcomes	5.1	Perceived changes in amenity through survey.	Existing road environment along the corridor	Perceived improvement in amenity by majority of local residents	Survey results of KPI 4-1 stakeholder group (I) – other community within an agreed catchment.
		5.2	Canopy Cover	LiDAR to be analysed	100% net increase in canopy cover in the project precinct	Tracking of number of trees removed due to the works. Number of trees selected as part of landscape design. Forecast canopy coverage of mature trees, factoring acceptable plant survival rates set out in PR-LS-C2 Planting.
		5.3	Vegetation Biodiversity	Vegetation Survey to be undertaken	Increase in native species biodiversity	Plant selection in design. Compare total numbers and number of different species of native plants.

SCHEDULE 6 – ADJUSTMENT EVENT EXAMPLES

Example



[Insert name of Project]

No. **[Insert number]**

PAA SCHEDULE 6:

ADJUSTMENT EVENT EXAMPLES

Example

Contract Award No	Scenario including impact of events /circumstances	Yes	No	Depends	Comments
Scenarios where Directions are given by the Principal					
1.	The Principal Directs, over a period of time, a multiple number of incremental Scope Changes which in themselves cost between \$5,000 to \$25,000 each.	X			Each of these are Adjustment Events as they are Variations Directed by the Principal with a cost impact of at least \$5,000 and, subject to the \$200,000 Rule, their cost impact can be reflected in a reasonable modification to the TOC.
2.	The Principal Directs, over a period of time, a multiple number of unrelated incremental Scope Changes.			X	In the event that any incremental Scope Change has a cost impact of at least \$5,000 it is an Adjustment event (those with a cost impact of less than \$5,000 are not Adjustment Events). Subject to the \$200,000 Rule, their cost impact can be reflected in a reasonable modification to the TOC.
3.	Principal agrees with a utility service provider that the utility service provider may undertake Augmentation Works (as defined in the Project Scope forming part of the CSCR) which result in additional costs to the Alliance of at least \$5,000 as a result of time related and/or other impacts to the Project.	X			The Principal will be required to Direct a Variation to the Works to the extent required to allow for any Augmentation Works (as defined in the Project Scope forming part of the CSCR) and such Variation will be an Adjustment Event (as the cost impact is at least \$5,000). Subject to the \$200,000 Rule, the cost impact can be reflected in a reasonable modification to the TOC.
4.	The Principal instructs a change to the scope of Works that increases the work to be carried out by at least \$5,000.	X			This constitutes a Variation involving a Scope Change and hence is an Adjustment Event. Subject to the \$200,000 Rule, the cost impact can be reflected in a reasonable modification to the TOC.
5.	The Principal instructs a change to the scope of Works that decreases the work to be carried out by more than \$5,000.	X			This constitutes a Variation involving a Scope Change and hence is an Adjustment Event. Subject to the \$200,000 Rule, the cost impact can be reflected in a reasonable modification to the TOC.

Contract Award No	Scenario including impact of events /circumstances	Yes	No	Depends	Comments
6.	A fatality occurs on another DIT work site and the Principal Directs all works on the project to stop while an investigation is completed.	X			A Direction to suspend works is a Variation involving a Scope Change (assuming the resultant cost impact is at least \$5,000) and hence an Adjustment Event. Subject to the \$200,000 Rule, the cost impact can be reflected in a reasonable modification to the TOC.
7.	Design development due to Design Traffic Loadings, ESA values being reduced from the CSCR requirements due to the Principal confirming that the original values were over conservative. Cost savings of over \$5,000.	X			To the extent that this results in a Variation Directed by the Principal (i.e. the Principal Directs that the CSCR requirements are amended), this constitutes a Variation involving a Scope Change and hence is an Adjustment Event. Subject to the \$200,000 Rule, the cost impact can be reflected in a reasonable modification to the TOC.
8.	The Principal Directs Augmentation Works (as defined in the Project Scope forming part of the CSCR) valued at more than \$5,000 as a result of a request made by a local council that power supply be relocated underground to enhance the urban amenity around the project.	X			This constitutes a Variation involving a Scope Change and hence is an Adjustment Event. Subject to the \$200,000 Rule, their cost impact can be reflected in a reasonable modification to the TOC.
9.	The Principal Directs a Variation to include Stakeholder requirements resulting in changes in materials and finishes to bridges and or hard landscaping that was not included in the TOC.			X	If this has a cost impact of \$5,000 or greater then it is an Adjustment Event and hence, subject to the \$200,000 Rule, the cost impact can be reflected in a reasonable modification to the TOC. If not, then it is not an Adjustment Event.
10.	The Principal Directs a change to the materials and finishes that was not included in the TOC that will have a cost impact of at least \$5,000.	X			This constitutes a Variation involving a Scope Change and hence is an Adjustment Event. Subject to the \$200,000 Rule, the cost impact can be reflected in a reasonable modification to the TOC.
11.	The Principal Directs the Alliance to undertake property assessments and/or modifications required as a result	X			Such works would usually not form part of the Works but do now as a result of the Principal's Direction which

Contract Award No	Scenario including impact of events /circumstances	Yes	No	Depends	Comments
	of land acquisitions by the Principal each of which have a cost impact of \$5,000 or greater.				results in a Variation involving a Scope Change and hence is an Adjustment Event. Subject to the \$200,000 Rule, their cost impact can be reflected in a reasonable modification to the TOC.
Scenarios relating to matters instigated by the Alliance (as directed by the AMT/ALT and not the Principal)					
12.	Contamination investigations have classified an area as being Waste Fill. However, during excavation a noticeable change in material occurs and additional contamination testing is conducted. This testing defines a volume of High Level Contaminated material.		X		This is a risk shared by all Participants and is not a Variation involving a Scope Change and hence is not an Adjustment Event. This applies whether or not the risk could have been foreseen or is in the control of the Alliance.
13.	When earthworks start, the ground conditions are discovered to be worse than indicated from the testing on which the design was based. This requires the design to be modified.		X		This is a risk shared by all Participants and is not a Variation involving a Scope Change and hence is not an Adjustment Event. This applies whether or not the risk could have been foreseen or is in the control of the Alliance.
14.	When earthworks start, ground water is found to be at different locations than shown by historical data. This required changes to the Project's methodology and design incurring additional costs.		X		This is a risk shared by all Participants and is not a Variation involving a Scope Change and hence is not an Adjustment Event. This applies whether or not the risk could have been foreseen or is in the control of the Alliance.
15.	The relocation of utility services runs behind the Project Program and causes a delay to the overall construction schedule. Significant costs are required as a result (whether or not the Participant is able to accelerate the Works to get the Project back on schedule).		X		The management and coordination of all utility services (including any Principal Utility Services (as defined in the Project Scope forming part of the CSCR) from award are a shared Alliance risk and any time and/or other related impacts (including scope changes) of any such works form part of the Works. Any change to the Project Program (including any acceleration required by these delays) is not a Variation involving a Scope Change but rather an obligation of the Participants

Contract Award No	Scenario including impact of events /circumstances	Yes	No	Depends	Comments
					under the Agreement and hence is not an Adjustment Event.
16.	Increase in utility services works (other than as a result of any Augmentation Works (as defined in the Project Scope forming part of the CSCR)) which may arise for any reason including, but not limited to, as a result of Alliance design development process which may include changes to design as a result of stakeholder (e.g. councils, property owners) input.		X		Such works form part of the Works and is a risk shared by all Participants and is not a Variation involving a Scope Change and hence is not an Adjustment Event. The direct cost of any Principal Utility Services (as defined in the Project Scope forming part of the CSCR) will be paid by the Principal to the relevant utility services provider but these do not form part of the Works.
17.	During earthworks excavation unearths Aboriginal relics. Aboriginal monitors are present on site and recovery of all of the relics takes three weeks. Additional cost is incurred due to inefficiencies.		X		This is a risk shared by all Participants and is not a Variation involving a Scope Change and hence is not an Adjustment Event. This applies whether or not the risk could have been foreseen or is in the control of the Alliance.
18.	Aboriginal Heritage Approval (S23) is not obtained in time to commence earthworks and the proposed construction methodology needs to be changed to a less invasive method (e.g. micro tunnelling rather than open trenching). Additional costs are incurred.		X		This is a risk shared by all Participants and is not a Variation involving a Scope Change and hence is not an Adjustment Event. This applies whether or not the risk could have been foreseen or is in the control of the Alliance.
19.	A relocated gas main installed by APA fails on site acceptance testing resulting in a delay to an occupation.		X		Risk shared by all Participants and is not a Variation involving a Scope Change and hence is not an Adjustment Event.
20.	Scope changes or the duration of service relocation works increase resulting in delays and additional costs.		X		Knock-on effects of utility service delay issues or changes to scope being required as a result of utility services issues is a risk shared by all Participants. They are not Variations involving a Scope Change and hence are not Adjustment Events.
21.	The Alliance is audited and changes to working procedures are required, adding additional cost to		X		Risk shared by all Participants and is not a Variation involving a Scope Change and hence is not an

Contract Award No	Scenario including impact of events /circumstances	Yes	No	Depends	Comments
	delivering the works.				Adjustment Event.
22.	The staging outlined in the Construction Management Plan is followed however this did not take into account telecommunications relocations that have now become more difficult and costly as a result.		X		Telecommunication relocations are a risk shared by all Participants and are not Variations involving a Scope Change and hence are not Adjustment Events.
23.	Design development results in changes to the Alliance design of the thickness of the wearing course for the road bridge. Changes have time and cost impacts.		X		Such design development forms part of the Works. It is not a Variation involving a Scope Change and hence is not an Adjustment Event.
24.	Innovation by the Participants leads to a saving (time and/or cost) without changing CSCR requirements.		X		Incentive to innovate needs to be maintained and should be rewarded. All Participants will share in the cost savings via the Risk/Reward provisions. This is not a Variation Directed by the Principal meaning it is not a Variation involving a Scope Change and hence is not an Adjustment Event.
25.	Urban design enhancement required incurring additional cost following further stakeholder consultation after TOC submitted.		X		Risk shared by all Participants and is not a Variation involving a Scope Change and hence is not an Adjustment Event.
26.	Innovation/design development resulting in savings to AOC.		X		Incentive to innovate needs to be maintained and should be rewarded. All Participants will share in the cost savings via the Risk/Reward provisions. This is not a Variation Directed by the Principal meaning it is not a Variation involving a Scope Change and hence is not an Adjustment Event.
27.	Changes to Project Program or methodology are required to limit impacts on the community and/or public transport users due to other (i.e. not the Principal's) infrastructure works or events outside of the project areas.		X		Participants' responsibility to undertake all reasonable efforts on a whole of network basis to manage works around other infrastructure or events. This is not a Variation Directed by the Principal meaning it is not a Variation involving a Scope Change and hence is not an Adjustment Event.

Contract Award No	Scenario including impact of events /circumstances	Yes	No	Depends	Comments
28.	Additional costs due to works resulting from the non-availability of personnel, facilities, plant, equipment and/or materials (which may include any to be supplied by the Principal such as barriers, casting yards, light pole footings and so on).		X		Such works form part of the Works and is a risk shared by all Participants and is not a Variation involving a Scope Change and hence is not an Adjustment Event.
29.	Any changes to working hours or days required to meet the Project Program resulting in additional direct and/or indirect costs to the Participants.		X		These changes form part of the Works and is a risk shared by all Participants and is not a Variation involving a Scope Change and hence is not an Adjustment Event.
30.	Participants incurring additional costs due to changes to productivities, inefficient work practices and/or downtime including as a result of inclement weather.		X		Any works giving rise to additional costs form part of the Works and this is a risk shared by all Participants and is not a Variation involving a Scope Change and hence is not an Adjustment Event.
31.	Participants employ alternate construction methodologies or sequences (other than as a result of being Directed to by the Principal).		X		Such works form part of the Works and is a risk shared by all Participants and is not a Variation involving a Scope Change and hence is not an Adjustment Event.
32.	Principal agrees to waive a requirement of the CSCR.		X		Waiver of a requirement of the CSCR does not constitute a Variation Directed by the Principal and hence is cannot be an Adjustment Event.
Scenarios arising due to external factors					
33.	The Principal is unable to achieve the agreed turnaround times for the approval of design packages resulting in delays to the start of construction. This impacts the staging agreed with the Principal in the final proposal and requires rework of the Project. Additional costs are incurred to re-work the staging and Project.		X		This is a risk that is shared by all Participants and is not a Variation involving a Scope Change and hence is not an Adjustment Event.
34.	The Principal changes its approval processes which require the Alliance to undertake further design work and submit more comprehensive reports than were		X		This is a risk shared by all Participants and is not a Variation involving a Scope Change and hence is not an Adjustment Event. This applies whether or not the

Contract Award No	Scenario including impact of events /circumstances	Yes	No	Depends	Comments
	required earlier. The Alliance design costs increase as a consequence of the Principal's requirements.				risk could have been foreseen or is in the control of the Alliance.
35.	Any change to a Statutory Requirement that substantially and materially affects the Works including EPA Statutory Requirements regarding contaminated material change during the construction period resulting in extra cost to the Alliance.	X			This constitutes a Change in Law and hence is an Adjustment Event.
36.	Increase in utility services works which do not constitute Augmentation Works (as defined in the Project Scope forming part of the CSCR) as a result of the Alliance agreeing to a request made by the utility service provider.		X		To the extent these works form part of the Principal Utility Services (as defined in the Project Scope forming part of the CSCR) then they do not form part of the Works and will be payable directly by the Principal outside of the Alliance. Otherwise all such utility service works form part of the Works (and the Works include the management and coordination of all such utility service works as well as works resulting from time related and/or other impacts (including scope changes) of all such utility services works) and any increase in those works does not require a Variation involving a Scope Change and hence is not an Adjustment Event.
37.	Statutory planning approvals are delayed and impact the Schedule.		X		Risk shared by all Participants and is not a Variation involving a Scope Change and hence is not an Adjustment Event.
38.	Unavailability of planned road closure dates causing additional costs to the Participants.		X		Any workarounds form part of the Works and is a risk shared by all Participants and is not a Variation involving a Scope Change and hence is not an Adjustment Event.
39.	A native title claim in respect of land that is to be acquired by the Principal (as identified in the CSCR) results in the Principal being unable to acquire that land resulting in the Principal Directing changes to the Works	X			Such works would usually not form part of the Works but do now as a result of the Principal's Direction which results in a Variation involving a Scope Change and hence is an Adjustment Event. Subject to the \$200,000

Contract Award No	Scenario including impact of events /circumstances	Yes	No	Depends	Comments
	to account for that land not being able to be acquired which have a cost impact of \$5,000 or greater.				Rule, their cost impact can be reflected in a reasonable modification to the TOC.
40.	Delays and additional costs caused by poor performance of subcontractors.		X		Risk shared by all Participants and is not a Variation involving a Scope Change and hence is not an Adjustment Event.
41.	Field works and geotechnical investigations being required which are additional to those already undertaken by the Principal as at the date of the Agreement and also to any additional works and investigations that were anticipated as being required as the date of the Agreement.		X		Risk shared by all Participants and is not a Variation involving a Scope Change and hence is not an Adjustment Event.

The intent of these Adjustment Event Examples is to assist the ALT and Participants to decide if a particular event is an Adjustment Event. The scenarios are not intended to be a complete list but rather examples of scenarios that are or are not categorised as Adjustment Events.

In the event that the Principal agrees with the NOPs that any Additional Works or Additional Works (Other) (as such terms are defined in the Contract Scope contained in the CSCR) are to be undertaken by the Alliance, it is the expectation of the Principal that sufficient site investigation works and analysis is undertaken such that the above Adjustment Event Examples will continue to apply to any expanded Works.

Where changes are necessary, at any stage during the Project lifecycle, in order to satisfy the CSCR, such changes are not to be considered as Adjustment Events as they are part of the Works. Where changes result from the CSCR themselves being amended, then these will be Directed by the Principal and, subject to the \$5,000 de minimis and the \$200,000 Rule, they will be considered as Adjustment Events.

References to the “\$200,000 Rule” above is a reference to the requirement regarding the ability of the cost impacts of Adjustment Events to be reflected in an adjustment to the TOC set out in clause 15.2 of the Agreement. Namely, it is not until the aggregate effect of such cost impacts, whether in the positive (net additional costs) or the negative (net additional savings), reaches \$200,000 that costs can be reflected in a modification to the TOC.

By way of example, if there were the following Adjustment Events (in the order indicated) with the following cost impacts:

- (i) +\$60,000, +\$100,000, -\$40,000 (i.e. a cost saving) and +\$100,000 then a reasonable modification to the TOC of +\$20,000 could be claimed and each and every Adjustment Event thereafter, whether positive or negative, could also then result in a reasonable modification to the TOC reflecting the cost impact of that Adjustment Event; or
- (ii) +\$60,000, +\$100,000, +\$100,000 and -\$40,000 then a net reasonable modification to the TOC of +\$20,000 could be made (+\$60,000 could be claimed after the third Adjustment Event and the last Adjustment Event cost saving of \$40,000 could be claimed)
- (iii) -\$140,000, +\$15,000, +\$25,000 and -\$130,000 then a reasonable modification to the TOC of -\$30,000 could be claimed and each and every Adjustment Event thereafter, whether positive or negative, could also then result in a reasonable modification to the TOC reflecting the cost impact of that Adjustment Event; or
- (iv) -\$140,000, - \$130,000, +\$15,000 and +\$25,000 then a net reasonable modification to the TOC of -\$30,000 could be made (as - \$70,000 could be claimed after the second Adjustment Event and each of the subsequent Adjustment Event cost impacts could be claimed).

As provided for in clause 19.2 of the Agreement, all amounts referred to in this Schedule 6 are exclusive of any GST that may be payable.

**SCHEDULE 7 – MILESTONE ACHIEVEMENT AND COMPLETION REPORT
REQUIREMENTS**

Example



[Insert name of Project]

No. **[Insert number]**

PAA SCHEDULE 7:

**REQUIREMENTS FOR MILESTONE ACHIEVEMENT AND
COMPLETION REPORTS**

Example

1 Completion Report Requirements

The Completion Report must contain all documents and other information associated with the Alliance Activities essential for all use, operation and maintenance of the Works including as a minimum:

- (a) a draft audit report from a financial auditor appointed by the Principal validating the AOC;
- (b) all Documentation required to be transferred to the Principal as set out in the Project Control and Reporting Plan;
- (c) all Documentation demonstrating compliance with all relevant aspects of the quality assurance system including, but not limited to, having undertaken all final inspections and Testing of the Works required by that system;
- (d) asset handover, consent to operate and transition into service plans, procedures and protocols for the Works;
- (e) Defects Liability Period plan detailing planned resourcing and management arrangements to meet the obligations during the Defects Liability Period;
- (f) drawings and other documents and other information required which are essential for the use, operation and maintenance of the Works;
- (g) As constructed drawings which comply with the requirements of the CSCR;
- (h) all asset management and technical data required to be submitted in accordance with the CSCR;
- (i) all third party guarantees, warranties and service agreements (including an afterhours list of all relevant personnel);
- (j) written notice from any landowners or occupiers whose properties have been utilised and occupied by the Participants for the purpose of carrying out Alliance Activities, confirming that the land has been left in a satisfactory condition (i.e. in no worse condition than prior to use or occupation by the Participants) and no items remain outstanding. In the event that the Participants cannot provide written notice from landowners or occupiers, the Participants must demonstrate to the Principal that they have used best endeavours and have actively sought written notice from the landowners or occupiers;
- (k) all approvals and certificates, including all:
 - (i) structural certificates;
 - (ii) structural calculations;
 - (iii) mechanical certificates;

- (iv) electrical certificates;
- (v) building certificates of occupancy;
- (vi) environmental approvals and certificates;
- (vii) design and construction verification certificates (by both internal and independent verifiers); and
- (viii) validation testing certificates and reports;
- (l) any other notices, permits, approvals, consents, certificates, manuals, documents or information which in the opinion of the Principal are reasonably necessary for the use, operation and maintenance of the Works;
- (m) any other Documentation necessary for the reliable, safe and efficient operation of all items of plant and equipment to eliminate the possibility of incorrect operation or use or handling;
- (n) any other Documentation that the Principal reasonably requires or the ALT agrees to provide; and
- (o) copies of all statutory planning approvals obtained for the Participants for the Alliance Activities.

2 Milestone Achievement Report Requirements

The Milestone Achievement Report shall contain the information outlined in clause 1 above, relevant to that particular Milestone.

SCHEDULE 8 – MANAGEMENT PLAN REQUIREMENTS

Example



[Insert name of Project]

No. **[Insert number]**

PAA SCHEDULE 8:

MANAGEMENT PLAN REQUIREMENTS

1.0 MANAGEMENT PLAN SUMMARY

The Management Plans, establishing the systems and controls for the Alliance, are detailed in the Agreement and its Attachments and sections of the DIT Master Specification - Project Controls included within the CSCR.

2.0 MANAGEMENT PLAN REQUIREMENTS

2.1 **Project Alliance Agreement Management Plans**

The following Management Plans submitted at the Request for Proposal phase shall be included in the Agreement developed to the status as detailed in brackets below.

Document	Document Number*	Revision	Aconex Transmittal
Schedule CC2.0 – Project Governance, Control and Reporting Plan (Draft)			
Schedule CC2.1 – Project Management Plan (Draft)			
Schedule CC2.2 – Engineering and Design Management Plan (Draft)			
Schedule CC2.3 – Mobilisation and Alliance Culture Implementation Pan (Draft)			
Schedule CC2.4 - Construction Management Plan (Draft)			

Schedule CC2.5 – Procurement and Contracting Strategy (Draft)			
Schedule CC2.7 – Indigenous Participation Plan (Draft)			
Schedule CC2.8 – Risk Management Plan (Draft)			
Schedule CC2.9 – Services Management Plan (Outline)			
Schedule CC2.12 – Environmental Management Plan (Outline)			
Schedule CC2.17 – Communications and Stakeholder Relations Plan (Draft)			
Schedule CC2.18 – Work Health and Safety Management Plan (Draft)			

2.2 Project Alliance Delivery phase Management Plans & Responsibilities

Upon award of the Alliance, the Management Plans as detailed in the respective sections of the DIT Master Specification - Project Controls included within the CSCR shall be submitted and approved within the specified timeframes. This shall include the following:

Document Number*	Management Plan Title	Prepare**	Endorse	Recommend	Approve
	Project Control and Reporting Plan	OR	AMT	AGM	ALT
	Project Management Plan	OR	AGM	ALT	Principal's Rep
	Engineering and Design Management Plan	OR	AMT	AGM	ALT
	Mobilisation Strategy	OR	-	AMT	AGM
	Construction Management Plan	OR	-	AMT	AGM
	Procurement and Contracting Strategy	OR	AGM	ALT	Principal's Rep
	Risk Management Plan	OR	-	AMT	AGM
	Services Management Plan (Utility Management Plan)	OR	-	AMT	AGM
	Construction Environmental Management Plan (CEMP)	OR	DIT Discipline Lead	AMT	AGM
	Sustainability Management Plan	OR	DIT Discipline Lead	AMT	AGM

OFFICIAL

Document Number*	Management Plan Title	Prepare**	Endorse	Recommend	Approve
	Community Engagement and Media Management Plan	OR	DIT Discipline Lead	ALT	Principal's Rep
			AGM		
	Work Health and Safety Management Plan	OR	AMT	AGM	ALT
	Governance Plan	OR	-	AGM	ALT
	Air Quality Monitoring and Management Plan (AQMMP)	OR	DIT Discipline Lead	AMT	AGM
	Construction Noise and Vibration Management Plan (CNVMP)	OR	DIT Discipline Lead	AMT	AGM
	incl. Night Works Management Plan				
	Contamination and Remediation Management Plan (CRMP)	OR	DIT Discipline Lead	AMT	AGM
	Soil Erosion and Drainage Management Plan (SEDMP)	OR	DIT Discipline Lead	AMT	AGM
	Drug and Alcohol Management Plan	OR	-	AMT	AGM
	Emergency Response Plan	OR	-	AMT	AGM
	HSE Improvement Plan	OR	-	AMT	AGM

OFFICIAL

Document Number*	Management Plan Title	Prepare**	Endorse	Recommend	Approve
	Site Security Plan	OR	-	AMT	AGM
	Traffic Management Plan	OR	DIT Discipline Lead	AMT	AGM
	Asset Completion and Handover Plan	OR	AGM	ALT	Principal's Rep
	Quality Management Plan	OR	-	AMT	AGM
	Project Document, Correspondence & Records Control Plan (Document Management Plan)	OR	AMT	AGM	Principal's Rep
	Commissioning and Testing Management Plan	OR	DIT Discipline Lead	AMT	Principal's Rep
	Financial Management Plan	OR	AMT	AGM	ALT
	Industry Participation Management Plan	OR	AMT	AGM	ALT
	KRA Performance Management Plan	OR	-	AMT	AGM
	Alliance Team Integration Plan	OR	AMT	AGM	ALT
	Human Resources Management Plan	OR	-	AGM	ALT

Document Number*	Management Plan Title	Prepare**	Endorse	Recommend	Approve
	Training Plan	OR	-	AMT	AGM
	Workforce Development Plan	OR	AMT	AGM	ALT
	Workplace Relations Management Plan	OR	AGM	ALT	ABCC
	Digital Engineering Execution Plan	OR	DIT Discipline Lead	AMT	AGM
	Survey Management Plan	OR	AMT	AMT	AGM

Notes:

* Document number to be developed by Alliance in accordance with agreed protocols

**OR – Originator of Document

SCHEDULE 9 – TERMINATION PAYMENTS

Example



[Insert name of Project]

No. **[Insert number]**

PAA SCHEDULE 9:

TERMINATION PAYMENTS

Example

Termination Payments

1. Subject to any rights the Principal has under or arising out of or in connection with the Agreement, including but not limited to a right to withhold or set off payment and recover all amounts to which any of the NOPs may be liable under the Agreement, if the Agreement is terminated under clauses 32.2.4 or 32.5.2 the Principal must pay the NOPs, or the NOPs must pay the Principal, as the case may be, an amount which is:
 - 1.1 agreed between the Participants; or
 - 1.2 failing agreement, an amount determined by an Adjudicator, in accordance with this Schedule 9.

Termination for Willful Default or Act of Insolvency

2. If the Agreement is terminated under clauses 32.2.4 or 32.5.2 any Reimbursable Cost or Fee to be paid to the non-defaulting NOPs in accordance with this Schedule 9 will be limited to:
 - 2.1 the Reimbursable Costs and Fee payable in accordance with the Agreement for the Alliance Activities performed prior to the date of termination;
 - 2.2 the Reimbursable Costs and Fee reasonably and properly incurred and payable by the non-defaulting NOPs in performing the Alliance Activities arising out of or in connection with any Subcontracts or Sub-Alliance:
 - (a) entered into in the expectation of performing the whole of the Alliance Activities or the Works which the non-defaulting NOPs are legally liable to pay;
 - (b) the performance of, or any rights or entitlements arising under or out of or in connection with such Subcontracts or Sub-Alliances, which becomes the property of the Principal or, the Principal obtains the benefit of; and
 - (c) which have not previously been included in any payment by the Principal; and
 - 2.3 the Reimbursable Costs and Fee reasonably and properly incurred and payable by the non-defaulting NOPs in accordance with the Agreement as a result of complying with any direction given by the Principal upon, or subsequent to, termination;
 - 2.4 the Reimbursable Costs and Fee reasonably and properly incurred by the non-defaulting NOPs in accordance with the Agreement to demobilise the Alliance from the performance of the Alliance Activities;

less any amounts which the Principal has previously paid to the non-defaulting NOPs under the Agreement for Reimbursable Costs and Fee. For the avoidance of doubt, any monies received from the Principal and retained by the non-defaulting NOPs in respect of accruals must be returned to the Principal to the extent not applied to the payment of those amounts referred to in clause 2 of this Schedule 9.
3. If the Agreement is terminated under clause 32.2.4 or 32.5.2 the Principal may:
 - 3.1 partly or wholly suspend any payment, or any entitlement to payment, of any Reimbursable Cost, Fee or reward due to the Defaulting NOP under the

Agreement until Final Completion; or

- 3.2 terminate the Defaulting NOP's entitlement to payment of any Reimbursable Cost, Fee or reward which may otherwise accrue to the Defaulting NOP under the Agreement on and from the date of the notice; and
 - 3.3 any monies received from the Principal and retained by the Defaulting NOP in respect of accruals or otherwise must be returned to the Principal to the extent not applied any payments that remain due and payable by the Principal to the Defaulting NOP after the application of clause 3 of this Schedule 9 and otherwise in accordance with the terms of the Agreement.
4. Nothing in this Schedule 9 has the effect of limiting or reducing the liability of the Defaulting NOP under the indemnity in clause 32.13 or the release and discharge under clause 32.14.

Independent Adjudication

Referral of certain issues to an Adjudicator

5. If the Participants are not able to agree on the value of a payment in accordance with this Schedule 9, then a Participant may by notice in writing to all other Participants, specify the nature of the issue and call for submission of the issue to an adjudicator (**Adjudicator**) to determine it. In the event of a submission of an issue to the Adjudicator, the Adjudicator must determine the amount payable by the Principal to the NOPs, or the NOPs to the Principal (as the case may be) by determining the net sum of the amounts set out in clauses 1 to 4 inclusive of this Schedule 9 (**Determination**).

Nomination of Adjudicator

6. The procedures for appointing the Adjudicator are as follows:
- 6.1 written notice must be given by the Participant calling for the appointment of the Adjudicator, including details of the issue to be resolved by the Adjudicator, to the other Participants;
 - 6.2 if the issue is not resolved within 20 Business Days from the date of the notice, the Participants must agree on a single Adjudicator to determine the issue;
 - 6.3 if, within 20 Business Days of the notice, the Participants failed to agree on a single Adjudicator, the Participants must, as soon as practicable, request the President of The Institute of Arbitrators and Mediators Australia to appoint the Adjudicator; and
 - 6.4 upon agreement of the Participants, or appointment of an Adjudicator under clause 6.3 of this Schedule 9, the Participants and the Adjudicator must enter into an agreement which will govern the determination of the issue. That agreement must be consistent with the provisions of this Schedule 9.
7. If any NOP (**Refusing Participant**) refuses to execute the agreement under clause 6.4 of this Schedule 9, the Principal may execute the agreement with the Adjudicator for the Refusing Participant and the Participants and the Adjudicator will proceed with the determination of the issue under this Schedule 9 and the Refusing Participant will be bound by the Adjudicator's determination.

Adjudicator to have appropriate experience

8. The Adjudicator must have appropriate commercial and practical experience and expertise in the area of the issue.
9. Any person nominated to act as an Adjudicator must fully disclose any interest or duty prior to that person's appointment. If that person has or may have an interest or duty which conflicts with their appointment as Adjudicator, then that person must not be appointed except for the agreement of all of the Participants.
10. In resolving the issue the Adjudicator must act impartially and in good faith.

Confidentiality

11. It will be a term of the Adjudicator's appointment that the Adjudicator undertakes to keep confidential matters coming into the Adjudicator's knowledge by reason of the Adjudicator's appointment and carrying it out.

Powers of Adjudicator

12. The Adjudicator will have the following powers:
 - 12.1 to determine an amount, if any, payable under clauses 1 to 4 inclusive of this Schedule 9;
 - 12.2 to inform itself independently as to facts to which the issue relates and notify each Participant of these facts;
 - 12.3 after consultation with the Participants to obtain evidence or other material from any person in relation to any aspect of the issue and notify each Participant of this evidence or other material;
 - 12.4 to receive written submissions and sworn and unsworn written statements and photocopy documents and to use the same;
 - 12.5 after consultation with the Participants, to consult with such other professionally qualified persons as the Adjudicator in its absolute discretion thinks fit; and
 - 12.6 to take such measures as the Adjudicator thinks to expedite the completion of the issue resolution, but the Adjudicator will only have the power to determine an issue regarding the amount payable under clauses 1 to 4 inclusive of this Schedule 9 and not any other issue (unless the Participants otherwise agree).

Timing of issue resolution

13. It will be a term of the Adjudicator's appointment that the Adjudicator must be required to make a determination of the issue within 40 Business Days of the Adjudicator's appointment or such further period as the Participants may agree in writing.

Written Determination

14. The Adjudicator must deliver a written determination which sets out the reasons for the determination and the findings of fact on which the determination is based.

Issue resolution to be held in Adelaide

15. The issue resolution process must be held in Adelaide.

Adjudicator's Determination is final

16. The Adjudicator must act as an expert and not an arbitrator. The determination is final and binding on the Participants except where the Adjudicator is in breach of the agreement referred to in clause 6.4 of this Schedule 9, in the case of manifest error on the face of the determination or if the Adjudicator has acted in bad faith.

Cost of Adjudicator

17. The costs of the Adjudicator must be borne equally by the Participants and are not Reimbursable Costs.

Referral to Adjudicator does not affect the obligations of the Participants

18. The referral of any matter to an Adjudicator does not in any manner relieve any Participant from performing its obligations under this Agreement pending the determination of the issues.

Example

SCHEDULE 10 – STATUTORY DECLARATION

Example



[Insert name of Project]

No. **[Insert number]**

PAA SCHEDULE 10:

STATUTORY DECLARATION

Example

Payment Statutory Declaration

I, **[insert name]**

of **[insert address]**

DO SOLEMNLY AND SINCERELY DECLARE that:

1. I am **[insert description of position]** and I am authorised to make this declaration on behalf of **[NOP]** in respect of payment claims under the **[insert description of Agreement]** - Project Alliance Agreement (**PAA**) with the **[insert Principal]**.
2. **[NOP]** has submitted payment claim number **[insert]** under the PAA.
3. I declare on behalf of **[NOP]** that I am in a position to be aware of the facts declared herein and have not withheld any relevant information in connection with the subject matter of this declaration.
4. I make this declaration after making all due enquiries and reviewing all relevant documents and materials in the possession, custody or control of **[NOP]**.
5. I declare that, as at **[insert date of payment claim]**:
 - (a) all persons who have at any time been employed or retained by **[NOP]** to provide goods and services to **[NOP]** for work:
 - i) performed to the date of **[NOP]**'s payment claim accompanying this declaration, being **[insert date]**; and
 - ii) in connection with the PAA,
(collectively, **work under the PAA**);
 have been paid all moneys, entitlements and prerequisites due and payable to them in respect of the work under the PAA as at the date of making this declaration;
 - (b) the below table sets out the current status of payments to all Subcontractors currently engaged by **[NOP]** in connection with the Project:

Subcontractor name and ACN/ABN	Contract no.	Date of works (period)	Aggregate of payment claim(s) received from Subcontractor to date	Aggregate amount paid to Subcontractor to date	Reasons for difference (if any)

- (c) **[NOP]** has complied with all of its obligations under all Laws or any industrial instrument (an award or an agreement that has been certified, approved or lodged under the *Fair Work Act 2009* (Cth)) that is binding on **[NOP]** in respect of all of its employees;

- (d) [NOP] has paid all workers compensation insurance premiums payable by [NOP] in respect of the work done in connection with the PAA to the date of this declaration. This declaration is accompanied by a copy of any relevant certificate of currency in respect of that insurance; and
 - (e) [NOP] has paid all pay roll tax payable by [NOP] in respect of wages paid or payable to the relevant employees for work done in connection with the PAA to the date of this declaration.
6. I declare that [NOP] has not made (nor intends to make) any legal or equitable set-off deduction or counterclaim (unless such deduction is made pursuant to a legal obligation arising from statute or court order) in respect of any moneys otherwise payable to any worker of, or supplier to, [NOP] in connection with the work under the PAA performed for [NOP] [except for the following – insert details of any deduction with reasons].
 7. I declare that following making all due and diligent enquiries I am not aware (nor could not have been aware after making such enquiries) of any Subcontractor not being paid all moneys due and payable to them in respect of each of their respective agreements with [NOP].
 8. I declare after making all due and diligent enquiries that I am not aware of any circumstances which would give rise to any claim or demand upon [NOP] by a person in respect of or in connection with that person’s work under the PAA.
 9. I declare after making all due and diligent enquiries that no Subcontractor, Sub-Alliance Participant, any other person engaged by [NOP] arising out of or in connection with the Agreement or [NOP] has a security interest in respect of any of the Temporary Works to which payment claim number [insert] under the PAA relates.
 10. For the avoidance of doubt, a term which has a defined meaning in the PAA has the same meaning when used in this declaration unless it is expressly defined in this declaration or the context otherwise requires.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the *Oaths Act 1936* (SA) as amended.

Signature of Declarant:

.....

Declared at:

.....

On:

Before me:

*Signature of legally authorised person * before whom the declaration is made:*

.....

Name and title of person before whom the declaration is made:*

SCHEDULE 11 – PARENT COMPANY GUARANTEE

Example



[Insert name of Project]
No. **[Insert number]**

**PAA SCHEDULE 11:
PARENT COMPANY GUARANTEE**

Example

DEED OF GUARANTEE

DEED dated

BY:

[Insert] (Parent)

IN FAVOUR OF:

COMMISSIONER OF HIGHWAYS a body corporate established pursuant to the *Highways Act 1926* (SA), of 50 Flinders Street, Adelaide, South Australia 5000 (the **Principal**)

IN RESPECT OF

[Insert] (Contractor)

RECITALS

- A. The Principal has or is about to enter into an alliance agreement (**Agreement**) with the Contractor to form an alliance to deliver the Project to the Principal.
- B. The Contractor is a subsidiary of the Parent.
- C. The Principal requires as a condition to its entry into the Agreement with the Contractor that the Parent guarantee the performance by the Contractor of its obligations under the Agreement, and indemnify the Principal against any cost or expense, loss or damage may incur or suffer as a result of any breach by the Contractor of the Agreement.
- D. The Parent has agreed to provide the guarantee and indemnity in this Deed of Guarantee.

AGREED TERMS

1. **GUARANTEE**

The Parent guarantees to the Principal the performance by the Contractor of all its obligations under the Agreement and if the Contractor fails to execute and perform its obligations under the Agreement, the Parent must if required to do so by the Principal complete or cause to be completed the obligations of the Contractor in accordance with the Agreement.

2. **INDEMNITY**

The Parent indemnifies the Principal and must keep the Principal indemnified against any liability, cost, expense, loss, charge or damage which the Principal incurs or suffers as a result of any breach by the Contractor of any or all of its obligations under the Agreement.

3. **NO ABROGATION**

Neither the guarantee nor the indemnity given under this Deed will be affected in any way by:

- (a) any variation, modification, addition or alteration to the Agreement whether with or without the consent of the Parent;
- (b) any waiver, extension of time or other indulgence granted by the Principal to the Contractor;
- (c) the whole or any part of the Agreement becoming void, voidable or unenforceable;
- (d) the insolvency of the Parent or the Contractor; or
- (e) a repeal of, or amendment to, the legislation constituting the Principal.

It is the intention of the Parent and the Principal that the guarantee and indemnity contained in this Deed are unconditional and absolute in all circumstances.

4. CONTINUING GUARANTEE AND INDEMNITY

The guarantee and indemnity contained in this Deed are continuing, irrevocable and remain in full force and effect until the Contractor performs, observes and discharges all its obligations under the Agreement.

5. PAYMENT

If the Contractor defaults in performance of any of its obligations under the Agreement and at any time after that default and following the Principal's compliance with any notice requirements under the Agreement or the expiry of any applicable grace or remedy period under the Agreement, the Principal gives written notice to the Parent of that default and the Principal's intention to exercise its rights under this Deed in respect of that default, then the Parent must (without further notice from the Principal) pay any amount due under this Deed within seven days of demand by or on behalf of the Principal under this Deed.

The Parent must pay interest at the Prescribed Rate on any amounts due under this Deed, but not paid.

"Prescribed Rate" means the rate of interest of 11%.

6. LIMITATION OF LIABILITY

- (a) Notwithstanding any other provision of this Deed save as provided for in clause 6(b) below, the aggregate of the liability of the Parent to the Principal under this Deed shall not exceed the liability of the Contractor arising out of or in connection with the Agreement assuming (for the purposes of determining the Parent's liability under this Deed) that none of the Contractor's obligations are void, voidable, invalid, illegal or otherwise unenforceable for any reason.
- (b) Nothing in this clause 6 shall restrict the amount of any award for costs that may be made in favour of the Principal in the event of proceedings taken in relation to this Deed.

7. PROPER LAW

The Laws in force in the State of South Australia apply to this Deed.

8. JURISDICTION OF COURTS

The courts of the State of South Australia will have exclusive jurisdiction to determine any proceedings in relation to this Deed.

Any proceedings brought in a Federal Court must be instituted in the Adelaide Registry of that Federal Court.

9. NOTICES

A notice or demand to the Parent under this Deed must be in writing and signed by the Principal or on behalf of the Principal by any person duly authorised by the Principal to do so. It will be presumed that a person who signs a notice or demand on behalf of the Principal is duly authorised to do so in the absence of proof to the contrary.

A notice of demand must be:

- (a) delivered to the Parent's address;
- (b) sent by pre-paid mail to the Parent's address; or

The address of the Parent, Principal and Contractor for the purposes of this Deed shall be as stated in Schedule 1 or such other address as is notified to the other parties from time to time.

A notice of demand given to the Parent in accordance with this clause is treated as having been given and received:

- (a) on the day of delivery if delivered before 5.00 pm on a Business Day, otherwise on the next Business Day;
- (b) if sent by pre-paid mail, on the third Business Day after posting; or

10. ASSIGNMENT

The Parent must not assign, novate or otherwise deal with its rights and obligations under this Deed without the written consent of the Principal.

All reference in this Deed to the Principal, the Parent and the Contractor shall be taken to include their respective successors and permitted assigns.

11. INTERPRETATION

Any term used but not defined in this Deed but defined in the Agreement has the meaning ascribed to that term in the Agreement.

EXECUTED as a Deed

SIGNED by **[Parent]** in accordance with section 127 of the *Corporations Act 2001* (Cth) by two directors or by one director and the company secretary:

.....
Director signature

.....
Director/Company Secretary signature

.....
Director name

.....
Director/Company Secretary name

.....
Date

.....
Date

Example

SCHEDULE 1

ADDRESSES FOR NOTICES

For the Principal:

Department for Infrastructure and
Transport

77 Grenfell Street,
Adelaide, SA 5000.

Email

Attention:

For the Contractor:

.....;

.....;

.....;

Email

Attention:

For the Parent:

.....;

.....;

.....;

Email

Attention:

Example

SCHEDULE CC1 - ALLIANCE DESIGN

Example

SCHEDULE CC2 - ALLIANCE DELIVERY

For final program, refer Schedule AC8 details

Example

SCHEDULE AC1 – TARGET OUTTURN COST

Schedule AC1 consists of the following:

	Aconex Correspondence Number
Schedule AC1A - Target Outturn Cost	
AC1.1: TOC	
AC1.3: Risks and Opportunities	
AC1.4: Cash Flow	
Schedule AC1B – Value for Money Initiatives or Proposals	
AC1.B.1: Value for Money Initiatives	
AC1.B.2: Alternative Proposals	

Example

SCHEDULE AC2 – NOP ADDITIONAL REIMBURSABLE COSTS

Example

SCHEDULE AC3 – NOP OPERATING HOURS

Example

SCHEDULE AC4 – REIMBURSABLE COST MULTIPLIER

Example

SCHEDULE AC5 – CALCULATION OF FEE

Example

**SCHEDULE AC6 – NOP KEY PERSONNEL AND SPECIALIST NON-WAGES
PERSONNEL**

Example

ATTACHMENT CC3 - PEOPLE

Example

**ATTACHMENT CC4 - UNDERSTANDING, ABILITY AND CAPACITY TO PARTICIPATE IN
THE ALLIANCE**

Example

ATTACHMENT AC7 – INDUSTRY PARTICIPATION PLAN

Example

ATTACHMENT AC8 – MILESTONES AND FINAL PROGRAM

Example

ATTACHMENT 1 – CONTRACT SCOPE AND CONTRACT REQUIREMENTS

Example

ATTACHMENT 2 – INSURANCE POLICIES

Example

ATTACHMENT 3 – INFORMATION PROVIDED TO NOPS¹

Example

¹ Note that the KNET references in the list of documents attached as Attachment 3 are for the Principal's internal use only.
