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Project Alliance Agreement

Quakers Hill to Vineyard Duplication

Transport Infrastructure Development Corporation
ABN 28 458 799 157

Leighton Contractors Pty Limited
ABN 98 000 893 667

MVM Rail Pty Limited
ABN 75 057 458 705

Ansaldo STS Australia Pty Limited
ABN 34 068 707 380

Maunsell Australia Pty Limited
ABN 20 093 846 925

Sinclair Knight Merz Pty Limited
ABN 37 001 024 095
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Project Alliance Agreement made at Sydney on 19 November 2008

Parties
Transport Infrastructure Development Corporation ABN 28 458 799 157
a statutory state owned corporation constituted by section 18A(1) of the Transport Administration Act 1988 (NSW) of Level 7, Tower A, Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067 ("TIDC")

The other parties to this Agreement are set out in the Agreement Particulars (each a "Non Owner Participant" or "NOP" and collectively the "Non Owner Participants" or "NOPs"),

(and all together referred to as the "Participants")

The Participants will generally be referred to as "we", "our" or "us", unless the context requires otherwise.

Background

A. TIDC is a statutory state owned corporation constituted under the Transport Administration Act 1988, and is responsible for developing certain major railway systems and other major transport projects, including facilitating their development by other persons.

B. TIDC is responsible for developing the Rail Clearways Program.

C. The Quakers Hill to Vineyard Duplication Project (the "Project") is one of the projects making up the Rail Clearways Program.

D. This Agreement sets out the basis on which we will:

   (a) jointly develop a Project Proposal for the Project; and

   (b) if the Project Proposal is approved by TIDC, proceed to complete the Alliance Activities.

Capitalised words and acronyms are defined in Schedule 1. The rules regarding the interpretation of this Agreement are also set out in Schedule 1.

Operative provisions

1. Behavioural commitments

1.1 Alliance Objectives and Alliance Principles

We will:

   (a) adopt all reasonable measures to ensure that the Alliance Objectives are achieved;

   (b) conduct the Alliance Activities in a way which is consistent with the Alliance Principles and will take all reasonable steps to ensure that our Associates involved in carrying out the Alliance Activities do likewise; and
(c) exhibit behaviours consistent with the Alliance Principles so as to achieve the Alliance Objectives within an ethical, positive, dynamic and results-oriented culture amongst those associated with carrying out the Alliance Activities.

The Gainshare/Painshare Regime set out in the Commercial Framework is intended to reflect and reinforce the Alliance Objectives.

1.2 **Co-operation and innovation**

We will work together in a co-operative and innovative manner for the purpose of:

(a) meeting or exceeding the Alliance Objectives and fully complying with the Alliance Principles;

(b) producing outstanding results for the Project;

(c) ensuring that the Alliance Activities are carried out in a co-ordinated and efficient manner;

(d) creating a win-win position for each of the Participants; and

(e) ensuring the successful completion of the Alliance Works in accordance with this Agreement.

1.3 **Commitment to act in good faith**

We will act in good faith in carrying out the Alliance Activities and will:

(a) be fair, reasonable and honest;

(b) do all things reasonably expected of us by the others to give effect to the spirit and intent of this Agreement; and

(c) not impede or restrict each other's performance of the Alliance Activities.

If a Participant believes this Agreement is operating unfairly or unreasonably with respect to a Participant we will use our best endeavours to achieve an agreement amongst all Participants on such action as may be necessary to remove the cause or causes of any unfairness or unreasonableness.

1.4 **Promote interests of the Project**

We will promote the interests of the Project and make decisions on a 'best for project' basis, giving as much weight to the interests of the Project as to our own self interest.

1.5 **Sharing of information**

We will share all information relevant to the Alliance Activities in an honest, open and timely manner.

1.6 **Avoid disputation**

We will use our best endeavours to avoid disputation, notify each other of perceived or real differences of opinion as soon as they arise, and attempt to promptly resolve those differences.
1.7 Conflicts of interest

We will:

(a) disclose to each other the full particulars of any real or apparent conflict of interest which arises or may arise in connection with this Agreement or the performance of the Alliance Activities, immediately upon becoming aware of the conflict of interest whether that conflict concerns us or any person employed or retained by us for or in connection with the performance of the Alliance Activities;

(b) not allow ourselves to be placed in a position of conflict of interest or duty in regard to any of our rights or obligations under this Agreement (without the prior consent of each other) before we participate in any decision in respect of that matter; and

(c) ensure that our ALT Members and our other Associates also comply with the requirements of clauses 1.7(a) and 1.7(b) when acting in connection with this Agreement or the performance of the Alliance Activities.

1.8 Collective sharing of risk and opportunities

We will share all risks and opportunities associated with the delivery of the Project except for risks/opportunities that we have specifically agreed will be retained solely by a particular Participant under this Agreement.

1.9 Future addition of Participants

If appropriate to achieve a 'best for project' outcome, we may agree to include an additional participant to the alliance. If we agree on such a course:

(a) we will cooperate to enter into the necessary documentation; and

(b) the ALT will seek to agree with the additional participant on any necessary amendments to the Commercial Framework.

2. Primary performance obligations

2.1 Primary performance obligations of Participants

We will collectively perform the Alliance Activities:

(a) in accordance with the Project Brief;

(b) in a careful, diligent, skilful and workmanlike manner;

(c) so that the Alliance Works:

(i) are fit for their intended purposes as stated in, or reasonably inferred from, the Scope of Work and this Agreement (including the Project Brief); and

(ii) comply with the requirements of the Project Brief, the Scope of Work and this Agreement; and
with the aim of achieving optimal value for money and satisfying the Alliance Objectives.

2.2 Primary performance obligations of TIDC

TIDC will:

(a) subject to the terms of this Agreement, provide access to the Project Site to enable the Participants to carry out the Alliance Activities; and

(b) pay the NOPs in accordance with the terms of this Agreement.

2.3 Parent Company Guarantee

(a) Ansaldo STS Australia Pty Limited must provide TIDC with a deed of guarantee and indemnity from Ansaldo STS S.p.A. in the form of Schedule 14 within 30 days of the date of this Agreement.

(b) MVM Rail Pty Limited must provide TIDC with a deed of guarantee and indemnity from Macmahon (Southern) Pty Ltd in the form of Schedule 14 within 30 days of the date of this Agreement.

3. Governance and management

3.1 Alliance Leadership Team

The Alliance Leadership Team ("ALT") has been established in accordance with clause 4 to administer this Agreement and provide strategic guidance and leadership to the Participants.

3.2 Alliance Management Team

An Alliance Management Team ("AMT") will be established in accordance with clause 5 to manage and co-ordinate the day to day Alliance Activities.

3.3 Alliance Manager

An Alliance Manager will be appointed in accordance with clause 5.2 to lead the AMT and report to the ALT.

3.4 Senior Executive Review Group

(a) If requested by TIDC, we will each appoint a senior executive to participate in the Senior Executive Review Group.

(b) Each Participant may replace its representatives on the Senior Executive Review Group with the consent of the other members of the Senior Executive Review Group (which will not be unreasonably withheld).
(c) The purpose of the Senior Executive Review Group is to review the progress of the Project at a higher level than the ALT and to make recommendations about the Project to the Participants.

(d) Any of us may call a meeting of the Senior Executive Review Group, and each of us must ensure that our representative attends the meeting.

3.5 TIDC Representative

TIDC may:

(a) by written notice to the NOPs appoint persons to exercise any of TIDC's functions under this Agreement;

(b) not appoint more than one person to exercise a specific function under this Agreement; and

(c) revoke any appointment under paragraph (a) by notice in writing to the NOPs.

All references in this Agreement to TIDC include a reference to a representative appointed under this clause 3.5.

4. Alliance Leadership Team

4.1 Establishment and functions of ALT

We have established the ALT to administer this Agreement and to provide strategic guidance and leadership to the Participants. The functions of the ALT are more fully described in Part 1 of Schedule 6 (Functions of ALT, AMT and Alliance Manager).

4.2 ALT Members

(a) Each Participant must appoint at least one person to be a member of the ALT and may appoint two persons as members of the ALT at any one time.

(b) The ALT Members appointed by each Participant at the Commencement Date are set out in the Agreement Particulars.

(c) A Participant may only appoint persons as ALT Members who are in a position to be able to fully participate as a member of the ALT. Each Participant must inform each other Participant of the availability times of its ALT Members.

(d) Each Participant may, with the consent of the other members of the ALT (which will not be unreasonably withheld), appoint one or more Alternative ALT Members to act in place of its ALT Members during absences caused by normal planned leave and emergencies for each ALT Member.

(e) Each Participant may replace its ALT Members or Alternative ALT Members with the consent of the other members of the ALT (which will not be unreasonably withheld).
The Alliance Manager may not act as an ALT Member or Alternative ALT Member.

### 4.3 ALT Chairperson

(a) At the Commencement Date, the ALT Chairperson is the ALT Member identified in the Agreement Particulars as the ALT Chairperson.

(b) The ALT Chairperson will convene and chair the meetings of the ALT.

(c) The ALT will appoint another ALT Member as ALT Chairperson or reappoint the existing ALT Chairperson every six months. The existing ALT Chairperson will remain the ALT Chairperson until such time as the ALT appoints another ALT Member as ALT Chairperson.

### 4.4 Meetings of the ALT

(a) The ALT will:

(i) hold a meeting as soon as practicable after the Commencement Date;

(ii) hold meetings at least once every calendar month and otherwise when considered necessary by a majority of the ALT Members;

(iii) not hold a meeting unless at least one ALT Member appointed by each Participant is present at that meeting; and

(iv) determine the procedures and rules for those meetings.

(b) Each ALT Member present at a meeting of the ALT will be entitled to cast one vote. Wherever possible, all votes must be cast at meetings of the ALT.

(c) The ALT may conduct a meeting even though the ALT Members are not at the same location, provided that all ALT Members who wish to participate in that meeting are linked by an agreed method of instant voice recognition.

### 4.5 Decisions of ALT

(a) Every decision of the ALT must be a unanimous decision of all ALT Members entitled to vote. No decision will have been made by the ALT unless it is unanimous. Accordingly, each ALT Member present at a meeting of the ALT holds a power of "veto".

(b) We will comply with all decisions of the ALT made in accordance with clause 4.5(a).

(c) If the ALT is unable to achieve unanimity in respect of a decision to be made by the ALT in respect of a Material ALT Issue within 5 Business Days of the issue being referred to the ALT, and a Participant wishes to pursue the issue, clause 17.1(d) will apply.
4.6 Minutes of ALT meetings

(a) The ALT will nominate a secretary to attend all ALT meetings and record the resolutions and actions arising out of each ALT meeting.

(b) The secretary will issue a copy of the minutes of the meeting to each ALT Member who attended the meeting within 5 Business Days after the relevant meeting.

(c) Each ALT Member who attended the meeting will notify the secretary whether he or she accepts the minutes as accurate as soon as practicable after receiving the minutes. If an ALT Member does not accept the minutes as accurate, the ALT Member must promptly provide any amendments to the minutes to the secretary and the secretary must promptly issue amended minutes to each ALT Member for approval. The procedures set out in this clause 4.6 will apply to the amended minutes.

(d) Following acceptance of the minutes by each of the ALT Member who attended the meeting, the minutes will be deemed to be the official record of the relevant meeting.

5. Alliance Management Team and Alliance Manager

5.1 Establishment, structure and functions of AMT

(a) As soon as practicable after the Commencement Date, the ALT must establish the AMT to carry out the day to day Alliance Activities. The functions of the AMT are more fully described in Part 2 of Schedule 6 (Functions of ALT, AMT and Alliance Manager).

(b) The AMT will consist of the best available people from the Participants, and people recruited from outside the resources of the Participants if necessary, to ensure the successful completion of the Alliance Activities.

(c) We will use our best endeavours to ensure that our personnel who are members of the AMT remain (subject to satisfactory performance by the personnel) members of the AMT until the ALT decides that those personnel are no longer required.

5.2 Appointment of Alliance Manager

(a) Subject to clause 5.2(b), the Alliance Manager will be the person nominated in the Agreement Particulars. If no person is nominated in the Agreement Particulars, the Alliance Manager will be appointed by the ALT as soon as practicable after the Commencement Date.

(b) The ALT may:

(i) replace the Alliance Manager at any time;

(ii) appoint a person to act as acting Alliance Manager on a temporary basis during any period in which the Alliance Manager is unavailable; and

(iii) appoint different persons to the position of Alliance Manager for different stages of the Project.
5.3 **Functions of the Alliance Manager**

The Alliance Manager will lead and be a member of the AMT. The functions of the Alliance Manager are more fully described in Part 3 of Schedule 6 (Functions of ALT, AMT and Alliance Manager).

5.4 **Interface between Alliance Manager and ALT**

The Alliance Manager (or acting Alliance Manager) will report to the ALT and attend ALT meetings as required by the ALT but is not a member of the ALT and has no voting rights at ALT meetings.

The Alliance Manager is subject to the control and direction of the ALT.

6. **Project Definition Phase**

6.1 **Commencement and duration**

The Project Definition Phase will commence on the Commencement Date and will end on the date on which TIDC gives a notice under clause 6.5(c)(i) or 6.5(c)(iii).

6.2 **PDP Activities**

During the Project Definition Phase, we will carry out the following activities ("PDP Activities"):

(a) prepare and finalise a Scope of Works in accordance with clause 6.4;
(b) prepare and finalise a Project Proposal in accordance with clause 6.5;
(c) prepare and finalise the AMP;
(d) undertake all activities necessary for the Planning Approval and obtain all other necessary Approvals in accordance with clause 9.2(b);
(e) liaise with the Stakeholders to understand and address their requirements;
(f) the other services and activities listed in Schedule 22; and
(g) such other services or activities as TIDC may direct.

In carrying out the PDP Activities we must comply with all relevant obligations under this Agreement.

6.3 **No payment for non-PDP Activities**

The NOPs will be entitled to payment of:

(a) their Reimbursable Costs incurred in carrying out the PDP Activities; and
(b) an amount on account of the Fee calculated by multiplying the amount of those Reimbursable Costs by the percentage specified in Appendix 1 of the Commercial Framework for calculating the Fee for each NOP.
However, the Participants must not carry out, and will not be entitled to payment in respect of, any Alliance Activities which are not PDP Activities unless and until TIDC approves the Project Proposal in accordance with clause 6.5.

Once TIDC has approved the Project Proposal, the NOPs will be entitled to payment for all Alliance Activities in accordance with the Commercial Framework. All payments by TIDC to the NOPs in respect of the PDP Activities, prior to the approval by TIDC of the Project Proposal will be taken to have been payments in relation to that entitlement.

6.4 Development and approval of Scope of Work

(a) We will carry out investigations to enable us to recommend to TIDC a Scope of Work for the Alliance Works.

(b) The Scope of Work must:

   (i) be delivered by us to TIDC within the period set out in Schedule 2 or such other period agreed in writing by TIDC at the request of the ALT;

   (ii) include the concept design for the Alliance Works; and

   (iii) set out a detailed estimate of the cost of the Alliance Works.

(c) Following receipt by TIDC of the Scope of Work, TIDC may, in its absolute discretion, elect to:

   (i) approve the Scope of Work by notice in writing to the NOPs, in which case clause 6.5 (Development and approval of Project Proposal) will apply on and from the date of that notice;

   (ii) request the Participants to:

      A. carry out further investigations in relation to the proposed Scope of Work;

      B. amend the proposed Scope of Work to take into consideration the findings derived from the further investigations carried out by the Participants or any other amendments as otherwise required by TIDC; and

      C. re-submit the amended Scope of Work to TIDC for approval in accordance with this clause 6.4(c); or

   (iii) give the ALT a notice in writing informing the ALT that the Alliance Activities will not proceed, in which case clause 16.1(a) (Termination without default) will apply on and from the date of that notice.

6.5 Development and approval of Project Proposal

(a) We will prepare and deliver a Project Proposal to TIDC within the period set out in Schedule 2 after the date on which TIDC notifies us in writing that it has approved the Scope of Work under clause 6.4(c)(i) or such other period agreed in writing by TIDC at the request of the ALT.
(b) The Project Proposal will include:

(i) a fully detailed TCE, including a separate calculation for each Portion and the proposed lump sum seed funds for the Schedule Performance Pool and KRA Performance Pool;

(ii) a fully detailed construction programme, which includes a construction staging methodology, outline of the work to be undertaken in each Possession and the proposed Dates for Completion;

(iii) a fully documented AMP;

(iv) confirmation that all concerns raised by the Stakeholders have been satisfactorily considered and addressed or can be addressed;

(v) confirmation that all necessary Approvals have been or can be obtained;

(vi) a Value for Money Report;

(vii) a certificate from the Independent Estimator that the TCE is fair and reasonable;

(viii) a Subcontracting Strategy; and

(ix) the information referred to in clause 9.8(b) (Industrial Relations).

(c) Following receipt of the Project Proposal TIDC may, in its absolute discretion, elect to:

(i) approve the Project Proposal by notice in writing to the NOPs;

(ii) request the Participants to amend the Project Proposal and re-submit it to TIDC for approval in accordance with clause 6.5(c)(i); or

(iii) give the ALT a notice in writing informing the ALT that the Alliance Activities will not proceed, in which case clause 16.1(a) will apply on and from the date of that notice.

(d) We will provide all documents, access and assistance necessary for the Independent Estimator to audit the TCE.

7. Commencement and access and care of the Site

7.1 Commencement

We will commence performing the Alliance Activities on the Commencement Date. However:

(a) we must not carry out any Alliance Activities which are not PDP Activities unless and until TIDC approves the Project Proposal pursuant to clause 6.5; and

(b) the commencement of any Alliance Activities on the Project Site is subject to:
7.2 Site access for the Participants

Subject to clause 9.4 and to any other constraints which may be inherent in or not reasonably avoidable for the Project, TIDC will give us such access, use and control of the Project Site or any part of the Project Site, as is appropriate to enable us to carry out the Alliance Activities. We must:

(a) comply with all reasonable restrictions and directions of TIDC in relation to access to the Project Site or any part of the Project Site by the Participants, Subcontractors and other parties, such as service providers;

(b) when requested by TIDC, enter into an SIA with TIDC and RailCorp for the Project in a form required by TIDC and RailCorp;

(c) comply with all Interface Agreements, including the SIA;

(d) maintain the Site and any other land and place required to carry out the Alliance Activities in a safe, clean and tidy condition; and

(e) on completing work at the Site and as a condition precedent to Completion:

(i) remove all Construction Plant, Temporary Works and all surplus materials and rubbish from the Site; and

(ii) leave the whole of the Site in a safe, clean and tidy condition.

7.3 Alliance to acquire access

We will obtain all necessary access to the Alliance Site.

7.4 Site access for TIDC

(a) TIDC, RailCorp, their Associates and any other person nominated by TIDC may at any time have access to any part of the Site for any purpose.

(b) At all reasonable times we will give TIDC and any other persons authorised in writing by TIDC, access to the Alliance Works at any place where the work is being carried out or materials are being prepared or stored.

7.5 Access protocols

Any person who is given access pursuant to clauses 7.2, 7.3 or 7.4 must be required to fully comply with all access protocols established by the Participants.

7.6 Project Office

(a) TIDC has procured the Project Office and will provide access to it as part of the Project Site from the date of this Agreement.
(b) We will ensure that all personnel and Subcontractors conduct themselves in an appropriate manner at all times and do not interfere with the quiet enjoyment of the property of other occupiers and neighbours to the Project Office.

(c) We must comply with clause 7.2(e) in respect of the Project Office as a condition precedent to Completion of the last Portion.

7.7 Care of the Alliance Works

(a) From the Commencement Date until the Date of Completion, we will be responsible for the care of the Alliance Works, the Construction Plant, the Temporary Works and any unfixed goods and materials (whether on or off Site) used or to be used in carrying out the Alliance Activities.

(b) After the Date of Completion, we will remain responsible for the care of such parts of the Alliance Works, any Construction Plant, Temporary Works or unfixed goods or materials (whether on or off Site) used or to be used in carrying out the Alliance Activities as are necessary to carry out our obligations under clause 10.2 (Defects) until the date on which the Certificate of Final Completion is approved and completed by the ALT under clause 11.4 (Certificate of Final Completion).

7.8 Reinstatement

We will promptly make good any loss or damage to the Alliance Works, the Construction Plant, the Temporary Works or any unfixed goods or materials that occurs during any period in which we are responsible for their care under clause 7.7 (Care of the Alliance Works).

7.9 Deed Poll by NOPs in favour of RailCorp

(a) We acknowledge that RailCorp is the owner of the Project Site and will be the owner of the Alliance Works but is not a party to this Agreement. Rather TIDC is procuring the Alliance Works for RailCorp pursuant to this Agreement. Accordingly we agree to give RailCorp the benefit of TIDC's rights under this Agreement in accordance with clause 7.9(b), without affecting the allocation of risk under this Agreement.

(b) As a condition precedent to any obligation of TIDC to pay the NOP any amount under clause 13.2 each NOP must, within 10 days of the Commencement Date, provide to TIDC an executed deed poll in favour of RailCorp in the form set out in Schedule 21.

8. Design, documents and auditing

8.1 Supply of design and documents by TIDC

(a) TIDC may provide the NOPs with design, documentation and specifications from time to time.

(b) The NOPs will not (and will ensure their subcontractors do not) use, copy or reproduce the design, documentation or specifications provided by TIDC for any purpose other than for the Alliance Works.
The design, documentation and specifications provided by TIDC will remain the property of TIDC and will be returned by the NOPs to TIDC if requested in writing by TIDC.

8.2 Supply of design and other documents by NOPs

(a) We will:

(i) prepare design and other documentation as is necessary to enable the Participants to construct the Alliance Works and otherwise carry out the Alliance Activities;

(ii) provide TIDC with copies of all such design and other documentation as it may require from time to time;

(iii) provide TIDC with a complete set of Asset Management Information for the completed Alliance Works; and

(iv) provide TIDC with any certificates, designs, documentation, surveys, approvals, programs or notices so that TIDC is able to fulfil its responsibilities and obligations under all applicable Approvals with respect to the Alliance Works.

(b) Where we are required to provide TIDC with documentation pursuant to clause 8.2, we will provide the number of copies specified in the Agreement Particulars.

8.3 Alliance Intellectual Property Rights

(a) All Alliance Intellectual Property Rights will become our joint property immediately upon being developed, created, produced, discovered or first reduced to practice.

(b) Each of us will have an irrevocable, royalty-free licence to use, or license all Alliance Intellectual Property Rights for any purpose.

(c) None of us will be required to account to the other in relation to the proceeds derived from the exercise of the rights granted under this clause 8.3.

(d) If requested to do so by a Participant, we will make available to all other Participants, all Records relating to Alliance Intellectual Property Rights within 7 Business Days of being requested to by another Participant.

(e) If a Participant uses any Alliance Intellectual Property Right, it may only do so on these terms:

(i) the Participant acknowledges that the risk associated with the use of the Alliance Intellectual Property Right is entirely theirs and they release the other Participants from any liability or claim in relation to such use;

(ii) the Participant indemnifies the other Participants against any liability the other Participants may have to a third party arising from such use;

(iii) no fee or royalty will be payable to the other Participants; and
(iv) the Participant must disclose to third parties which receive use of, or benefit from, the Alliance Intellectual Property Right that the other Participants disclaim responsibility for and deny any right to rely on the Alliance Intellectual Property Right.

(f) If a Participant licenses its right in any Alliance Intellectual Property Right, it may only do so on the basis that the licensee acknowledges that the risk associated with the use of the Alliance Intellectual Property Right is entirely theirs.

8.4 Background Intellectual Property Rights

(a) Each of us grants to the other a non-exclusive irrevocable royalty-free licence to use our Background Intellectual Property Rights for the purpose of carrying out the Alliance Activities.

(b) We will make available to all Participants all Records relating to our Background Intellectual Property Rights to the extent necessary to enable that knowledge to be used effectively for the Alliance Activities within 7 Business Days of being requested to by another Participant.

(c) We will not use the Background Intellectual Property Rights of any other Participant for any other purpose than for carrying out the Alliance Activities and the subsequent use of the Alliance Works.

8.5 Third parties’ Intellectual Property Rights

(a) In carrying out the Alliance Activities we will not infringe the Intellectual Property Rights of any third party.

(b) Each Participant indemnifies the others against all Claims, losses or expenses it incurs as a result of a breach by that Participant of clause 8.5(a).

(c) Where we need to use the Intellectual Property Rights of a third party in carrying out the Alliance Activities, we will make every reasonable effort to procure licences for those rights for the Participants on reasonable commercial terms as approved by the ALT.

8.6 Moral rights

(a) Each NOP must use its best endeavours to:

(i) obtain in writing from its Associates and licensors all necessary, unconditional and irrevocable:

A. consents permitted by applicable law, to any alterations to, or use of any Work Product that would otherwise infringe Moral Rights in the Work Product, whether occurring before or after the consent is given; or

B. to the extent a consent is not permitted by applicable law, waivers permitted by applicable law of moral rights in the Work Product,

for the benefit of TIDC and RailCorp;
provide TIDC with copies of each written consent and waiver obtained under this clause 8.6, at TIDC's request; and

(ii) ensure that none of its Associates or Licensors maintains or supports any claim or proceedings for infringement by TIDC of any of the NOP's Associates', or licensors' Moral Rights in the Work Product.

(b) Each NOP must indemnify TIDC and RailCorp against all cost, loss, expense or damage (including legal costs on a solicitor and own client basis and whether incurred by or awarded against TIDC or RailCorp) or any claim or proceedings, that TIDC or RailCorp may sustain or incur as a result of a breach of this clause 8.6.

8.7 Claims

The NOPs must:

(a) provide, at no cost to TIDC, all reasonable assistance required by TIDC or RailCorp to defend a claim or any proceedings arising from defending any claim for the infringement of:

(i) Intellectual Property Rights vested in TIDC as joint tenant under clause 8.3(a);

(ii) any Intellectual Property Rights of third parties; or

(iii) a person's Moral Rights of third parties; and

(b) keep TIDC fully informed of all suspected or actual infringements and claims by any person that the Work Product, or it's use, infringes the Intellectual Property rights or Moral Rights of any person.

8.8 Confidentiality

(a) Except for the efficient performance of the Alliance Works, the NOPs will not, and will ensure that those for whom they are responsible do not:

(i) disclose to any person any information; or

(ii) publish any photographs, texts, documents, articles, advertisements or other information,

relating to this Agreement, the Alliance Works or the Project or documented or communicated in the course of negotiations and developing this Agreement, without obtaining TIDC's prior written consent (which consent can be withheld in the absolute discretion of TIDC).

(b) If requested by TIDC, the NOPs will execute a confidentiality deed, on terms reasonably required by TIDC, in relation to any information obtained by us for the purposes of this Agreement, the Alliance Works or the Project, or in the course of negotiating, developing and implementing this Agreement.

(c) The NOPs must take all reasonable steps to protect the confidentiality of all information relating to the Agreement, the Alliance Works and the Project.
(d) Clause 8.8(a) does not apply to any information that is:

(i) in or enters the public domain, except through disclosure contrary to this Agreement; or

(ii) was made available to the NOP by a person who is or was not under any obligation of confidence in relation to that information.

(e) The obligations of confidentiality set out in this clause 8.8 do not apply to the extent that a NOP is required by law, or the rules of any stock exchange to disclose any information, provided the NOP:

(i) promptly gives notice to TIDC of that requirement;

(ii) takes all lawful measures available, and allows TIDC to take all lawful measures available, to restrict disclosure of information; and

(iii) discloses only that portion of information which it is legally required to disclose.

(f) We acknowledge that:

(i) subject to clause 8.8(f)(ii), TIDC will disclose parts of this Agreement and information concerning the terms of this Agreement under section 15A of the Freedom of Information Act 1989 (NSW) ("FOI Act") and otherwise as required by law; and

(ii) Schedule 7 (Commercial Framework) is commercial-in-confidence (as defined in section 15A of the FOI Act) and will not be disclosed except:

A. to RailCorp or the employees, contractors or advisors of TIDC or RailCorp on those persons undertaking to keep strictly confidential any information disclosed to them;

B. as required by law or any requirement of any regulatory body or government agency;

C. to the Minister responsible for TIDC; or

D. with the written consent of the NOPs.

(g) Each NOP must provide to TIDC:

(i) details of any related body corporate or any other private sector entity in which the NOP has an interest, that will be involved in carrying out any of the NOP's obligations or will receive a benefit under this Agreement; and

(ii) any other information which TIDC reasonably requires to comply with its obligations under section 15A of the FOI Act.
8.9 **Transparency**

We acknowledge that it is of paramount importance to TIDC that all commercial aspects of this Agreement are administered in a transparent manner that demonstrates to all Participants and relevant Stakeholders that all payments made under this Agreement are in accordance with the terms of this Agreement. We agree to do all things necessary or appropriate to ensure that these outcomes are achieved.

8.10 **Financial Auditor**

(a) TIDC will appoint and pay the Financial Auditor.

(b) The Financial Auditor's overriding brief from TIDC is to audit and verify the Fee and Reimbursable Costs and to ensure that in respect of all payments made pursuant to this Agreement, the Participants receive their exact entitlement in accordance with clause 13.2 (Invoices and payment) and no more.

(c) The Alliance Manager must ensure that any reports or advice from the Financial Auditor that raise concerns about amounts claimed by or paid to any Participant are promptly brought to the attention of the ALT.

(d) Provided it has given prior notice in writing to and consulted with the Participants, TIDC may appoint a different person or company to be the Financial Auditor.

(e) References in this Agreement to the Financial Auditor will include the authorised representatives of the Financial Auditor.

8.11 **Audit of Records**

(a) At any time until the Date of Final Completion, and thereafter at any time required to enable a recalculation to be carried out under clause 15.7 (Accounting for insurance proceeds) or clause 15.12 (Accounting for third party payments and recoveries), the NOPs are required to provide TIDC and the Financial Auditor the right to:

(i) audit the process by which the Fee or components of it are calculated or charged and Reimbursable Costs are incurred and recorded by the Participants; and

(ii) have access at all reasonable times to the personnel and Records of the Participants that are related to the Fee or Reimbursable Costs.

(b) TIDC and the Financial Auditor will have the right to reproduce any of the Records referred to in clause 8.11(a).

8.12 **Retention of Records**

Due to the "open book" nature of this Agreement, the NOPs must provide to TIDC at its request copies of all Records regarding the Fee or components of it or Reimbursable Costs or the Alliance Activities. Copies of these Records must be provided progressively and no later than the Date of Final Completion.
8.13 Collaborative audit of compliance with AMP

(a) The ALT, the Alliance Manager or a Participant may at any time request that an auditor approved by the ALT carry out an audit on our compliance with any of the plans contained in the AMP.

(b) We will provide all documents, access and assistance necessary for the completion of any audit.

(c) The audits will be carried out as collaborative audits involving our personnel and technical specialists.

(d) If any non-conformance is detected, we will immediately take steps to rectify the non-conformance.

(e) The costs of conducting an audit requested by the ALT or the Alliance Manager will be treated as Reimbursable Costs.

(f) Unless we agree otherwise, the cost of any audit requested by a Participant will be paid for by that Participant and will not be a Reimbursable Cost.

8.14 Continuing effect

The provisions of clauses 8.3 to 8.13 continue to operate and bind all Participants after termination of this Agreement.

9. Alliance Works

9.1 Subcontracts

(a) We will ensure that Subcontracts are entered into in accordance with the Subcontracting Strategy and within the authorisation limits set by the ALT from time to time.

(b) The terms of any Subcontract will:

(i) contain a requirement that the relevant Subcontractor execute a deed (in the form of Schedule 24 or in such other form as TIDC may from time to time require) with TIDC and RailCorp creating a duty of care in favour of TIDC and RailCorp in relation to the works or services to be conducted under the Subcontract, unless TIDC decides in its absolute discretion that a deed is not necessary;

(ii) be approved by the Alliance Manager;

(iii) contain an assignment of Alliance Intellectual Property Rights by the Subcontractor to the Participants;

(iv) contain confidentiality provisions substantially the same as those in clause 8.8, and

otherwise contain provisions to support or to match those in clause 8 (as required by the Alliance Manager).
A Participant who engages a Subcontractor in connection with the Alliance Activities does so in its own right and, for the purposes of that Subcontract will not be acting as the agent of any other Participant. However, the Participants will remain collectively responsible under this Agreement for the Alliance Activities including any Alliance Activities carried out by Subcontractors.

If a NOP engages a Subcontractor the NOP must, where required in writing by either the ALT or TIDC, enforce or defend the relevant Subcontract for the benefit of the Participants and any such enforcement or defence actions, settlement or proceedings must be conducted under the written direction of either the ALT or TIDC.

Subject to the requirements of this clause 9.1, we agree that the NOPs specified in the Agreement Particulars will procure the parts of the Alliance Works specified in the Agreement Particulars using the entity identified in the Agreement Particulars.

### 9.2 Statutory Requirements

In carrying out the Alliance Activities, we will:

(a) comply with all Statutory Requirements;

(b) without limiting clause 9.2(a):

(i) obtain the Planning Approval and all other Approvals; and

(ii) comply with the requirements of the Planning Approvals and all other Approvals; and

(c) ensure that all Subcontractors do likewise.

### 9.3 Subcontractor warranties

We will obtain written warranties in favour of TIDC and RailCorp from Subcontractors, to the extent such warranties are relevant, that any:

(a) materials incorporated into the Alliance 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

(b) design of, and any materials incorporated into, the Alliance Works are of the required quality and fit for the intended purposes as stated in, or reasonably inferred from, this Agreement.

### 9.4 Occupational health and safety

(a) We are committed to achieving outstanding performance in relation to health and safety and making every effort to maintain a workplace free of accidents and injuries.

Without limiting our obligations under any other provision of this Agreement, we agree as follows:

(i) to the extent that TIDC is able to validly appoint or procure appointment of the NOP specified in the Agreement Particulars (the "Principal Contractor") as the principal contractor under clause 210 of the Regulation then, from the date on which TIDC notifies the Principal Contractor:

A. the Principal Contractor is appointed as principal contractor under clause 210 of the Regulation; and

B. despite clauses 4.5, 7.4 and 7.5 TIDC and the NOPs give all necessary authority to the Principal Contractor to allow it to fulfil and exercise the obligations and functions of the principal contractor under the Regulation;

(ii) the Principal Contractor must, from the date on which TIDC notifies the Principal Contractor:

A. where clause 9.4(c)(i) applies, exercise and fulfil the functions and obligations of the principal contractor under the Regulation;

B. where clause 9.4(c)(i) does not apply, exercise and fulfil the functions and obligations of the principal contractor under the Regulation as if the Principal Contractor had been validly appointed as the principal contractor under clause 210 of the Regulation;

C. ensure that all Subcontractors comply with their respective obligations under the Act and the Regulation;

D. at all reasonable times provide the other Participants with access to such records as may be necessary to establish the Principal Contractor's compliance with its obligations under this clause;

E. ensure that the Participants carry out the Alliance Activities in a manner which ensures that the Participants satisfy their obligations under the Act and the Regulations; and

F. immediately inform the other Participants in writing of all incidents involving injury to any person arising during the carrying out of the Alliance Activities; and

(iii) in carrying out the Alliance Activities we will ensure that we (and our Associates) comply with:

A. the latest OH&S Plan;

B. all Statutory Requirements and other requirements of this Agreement relating to occupational health and safety;
C. all proper safety directives, procedures and work instructions issued by the Principal Contractor and, to the extent not inconsistent with them, issued by the Alliance Manager or personnel authorised by the ALT to issue such directives, procedures and instructions;

D. the terms of the SIA;

E. the provisions of Schedule 18 (Occupational Health and Safety) and Schedule 20 (Rail Safety); and

F. TIDC’s Accreditation.

9.5 Occupational health and safety management plan

We will:

(a) as part of PDP Activities and prior to accessing any part of the Site, develop, as part of the AMP, an occupational health and safety management plan ("OH&S Plan") in accordance with the New South Wales OHS Management Systems Guidelines dated June 2004; and

(b) ensure strict compliance with the requirements of the OH&S Plan.

9.6 Rail Safety Accreditation

(a) We must undertake all Alliance Activities pursuant to, and in accordance with the requirements of, the TIDC Accreditation.

(b) We must develop, implement and maintain appropriate systems, procedures and records and make these available to TIDC upon request, to ensure compliance with these requirements.

(c) We must be proactive in confirming that the obligations of and authority of the Principal Contractor in that capacity can be undertaken and exercised consistently with the requirements of the TIDC Accreditation. Each of us will immediately inform TIDC and the Principal Contractor if it appears that they cannot.

9.7 Protection of people, the environment and property

(a) We are dedicated to protecting both people, the environment and property in carrying out the Alliance Activities and we will, in carrying out the Alliance Activities:

(i) provide all things and take all measures necessary to protect people, the environment and property;

(ii) avoid unnecessary interference with the passage of people and vehicles;

(iii) prevent damage, obstruction or other interference with services;

(iv) prevent nuisance and unnecessary noise and disturbance;

(v) prevent environmental damage or pollution;
ensure that the Alliance Activities do not have any adverse impact on RailCorp infrastructure and operations to a greater extent than is inherently necessary for the performance of the Alliance Activities; and

(vii) ensure that our Subcontractors do likewise,

provided that this clause will not be taken to mean that TIDC authorises any action constituting a breach of any Statutory Requirements.

(b) Our obligations include the provision of barricades, guards, fencing, temporary roads, footpaths, warning signs, lighting, watching, traffic flagging, safety helmets and clothing, removal of obstructions and protection of services.

9.8 Industrial relations

(a) We must comply with the *NSW Government Industrial Relations Management Guidelines* and acknowledge that the Project constitutes a Category 1 Project as defined in those guidelines.

(b) The Project Proposal must include:

(i) evidence of compliance by each of the NOPs with all employment and legal obligations in the preceding twelve months (and the NOPs must provide this evidence when requested by the Alliance Manager);

(ii) the location of time and wage records and other documents that are required to be kept to verify ongoing compliance with all employment and legal obligations;

(iii) the names of Federal or New South Wales awards that are likely to cover Subcontractors and other contractors on the Project;

(iv) the names of those responsible for co-ordinating industrial relations in relation to any part of the Project;

(v) an outline of:

A. consultation and communications mechanisms;

B. measures to coordinate the interface with Subcontractors, other contractors and unions;

C. measures for assessing Subcontractors; and

D. measures to monitor and verify ongoing compliance; and

(vi) a project industrial relations plan, as part of the AMP.

9.9 Protection of cultural heritage and native title rights

We are committed to the protection of cultural heritage items and native title rights and will:

(a) if any cultural heritage items are discovered by us immediately give written notice to TIDC;
(b) comply with TIDC’s instructions required to enable TIDC to comply with any obligations arising as a result of the operation of Statutory Requirements in relation to heritage items and native title; and

(c) ensure that our Associates do likewise.

9.10 **Minimise disruption**

In carrying out the Alliance Activities, we will minimise disruption or inconvenience to:

(a) the existing network of rail lines and rail stations owned and operated by RailCorp;

(b) existing road network and pedestrian facilities; and

(c) TIDC and other owners, occupiers, tenants and potential tenants of the Site in their occupation or use of, or attendance on, any part of the Site, including any occupation or use of the Alliance Works or a Portion.

10. **Quality**

10.1 **Quality assurance**

We are committed to ensuring that the Alliance Works are consistent with a "best for project" approach. For the achievement of this objective, we will establish, implement and maintain a quality assurance system to a standard equivalent to or better than the standard referred to in the Agreement Particulars.

10.2 **Defects**

(a) TIDC may inform us of the existence of a Defect which becomes apparent at any time prior to the expiration of the Defects Notification Period.

(b) A notice by the TIDC under clause 10.2(a):

(i) must identify the Defect;

(ii) may be given at any time within the Defects Notification Period; and

(iii) may state the time in which the rectification work is to be carried out and completed.

(c) On receipt of any notice under clause 10.2(a), we will rectify the Defect within the period stated in that notice and in accordance with any other requirement stated in that notice.

(d) TIDC will be entitled to rectify a Defect itself or engage others to do rectification work if TIDC considers that:

(i) the rectification work must be carried out urgently for safety, environmental or other reasons of urgency; or

(ii) we have not undertaken the rectification work in the time specified in a notice under clause 10.2(a).
(e) Where TIDC rectifies a Defect pursuant to clause 10.2(d), any costs reasonably incurred by TIDC in doing so will be treated as Reimbursable Costs.

(f) The NOPs will be reimbursed in accordance with the Commercial Framework for the costs reasonably incurred by them in rectifying Defects pursuant to clause 10.2(c).

(g) The ALT must, within a reasonable time of Completion, determine any amount which should be withheld, until the Date of Final Completion, or deducted from any final payment in order to ensure that the obligations of the Participants in relation to the rectification of Defects are completed.

11. Time, progress and Completion

11.1 Progress and Date for Completion

If TIDC approves the Project Proposal in accordance with clause 6.5(c)(i), we will:

(a) except as otherwise approved by the Alliance Manager, progress the Alliance Activities in accordance with the construction programme approved under clause 6.5 (Development and approval of Project Proposal); and

(b) without limiting clause 11.1(a), achieve Completion of the Alliance Works by the Date for Completion.

The Date for Completion may only be adjusted by the ALT.

11.2 Suspension of Alliance Works

(a) Except to the extent necessary to avoid an event having, or reasonably foreseeable as having, an adverse impact on the environment, public health or safety, we will not suspend the Alliance Activities without a written direction from TIDC or pursuant to clause 16.6(d)(i).

(b) If TIDC considers that suspension of the whole or part of the Alliance Activities is necessary or appropriate for any reason, TIDC may direct that we suspend the progress of the whole or part of the Alliance Activities for such time as TIDC decides and we will promptly suspend that part of the Alliance Activities.

(c) TIDC may direct that we are to recommence the whole or the relevant part of the Alliance Activities at any time.

(d) If TIDC requires a suspension under this clause 11.2, the ALT will determine whether the Commercial Framework should be adjusted to take into account the effect of the suspension.

(e) We will use all reasonable endeavours to mitigate costs whether arising during the period of, or as the result of, any suspension.

11.3 Certificate of Completion

(a) When the Alliance Manager considers that we have achieved Completion, the Alliance Manager will submit a Certificate of Completion to the ALT for its
approval. The Certificate of Completion must include a statement by the Alliance Manager to the effect that:

(i) the Alliance Manager is not aware of any Defects; and

(ii) to the best knowledge of the Alliance Manager, having made reasonable enquiries, the Alliance Works have reached Completion.

(b) If the ALT approves the Certificate of Completion, the ALT will complete the Certificate of Completion indicating the Date of Completion.

(c) If the ALT does not consider the Alliance Works to have reached Completion:

(i) the ALT will complete the Certificate of Completion indicating details of work the ALT considers to be outstanding to achieve Completion; and

(ii) the Alliance Manager will promptly inform the Participants that Completion has not been achieved and the details of the outstanding work required to achieve Completion.

(d) Once the Alliance Manager is satisfied that the outstanding work has been completed in accordance with this Agreement, the Alliance Manager will again initiate the approval process under this clause 11.3.

(e) The Certificate of Completion must also refer to the date which the ALT determines is the Date of Completion.

11.4 Certificate of Final Completion

(a) After expiry of the Defects Notification Period, and provided the Alliance Manager is not aware of any outstanding Defects, the Alliance Manager will submit a Certificate of Final Completion to the ALT for its approval.

(b) If the ALT approves the Certificate of Final Completion, the ALT will complete the Certificate of Final Completion indicating the Date of Final Completion.

(c) If the ALT does not consider the Alliance Works to have reached Final Completion or considers that there is some other obligation under this Agreement which is required to be performed to reach Final Completion which has not been performed or observed:

(i) the ALT will complete the Certificate of Final Completion indicating what the ALT considers to be outstanding to achieve Final Completion or to perform or observe the relevant obligation under this Agreement; and

(ii) the Alliance Manager will promptly inform the Participants that Final Completion has not been achieved and any details of the outstanding work or the failure to perform or observe the relevant obligation under this Agreement.

(d) Once the Alliance Manager is satisfied that the outstanding work or obligation required to be performed to reach Final Completion has been completed, performed
or observed in accordance with this Agreement, the Alliance Manager will again initiate the approval process under this clause 11.4.

(e) The Certificate of Final Completion must also refer to the date which the ALT determines is the Date of Final Completion.

11.5 Portions

(a) In addition to any Portions described in the Agreement Particulars, the ALT or TIDC may at any time determine that any part of the Alliance Works will be regarded as a Portion.

(b) References in this Agreement to Alliance Works, Certificate of Completion, Completion, Date for Completion, and Date of Completion will be read as referring to a Portion where the context requires or permits.

12. Directions by TIDC and Target Adjustment Events

12.1 TIDC Reserved Powers

Although the Participants intend that decisions affecting the Alliance Works will be made collectively as required by clause 4.5 (Decisions of ALT), each Participant acknowledges that the final decision on the following matters ("TIDC Reserved Powers") ought to be, and is, reserved for unilateral determination by TIDC in its absolute and unfettered discretion:

(a) functional requirements, scope and design parameters for the Alliance Works (including the addition of work, the omission of work, changes to the levels, lines, positions or dimensions of work, changes to the character or quality of any work, and any other changes to the scope of the Alliance Works);

(b) timing or sequencing of the Alliance Activities (including Date for Completion);

(c) urgent protection of people, the Alliance Works or the environment;

(d) media communications;

(e) communications and interface issues with Stakeholders;

(f) Site access arrangements (including directions under clause 7.2(a));

(g) protection of any items of cultural heritage value;

(h) the issue of a Defects notice under clause 10.2;

(i) a suspension of the Alliance Works under clause 11.2;

(j) the determination of a Portion under clause 11.5;

(k) anything necessary to enable TIDC to comply with its responsibilities and obligations under any Approvals with respect to the Alliance Works; or

(l) anything TIDC judges appropriate to allow TIDC to comply with its statutory obligations or responsibilities or to preserve and satisfy the TIDC Accreditation or TIDC's role as a determining Authority for the purposes of any Approval,
and the Participants will abide by and implement any direction of TIDC in respect of any TIDC Reserved Power ("Direction") as though it were a decision of the ALT.

No Direction will invalidate this Agreement. If a Direction omits or deletes any part of the Alliance Works TIDC may carry out the omitted or deleted work itself or by engaging others.

Any discretion or power of unilateral determination which is reserved or accorded to TIDC under this Agreement or by law may be exercised solely for the benefit of TIDC, notwithstanding any other terms of this Agreement.

12.2 Impact of Reserved Powers on Commercial Framework

The decision on what adjustments, if any, should be made to the Commercial Framework to take into account the exercise of a TIDC Reserved Powers will be made by the Participants collectively in accordance with the ALT decision-making protocols set out in clause 4.5, and not unilaterally by TIDC.

No Direction will result in an adjustment to the Commercial Framework unless the Direction is determined by the ALT to give rise to a Target Adjustment Event.

12.3 Impact Request

TIDC may (but is not obliged to) issue an Impact Request to the ALT before giving a Direction in respect of the TIDC Reserved Power.

If TIDC issues an Impact Request, the ALT must promptly determine:

(a) whether the proposed Direction referred to in the Impact Request would constitute a Target Adjustment Event; and

(b) the adjustment which would be made to the Commercial Framework to take account of the proposed Direction,

and provide written notice as to its determination to TIDC.

12.4 Other Target Adjustment Events

Upon becoming aware of a potential Target Adjustment Event which arises other than as a result of a Direction, the AMT must submit relevant details to the ALT including any submissions or recommendations they believe are appropriate.

The ALT must consider any such details that it receives at its next scheduled meeting and determine:

(a) whether there is a Target Adjustment Event; and

(b) if so the adjustments, if any, to be made to the Commercial Framework.

12.5 Impact of Target Adjustment Events

If at anytime the ALT believes that a Target Adjustment Event has occurred, the ALT must determine any appropriate adjustments which need to be made to the Commercial Framework.
12.6 ALT may recommend a change to the Alliance Works

(a) The ALT may, at any time, recommend to TIDC a change to the functional requirements, scope and design parameters for the Alliance Works (including the addition of work, the omission of work, changes to the levels, lines, positions or dimensions of work, changes to the character or quality of any work, and any other changes to the scope of the Alliance Works).

(b) Any recommendation under clause 12.6(a) must:
   (i) include details of adjustments, if any, which would be made to the Commercial Framework to take account of the proposed change;
   (ii) confirm that the Alliance Works will be fit for their intended purposes as stated in, or reasonably inferred from, the Scope of Work and this Agreement, notwithstanding the proposed change; and
   (iii) clearly indicate that it is a recommendation given under this clause 12.6.

(c) TIDC will consider in good faith any recommendation given by the ALT under this clause 12.6 but we acknowledge and agree that TIDC may accept (with or without conditions) or reject the recommendation in its absolute and unfettered discretion.

(d) If TIDC accepts the recommendation TIDC will issue a notice to proceed with the recommendation in which event:
   (i) the ALT will ensure that the notice is complied with; and
   (ii) the Commercial Framework will be adjusted in the manner set out in the recommendation.

(e) If TIDC does not accept the recommendation, the recommendation will be withdrawn by the ALT and we will continue to perform the Alliance Activities as if the recommendation had not been made.

12.7 Adjusting the Commercial Framework

A reference to adjusting the Commercial Framework includes, if appropriate:

(a) adjusting the Date for Completion;

(b) adjusting the TOC;

(c) adjusting any other targets that affect the Gainshare/Painshare Regime; and

(d) adjusting any other aspect of the Commercial Framework including the definitions and any documents referred to in the Commercial Framework.

12.8 Target Adjustment Guidelines

(a) When the ALT is considering whether a circumstance or event justifies a change in any of the targets in the Commercial Framework and related terms it will take into account the Target Adjustment Guidelines, the context and content of which are explained in this clause 12.8.
(b) We expect that most, if not all such circumstances or events will relate to design development and evolution/clarification of the Alliance Works or Alliance Activities whilst remaining within the Scope of Work and Project Proposal, and those circumstances or events will not constitute a Target Adjustment Event. However we acknowledge that if such circumstances or events represent:

(i) a significant increase or decrease in the size/scope of the Alliance Works; or

(ii) a significant change in the fundamental parameters or core functionality requirements underlying the design of the Alliance Works; or

(iii) a significant change in the method, manner or timeframe for the performance of a substantial part of Alliance Activities,

then an adjustment to one or more of the targets in the Commercial Framework and related terms may be justified.

(c) We intend to share all risks and opportunities associated with the delivery of the Alliance Works, regardless of:

(i) whether or not those risks/opportunities are within our control; or

(ii) whether or not we could (or should) reasonably have foreseen them, except for risks/opportunities that we have specifically agreed will be retained solely by a particular Participant either in this Agreement or the Target Adjustment Guidelines.

(d) During the Project Definition Phase, and prior to TIDC approving the Project Proposal, the members of the ALT and the AMT (and others) will conduct workshops where they will consider the kind of events and circumstances and risks/opportunities that might eventuate during delivery of the Project.

(e) Based on those workshops:

(i) we will reach alignment on the kind of (very limited) situations that would give rise to an adjustment to one or more of the targets in the Commercial Framework and related terms and record these in the Target Adjustment Guidelines document; and

(ii) we will make provisions within the Target Cost Estimate for other events or circumstances and risks/opportunities which will be shared collectively by us.

13. Payments

13.1 Compensation for Alliance Works

(a) TIDC will pay the NOPs for carrying out the Alliance Activities in accordance with clause 13.2 and the Commercial Framework.
Payment to the NOPs pursuant to clause 13.1(a) will be the sole compensation to the NOPs for the fulfilment of their obligations under this Agreement.

The Commercial Framework may only be adjusted by the ALT:

(i) where there is a Target Adjustment Event;

(ii) in accordance with clause 1.9 (Future addition of Participants); or

(iii) if the ALT determines that the Commercial Framework is unsuitable to achieve the Alliance Objectives or part of it is not consistent with the principles of the Commercial Framework set out in section 2 of the Commercial Framework, provided any adjustment is confirmed by us in writing in a form that properly amends this Agreement.

**13.2 Invoices and payments**

(a) At the end of each calendar month and within 28 days of the Date of Final Completion, the Alliance Manager will, with input from the Participants, prepare and submit to TIDC a single Payment Claim, in relation to the work done by the Participants during the relevant period.

(b) The amounts to be included in a Payment Claim submitted under this Agreement will be calculated in accordance with this Agreement (including the Commercial Framework).

(c) TIDC must issue a Payment Schedule within 10 Business Days after receipt of a Payment Claim. The Payment Schedule must identify the Payment Claim to which it relates and must be based on the Commercial Framework. If the Payment Schedule shows an amount less than the claimed amount (excluding payments already made), the Payment Schedule must state why the amount is less.

(d) Subject to clause 13.2(c), TIDC may issue a Payment Schedule at any time even if the Alliance Manager has not lodged a Payment Claim.

(e) The following conditions must be satisfied before TIDC is obliged to make any payment to the NOPs under this clause 13.2:

(i) if required under clause 13.9, a Payment Claim must be accompanied by a Tax Invoice for each NOP's share of the Payment Claim;

(ii) all relevant sections of the Payment Claim must be properly completed;

(iii) a Payment Claim must be accompanied by a statement by the Alliance Manager that the amounts shown in the Payment Claim are in accordance with the terms of this Agreement;

(iv) the Final Payment Claim must be accompanied by a statement by the Financial Auditor in a form approved by TIDC confirming that the amounts shown in the Payment Claim are in accordance with the terms of this Agreement;

(v) a Payment Claim must be accompanied by an ALT resolution approving the amount of the payment; and
(vi) compliance with clause 13.5.

(f) We agree that any separate payment made by TIDC to a NOP in response to a payment claim or adjudication application under the *Building and Construction Industry Security of Payment Act 1999* (NSW) must be taken into account in the next Payment Claim issued under this clause 13.2.

(g) Subject to clause 13.2(e), TIDC will pay the NOPs (or the NOPs will pay TIDC as the case may be) the amounts stated in a Payment Schedule in accordance with clause 13.2(h).

(h) Payment by TIDC to the NOPs or by the NOPs to TIDC (as the case may be) under clause 13.2(g) will be made no later than 10 Business Days after TIDC issues a Payment Schedule in accordance with clause 13.2(c) or clause 13.2(d).

(i) Payment by TIDC will not be evidence of the value of work, an admission of liability or that the work has been executed satisfactorily, but will be deemed to be a provisional payment on account and subject to a final verification audit by the Financial Auditor and TIDC.

(j) Nothing in this clause 13.2 limits or otherwise affects TIDC’s rights under section 175B(7) of the *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 section 18 of the *Payroll Tax Act 2007* (NSW) or section 127 of the *Industrial Relations Act 1996* (NSW).

(k) In relation to TIDC Alliance Costs incurred by TIDC, TIDC will submit to the Alliance Manager, at the times or periods required by the ALT and as otherwise determined by TIDC:

(i) a statement of its TIDC Alliance Costs for the relevant period; and

(ii) a statement by the Financial Auditor confirming that the amounts shown in the statement are in accordance with the terms of this Agreement.

(l) The ALT may determine that an interim payment on account of anticipated or actual Painshare or Gainshare be made under the Gainshare/Painshare Regime, and either TIDC or the NOPs (as the case may require) must pay or allow the amount so determined. If it becomes likely that the NOPs will be required to pay TIDC an amount under the Gainshare/Painshare Regime, TIDC may retain such amounts from the monthly payments under clause 13.2(g) so that TIDC has retained a total amount under this clause 13.2(l) that is equal to the total likely liability of the NOPs under the Gainshare/Painshare Regime.

(m) The payments made in respect of the Final Payment Schedule will be deemed to be in full and final settlement of all entitlements to compensation arising pursuant to this Agreement except to the extent that:

(i) payments are required pursuant to clause 15.7 (Accounting for insurance proceeds) or 15.12 (Accounting for third party payments); or

(ii) matters have been deliberately or fraudulently concealed by a Participant.
At any time after a Payment Claim has been paid the Financial Auditor may undertake an audit of that Payment Claim to confirm that the amounts shown in the Payment Claim are in accordance with the terms of this Agreement. If the Financial Auditor demonstrates to the ALT that any amount shown in the Payment Claim is not in accordance with the terms of this Agreement, then any adjustment necessary must be made in the Payment Claim following that demonstration.

13.3 Payment for materials at Site but not incorporated

(a) If the NOPs wish to be paid for materials at the Site but not incorporated into the Alliance Works then, where the value of the materials is more than $100,000 or if otherwise requested by TIDC, the Payment Claim under clause 13.2(a) must include evidence and documentation to establish to the satisfaction of TIDC that:

(i) the materials exist;

(ii) unencumbered ownership will pass to TIDC on or before payment by TIDC; and

(iii) the materials are properly stored at the Site, labelled as the property of TIDC and insured in the name of TIDC and the relevant NOP supplying it.

(b) The amount to be paid will be the value of the materials as determined by TIDC in accordance with the principles set out in the Commercial Framework.

13.4 Payment for materials not at Site

If a NOP wishes to be paid for materials that are not stored on the Site, then prior approval must be obtained from the ALT.

13.5 Participants to lodge statutory declarations

(a) Each Payment Claim must be accompanied by a statutory declaration from each of the NOPs:

(i) in the form set out in Schedule 10 (Statutory Declaration);

(ii) including the details required by Schedule 10 (Statutory Declaration);

(iii) made by a person who is in a position to know the facts attested to; and

(iv) be properly sworn or affirmed according to the Oaths Act 1900 (NSW) or the equivalent legislation applicable in the place where the declaration is made.

(b) Statutory declarations must also be provided at other times as requested by the Alliance Manager.

13.6 TIDC may make direct payments on request

At a NOP’s written request and out of money due and payable to that NOP, TIDC may pay money on that NOP's behalf to workers or Subcontractors of that NOP.
13.7 TIDC may pay on court order

TIDC may pay money direct to a worker of a NOP or Subcontractor and recover the amount paid from the NOPs as a debt due if TIDC is presented with:

(a) a court order in respect of money payable to the worker or Subcontractor under an award, enterprise agreement or Subcontract for work, services, materials, plant, equipment or advice supplied for the Alliance Works; and

(b) a statutory declaration that no money has been paid under the court order.

13.8 Set-off

(a) Without prejudice to any other rights, TIDC may deduct from any monies which may be, or become, payable to a NOP any money due from that NOP to TIDC under this Agreement.

(b) Nothing in this clause 13.8 will affect the right of TIDC to recover from the NOP the whole of any debt or any balance that remains owing by that NOP after deduction.

13.9 GST

(a) In this clause 13.9:

(i) "GST" and other terms used in this clause 13.9 (other than Recipient) have the meanings ascribed to those terms by the GST Legislation;

(ii) any reference to GST payable by an entity includes any GST payable by the representative member of any GST group of which that entity is a member;

(iii) any reference to input tax credits to which an entity is entitled will include input tax credits to which the representative member of any GST group of which that entity is a member is entitled; and

(iv) if the GST Legislation treats part of a supply as a separate supply for any purpose, such part of the supply will be treated as a separate supply for the purposes of this clause.

(b) If a party is required under this Agreement to reimburse or pay to another party an amount calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or an entity on whose behalf the party is acting) is entitled in respect of any acquisition relating to that cost, expense or other amount.

(c) If a payment to be made under this Agreement is calculated as a percentage of another amount, that payment will be calculated as a percentage of that amount excluding any GST component.

(d) If GST is payable by an entity ("Supplier") in relation to any supply that it makes under or in connection with this Agreement, the parties agree that:
any consideration (including the value of any non-monetary consideration) provided for that supply under or in connection with this Agreement other than under this clause 13.9(d) ("Agreed Amount") is exclusive of GST;

(ii) an additional amount will be payable by the party providing consideration for that supply ("Recipient") equal to the amount of GST payable by the Supplier on that supply; and

(iii) the additional amount is payable at the same time as any part of the Agreed Amount is to be first provided for that supply and the Supplier will provide a tax invoice to the Recipient in respect of that supply, no later than that time.

To the extent, if any, that any consideration (or part thereof) is specified in this Agreement to be inclusive of GST, that consideration (or the relevant part) shall be excluded from the Agreed Amount for the purposes of calculating the additional amount under paragraph 13.9(d)(ii).

If the Supplier determines on reasonable grounds, is advised by the Commissioner of Taxation or otherwise becomes aware that the GST payable on a supply made under or in connection with this Agreement is different to the additional amount paid by the Recipient to the Supplier in accordance with paragraph 13.9(d)(ii) (if any) in respect of that supply such that:

(i) the Supplier is liable to account for an amount (or further amount) of GST in respect of that supply; or

(ii) the Supplier receives or becomes entitled to receive a refund or credit of the whole or any part of the GST paid by the Supplier in relation to that supply,

the Supplier must either:

(iii) provide a corresponding refund or credit to the Recipient; or

(iv) will be entitled to receive the amount of that variation from the Recipient,

as the case may be.

For the purposes of calculating whether the GST payable on a supply made under or in connection with this Agreement is different to the additional amount paid by the Recipient to the Supplier for the purposes of clause 13.9(f), any additional amount referred to in paragraph 13.9(d)(ii) is taken to be amended by the amount of any earlier variation made under this clause.

Where an adjustment event occurs in relation to a supply made by the Supplier under or in connection with this Agreement, and the adjustment event gives rise to an adjustment under the GST Legislation the Supplier will issue an adjustment note to the Recipient in respect of that supply within 14 days after becoming aware of the relevant adjustment.

This clause shall not merge on termination of this Agreement.
14. Remedies and liabilities

(a) Subject to clauses 14(d), 14(e) and any requirement of law, the respective rights, obligations and liabilities of each of us as set out in this Agreement exclusively govern our rights in relation to this Agreement and the Alliance Works and we do not have any other rights or remedies arising out of or in connection with this Agreement and the Alliance Works, at law (including negligence) or equity, other than as set out in this Agreement.

(b) This Agreement creates legally enforceable rights:

(i) despite the fact that certain matters are to be settled, resolved, determined or agreed by the ALT; and

(ii) irrespective of how or whether any matters to be settled, resolved, determined or agreed by the ALT are settled, resolved, determined or agreed.

(c) Interpretation of this Agreement which is consistent with the principles in clauses 14(a) and 14(b) is to be adopted.

(d) To the extent permitted by law and despite any other provisions of this Agreement (except clause 14(e)):

(i) each Participant waives all rights of action against the other Participants; and

(ii) each Participant agrees that no Participant will be liable to any other Participant, (whether the right of action or the liability is under this Agreement, at law, in equity, under statute or otherwise) with respect to any breach of this Agreement or any act, error or omission in connection with the Alliance Works or this Agreement, except to the extent that the breach, act, error or omission constitutes a Wilful Default.

(e) Nothing in this Agreement, including clauses 14(a), 14(d), 16.2 or 17 limits, excludes or constitutes a waiver of any right or remedy of a Participant with respect to or arising out of or in connection with any Wilful Default by any other Participant

(f) Each Participant is liable for and indemnifies the other Participants for all costs, expenses, damages, losses or other amounts arising out of or in connection with that Participant's Wilful Default.

15. Insurances and indemnities

15.1 Insurance for the Alliance Works

(a) We acknowledge that TIDC has effected policies of works insurance substantially in the terms of the certificates of currency set out in Schedule 11 (the "Works Policy"). TIDC, in its discretion, may have other insureds named or included in the policies.
(b) The Participants acknowledge that the effecting and the maintenance of the Works Policy by TIDC does not affect the Participants' obligations or liabilities under this Agreement.

(c) TIDC will maintain the Works Policy (or if that policy lapses or is cancelled, a policy in substantially the same terms) until the Date of Final Completion.

15.2 Liability Insurance

(a) We acknowledge that TIDC has effected a policy of liability insurance substantially in the terms of the certificates of currency set out in Schedule 12 (the "Liability Policy"). TIDC, in its discretion, may have other insureds named or included in the policy.

(b) The Participants acknowledge that the effecting and the maintenance of the Liability Policy by TIDC does not affect the Participants' obligations or liabilities under this Agreement.

(c) TIDC will maintain the Liability Policy (or if that policy lapses or is cancelled, a policy in substantially the same terms) until the Date of Final Completion.

15.3 Alliance professional indemnity insurance

(a) At the date of this deed, TIDC anticipates that it will effect a policy of insurance in relation to breach of professional duty (the "Alliance PI Policy") if such a policy can be obtained on commercially reasonable terms. TIDC anticipates making this decision before the Project Proposal is approved under clause 6.5(c). If TIDC decides not to effect an Alliance PI Policy, we may include a contingency amount in the TCE on account of the risks which would have been covered by the Alliance PI Policy.

(b) TIDC, in its discretion, may have other insureds named or included in the policy.

(c) The Participants acknowledge that the effecting and the maintenance of the Alliance PI Policy by TIDC does not affect the Participants' obligations or liabilities under this Agreement.

(d) If TIDC effects the Alliance PI Policy, it will use all reasonable endeavours, subject to obtaining commercially reasonable terms, to maintain the Alliance PI Policy for a period after the Date of Final Completion.

15.4 Insurance of employees

(a) Each Participant shall maintain insurances until the Date of Final Completion and while ever the rectification of Defects is carried out under clause 10.2, against liability for death of or injury to its employees including liability by statute and at common law.

(b) The NOPs' employee insurance policies will be for the maximum amount required by law, and where permitted by law, will extend to indemnify TIDC for TIDC's statutory liability to persons employed by any NOP.

(c) The Participants will ensure that every Subcontractor is similarly insured.
15.5 Subcontractors’ insurance

The Participants will use all reasonable endeavours to ensure that all Subcontractors:

(a) have a minimum of $10 million public liability insurance;
(b) have, and maintain for a period of six years after their work on the Project is complete, a minimum of $5 million professional indemnity insurance where they have a significant design responsibility;
(c) have appropriate insurance for their own employees, plant and equipment and for any work or other items intended for incorporation into the Alliance Works while ever that work or those items are not covered by the Works Policy; and
(d) indemnify the Participants in so far as possible at law against all claims against the Participants that are related to bodily injury or death caused by the Subcontractor.

15.6 Notices of potential claims

(a) The relevant NOP will, as soon as practicable, inform TIDC and the ALT in writing of any occurrence which may give rise to a claim or potential claim under the Works Policy, the Liability Policy or the Alliance PI Policy regardless of whether the likely value of such claim is less than the applicable deductible. The relevant NOP will keep TIDC and the ALT informed of subsequent developments concerning the claim.
(b) The Participants must, despite any other provision of this Agreement, comply in all respects with procedures for notifying a claim under the Works Policy, the Liability Policy or the Alliance PI Policy as set out in Schedule 23 ("Clearways Claims Protocol").
(c) The Participants must comply with the terms of the policies of insurance effected for the Project.
(d) Each NOP will also ensure that it informs TIDC and the ALT pursuant to clause 15.6(a) in respect of any occurrence which may give rise to a claim or potential claim under the Works Policy, the Liability Policy or the Alliance PI Policy concerning Subcontractors under that NOP's control or direction.

15.7 Accounting for insurance proceeds

To the extent that a Participant receives payment under an insurance policy which, reimburses that Participant for any cost, loss, expense or damage that has been or is to be treated as a Reimbursable Cost then the relevant Participant must account to the other Participants for that payment in full. If that happens after the date on which the Final Payment Schedule is signed under clause 13.2 (Invoices and payment), then within 21 days of the Participant receiving the insurance payment:

(a) the relevant Participant must notify the other Participants in writing of the payment received;
(b) the Alliance Manager must recalculate the Final Payment Schedule to take into account the proceeds received under the insurance policy;
the ALT must arrange for the Financial Auditor to verify that the amounts shown in the recalculation of the Final Payment Schedule are correct and in accordance with this Agreement; and

subject to the terms of this Agreement, the NOPs will as necessary make payment(s) to TIDC, or TIDC will pay the NOPs as the case may be, such that the total amounts paid to the NOPs under this Agreement are in accordance with the recalculated and verified Final Payment Schedule. Any such payments must be made within 10 Business Days after the verification by the Financial Auditor of the Final Payment Schedule.

This clause 15.7 survives termination of this Agreement.

15.8 Other insurances by NOPs

(a) The NOPs will obtain and maintain insurance for all Construction Plant belonging to, leased, hired or used by or otherwise in the care, custody or control of any NOP or its Associates at places where the Alliance Works are being carried out, such insurance to be for not less than the market value of the Construction Plant and against all usually insured risks. If the Construction Plant has become the property of TIDC pursuant to the Commercial Framework, TIDC must be an insured under the insurance.

(b) Unless otherwise determined by the ALT, the NOPs will obtain and maintain comprehensive motor vehicle insurance covering all mechanically propelled vehicles, whether registered or required under the law to be registered, used by the NOPs at any time in connection with the Alliance Works, extended specifically to cover transportation of items and substances (including for third party liability, property damage and personal injury or death in accordance with relevant laws), such insurance to cover all amounts which the NOP or its officers, employees or agents might become legally liable to pay.

(c) If the Alliance Activities include any work involving asbestos or asbestos decontamination, including stripping, encapsulation or removal, the NOPs will obtain and maintain asbestos liability insurance (either through an NOP or a specialist asbestos removal Subcontractor):

(i) in the joint names of each Participant and covering the Participants and all Subcontractors for their respective rights and interests, and their liabilities to third parties and each other;

(ii) for $10 million for any one occurrence and $20 million in the aggregate;

(iii) from at least 60 days before any work involving asbestos or asbestos decontamination commences; and

(iv) for so long as there is a risk that an event covered by the insurance may occur in relation to the Alliance Works or the Alliance Activities.

(d) The NOPs will obtain and maintain marine transit insurance for any part of the Alliance Works that are in transit (including storage and transhipment) from any place outside Australia:
(i) on an "all risks" basis, including war, riots, strikes and civil commotion coverage, covering those things until they are delivered to the Site, unpacked and inspected and confirmed as in sound condition;

(ii) in the joint names of each Participant and covering the Participants and all Subcontractors for their respective rights and interests, and their liabilities to third parties and each other;

(iii) that includes a delayed unpacking clause and a 50:50 clause; and

(iv) for as long as there is a risk that an event covered by the insurance may occur in relation to the Alliance Works or Alliance Activities.

(e) Unless otherwise determined by the ALT, the NOPs will obtain and maintain appropriate insurance (for replacement value) in respect of all materials being or to be fabricated overseas for the Alliance Works in the joint names of each Participant for the period required by any law.

(f) The NOPs will obtain and maintain any insurance required by virtue of any change in Statutory Requirements.

(g) For each insurance policy referred to in this clause:

(i) we must ensure that:

A. TIDC receives at least 30 days notice of any material change of the policy;

B. a notice of claim given by a Participant or a Subcontractor will be accepted by the insurer as a notice of claim by the Participant and the Subcontractor; and

C. upon becoming aware of any fact, matter or thing entitling the insurer to cancel the policy, immediate notice is given in writing to TIDC about that fact, matter or thing at least 30 days prior to the insurer giving any notice of cancellation; and

(ii) ensure that we:

A. do not do anything which prejudices the insurance policy;

B. where required, rectify anything which might prejudice any insurance policy;

C. resinate any insurance policy which lapses;

D. do not cancel, vary in any material way which reduces the level of cover to the Participants or allow an insurance policy to lapse without the prior written consent of the ALT;

E. immediately notify TIDC of any event that may result in an insurance policy lapsing or being cancelled, and replace that insurance policy prior to it lapsing or being cancelled; and
F. give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance policy.

15.9 **Cross liability**

Any insurance required to be effected by the Participants in joint names shall include a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured and for the purpose of which the insurer accepts the term "insured" as applying to each of the insureds as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

15.10 **Settlement of claims**

Settlement of claims under the Works Policy, the Liability Policy and the Alliance PI Policy will be dealt with in accordance with any claims procedure notified by TIDC.

15.11 **Indemnities**

(a) Each Participant (the "*Indemnifier*") will indemnify each other Participant (an "*Indemnified Participant*") against claims by any third party against an Indemnified Participant in respect of:

(i) loss of or damage to any property; or

(ii) personal injury (including mental as well as bodily injury), disease, illness or death,

arising out of or in connection with any act or omission of the Indemnifier or its Associates in carrying out the Alliance Activities, whatever the cause, including breach of this Agreement, tort (including negligence) or breach of statute or otherwise.

(b) An Indemnifier's liability to indemnify an Indemnified Participant under clause 15.11(a):

(i) includes legal costs in connection with the claim against the Indemnified Participant (on a solicitor and own client basis and whether incurred by or awarded against the Indemnified Participant);

(ii) will be reduced proportionally to the extent that an act or omission of the Indemnified Participant or its Associates contributed to the loss, damage, injury, disease, illness or death; and

(iii) is limited to the greater of:

A. any amount which the Indemnifier recovers or is entitled to recover under the Works Policy, the Liability Policy or the Alliance PI Policy; and

B. any amount which, but for a failure of the Indemnifier to comply with its obligations under this Agreement, the Indemnifier would have recovered or been entitled to recover
under the Works Policy, the Liability Policy or the Alliance PI Policy,

with respect to the Indemnifier's liability to the Indemnified Participant under clause 15.11(a).

(c) To avoid circularity, a reference in clause 15.11(b)(iii) to any amount which the Indemnifier recovers or is entitled to recover under the Works Policy, the Liability Policy or the Alliance PI Policy, is a reference to the maximum amount which the Indemnifier would have received payment or been indemnified for under the relevant insurance policy if:

(i) clause 14 did not affect that liability and the limitation in clause 15.11(b)(iii) did not apply;

(ii) the insurance policy were interpreted disregarding clauses 14 and 15.11(b)(iii); and

(iii) the Indemnifier had paid each Indemnified Participant in full the amount of its liability (being its liability unlimited by clauses 14 and 15.11(b)(iii)) in a manner which entitled the Indemnifier to claim under the insurance policy.

(d) To avoid doubt or circularity, the parties do not intend clauses 14 or 15.11(b)(iii) to limit the Indemnifier's ability to recover any amount under any insurance policy.

(e) Clause 15.11(b)(iii) will not apply where:

(i) the Indemnifier does not take all reasonable steps to ensure that it is indemnified under any applicable policy of insurance against its liability to the Indemnified Participant; or

(ii) the loss, damage, injury, disease, illness or death, arises out of or in connection with a Wilful Default.

15.12 Accounting for third party payments and recoveries

(a) If, during the period of 6 years commencing on the Date of Final Completion, a Participant is required to pay to a third party or recovers from a third party, any moneys (whether by way of compensation or otherwise) which are a Reimbursable Cost or compensation for or reimbursement of any cost, loss, expense or damage that has been or is to be treated as a Reimbursable Cost then the relevant Participant must as applicable account to the other Participants in full for the payment or the recovered moneys (net of any unrecovered costs incurred by that Participant in recovering those moneys).

If that happens after the date on which the Final Payment Schedule is signed under clause 13.2 (Invoices and payments), then within 21 days of the Participant paying or receiving the moneys:

(i) the relevant Participant must notify the other Participants in writing of the payment made or received;
(ii) the Alliance Manager must recalculate the Final Payment Schedule to take into account the recovered moneys;

(iii) the parties must arrange for the Financial Auditor to verify that the amounts shown in the recalculation of the Final Payment Schedule are correct and in accordance with this Agreement; and

(iv) subject to the terms of this Agreement, the NOPs will as necessary make payment(s) to TIDC, or TIDC will pay the NOPs as the case may be, such that the total amounts paid to the NOPs under this Agreement are in accordance with the recalculated and verified Final Payment Schedule. Any such payments must be made within 10 Business Days after the issue by the Financial Auditor of the relevant recalculated and verified Final Payment Schedule.

(b) 15.12(a) does not apply to amounts recovered from an insurer under an insurance policy. That situation is dealt with in clause 15.7 (Accounting for insurance proceeds).

16. Termination

16.1 Termination without default

This Agreement will terminate on the date on whichever of the following events occurs first:

(a) TIDC gives notice under clause 6.4(c)(iii) or 6.5(c)(iii) informing the ALT that the Alliance Activities will not proceed; or

(b) TIDC terminates this Agreement under clause 16.2 (Notice of termination).

16.2 Notice of termination

Notwithstanding any express or implied term of this Agreement and without prejudice to any of TIDC's other rights under this Agreement or otherwise, TIDC may at any time in its absolute discretion, for its sole convenience and for any reason, by written notice to the NOPs:

(a) terminate this Agreement; and

(b) in its absolute discretion, complete the uncompleted part of the Alliance Works either itself or by engaging any other person, including any one or more of the NOPs.

16.3 Effect of termination

(a) If this Agreement is terminated under clauses 16.1, 16.2 or 16.6, TIDC may take and use, in any way, the whole or any part of the Alliance Works (including any work carried out by the Participants during the Project Definition Phase).

(b) On and from the date on which this Agreement is terminated under clause 16.1, 16.2 or 16.6 each Participant releases and discharges each other Participant from all Claims, costs, expenses and losses which we may have against each other arising out of or incidental to the performance of the Alliance Activities with the exception of:
any Claims in relation to a Wilful Default; and

(ii) any claims for payment under clause 16.5 (Termination payment).

(e) The NOPs will not be liable for that part of the Alliance Works that is not completed as a result of termination of this Agreement under clauses 16.1, 16.2 or 16.6.

16.4 Actions following termination

If this Agreement is terminated under either clause 16.1, 16.2 or 16.6, we will immediately:

(a) cease work under this Agreement;

(b) protect property in our possession in which TIDC has or may acquire an interest;

(c) demobilise from the Site all persons, Construction Plant, Temporary Works, vehicles, equipment and other things owned by or under the control of the NOPs;

(d) if requested by TIDC in writing, assign or novate to TIDC all rights and benefits under Subcontracts;

(e) provide TIDC with possession of all materials and other things on the Site or off-Site and deliver to TIDC all necessary documents, which are required for the Alliance Works; and

(f) comply with any directions of TIDC, including any directions to carry out the activities or do the things referred to in clauses 16.4(a) to (e) (inclusive).

16.5 Termination payments

Subject to TIDC's rights under or in connection with this Agreement, including the rights to withhold or set-off payment and recover damages, if this Agreement is terminated by TIDC under either clause 16.1 or 16.2 or by the NOP's under clause 16.6(d)(ii), TIDC will pay the NOPs or the NOPs will pay TIDC, as the case may be, the difference between:

(a) the sum of (without any double counting):

(i) the amounts payable for the Alliance Activities carried out prior to the date of termination which will in respect of the Gainshare/Painshare Regime be determined on a just and equitable basis by the ALT;

(ii) the cost of materials reasonably ordered by the NOPs for the Alliance Works, which they are legally liable to accept, but only if the materials become the property of TIDC after payment;

(iii) costs reasonably incurred by the NOPs in the expectation of completing the whole of the Alliance Works and not included in any payment by TIDC;

(iv) reasonable costs of demobilisation;

(v) reasonable cancellation costs incurred by the NOPs in cancelling any Subcontracts; and
(vi) the reasonable costs of complying with any directions given by TIDC on or after termination; and

(b) an amount equal to any amounts which TIDC previously paid to the NOPs.

16.6 Wilful Default

If a Wilful Default occurs in respect of a Participant (the "Defaulting Participant"), then:

(a) where the Wilful Default is not the occurrence of an Insolvency Event, and the Defaulting Participant fails to rectify the default within 10 Business Days after the other Participants have notified it in writing that they require the default to be rectified (such notice to be marked "Notice of Wilful Default"); or

(b) where the Wilful Default is the occurrence of an Insolvency Event,

the other Participants may, without prejudice to any other rights or remedies they may have under this Agreement or otherwise:

(c) in the case that the Defaulting Participant is an NOP, do either or both of the following:

(i) wholly or partly suspend any payment due to the Defaulting Participant until the default has been remedied; and/or

(ii) by joint written notice, exclude the Defaulting Participant from further participation in the performance of the Alliance Activities; or

(d) in the case that the Defaulting Participant is TIDC, do either or both of the following by joint written notice to TIDC:

(i) wholly or partly suspend the Alliance Activities until the default has been remedied; and/or

(ii) terminate this Agreement.

16.7 Exclusion from further participation

If the other Participants exclude a NOP from further participation in the performance of the Alliance Activities by notice under clause 16.6(c)(ii):

(a) the other Participants may employ and pay other persons to replace the NOP in the performance of the Alliance Activities and may use all design documentation, Temporary Works and Construction Plant provided by the NOP and necessary to perform the Alliance Works;

(b) the Defaulting Participant will promptly, if required by the other Participants, assign or novate to TIDC without payment the benefit of any agreements for the performance of any part of the Alliance Activities;

(c) as and when required by the ALT (and not before), the Defaulting Participant will remove from the Site any Temporary Works, Construction Plant and other property provided by the NOP and if it fails to do so, not less than 10 Business Days after written notice of the other Participants' intention to do so (but without such other
Participants being responsible for any loss or damage), the other Participants may remove and/or sell any such Temporary Works, Construction Plant or other property;

(d) the Defaulting Participant and its ALT Members will no longer be entitled to be represented on or vote as part of the ALT or otherwise participate in the Project; and

(e) the other Participants may execute all deeds and documents (including, for the purposes of assigning or novating to TIDC or another NOP any Subcontract, a deed of novation in the form of Schedule 25) and do all such things on behalf of the Defaulting Participant, including making decisions and determinations at the ALT meetings, as are necessary for the performance of the Alliance Activities and the Defaulting Participant irrevocably authorises any directors or managers of the other Participants to act as its attorneys for the purpose of executing such deeds and documents and doing those things.

17. Resolution of Disagreements

17.1 Handling Disagreements

(a) The Participants will try to settle any Disagreement in good faith in a manner consistent with the Alliance Principles. If despite these efforts a Disagreement remains unresolved, any of the Participants may give a written notice to each of the other Participants within 14 days of the initial disagreement requesting that the Disagreement be considered by the ALT.

(b) The ALT will consider any Disagreement referred to it and will give due consideration to submissions by all Participants, to any recommendation by the Alliance Manager in respect of the Disagreement and to any other relevant information.

(c) The ALT will make a decision on any Disagreement referred to it and advise each Participant of that decision by written notice within 14 days of being notified of the Disagreement. The decision of the ALT will be final and binding on the Participants.

(d) If the ALT is unable to achieve unanimity in respect of a decision to be made by the ALT in respect of a Material ALT Issue within 5 Business Days of the issue being referred to the ALT, and a Participant wishes to pursue the issue, the Participant may by written notice to the other Participants request that the deadlock be resolved in accordance with clause 17.2.

(e) The parties agree that nothing in this clause 17.1 limits the rights of any party to take such action as may be necessary to enforce its rights under clauses 14(e) and 14(f).

17.2 Deadlock resolution procedure

This clause 17.2 applies where a Participant gives a written notice pursuant to clause 17.1(d). Where such a notice is given in respect of a Material ALT Issue in respect of which the ALT has failed to achieve unanimity, the matter will be referred to:
(a) the expert determined by the ALT prior to any Participant having given a written notice pursuant to clause 17.1(d); or

(b) if no expert is determined by the ALT pursuant to clause 17.2(a) or the expert determined by the ALT pursuant to clause 17.2(a) is not available:

   (i) an expert determined by the ALT; or

   (ii) if the ALT is unable to achieve unanimity in respect of the identity of the expert within 7 days, an expert nominated by the President of the Institute of Arbitrators and Mediators, Australia (or the person acting in that position at the time),

and the Participants must enter into an agreement with the expert in substantially the same form as that set out in Schedule 13.

The Participants acknowledge that the agreement which they must enter into with the expert will:

(c) describe the procedure by which the expert will determine the matter;

(d) entitle each Participant to lodge with the expert a draft written submission setting out that Participant's position as to how the matter should be determined;

(e) require the expert to meet separately with each Participant to discuss its draft written submission and the expert's preliminary view on it;

(f) if the ALT is still unable to achieve unanimity after the expert has met with each Participant, entitle each Participant to lodge with the expert a final written submission setting out that Participant's position as to how the matter should be determined;

(g) require the expert to select which of the alternative final submissions lodged by the Participants is most closely aligned with the Alliance Principles;

(h) preclude the expert from imposing on the Participants a position other than one of the final submissions by one of the Participants; and

(i) require each Participant to release the expert from and against all claims, except in the case of fraud on the part of the expert, which may be made against the expert in connection with the expert's appointment to determine the matter.

The Participants agree that the position set out in the final submission selected by the expert will be treated as a unanimous decision of the ALT in respect of the relevant Material ALT Issue for the purposes of this Agreement.

18. Value for Money

18.1 Value for money

(a) The Participants agree that it is a fundamental obligation of the alliance to ensure and deliver value for money to TIDC and demonstrate value for money to all Stakeholders and key interested parties.
(b) The NOPs will provide every opportunity to enable the ALT to effectively demonstrate that these value for money outcomes are and/or will be achieved.

18.2 Value for Money Report

The Value for Money Report must be a report which identifies why the Target Cost Estimate represents value for money, and in particular must:

(a) identify the value of all significant improvements and innovations between the concept design for the Alliance Works at the date of this Agreement and the design for the Alliance Works contained in the Project Proposal;

(b) provide a reconciliation, including reasons for all major positive and negative variances in cost, between the budget estimate for the Alliance Works at the date of this Agreement and the Target Cost Estimate; and

(c) include any other information that TIDC reasonably requires.

18.3 Subcontracting Strategy

The Subcontracting Strategy must be a strategy for achieving the best value for money outcomes from subcontractors and suppliers and will include at a minimum:

(a) the processes by which the Participants will procure goods and services for the performance of the Alliance Works;

(b) the structure of the multi criteria analysis that the Participants will apply in determining the most appropriate ‘best for project’ procurement method for procuring goods and services for the performance of the Alliance Works;

(c) authority for the Alliance Manager (with the approval of the ALT) to engage with the market to call for, negotiate and agree prices or contractual documentation on behalf of the Participants;

(d) authority for the Alliance Manager (with the approval of the ALT) to award or execute contractual documentation on behalf of the Participants;

(e) authority for the Alliance Manager and the AMT to administer any contractual documentation and/or commitments made on behalf of the Participants;

(f) an authorisation process for the entering into of commitments on behalf of the Participants; and

(g) a requirement that any proposed transaction with a Related Entity will be on market tested and on commercially reasonable arm’s length terms and only negotiated and entered into upon the prior agreement on the ALT.

18.4 Benchmarking of Alliance performance

(a) The NOPs have agreed to benchmark the performance of the Participants against the performance of other alliance participants delivering other works or projects similar to the Alliance Works.
(b) The NOPs agree that for the purposes of benchmarking the performance of the Participants they will, in a manner consistent with the Alliance Principles, fully, frankly and honestly disclose all information relating to:

(i) the actual outturn performance of all aspects of the Alliance Activities; and

(ii) the Alliance Activities or the Alliance Works,

other than that which the ALT determines is genuinely commercial in confidence.

(c) Where the ALT determines that information is genuinely commercial in confidence, the ALT must determine an acceptable and appropriate manner to protect the confidential nature of the information but will share the information for the purposes of benchmarking the actual outturn performance of all aspects of the Alliance.

(d) For the purposes of this Agreement, the expression "commercial in confidence" will have the interpretation that the term has under the operation of the Freedom of Information Act 1989 (NSW).

18.5 Conference with representatives of other alliances

(a) TIDC’s authorised representative may, at any time prior to the Date of Final Completion, direct the ALT to attend a conference which will also be attended by:

(i) the representatives of TIDC’s other alliances; and

(ii) nominated invitees of TIDC’s authorised representative (which may specifically include alliance leadership team representatives from alliances sponsored by parties other than TIDC).

(b) TIDC’s expectation of this conference is to enable:

(i) alliance contracting best practice methodologies to be identified, shared and understood;

(ii) TIDC to be satisfied that the behaviours, standards and governance of its alliances are equal to other alliances developed or being developed across Australasia; and

(iii) development of a benchmark for the performance of TIDC’s alliances against each other and/or against other alliances developed or being developed across Australasia to the extent that it is practicable to do so.

(c) The NOPs agree that they will attend the conference and participate in a manner consistent with the Alliance Principles so as to fully, frankly and honestly disclose all information or lessons learned relating to the Project, the Alliance Activities or the Alliance Works, other than that which the ALT determines is genuinely commercial in confidence.
19. **Miscellaneous Provisions**

19.1 **Service of notices**

(a) Any notice or other communication given by one Participant to the other, unless the contrary intention appears, will only be effective if it is in writing and signed on behalf of the Participant giving the notice.

(b) To be valid, a written notice under this Agreement must be delivered by hand, registered mail or facsimile, addressed in accordance with the contact details for the receiving Participant stated in the Agreement Particulars.

(c) A notice, consent or other communication that complies with this clause is regarded as given and received:

(i) if it is delivered or sent by fax:
   
   A. by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
   
   B. after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day; and

(ii) if it is sent by mail:

   A. within Australia - 3 Business Days after posting; or

   B. to or from a place outside Australia - 7 Business Days after posting.

(d) Electronic communication by email will not constitute a valid notice under this Agreement, but a hard copy of an email may be issued as a valid notice using any of the means listed in clause 19.1(b).

(e) We may change our address to which notices can be sent to us by giving each other notice of the change in accordance with this clause.

19.2 **Right to assign or subcontract**

We must not:

(a) assign our rights under this Agreement; or

(b) subcontract the performance of any of our obligations under this Agreement (except pursuant to clause 9.1),

without the prior written approval of each other, which must not be unreasonably withheld.

Any change in control (as defined in sections 9 and 50AA of the *Corporations Act 2001* (Cth)) of a NOP will be deemed to be an assignment of its rights under this Agreement.
19.3 **Governing law**

This Agreement is governed by the laws of New South Wales.

19.4 **Status of Agreement**

This Agreement:

(a) is a contract for services, not a contract of service; and

(b) does not give rise to any legally binding obligation between any of our employees and each other one of us.

19.5 **Tariff concessions**

Where goods are to be imported into Australia in connection with the Alliance Works, the NOPs will do all that is reasonably necessary to assist TIDC in obtaining the full benefit of any tariff concession in respect of the same.

19.6 **Australian currency**

Except where expressed to the contrary, all prices and sums of money and all payments made under this Agreement are in Australian currency.

19.7 **Relationship of the Participants**

(a) Except as expressly provided in this clause, this Agreement is not intended to create and should not be construed as creating, any partnership, joint venture or fiduciary relationship between any one or more of us or confer a right in favour of any of us to enter into any commitment on behalf of each other or otherwise to act as its agent.

(b) Each of us is an independent entity, and for the purposes of this Agreement, each of our Associates will not be deemed to be Associates of each other, unless deemed otherwise by law and, without limiting the generality of this clause, we will pay all costs associated with our own officers and employees including any fringe benefits tax liability attaching to the grant of any fringe benefit to our officers and employees in respect of their employment.

19.8 **Entire agreement**

This Agreement as amended from time to time contains the entire agreement between us and supersedes all prior arrangements whether written or oral and any heads of agreement, letters of intent, representations and other documents in relation to the Alliance Works issued or entered into prior to the Commencement Date.

19.9 **Non-waiver**

Waiver or relaxation partly or wholly of any of the terms of this Agreement will:

(a) be effective only if in writing and signed by each of us;

(b) apply only to a particular occasion unless expressed to be continuing; and
not constitute a waiver or relaxation of any other term of this Agreement.

19.10 Corporate power and authority

We represent to each other and must ensure that we have full power to enter into and perform our obligations under this Agreement and that when executed it will constitute legal, valid and binding obligations in accordance with its terms.

19.11 No representation or reliance

We each acknowledge that we:

(a) (or any person acting on our behalf) have not made any representation or other inducement to enter into this Agreement, except for representations or inducements expressly set out in this Agreement; and

(b) do not enter into this Agreement in reliance on any representation or other inducement by or on behalf of each other, except for any representation or inducement expressly set out in this Agreement.

19.12 Severability

If any provision of this Agreement, or its application to any of us, is or becomes invalid, void, voidable or otherwise unenforceable for any reason:

(a) that provision or its application to any of us will be severed from this Agreement; and

(b) the remainder of this Agreement or the application of its provisions to any of us will not be affected.

19.13 Indemnities

(a) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations under this Agreement and survives termination, completion or expiration of this Agreement.

(b) It is not necessary for us to incur expense or to make any payment before enforcing a right of indemnity conferred by this Agreement.

19.14 Limitations and exclusions of rights and liabilities

Any provision of this Agreement which seeks to limit or exclude a right or liability is to be construed as doing so only to the extent permitted by law.

19.15 Survival after termination

The termination of this Agreement will not affect any terms of this Agreement that expressly provide that they will operate after termination or which of necessity must continue to have effect after termination, notwithstanding that the clauses themselves do not expressly provide for this.
19.16 Prior work

This Agreement will apply to any work done by any of us in relation to the Alliance Activities prior to the Commencement Date.
Executed as an agreement

Executed by Transport Infrastructure Development Corporation (ABN 28 458 799 157) by or in the presence of:

[Signature]
Name of Director

CHRISTOPHER DECCAN LOCK
Name of Director in full

Executed for and on behalf of Leighton Contractors Pty Limited (ABN 98 000 893 667) by its Attorney under a Power of Attorney dated 24 June 2000, and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

[Signature]
Name of Witness

DAVID FABIAN
Name of Witness in full

DAVID ERNEST WILSON
Name of Attorney in full

Executed for and on behalf of Maunsell Australia Pty Limited (ABN 20 093 846 925) by its Attorneys under a Power of Attorney dated 18 June 2005, and the Attorneys declares that the Attorneys have not received any notice of the revocation of such Power of Attorney, in the presence of:

[Signature]
Name of Witness

DAVID FABIAN
Name of Witness in full

PETER WAYNE WATSON
Name of Attorney in full

ANDREW WILLIAM CARRUTHERS
Name of Attorney in full

405648.2

ME_77955947_1 (W2003)
Executed by Sinclair Knight Merz Pty Limited (ABN 37 001 024 095) in accordance with section 127 of the Corporations Act by or in the presence of:

Signature of Director

David Holmes Mathlin
Name of Director in full

Signature of Secretary

KERRIE ANNE FORRESTER
Name of Secretary in full

Executed for and on behalf of MVM Rail Pty Limited (ABN 75 057 458 795) by its Attorney under a Power of Attorney dated 28 August 2003 and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

Signature of Witness

Signature of Attorney

Name of Witness in full

Name of Attorney in full

ROCERICK NORMAN
Executed for and on behalf of Ansaldo STS Australia Pty Limited (ABN 34 068 707 380) by its Attorneys under a Power of Attorney dated 16 JUNE 2008, and the Attorneys declares that the Attorneys have not received any notice of the revocation of such Power of Attorney, in the presence of:

[Signature of Witness]

[Name of Witness in full]

[Signature of Attorney]

[Name of Attorney in full]

[Signature of Attorney]

[Name of Attorney in full]
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Schedule 1 – Acronyms, definitions and interpretation

Note that acronyms and defined terms used in formulae in Schedule 7 are mostly not included in the list of acronyms and definition set out below in this Schedule 1 – they are defined within the text of Schedule 7.

1. **Acronyms**

   The following acronyms are used in this Agreement

   ALT  Alliance Leadership Team
   AMP  Alliance Management Plan
   AMT  Alliance Management Team
   AOC  Actual Outturn Cost
   EBA  Enterprise Bargaining Agreement
   ERO  Employment Related Overheads
   FA   Financial Auditor
   FTOC Final Target Outturn Cost
   GST  Goods and Services Tax
   KPP  KRA Performance Pool
   KPS  KRA Performance Score
   KRA  Key Result Area
   KPI  Key Performance Indicator
   MCOS Minimum Conditions of Satisfaction
   NOP  Non Owner Participant
   PAA  Project Alliance Agreement
   PDP  Project Definition Phase
   PEP  Project Execution Phase
   PPS  Possession Performance Score
   RC   Reimbursable Cost
   SIA  Safety Interface Agreement
   SPP  Schedule Performance Pool
   SPS  Schedule Performance Score
   TAE  Target Adjustment Event
   TOC  Target Outturn Cost
   TCE  Target Cost Estimate
   TFR  Total Fixed Remuneration
2. Definitions

Defined terms set out in the Commercial Framework apply in this Agreement and the following definitions apply in this Agreement:

"Actual Outturn Cost" or "AOC" has the meaning given in the Commercial Framework.

"Alliance" means the alliance we have formed under this Agreement to carry out the Project.

"Agreement" means this document and includes its schedules, annexures and attachments.

"Agreement Particulars" means Schedule 2.

"Alliance Activities" means:

(a) during the Project Definition Phase, the PDP Activities; and

(b) after TIDC approves the Project Proposal in accordance with clause 6.5(c)(i), all activities, things and tasks which any Participant is, or may be, required to do to comply with its obligations under this Agreement (including the Project Brief).

"Alliance Intellectual Property Rights" means any Intellectual Property Rights that arise as a result of us, any of us, or our Subcontractors creating, producing, discovering or first reducing to practice any concept, product or process (whether or not capable of being patented) as part of the Alliance Activities but excluding:

(a) any new Intellectual Property Rights which are, in substance, a development or enhancement of a pre-existing Intellectual Property Right and the development or enhancement cannot practically be separated from the pre-existing Intellectual Property Right;

(b) any other Intellectual Property Rights which the ALT determines should not be treated as Alliance Intellectual Property Rights; and

(c) any design, documentation and specifications provided by TIDC under clause 8.1 and all Intellectual Property Rights associated with them.

"Alliance Leadership Team" or "ALT" means the alliance leadership team established under clause 4.1.

"Alliance Management Plan" or "AMP" means the suite of plans referred to in Schedule 8.

"Alliance Management Team" or "AMT" means the alliance management team established by the ALT under clause 5.1.

"Alliance Manager" means the person appointed by the ALT under clause 5.2.

"Alliance Objectives" means the objectives set out in Schedule 5 (Alliance Objectives) or any other objectives determined by the ALT from time to time.

"Alliance Principles" means the principles set out in Schedule 3 (Alliance Principles) or any other principles determined by the ALT from time to time.
"Alliance Site" means any areas other than the Project Site which we require access to for the construction of the Alliance Works, including private properties adjoining the Project Site.

"Alliance Values" means the values set out in Schedule 4 (Alliance Values) or any other values determined by the ALT from time to time.

"Alliance Works" means the structures, plant and other things to be furnished, fabricated, constructed, installed, erected or commissioned by the combined efforts of the Participants and handed over to TIDC under this Agreement but excluding the Temporary Works.

"Alternative ALT Member" means, in respect of an ALT Member, a person appointed in accordance with clause 4.2(d) to act as the Alternative of that ALT Member.

"ALT Chairperson" means the chairperson of the ALT as referred to in clause 4.3(a) and appointed from time to time under clause 4.3(c).

"ALT Member" means, in respect of a Participant, a person appointed by that Participant as a member of the ALT, as replaced from time to time in accordance with clause 4.2. Where the context permits, references to an "ALT Member" include an Alternative ALT Member of that ALT Member.

"Approval" means:

(a) any consent, approval, acknowledgment, permit, licence, registration, order, permission, determination, certificate or concurrence from any Authority or under any law (including a Statutory Requirement);

(b) any requirement made under any law (including a Statutory Requirement); and

(c) any TIDC condition or approval in connection with the Alliance Works (including those under this Agreement),

which must be obtained or satisfied (as the case may be) to carry out the Alliance Activities or to occupy, use, operate or maintain the Alliance Works.

"Asset Management Information" means information for asset management required to be developed and provided as detailed in the Scope of Work.

"Associate" means, in respect of a Participant, any officer, employee, agent, Subcontractor, supplier or consultant of that Participant and their respective officers, employees, agents, subcontractors, suppliers and consultants.

"Authority" means:

(a) any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality; or

(b) any other person having a right to impose a requirement, or whose consent is required, with respect to any part of the Alliance Activities.

"Background Intellectual Property Rights" means any Intellectual Property Rights that any of us possess which are not Alliance Intellectual Property Rights.
"Business Day" means a day that is not:

(a) a Saturday or Sunday; or  
(b) a public holiday in Sydney; or  
(c) 27, 28, 29, 30 or 31 December.

"Certificate of Completion" means the certificate referred to in clause 11.3(b).

"Certificate of Final Completion" means the certificate referred to in clause 11.4(b) in which the Alliance Manager states that the Defects Notification Period has expired and the date of such expiry and that the Alliance Manager is not aware of any outstanding Defects.

"Claim" means any claimed entitlement (including for debt, damages or indemnity) under or arising out of or connected with this Agreement, in contract, in tort including negligence, in equity, under any statute, or otherwise.

"Commencement Date" means the date of this Agreement.

"Commercial Framework" means the commercial framework set out in Schedule 7 (Commercial Framework), as adjusted by the ALT in writing from time to time.

"Completion" means the stage when in respect of a Portion:

(a) in the case of Portion 1, it is Ready for Operations;

(b) in the case of all Portions other than Portion 1, the Portion is 100% complete and free from any known Defects;

(c) in the case of all Portions:

(i) the requirements of all relevant certifying Authorities and insurance surveyors have been met and all certificates, authorisations, approvals and consents from Authorities and service providers required for the occupation, use and maintenance of the Portion have been issued;

(ii) those tests that are required to be carried out before the Portion reaches Completion have been carried out and passed;

(iii) all testing, training, documents and other information associated with the Portion and essential for the use, operation and maintenance of the Portion have been supplied to TIDC including but not limited to all Subcontractors' warranties, operating manuals, licences, access codes, as-built drawings or work-as-executed drawings; and

(iv) any other things required to be done under this Agreement as part of the Portion, or before (or as conditions precedent to) Completion, have been done.

"Construction Plant" means appliances, vehicles and other things (including devices, equipment, instruments and tools) used to carry out the Alliance Activities, but not for incorporation in the Alliance Works.
"Date for Completion" means the date which is specified in the construction programme approved by TIDC under clause 6.5 as the date by which the Alliance Works will be brought to Completion, or such other date as may be determined by the ALT.

"Date of Completion" means the date stated in a Certificate of Completion approved and completed by the ALT in accordance with clause 11.3(b).

"Date of Final Completion" means the date stated in a Certificate of Final Completion approved and completed by the ALT in accordance with clause 11.4(b).

"Defaulting Participant" means a Participant that has committed a Wilful Default (or in respect of which a Wilful Default has occurred).

"Defect" means:

(a) any defect or omission in the Alliance Works and includes any damage caused to the Alliance Works by any one of us in the course of performing the Alliance Works; or

(b) any aspect of the Alliance Works which is not in accordance with the requirements of this Agreement.

"Defects Notification Period" means the period expiring on the later of:

(a) the date which is 12 months after the Date of Completion; and

(b) the date on which all Defects notified under clause 10.2 have been rectified in accordance with clause 10.2.

"Direction" means a direction under clause 12.1.

"Disagreement" means any difference of opinion or conflict between TIDC and any one or more of the NOPs arising out of or in connection with the Alliance Activities, the Alliance Works or this Agreement.

"Establishment Audits" means the audits of the financial records of the NOPs conducted by the Financial Auditor prior to execution of this Agreement to provide the basis for determining the Fee% and Fees and to clarify the basis for determining Reimbursable Costs.

"Excusable Delay" means:

(a) war, revolution, act of public enemies, terrorism, epidemic, tidal wave, earthquake, lightning or explosion;

(b) action or inaction by, or orders, judgements, rulings, decisions or enforcement actions of any State or Federal court, government, tribunal or Authority (including denial, refusal or failure to grant any Approval despite the use of timely best endeavours by the Participants to obtain same);

(c) a change in laws, such change not being foreseeable at the time of entering into this Agreement; or

(d) any other reasonable cause that the ALT decides should be an Excusable Delay.
"Fee" has the meaning given in the Commercial Framework.

"Fee%" has the meaning given in the Commercial Framework.

"Final Completion" means the stage when all obligations in relation to the Alliance Works have been completed and a Certificate of Final Completion has been issued.

"Final Payment Claim" means the Payment Claim made pursuant to clause 13.2 (Invoices and Payments) upon the issue of the Certificate of Final Completion.

"Final Payment Schedule" means the Payment Schedule issued in connection with the Final Payment Claim.

"Financial Auditor" means the person named in the Agreement Particulars.

"Gainshare/Painshare Regime", "Gainshare" and "Painshare" have the meanings given in the Commercial Framework.

"GST Legislation" means the New Tax System (Goods and Services Tax) Act 1999 and any related legislation imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

"Impact Request" means a notice from TIDC to the ALT, requesting the ALT to make a determination under clause 12.3.

"Insolvency Event" means:

(a) a NOP becomes, is declared to be, is taken under any applicable law to be, admits to or informs TIDC in writing or its creditors generally that the NOP is insolvent, bankrupt, unable to pay its debts or is unable to proceed with the Agreement for financial reasons;

(b) execution is levied against the NOP by a creditor;

(c) a 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

(d) where the NOP is a corporation, any one of the following occurs:

(i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement;

(ii) the corporation entering a deed of company arrangement with creditors;

(iii) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;

(iv) an application is made to a court for the winding up of the corporation and not stayed within 14 days;

(v) a winding up order is made in respect of the corporation;

(vi) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding up); or
(vii) a mortgagee of any property of the corporation takes possession of that property.

"Independent Estimator" means an independent estimator appointed by TIDC.

"Intellectual Property Rights" means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trade marks, patents, designs, circuit layouts, plant varieties, business and domain names, inventions and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable. These rights include:

(a) all rights in all applications to register these rights;
(b) all renewals and extensions of these rights; and
(c) all rights in the nature of these rights.

"Interface Agreements" means all deeds, agreements, protocols and other arrangements with other owners, occupiers, tenants or potential tenants of the Site to which TIDC or the Participants are parties, including the SIA.

"Key Result Area" or "KRA" has the meaning given in the Commercial Framework.

"Key Performance Indicator" or "KPI" has the meaning given in the Commercial Framework.

"Material ALT Issue" means a determination or approval required to be made or given by the ALT under clause 9.1 (Subcontracts), clause 10.2(g) (Defects), 11.1 (Adjustment of Date for Completion), 11.2(d) (Suspension of Alliance Works), 11.3(b) (Certificate of Completion), 11.4(b) (Certificate of Final Completion), 12.2 (Impact of Reserved Powers on Commercial Framework), 12.3 (Impact Request), 12.4 (Other Target Adjustment Events) and 12.5 (Impact of other Target Adjustment Events), the definition of Target Adjustment Events, or under the Commercial Framework.

"Minimum Conditions of Satisfaction" or "MCOS" has the meaning given in the Commercial Framework.

"Minor Event Modifier" means a modifier of Gainshare identified as such in the Commercial Framework.

"Moral Rights" means any of the rights described in Article 6(b) of the Berne Convention for the Protection of Literary and Artistic Work 1886, being "draft moral" or other analogous rights arising under any Statutory Requirement (including the Copyright Act 1968 (Cth)) its amendments or any other law of the Commonwealth.

"Non Owner Participant" or "NOP" means a Participant with the exception of TIDC and where the plural is used means all of the Participants with the exception of TIDC.

"OH&S Plan" means the occupational health and safety management plan prepared in accordance with clause 9.5.

"Participant" means TIDC and the other parties identified in the Agreement Particulars.

"Payment Claim" means a claim in such form as the ALT determines.
"Payment Schedule" means a payment schedule issued by TIDC under clause 13.2(c).

"PDP Activities" means the activities referred to in clause 6.2.

"Planning Approval" means the approval for the Project under the Environmental Planning and Assessment Act 1979 (NSW) as modified from time to time.

"Portion" means the following portions of the Alliance Works:

(a) each of the portions identified in the Agreement Particulars; and

(b) any other part of the Alliance Works which the ALT or TIDC determines is a portion pursuant to clause 11.5(a).

"Possession" means a period (delimited by times and dates) of access to the rail corridor as allowed by RailCorp, including access to rail track and/or electrical isolation.

"Possession Plan" means a plan for each Possession that details the Alliance Activities leading up to, during and after each Possession.

"Project" means the project referred to in the Agreement Particulars, as more fully described in the Project Brief.

"Project Alliance Agreement" or "PAA" means the Agreement.

"Project Brief" means the document set out in Schedule 9.

"Project Definition Phase" or "PDP" is the phase during which the Alliance will provide the PDP Activities as described in clause 6.

"Project Execution Phase" is the phase from the time TIDC approves the Project Proposal pursuant to clause 6.5 until the Date of Final Completion.

"Project Office" the project office for the project described in the Agreement Particulars.

"Project Proposal" means the proposal prepared by the Participants under clause 6.5.

"Project Site" means the land and other places that TIDC makes available for the Alliance Activities as described in the Project Proposal.

"Rail Clearways Program" means the NSW Government program for upgrading parts of the Sydney rail network to create a number of independent "rail clearways".

"RailCorp" means Rail Corporation New South Wales, a corporation constituted by section 19C(1) of the Transport Administration Act 1988 of Level 6, 18 Lee Street, Chippendale, New South Wales and its successors in title or law.

"Rail Corridor" means the area containing the Rail Tracks, rail junctions, level crossings, station buildings, platforms, signal boxes, tunnels, bridges and other associated structures. This area is often defined by railway boundary fencing and in the absence of such fencing, is defined by a physical boundary (ie tunnel, building or retaining walls) or everywhere within 15 metres of the outermost rails. It may exclude areas that have received "RISI Exemption" for the period of the exemption.
"Railway Track" means the rails fastened on sleepers or transoms and founded on ballast or bridge decking, associated signalling and overhead wiring components (in electrified areas).

"Ready For Operations" means the stage when Portion 1 is ready for use by passengers, staff and train services and ready for handover to RailCorp for operation.

"Records" include both electronic and physical versions of records, accounts, ledgers, payroll, correspondence, tenders, minutes of meetings, notes, reports, instructions, plans, drawings, invoices, dockets, receipts, vouchers, computer programs. In relation to Intellectual Property Rights, it includes all plans, designs, drawings, specifications, records but excluding:

(a) normal internal business records, data reports and other technical information, both electronic and physical versions; and

(b) any electronic or physical record, including but not limited to correspondence or instruction, that is subject to legal professional privilege.

"Reimbursable Costs" has the meaning given in the Commercial Framework and includes any costs identified in this Agreement as Reimbursable Costs.

"Related Entity" means a related entity of a Participant as that term is defined in section 9 of the Corporations Act 2001 (Cth) and will include a subsidiary and a related party as those terms are defined in the Corporations Act 2001 (Cth).

"Safety Interface Agreement" or "SIA" means an agreement between TIDC, the NOPs and RailCorp for the purpose of the Rail Safety Act 2002.

"Scope of Work" means the scope of work for the Alliance Works prepared by the Participants under clause 6.2.

"Senior Executive Review Group" means the group referred to in clause 3.4.

"Significant Event Modifier" means a modifier of Gainshare identified as such in the Commercial Framework.

"Site" means the Project Site and the Alliance Site.

"Stakeholders" includes any of the following:

(a) members of the community;
(b) environmental, community and cultural heritage interest groups;
(c) local businesses;
(d) utility service providers;
(e) unions;
(f) insurance brokers (in relation to Project specific insurances);
(g) the New South Wales Government (including individual ministries, departments, authorities and other bodies within the New South Wales Government);
(h) media; and

(i) parliament.

"Statutory Requirements" means:

(a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the Alliance Works are being carried out;

(b) certificates, licences, consents, permits, approvals, and requirements of organisations having jurisdiction in connection with the carrying out of the Alliance Works; and

(c) fees and charges payable in connection with the matters referred to in paragraphs (a) and (b).

"Subcontract" means any contract or purchase order between a NOP and a Subcontractor in relation to any part of the Alliance Works.

"Subcontracting Strategy" means the strategy referred to in clause 18.3.

"Subcontractor" means any person engaged by a NOP (including a supplier or hirer of materials, plant, equipment or testing services) to perform any part of the Alliance Activities and includes, where it is not inconsistent with the context, the Subcontractor’s officers, employees, agents, consultants and invitees.

"Target Adjustment Event" means:

(a) any delay in the Alliance Works achieving Completion as a result of an Excusable Delay; or

(b) any other event or circumstance which the ALT agrees justifies a modification to the Commercial Framework as determined by the ALT in accordance with this Agreement.

"Target Adjustment Guidelines" means the document developed in the Project Definition Phase which sets out the kind of situations that would and would not amount to a Target Adjustment Event.

"Target Cost Estimate" or "TCE" means the target cost estimate prepared by the Participants as part of the Project Proposal, as adjusted (if at all) by the ALT in accordance with this Agreement as a sufficient estimate of costs to achieve the Minimum Conditions of Satisfaction and Final Completion including all Reimbursable Costs and Fee and necessary contingencies required to perform the Alliance Activities.

"Target Outturn Cost" or "TOC" means the target outturn cost to be ascertained in accordance with S7-1.4.3 of the Commercial Framework and approved by TIDC in accordance with clause 6.5(c)(i), as adjusted (if at all) by the ALT in accordance with this Agreement.

"Tax Invoice" has the meaning given to it by GST Legislation.

"Temporary Works" means works (including processes and other things) used for the purpose of carrying out the Alliance Works, but which does not form part of the Alliance Works.
"TIDC Accreditation" means the accreditation held by TIDC pursuant to the Rail Safety Act 2002 (NSW).

"TIDC Alliance Costs" means any cost incurred directly by TIDC on the Alliance Activities (other than a payment made to an NOP in accordance with this Agreement) and includes any costs identified in this Agreement as TIDC Alliance Costs.

"TIDC Reserved Powers" means those matters as defined in clause 12.1 on which the final decision is reserved for a determination by TIDC (rather than being decided collectively by the Participants or unanimously by the ALT Members on the ALT).

"Value for Money Report" means the report referred to in clause 18.2.

"Wilful Default" means, in respect of a Participant:

(a) repudiation of this Agreement by the Participant;
(b) in respect of any duty, obligation or stipulation arising out of this Agreement or the Alliance Activities, any intentional or wanton or reckless act or omission of the Participant which:
   (i) is a breach of that duty, obligation or stipulation;
   (ii) which the Participant knows or ought to reasonably to have known would harm another Participant; and
   (iii) causes harm to another Participant, but not including any error of judgment, mistake, act or omission, whether negligent or not, made in good faith by that Participant;
(c) fraud or dishonesty by a Participant in relation to this Agreement or any aspect of the Alliance Activities;
(d) a failure by the Participant to make payment which has become due under this Agreement;
(e) a failure by the Participant to honour an indemnity contained in this Agreement;
(f) an Insolvency Event occurring in relation to a NOP;
(g) a failure by the Participant to comply with clause 8.5 (Third parties’ Intellectual Property Rights) or 8.6 (Moral Rights);
(h) a failure by a Participant to effect and maintain an insurance policy that it is required to effect and maintain under this Agreement;
(i) a Participant refusing reasonable access for an audit which is permitted or required under this Agreement; or
(j) any material non-compliance by a Participant with the requirements of the TIDC Accreditation.
"Work Product" means, in respect of the Alliance Works, any idea, document, work, process, product, result or solution introduced to the Project by a NOP or created by or on behalf of a NOP as part of the Project.

3. Interpreting this Agreement

Headings are for convenience only, and do not affect interpretation.

The following rules also apply in interpreting this Agreement, except where the context makes it clear that a rule is not intended to apply:

(a) a reference to:

(i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;

(ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;

(iii) a Participant includes a permitted substitute or a permitted assign of that Participant;

(iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and

(v) anything (including a right, obligation or concept) includes each part of it;

(b) any reference to currency is a reference to Australian dollars, unless stated otherwise;

(c) no rule of construction applies to the interpretation of this Agreement to the disadvantage of one Participant on the basis that the Participant prepared it;

(d) a decision of the ALT includes a direction, determination, approval, authorisation, consent, agreement, recommendation or requirement of the ALT; and

(e) the words "including" and "includes", and any variants of those words or similar expressions (for example, "for example"), will be read as if followed by the words "without limitation".
Schedule 2 – Agreement Particulars

| The other parties to this Agreement (Non Owner Participants or NOPs) | Name: Leighton Contractors Pty Limited  
ABN: 98 000 893 667  
Address:  
Level 4, Tower A  
799 Pacific Highway  
Chatswood NSW 2067  
Name: Maunsell Australia Pty Limited  
ABN: 20 093 846 925  
Address:  
Level 11  
44 Market Street  
Sydney NSW 2000  
Name: Sinclair Knight Merz Pty Limited  
ABN: 37 001 024 095  
Address:  
100 Christie Street  
St Leonards NSW 2065  
Name: MVM Rail Pty Limited  
ABN: 75 057 458 705  
Address:  
Level 1 Tower A  
112-118 Talavera Road  
North Ryde NSW 2113  
Name: Ansaldo STS Australia Pty Limited  
ABN: 34 068 707 380  
Address:  
11 Viola Place  
Eagle Farm QLD 4009  
Name: Alan Warburton  
Organisation: Leighton Contractors Pty Limited  
E-mail: alan.warburton@leicon.com.au  
Phone: (02) 9414 3418  
Mobile: 0404 812 238  
Name: Ben Hyde  
Organisation: Sinclair Knight Merz Pty Limited  
E-mail: bhyde@skm.com.au  
Phone: (02) 9928 2489  
Mobile: 0401 144 791 |
<table>
<thead>
<tr>
<th>Name</th>
<th>Organisation</th>
<th>E-mail</th>
<th>Phone</th>
<th>Mobile</th>
</tr>
</thead>
<tbody>
<tr>
<td>Craig Southward</td>
<td>Ansaldo STS Australia Pty Limited</td>
<td><a href="mailto:southward.craig@ansaldo-sts.com.au">southward.craig@ansaldo-sts.com.au</a></td>
<td>(07) 3868 9333</td>
<td>0410 152 462</td>
</tr>
<tr>
<td>Peter Wyton</td>
<td>Maunsell Australia Pty Limited</td>
<td><a href="mailto:peter.wyton@maunsell.com">peter.wyton@maunsell.com</a></td>
<td>(02) 8295 3600</td>
<td>0422 402 688</td>
</tr>
<tr>
<td>Greg Mackie</td>
<td>MVM Rail Pty Limited</td>
<td><a href="mailto:gmacroe@mvmrail.com.au">gmacroe@mvmrail.com.au</a></td>
<td>(02) 9855 4000</td>
<td>0417 662 295</td>
</tr>
<tr>
<td>Glenn Bentley</td>
<td>Transport Infrastructure Development Corporation</td>
<td><a href="mailto:glenn.bentley@tidc.nsw.gov.au">glenn.bentley@tidc.nsw.gov.au</a></td>
<td>(02) 9200 0200</td>
<td>0400 818 282</td>
</tr>
<tr>
<td>Anand Thomas</td>
<td>Transport Infrastructure Development Corporation</td>
<td><a href="mailto:anand.thomas@tidc.nsw.gov.au">anand.thomas@tidc.nsw.gov.au</a></td>
<td>(02) 9200 0200</td>
<td>0400 141 510</td>
</tr>
</tbody>
</table>

ALT Chairperson (Clause 4.3(a))

Alan Warburton

Alliance Manager (Clause 5.2(a))

Name: Norman Lovemore
Organisation: Leighton Contractors Pty Limited
E-mail: norman.lovemore@leicon.com.au
Phone: (02) 9414 3417
Mobile: 0433 802 896

Period for delivery of Scope of Works to TIDC (Clause 6.4(b))

50 Business Days after the Commencement Date

Period for delivery of Project Proposal to TIDC

110 Business Days after the date on which TIDC notifies the Participants in writing that it has approved the Scope of
<table>
<thead>
<tr>
<th><strong>(Clause 6.5(a))</strong></th>
<th>Work under clause 6.4(c)(i)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Project Office (Clause 7.6)</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Number of copies of documentation (Clause 8.2(b))</strong></td>
<td>4 hard copies (3 bound and 1 unbound) and 1 soft copy.</td>
</tr>
</tbody>
</table>
| **Financial Auditor (Clause 8.10)** | Name: KPMG (George Sutton, Partner)  
Address:  
10 Shelly St  
Sydney NSW 2000  
Phone: 02 9455 9796  
Fax: 02 9455 9455  
E-mail: Georgesutton@kpmg.com.au  
Mobile: 0413 705 583 |
| **Nominated Subcontractors (Clause 9.1(e))** | **NOP**  
Maunsell Australia Pty Limited  
Leighton Contractors Pty Limited  
**Part of Alliance Works, and entity**  
Urban Design, EDAW Australia Pty Ltd  
Station and Bridge Architects, HBO EMTB Architects Pty Ltd |
| **NOP to be appointed as principal contractor (Clause 9.4(c))** | Leighton Contractors Pty Limited |
| **Benchmark quality assurance standard (Clause 10.1)** | AS/NZ ISO 9001: 2000 for design work  
AS/NZ ISO 9002: 2000 for manufacturing and construction work |
| **Portions (Clause 11.5)** | Portion 1: All parts of the Alliance Works necessary for putting into operation the stations and rail infrastructure.  
Portion 2: The completion of the remainder of the Alliance Works other than the Defects in Portion 1. |
| **Addresses for service of notices (Clause 19.1(a))** | **Name**: Transport Infrastructure Development Corporation  
**Address**:  
Level 7, Tower A  
Zenith Centre  
821 Pacific Highway  
Chatswood NSW 2067  
Locked Bag 6501  
St Leonards NSW 2065  
**Fax**: 02 9200 0290  
**Attention**: Glenn Bentley |
| | **Name**: Leighton Contractors Pty Limited  
**Address**:  
Level 4  
799 Pacific Highway |
<table>
<thead>
<tr>
<th>Name: Maunsell Australia Pty Limited</th>
<th>Name: Sinclair Knight Merz Pty Limited</th>
<th>Name: MVM Rail Pty Limited</th>
<th>Name: Ansaldo STS Australia Pty Limited</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Address:</strong> Level 11, 44 Market Street &lt;br&gt;Sydney NW 2000 &lt;br&gt;PO Box Q410 &lt;br&gt;QVB Post Office &lt;br&gt;Sydney NSW 1230</td>
<td><strong>Address:</strong> 100 Christie Street &lt;br&gt;St Leonards NSW 2065</td>
<td><strong>Address:</strong> PO Box 914 &lt;br&gt;North Ryde Business Centre &lt;br&gt;NSW 1670</td>
<td><strong>Address:</strong> 11 Viola Place Eagle Farm, Brisbane, QLD 4009 &lt;br&gt;PO Box: 1168 Eagle Farm QLD 4009</td>
</tr>
<tr>
<td><strong>Fax:</strong> 02 9262 5060</td>
<td><strong>Fax:</strong> 02 9928 2500</td>
<td><strong>Fax:</strong> 02 9855 4099</td>
<td><strong>Fax:</strong> 07 3268 4425</td>
</tr>
<tr>
<td><strong>Attention:</strong> Peter Wyton</td>
<td><strong>Attention:</strong> Ben Hyde</td>
<td><strong>Attention:</strong> Greg Mackie</td>
<td><strong>Attention:</strong> Craig Southward</td>
</tr>
</tbody>
</table>
Schedule 3 – Alliance Principles

The Alliance Principles are as follows:

• All participants win, or all participants lose, depending on outcomes actually achieved.
• A peer relationship where all participants have an equal say.
• Collective responsibility for performance with an equitable sharing of risk and reward.
• Full access to and commitment of “best-in-class” resources from all participants.
• A focus on innovative thinking with a commitment to achieve outstanding results.
• Clear responsibilities and accountabilities within a no-blame culture.
• An integrated team selected on the basis of the best person for each position.
• Open, straight and honest communication between all participants.
• Commercial arrangements and all transactions are fully open-book.
• Important decisions should be made on a “best for project” basis in accordance with the above principles and not on the basis of organisational positions.
Schedule 4 – Alliance Values

The Alliance Values are as follows:

- Safety and Health - Safety and health above everything else.
- Passion and Pride - We will tackle the Project with passion and pride.
- Innovation and Value for Money - We will use an open minded approach to drive innovation and value for money.
- Integrity - Our relationship to each other and our stakeholders is based on honesty, respect and trust.
- Courage and Commitment - Challenges will be met with courage and commitment.
- Sustainability - We will build a sustainable project for the future.
- Community - Our decisions and actions will respect the community.
Schedule 5 – Alliance Objectives

The Alliance Objectives are as follows:

<table>
<thead>
<tr>
<th>Key Result Areas</th>
<th>Alliance objective</th>
</tr>
</thead>
<tbody>
<tr>
<td>Safety</td>
<td>Zero harm</td>
</tr>
<tr>
<td></td>
<td>Open reporting culture</td>
</tr>
<tr>
<td>Schedule</td>
<td>Meet all milestone dates and project ready for operation by 31 August 2011</td>
</tr>
<tr>
<td>RailCorp Interface</td>
<td>Successful interface management with RailCorp</td>
</tr>
<tr>
<td></td>
<td>Minimise reliance on RailCorp resources</td>
</tr>
<tr>
<td>Costs</td>
<td>Deliver value for money</td>
</tr>
<tr>
<td>Operations</td>
<td>Zero reliability incidents</td>
</tr>
<tr>
<td>Community</td>
<td>Positively engage with and minimise disruption to the community, adjacent residents, property owners and all transport users</td>
</tr>
<tr>
<td>Stakeholders</td>
<td>Positively engage with and effectively manage stakeholders interests</td>
</tr>
<tr>
<td>Environment</td>
<td>Exceptional environmental management, urban design and environmental and sustainability outcomes</td>
</tr>
</tbody>
</table>
Schedule 6 – Functions of ALT, AMT and the Alliance Manager

1. **Part 1 – ALT**

The functions of the ALT include the following:

(a) provide strategic guidance and leadership to the Participants;
(b) create and project the Project vision;
(c) empower and support the AMT;
(d) establish and maintain a strong performance orientation by championing and recognising outstanding results in all Alliance Objectives;
(e) support outstanding performance;
(f) set the example for alliance behaviour;
(g) ensure corporate management support;
(h) ensure that each Participant contributes its best available personnel and other resources to the Project;
(i) use best endeavours to ensure that the Participants comply with this Agreement;
(j) co-ordinate and monitor the performance of the Participants to ensure that:
   (i) the terms and conditions of this Agreement are complied with;
   (ii) the Alliance Works are carried out in accordance with this Agreement;
   (iii) the Participants, the Alliance Project Manager and the AMT adhere to the Alliance Objectives and the Alliance Principles;
(k) ensure that the Alliance Manager has clear objectives, responsibilities and delegated authority to lead the AMT;
(l) establish the AMT including the appointment of the AMT members, after appropriate consultation with the Participants;
(m) ensure implementation of effective and efficient systems and controls;
(n) set, review and revise limits of delegated authority, as appropriate;
(o) monitor the health and performance of the Project;
(p) approve the AMP and any subsequent modifications to it;
(q) review and, where the ALT determines it to be necessary, approve appropriate supplements to the insurances set out in clause 15 of this Agreement;
(r) ensure that appropriate controls, delegations, systems and procedures are embodied within the detailed plans which comprise the AMP and that the requirements of each plan are adhered to;

(s) monitor the performance of the Alliance Manager and the AMT and implement appropriate measures (including corrective actions based on the Alliance Objectives and the Alliance Principles) to correct undesirable trends;

(t) monitor the suitability of the Commercial Framework to achieve the Alliance Objectives and the consistency of it with the principles of the Commercial Framework, and make adjustments where necessary;

(u) review and, if appropriate, approve proposed performance targets (both cost and non-cost) for the Project;

(v) review and, if appropriate, approve any Target Adjustment Event;

(w) deal with any Disagreements between Participants;

(x) initiate and/or approve the commitment of resources to carry out the Alliance Activities and provide corporate support where necessary;

(y) report progress and performance of the Alliance Works to senior management of the Participants;

(z) implement any Directions received from TIDC in relation to any TIDC Reserved Power; and

(aa) discharge such other functions of the ALT set out in this Agreement.

2. **Part 2 – AMT**

The functions of the AMT include the following:

(a) implement the decisions and determinations of the ALT;

(b) implement the management and operational processes and systems;

(c) identify and manage risk and opportunity;

(d) provide regular reports to the ALT;

(e) ensure that short term and long term environmental risks are managed; and

(f) manage the Alliance Management Team in terms of:

   (i) roles;

   (ii) responsibilities; and

   (iii) time requirements.
Schedule 8 – Alliance Management Plan

The AMP will comprise the following suite of plans:

(a) AMP Framework Plan;
(b) Configuration Management Plan;
(c) Environmental Management Plan;
(d) Risk Management Plan;
(f) OH&S Management Plan;
(g) Construction Management Plan;
(h) Rail Safety Management Plan;
(i) Community Liaison Plan;
(j) Design Management Plan;
(k) Site Management Plan;
(l) Traffic Management Plan;
(m) Commissioning Management Plan;
(n) Audit Plan;
(o) Project Industrial Relations Plan;
(p) Procurement/Tendering Management Plan including local industry participation;
(q) Cost Management Plan;
(r) Value for Money Plan;
(s) Alliance Finalisation Plan;
(t) Crisis Management Plan;
(u) Property Damage Management Plan;
(v) Authority Liaison and Approval Management Plan;
(w) Passenger Management Plan;
(x) Information and Communication Technology (ICT) Management Plan;
(y) HR Management Plan; and
(z) TCE Development Plan.
Schedule 9 – Project Brief
Rail Clearways Program

Quakers Hill to Schofields Duplication

Project Brief
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1 Introduction

The Quakers Hill to Schofields Duplication project is one of the largest of the Rail Clearways projects. In December 2005 the NSW Government approved the duplication of the Richmond line from Quakers Hill to Schofields. However, in November 2006, the NSW Government extended the project north to include duplication of the Richmond line to Riverstone by 2010 and Vineyard by 2012.

The NSW Government proposed to originally stage the projects delivery; Stage 1 – Quakers Hill to Riverstone by 2010 and Stage 2 – Riverstone to Vineyard by 2012. However, RailCorp has carried out demand forecasts and as a result has recommended a project delivery to meet demand predictions from Quakers Hill to Schofields only by 2011.

The provision of this additional track between Quakers Hill and Schofields Stations will enable more reliable services on the Richmond Line and increased capacity.

2 The Project

2.1 Rational for the Project

The train operations objectives of the Quakers Hill to Schofields Duplication project are to:

(a) Increase capacity to run additional services on the Richmond Line.
(b) Improve service reliability by separating service types, and providing infrastructure to support out of course train running.

The station operations objectives of the Quakers Hill to Schofields Duplication project are to:

(a) Manage safe and reliable temporary turnback operations at new Schofields station.
(b) Facilitate a high level of passenger information.
(c) Enhance Schofields Station operations to facilitate a high level of customer service, reflecting the new infrastructure and role of Schofields as interchanges.

2.2 Key Features of the Project

The key features of the project includes providing one new track adjacent to the existing single track from the existing twin track arrangement north of Quakers Hill Station through to the northern end of the proposed new Schofields Station including all associated civil and rail systems works and new station at Schofields.

The new Schofields Station is to be located approximately 850m south of the existing station with the existing station platform, buildings to be removed.

2.3 Detailed work Elements

Based on studies and investigations undertaken to date, TIDC anticipates that the works will include but not necessarily be limited to the following elements:
- Approximately 3.21km of single new track between Quakers Hill (approx. 40.090km) and Schofields (approx. 43.29km). A total of approximately 4 km of new track is envisaged for these works including some of the additional items listed below.

- Civil works including embankment and cutting widening, retaining walls, slope stabilisation, drainage, combined services route, maintenance access roads, landscaping and noise mitigation devices.

- Track slewing and new track for the new Schofields Station.

- New overhead wiring to suit new track and connections to existing track.

- New signalling to suit the new and existing tracks.

- Modification of the existing signalling system to suit the new track.

- Culverts works including:
  - New drainage culverts along the route.
  - Replacement and/or modifications to a number of other existing drainage culverts along the route with connections to existing drainage network.

- New Schofields Station works including:
  - New level access island platform
  - Booking office, station staff amenities and public toilets
  - Footbridge, 3 lifts, and stairs to the street and the platform
  - Communications and security devices
  - Bus interchange and carparking, and associated infrastructure works.
  - Turnback at New Schofields station to be one crossover from Down to Up Mains on the Sydney end of the New Schofields Station and double to single track turnout at the country end.

- New Quakers Hill footbridge and ramps to the street to replace the existing pedestrian level crossing.

- Replacement of the existing Schofields traction substation.

- Utilities adjustments and protection.

- Relocation of existing signalling infrastructure, including signalling supplies and signal huts.

- 33kV overhead and underground relocation of feeders and equipment.

- Traction modelling.

- New regulated 11kV supply for signalling and station supplies from Quakers Hill to Schofields.

- 11kV backup supply from Integral Energy at new Schofields Station and also at Quakers Hill footbridge.

- New LV supplies/equipment throughout the project.
• Removal of existing platforms and buildings at Schofields Station.
• Removal of existing pedestrian level crossings at Quakers Hill.
• Commissioning the stations communications systems into the master system.
• Provision of full length maintenance vehicle tracks on one side of the alignment.
• Property acquisition at Quakers Hill (for the new footbridge), Schofields (for the new Schofields Station, substation upgrade and new track at existing Schofields Station).

2.4 Additional Work Elements

Additional work elements that may be incorporated into the project, subject to funding approval by RailCorp are listed below. It is noted that the additional work elements identified below will need to be addressed with RailCorp during the Reference Design Phase.

• Upgrading of the existing track.
• Upgrading of overhead wiring, including 33kV, and associated structures to suit future increased electrical loadings.
• Upgrade of overhead wiring infrastructure (including timber poles) for the existing track where not impacted by new work.
• Bi-directional signalling.
• Provision of any new platforms, footbridge or adjustments to level access/station security upgrades to Quakers Hill Station.
• Modifications to Quakers Hill Parkway overbridge.
• Any capital works contributions to the drainage system outside the rail corridor.
• Provision of 500 space aboveground/underground carpark at the new Schofields Station.
• Upgrade of power supplies at electrical equipment along the route.
• Provision of cycleways.
• Incorporation of commercial premises into the new overhead station footbridges at the new Schofields Station.
• Conversion of 33 kV pole top substations to pad mount substations.

2.5 Design

The Alliance must provide the entire design necessary for the construction of the works including fabrication, construction, installation, testing and commissioning of the works.

It is important the design adopted gives full consideration to whole-of-life cost of the works in the selection of appropriate design solutions.

The design includes the preparation of all design documentation such as calculations, verifications, detailed construction drawings, specifications, commissioning plans, and maintenance plans. The design must address the requirements of this Project Brief including the following:
The integration of the works into existing railway systems;

Temporary works required to minimise disruptions to railway operations and any potential impact on the adjacent areas during construction and commissioning;

Urban design and architectural requirements, with urban design considered as part of the design;

A fully integrated approach, recognising and balancing the different functional, ecological, landscaping, community and stakeholder expectations. Design outcomes must be a careful balance of urban and landscape design which satisfy all relevant criteria;

Safety-in-design; and

Reliability, availability, maintainability and sustainability.

The Alliance’s design documentation should be submitted progressively and generally in accordance with established design development and approval processes that have been developed in conjunction with RailCorp.

TIDC wants to ensure that the Alliance demonstrates value for money in the design development phase and that options already investigated and rejected are not inappropriately revisited.

Designs will be formally reviewed prior to construction by:

- RailCorp in the case of all design; and
- TIDC’s Design Review Panel, in the case of architectural and urban design elements.

3 Planning Approval

TIDC has submitted a Project Application to the Department of Planning (DoP) to commence the Part 3A approval process and has received the Director General’s requirements. TIDC is also progressing with the Environmental Assessment process. All Environmental Assessment documentation (including Environmental Assessment, Statement of Commitments and Preferred Project Report (if required)) for the Project must be approved by TIDC’s Board before being submitted to the DoP for review or placed on exhibition. The final conditions of approval for the Project must be endorsed by TIDC’s CEO.

TIDC has commenced preparation of an Environmental Assessment. It is currently anticipated that the Environmental Assessment will be submitted by TIDC to the DoP for adequacy review by September 2008. Formal public exhibition of the Environmental Assessment is expected to be completed by October 2008.

TIDC is the Proponent for the project under the EP&A Act and its Director Planning and Environment (or delegate) will lead negotiations with the Department of Planning on the conditions of approval for the project.

The Alliance must actively support TIDC, RailCorp, government authorities and TIDC’s planning consultant in the environmental assessment and planning approval process, including with the preparation of any revised documentation and any information or materials required for further public exhibition and display.
The Alliance’s Contractor NOP must apply for and hold any Department of Environment and Climate Change licence required for the construction of scheduled development works for the Project.

The Alliance must ensure that it takes into account in designing and constructing the works the Project Application, Director General’s Requirements, Commitments and mitigation measures in the Environmental Assessment documents and the Minister’s Conditions of Approval relevant to the Project.

4 General Requirements

4.1 TIDC/RailCorp Processes

Over the duration of the Rail Clearways Program, TIDC and RailCorp have developed and refined various processes. The Alliance should be aware that deviations from these agreed processes can only be approved in conjunction with RailCorp and TIDC and that any such deviations are likely to require considerable time and effort.

Some key agreed processes that need to be complied with include the following:

(a) RailCorp design review process including:
   - NAI Design Review Process;
   - Engineering Authority;
   - Engineering Waivers;

(b) Configuration Management and Change Requests including:
   - Project Work Interface Agreement (PWIA);
   - Work Activity Advice (WAA);
   - Configuration Change Request (CCR);

(c) Signalling approval process;

(d) Operational Readiness including commissioning; and

(e) The Possession management regime.

4.2 Preferred RailCorp Suppliers

In any procurement decisions the Alliance should give consideration to utilising existing RailCorp preferred suppliers and contractors, taking into account in such decisions matters such as supply lead times and emergency, maintenance and spares requirements and impacts.

5 Operational Requirements

The existing Quakers Hill to Schofields line must remain fully operational throughout the execution of the works, with the exception of Possession availability, during which the lines will not be operational and the Alliance may, subject to compliance with standard protocols, carry out interface work with the existing infrastructure. The works must have no impact on the operation of running lines, stations and associated facilities.
Traffic impacts from disruption to the surrounding road network require detailed consideration and associated management plans are to be agreed with the RTA and local councils prior to implementing any work.

In addition access is required for RailCorp throughout all stages of the works for inspection, maintenance and emergency requirements of new and existing infrastructure located on or adjacent to the site.

6 Maintenance

The project works are to be designed and constructed so that they can be maintained effectively, safely and with minimum whole of life cycle costs. All planned maintenance shall be conducted without adversely affecting the normal operations of the Sydney metropolitan rail network subject to approved operations and maintenance policies and practices.

Additional infrastructure shall, wherever feasible, be maintainable (planned and unplanned) without impact on the timetabled train services. Providing adequate maintenance access is an important facet of the project scope. Additional easements as necessary will be identified and included in the project scope.

7 Safety Management

TIDC’s Safety Assurance Management Process will be applied to the project to provide assurance that the developed infrastructure is safe to operate and maintain. Controls will be required to be implemented at the design phase of the project through to final commissioning and handover of the asset.

8 Operational Readiness

Operational readiness processes are required to integrate the project into the rail system. These processes must commence early in the design phase with consideration of reliability, maintainability, commissioning and safety assurance and continue through the balance of the project delivery cycle. Precise, detailed and timely documentation is a pre-requisite for an efficient operational readiness process.

Inspection, testing and commissioning works will need to be undertaken on all infrastructures, systems, equipment and cabling installations including but not limited to the following:

(a) Permanent way;
(b) Civil engineering works;
(c) Structures and buildings;
(d) Building services;
(e) Utilities;
(f) Signalling;
(g) OHW;
(h) Communications including CCTV and other systems;
(i) Electrical including LV plant and equipment; and

(j) Landscaping.

The Alliance is required to undertake the role of the lead commissioning coordinator and is responsible for coordinating all other parties involved in commissioning of the works.

Commissioning requirements must comply with Australian and RailCorp standards.

9 Other information

Following execution of the Project Alliance Agreement, TIDC will supply a suite of existing project related data, reports, drawings and the like for the Alliance’s information.
Schedule 10 – Statutory Declaration

[ ] Form No 592 (Modified) Schedule

Statutory Declaration

1. __________________________ of __________________________ do solemnly and sincerely declare that:

1. I am a representative of __________________________ ("NOP") in the Office Bearer capacity of __________________________

2. The NOP is a party to an alliance agreement with TIDC in respect of the upgrade of the [ ] ("Contract").

3. Attached to and forming part of this declaration is a Subcontractor's Statement given by the NOP in its capacity as 'Subcontractor' (as that term is defined in the Workers Compensation Act 1987, Payroll Tax Act 2007 and Industrial Relations Act 1996) which is a written statement:
   a. under the Workers Compensation Act 1987, section 175B, in the form and providing the detail required by that legislation;
   b. under the Payroll Tax Act 2007, Schedule 2 Part 5 section 18, in the form and providing the detail required by that legislation; and
   c. under the Industrial Relations Act 1996, section 127, in the form and providing the detail required by that legislation.

4. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.

5. The obligations of the NOP under the Contract relating to Security of Payment, if any, including payment of employees, workers and Subcontractors of the Contractor have been complied with by the NOP.

6. If the NOP has Subcontractors and the subcontract price exceeds $25,000 at commencement, the NOP has received from each of those Subcontractors a statutory declaration and Subcontractor's Statement in equivalent terms to this declaration (made no earlier than 14 days before the date of this declaration).

7. All statutory declarations and Subcontractor's Statements received by the NOP from Subcontractors pursuant to clause 6 were:
   (a) given to the NOP in its capacity as 'Principal Contractor' as defined in the Workers Compensation Act 1987, the Payroll Tax Act 2007 and the Industrial Relations Act 1996 ("Acts"); and
   (b) given by the Subcontractors in their capacity as 'Subcontractors' as defined in the Acts.

8. I am not aware of anything that would contradict the statements made in the statutory declarations and Subcontractor's Statements provided to the NOP by its Subcontractors.
9. The period of the Contract covered by this declaration and the attached Subcontractor's Statement is from _________________________ to _______________________.

10. The NOP is not, under any law, insolvent or unable to pay its debts as and when they fall due.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 (NSW). I am aware that I may be subject to punishment by law if I wilfully make a false statement in this declaration.

Declared at ______________________________ (place where declaration made)

on ______________________ (date of declaration) by

____________________________________

Signature of person making the declaration

Before me: _______________________________________

Justice of the Peace/Solicitor of the Supreme Court of New South Wales

[or other person legally authorised to administer an oath under the Oaths Act 1900 (NSW) or where the declaration is sworn outside the State of New South Wales, any person having authority to administer an oath in that place]
SUBCONTRACTOR’S STATEMENT
REGARDING WORKERS COMPENSATION, PAY-ROLL TAX
AND REMUNERATION (Note 1)

☐ Workers Compensation
☐ Pay-roll tax
☐ Remuneration

s175B Workers Compensation Act 1987
Schedule 2 Part 5 Payroll Tax Act 2007
ss127, 127A Industrial Relations Act 1996

Sub Contractor: ___________________________________________________ ABN: ____________________
of ________________________________________________________________
(Address of subcontractor)

has entered into a contract with _______________________________________
(Business name of principal contractor)
ABN: ____________________ For work between: __/__/____ and __/__/____
(Note 3)

and/or Payment Claim Details: ___________________________________________
(Note 4)

Nature of contract work: _______________________________________________
(Note 5)

DECLARATION
I, ___________________, a Director of / a person authorised by the subcontractor on whose behalf this
declaration is made, hereby state that the abovementioned subcontractor:

Is either

☐ A sole trader or partnership without workers or subcontractors (Note 6).
Or

☐ Has and will maintain in force valid workers compensation insurance, policy________
(Policy Number)

held with ___________________________ as indicated on the attached
(Insurance Company)

Certificate of Currency dated _________________, in respect of work done in connection with the contract, during
any period of the contract and has paid all workers compensation insurance premiums payable in connection with
the contract (Note 7).

☐ Is ☐ Is not also a principal contractor in connection with the work under contract (Note 8).

☐ Has ☐ Has not been given a written statement by subcontractors in connection with the work.

☐ Is ☐ Is not required to be registered as an employer under the Pay-roll Tax Act 2007________
(Pay-roll tax client No.)

☐ Has paid all pay-roll tax due in respect of employees who performed the work for the principal contractor, as
required at the date of this statement (Note 9).

☐ Has paid all remuneration payable to relevant employees, for work done under the contract during the period
outlined above (Note 10).

Signature ___________________________ Full Name ___________________________
(please print)

Position/Title ___________________________

Dated ____________________________

WARNING

☒ Any subcontractor, who knowingly provides a principal contractor with a written statement that is false, is guilty of an offence (Maximum
penalty 100 units or $11,000).

☒ Any written statement will not relieve the principal contractor of liability if, at the time the written statement was provided, the
principal contractor believed the written statement to be false.

☒ The principal contractor must retain a copy of any written statement for a period of not less than five years
(Pay-roll tax), six years (Remuneration) or seven years (Workers compensation).

☒ This statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers
Compensation Act 1987
NOTES

1. This form is prepared for the purpose of section 175B of the Workers Compensation Act 1987, Schedule 2 Part 5 of the Payroll Tax Act 2007 and section 127 of the Industrial Relations Act 1996. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, pay-roll tax and remuneration payable by the subcontractor.

2. For the purpose of this statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity), referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal.

3. In order to meet the requirements of s127 Industrial Relations Act 1996, a statement in relation to remuneration must state the period to which the statement relates.

Section 127(6) Industrial Relations Act 1996 defines remuneration as ‘remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.’

Section 127(11) of the Industrial Relations Act 1996 states ‘to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.’

4. Payment claim details – Where a subcontractor has entered into a payment schedule with a principal contractor they must identify the period or payment to which the statement applies.

5. An accurate description of the work covered by the contract must be included.

6. In completing the statement, a subcontractor declares that they are a sole trader or partnership without workers or subcontractors and is not required to hold workers compensation insurance.

7. In completing the statement, a subcontractor declares that workers compensation premiums payable up to and including the date(s) on the statement have been paid, and all premiums owing during the term of the contract will be paid.

8. It is important to note that a business could be both a subcontractor and a principal contractor, if a business ‘in turn’ engages subcontractors to carry out work. If your business falls within this category you should also obtain statements from your subcontractors.

9. In completing the statement, a subcontractor declares that all pay-roll tax payable relating to work undertaken as part of the contract has been paid.

10. In completing the statement, a subcontractor declares that all remuneration payable has been paid.

It is noted that definitions of employer, employee, remuneration, and specific provisions for employers of outworkers in the clothing trades are as defined in s127A of the Industrial Relations Act 1996.

11. Failure to complete this statement may result in the principal contractor withholding any payment due to the subcontractor. Any penalty for late payment under the contract does not apply to any payment withheld under this subsection. Subcontractors may wish to keep a copy of the statement for their own records.

Schedule 11 – Works Policy
Certificate of Currency

This certificate is issued as a matter of information only and confers no rights upon the holder. It does not amend, extend or alter the coverage afforded by the policy/policies listed. It is provided as a summary only of the cover provided and is current only at the date of issue. For full particulars, reference must be made to the current policy wording.

Class of Insurance: Contract Works

Insurer: American Home Assurance Company

Policy Number: 115680

Insured:

The Owner and Principal:
Rail Corporation of New South Wales (RailCorp) and any subsidiary or affiliated companies constituted at inception of this Insurance or subsequently

The Principal and declared Agent of the Owner:
Transport Infrastructure Development Corporation and any subsidiary or controlled companies constituted at inception of this Insurance or subsequently

Head Contractors, Contract Managers, Project Managers and any subsidiary or controlled companies constituted at inception of this Insurance or subsequently

Other Contractors and/or Subcontractors or any tier and/or other parties, for their respective rights and interests, as more specifically defined in the policy wording

Additional Insured(s):

Consultants, Architects, Engineers, Surveyors, Suppliers, Manufacturers and Vendors of any tier whilst engaged in carrying out work associated with the Project on or about the Project Site.

Consultants, Engineers, Surveyors, Suppliers, Manufacturers and Vendors will not be considered to be subcontractors.
MARSH

16 November 2007

Period of Insurance: From 4:00 p.m. local standard time 15th November 2007 to 15th November 2008 at 4:00 p.m. local standard time

Period of Cover for Each Contract
Construction Period
Cover for each Contract will commence upon possession of the site by the contractor and cease upon practical completion of the work at commencement of commercial operation or 15th November 2008, whichever occurs first, and subject to the maximum length of the Construction Period being 48 months, unless agreed to otherwise by the insurer

Cover includes up to 12 weeks testing and commissioning included within the Construction Period for each Contract.

Maintenance Period/Defects Liability period 24 months from the date of Practical Completion for each Contract.

Description of Business:

The Project:
The design, procurement, construction, trial operation and maintenance of the Clearways Project, at various sites on the RailCorp network in metropolitan and suburban Sydney, and all associated and ancillary works in connection therewith.

Scope of works are limited to the following Contracts:
- Macondonldtown Stabling
- Revesby Turnback Project
- Hornsby Platform 5 and Stabling Project
- Homebush and Lidcombe Turnback Projects
- Cronulla Line Duplication Project
- Liverpool Turnback Project
- Kingsgrove to Revesby
- Carlingford Platform
- Quakers Hill to Vineyard
- Macarthur 4th Platform
- Berowra Platform

Covering:
Subject to the policy Conditions, Memoranda or Exclusions the Insurers' will by payment of the cost of reinstatement, replacement or repair, indemnify the Insured against an Occurrence to the Property Insured during the Construction Period, arising from any cause whatsoever

(a) whilst on or adjacent to or in the vicinity of the Project Site

Schedule 11– Works Policy

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ME_7955947_1 (W2003)
(b) in transit thereto or therefrom (other than by sea or air, subject to a limit any one transit of AUD 2,500,000) including physical loss or damage occurring during any deviation therein or storage in the course of transit, temporary off-site storage or temporary removal from or return to the Project Site for any purpose whatsoever (including any loading, transit or unloading incidental thereto)

Territorial Limits: As specified in the scope of works for Clearways program in NSW, including whilst during inland transit and off-site storage anywhere in Australia

Limit of Indemnity: All Contract Works, Permanent Works, Temporary Works, Materials (including free issue materials), equipment, plant, Supplies and the like and work ancillary thereto and all other Property to be incorporated into the Project and all other things brought on to the Project Site for the purposes of the Project, but excluding existing property, temporary buildings and their contents, construction tools, plant and equipment.

AUD $80,000,000 any one Occurrence / any one location

Temporary Buildings and Contents thereof (excluding Construction tools, plant and equipment)

AUD $1,000,000 any one Occurrence / any one location

Sub-Limits of Liability:

Escalation
10% of Estimated Contract Value for each separable portion of the contract works

Professional Fees
$8,000,000 maximum or as per scale, whichever is the lesser.

Removal of Debris
$8,000,000 or 10% of the loss, whichever is the lesser.

Expediting Expenses
25% of the loss to a maximum of $10,000,000

Transit
$2,500,000 in respect of Materials in Transit maximum per Conveyance

Temporary Protection
$5,000,000
Q2V Duplication Project Alliance Agreement

MARS H

Page 4  
16 November 2007

Shoring and Propping  
$5,000,000

Material Storage Offsite  
$5,000,000 in respect of Materials Stored Offsite inclusive of total contract value

Restoration Plans & Documents  
$1,000,000

Loss Minimisation (Mitigation) Expenses  
$5,000,000

Government Fees, Local Authority Charges  
$2,500,000

Deductible:  
Hornsby Station Platform 5 and Stabling Contract  
$50,000 each and every Occurrence

All Other Contracts  
$250,000 each and every Occurrence

Yours faithfully,

David Torossian  
Principal
Schedule 12 – Liability Policy

MARS\H

3 October 2007

CERTIFICATE OF CURRENCY

This certificate is issued as a matter of information only and confers no rights upon the holder. It does not amend, extend or alter the coverage afforded by the policy/policies listed. It is provided as a summary only of the cover provided and is current only at the date of issue. For full particulars reference must be made to the current policy wording.

Insured
Rail Corporation New South Wales (as Owner and Principal), Transport Infrastructure Development Corporation (as Principal and declared agent of the owner)

Project Managers, Contract Managers, Heads Contractors and subcontractors and other parties as required by contract or agreement in relation to the Quakers Hill to Schofields project forming part of the Clearways Project

Class of Insurance
Public Liability

Insurer(s)
Excess Layer(s)
Lloyds and other British, European and Australian Underwriters

Policy No.
Excess Layer(s)
DR324506 (lead)

Period
From 4:00pm on 30 September 2007 to 4:00pm on 30 September 2008

local standard time

Maintenance Period: 12 months from the date of Practical Completion

Covering
Legal Liability to third parties for personal injury and/or property damage (including charges, expenses, legal and other costs incurred) as a result of an Occurrence happening during the Period of Insurance in relation to the Clearways Project
MARSH

Situation
Anywhere in Australia, in relation to the Quakers Hill to Schofields project forming part of the Clearways Project

Limit of Liability
A$200,000,000 any one Occurrence

Excess
A$10,000,000 each and every Occurrence

In accordance with the ongoing commitment by Marsh to quality management philosophies, this certificate has been verified for accuracy of content by:
David Torosian

Initials [Signature]  Date 3-10-07
28 September 2007

CERTIFICATE OF CURRENCY

This certificate is issued as a matter of information only and confers no rights upon the holder. It does not amend, extend or alter the coverage afforded by the policy/policies listed. It is provided as a summary only of the cover provided and is current only at the date of issue. For full particulars, reference must be made to the current policy wording.

Insured
Rail Corporation New South Wales (as Owner and Principal), Transport Infrastructure Development Corporation (as Principal and declared agent of the owner)

Project Managers, Contract Managers, Heads Contractors and subcontractors and other parties as required by contract or agreement in relation to the Clearways Project

Class of Insurance
Public Liability

Insurer(s)
Excess Layer(s)
Lloyds and other British, European and Australian Underwriters

Policy No.
Excess Layer(s)
DR324506

Period
From 4:00pm on 30 September 2007 to 4:00pm on 30 September 2008

local standard time

Maintenance Period: 12 months from the date of Practical Completion

Covering
Legal Liability to third parties for personal injury and/or property damage (including charges, expenses, legal and other costs incurred) as a result of an Occurrence happening during the Period of Insurance in relation to the Clearways Project

405648.2

Schedule 12– Liability Policy
MARSH

Situation  Anywhere in Australia, in relation to the Clearways Project

Limit of Liability  A$100,000,000 any one Occurrence

Excess  A$10,000,000 each and every Occurrence

In accordance with the ongoing commitment by Marsh to quality management philosophies, this certificate has been verified for accuracy of content by:

David Toossian

Initials  

Date  28-9-07
Certificate of Currency

This certificate is issued as a matter of information only and conveys no rights upon the holder. It does not extend, extend or alter the coverage afforded by the policy/policies listed. It is provided as a summary only of the cover provided and is current only at the date of issue. For full particulars, reference must be made to the current policy wording.

Class of Insurance: Public Liability (Primary)

Insurer: Liberty International Underwriters

Policy Number: 414224

Insured:
1. Rail Corporation of New South Wales (RailCorp) (as owner and principal)
   TIDC Transport Infrastructure Development Corporation (as principal and declared agent of the owner)
2. Project managers and contract managers, contractors and sub-contractors and other parties as required by contract
3. Consultants, engineers, surveyors, suppliers, manufacturers and vendors of any tier whilst engaged in carrying out work associated with the project on or about the project site and in respect of their manual on-site activities only

Duration of Policy: From 15th November 2007 at 4:00 p.m. local standard time to 15th November 2008 at 4:00 p.m. local standard time

Description of Business: Cover under this Policy shall only apply to all work undertaken on behalf of RailCorp / TIDC pursuant to contracts, including work performed in accordance with the Insured’s obligations under any maintenance and defects rectification provisions of the contracts, as declared and agreed to by the Insurers.
Insured all sums for which the Insured shall become legally liable to pay by way of compensation in respect of Injury and/or Damage arising from an Occurrence first happening during the Period of Insurance in connection with the Insured’s Business and/or Completed Operations in relation to projects forming part of the Clearways Project only

**Territorial Limits:**
Anywhere in the world in relation to projects detailed below:-

- Macdonaldtown Stabling
- Revesby Turnback Project
- Hornsby Platform 5 and Stabling Project
- Homebush and Lidcombe Turnback Projects
- Cromalla Line Duplication Project
- Liverpool Turnback Project
- Kingsgrove to Revesby
- Carlingford Platform
- Quakers Hill to Vineyard
- Macarthur 4th Platform
- Berowra Platform

forming part of the Clearways Project, except the United States of America and Canada where this Policy will only apply in respect to travelling executives and salespersons within such countries

**Limit of Liability:**
$10,000,000 any one Occurrence in respect of public liability and in the aggregate during the Period of Insurance in respect of Completed Operations

**Deductible:**
$250,000 each and every Occurrence (costs inclusive) except:-

- Hornsby Platform 5 and Stabling Project
  Injury to contractors, sub-contractors ands labour hire personnel
  $100,000 each and every Occurrence (costs inclusive)

- Other Losses
  $50,000 each and every Occurrence (costs inclusive)

Yours faithfully,

David Torossian
Principal
Schedule 13 – Deadlock Resolution Agreement
Deadlock Resolution Agreement
[Insert project name]

Transport Infrastructure Development Corporation
ABN 28 458 799 157

[Insert names and ABNs of NOPs]
[Expert's name]
[Expert's ABN]

Deadlock Resolution Agreement made at on

Parties

Transport Infrastructure Development Corporation ABN 28 458 799 157
a statutory state owned corporation constituted by section 18A(1) of the Transport Administration Act 1988 (NSW) of Level 7, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067 ("TIDC")

[Insert names, ABNs and addresses of NOPs]

(all together referred to as the "Participants")

[Insert name, ABN and address of Expert agreed between the Participants or appointed pursuant to clause 17.2 of the Alliance Agreement] ("Expert")

Recitals

A. The Participants are parties to an alliance agreement (the "Alliance Agreement") for the Project.

B. By written notice dated [to be inserted], the [insert name of referring Participant] has required that the deadlock described in Annexure 1 be determined by an Expert appointed under clause 17.2 of the Alliance Agreement (the "Deadlock").

C. Under clause 17.2 of the Alliance Agreement, the Expert has been appointed to determine the Deadlock in accordance with the process set out in this agreement.
Operative provisions

1. Interpretation

In this agreement:

(a) headings are for convenience only and do not affect interpretation;
(b) terms defined in the Alliance Agreement have the same meaning;

and unless the context indicates a contrary intention:

(c) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
(d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
(e) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
(f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
(g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
(h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
(i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
(j) "includes" in any form is not a word of limitation; and
(k) a reference to "$" or "dollar" is to Australian currency.

2. Appointment of Expert

(a) The Participants appoint the Expert to make a determination on the Deadlock in the manner and within the times set out in this agreement and the Expert accepts the appointment on the basis set out in this agreement.

(b) The Participants agree that:

(i) the Expert will act as an expert and not as an arbitrator;
(ii) neither the determination of the Deadlock, nor the process required by this agreement is an arbitration and any conference conducted during the
determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;

(iii) the rules of evidence do not apply to the determination process required by this agreement or to any determination; and

(iv) the Expert must conduct the determination of the Deadlock in accordance with:

A. the Rules for Deadlock Resolution Process set out in Annexure 2 ("the Rules"); and

B. the requirements of procedural fairness.

(c) If, at any time during the determination process, the Expert becomes aware of circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, the Expert must inform the Participants immediately and, unless the Participants agree otherwise, terminate this agreement.

(d) The Expert must take all reasonable steps to avoid any conflict of interest, potential conflict of interest or other circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially.

3. Confidentiality

All proceedings and submissions relating to the determination process (including the fact that any step in the determination process is occurring), and all documents prepared for the purposes of the determination process (including the Expert's determination), must be kept confidential between the Participants and the Expert. No such proceedings, submissions or documents, nor any other information relating to or arising out of the determination process, may be divulged to any other person, except with the prior written consent of all Participants or as may be required by law or to the extent necessary to give effect to or enforce the Expert's determination.

4. Fees

TIDC will pay the Expert’s fees and disbursements, calculated in accordance with Annexure 3.

5. Exclusion of liability and indemnity

Except in the case of fraud, the Expert will not be liable to any Participant for any act or omission by the Expert in the performance or purported performance of this agreement. The Participants jointly and severally indemnify the Expert against all claims arising out of or in any way referable to any act or omission by the Expert (except fraud) in the performance or purported performance by the Expert of the terms of this agreement.

6. Co-operation of the Participants

Each Participant agrees to take part in the determination process in good faith and to comply with the reasonable requests and directions of the Expert in relation to the conduct of the determination process. If a Participant does not comply with the Expert's reasonable
directions, the Expert may continue with the determination process and determine the Deadlock despite the non-compliance.

7. **Governing law**

This agreement is governed by and is to be construed according to the law applying in New South Wales.

8. **Jurisdiction**

The Participants and the Expert irrevocably:

(a) submit to the non-exclusive jurisdiction of the courts of the State of New South Wales and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and

(b) waive any objection they may now or in the future have to the venue of any proceedings, and any claim they may now or in the future have that any proceeding has been brought in an inconvenient forum, if that venue falls within clause 8(a).

9. **GST**

9.1 **GST payable**

Unless otherwise stated, all amounts set out in this agreement are GST exclusive.

Notwithstanding any other provision in this agreement, if any party to this agreement ("Supplier") is or becomes liable to pay GST in connection with any supplies made pursuant to this agreement ("the affected supplies") for which GST is not otherwise included in the consideration:

(a) the Supplier may, subject to clause 9.1(d), add to the price of all affected Supplies an additional amount equal to the amount of GST for which the Supplier is or becomes liable in respect of those affected supplies, as calculated by Supplier in accordance with the GST law;

(b) the party providing consideration for the affected supplies ("Recipient") will pay the amounts or provide any other consideration required to be provided under other provisions of this agreement for the affected supplies (in this clause "the price") plus the additional amount on account of GST in accordance with this clause;

(c) the additional amount or amounts will be payable at the same time or times as the price is required to be provided to Supplier under the other provisions of this agreement; and

(d) the Supplier is only entitled to the additional amount payable under clause 9.1(a) where the Supplier has issued a tax invoice to the Recipient in respect of the relevant supply.
9.2 Necessary adjustments

If the additional amount on account of GST recovered by the Supplier from the Recipient on any supply made under this agreement differs for any reason from the amount of GST paid or payable by the Supplier to the Commissioner of Taxation, including by reason of:

(a) an amendment to the GST law;
(b) the issue of or an alteration in a ruling or advice of the Commissioner of Taxation;
(c) a decision of any tribunal or court; and
(d) any adjustment to the consideration under this agreement,

then the difference between the two said amounts will be payable by the Supplier or the Recipient as appropriate. Where an adjustment event (as defined in the GST law) has occurred in relation to any supply under this agreement, the Supplier will provide an adjustment note to the Recipient within 14 days of the date of the adjustment event.

9.3 Reimbursements and similar payments

Any payment or reimbursement required to be made under this agreement for a cost, expense or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

9.4 Definitions

“GST”, “GST law” and other terms used in this clause 9 have the meanings used in the A New Tax System (Goods and Services Tax) Act 1999 (Cth), except that “GST law” includes any applicable rulings issued by the Commissioner of Taxation.

10. General

10.1 Notices

(a) Any notice or other written communication given by one Participant to another Participant or to the Expert, unless the contrary intention appears, will only be effective if it is in writing and signed on behalf of the Participant giving the notice.

(b) To be valid, a written notice or other written communication under this agreement must be delivered by hand, registered mail or facsimile, and addressed:

(i) in the case of a notice or other written communication to a Participant, in accordance with the contact details for the receiving Participant stated in the Agreement Particulars; and

(ii) in the case of a notice or other written communication to the Expert, as follows:
Name: [Name of Expert]  
Address: [Address for service on Expert]  
Fax: [Fax number for service on Expert]  
For the attention of: [Person's name to whom correspondence is directed]  

(c) A notice, consent or other communication that complies with this clause is regarded as given and received:

(i) if it is delivered or sent by fax:
   A. by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
   B. after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day; and

(ii) if it is sent by mail:
   A. within Australia - 3 Business Days after posting; or
   B. to or from a place outside Australia - 7 Business Days after posting.

(d) Electronic communication by email will not constitute a valid notice under this agreement, but a hard copy of an email may be issued as a valid notice using any of the means listed in clause 19.1(a) of the Alliance Agreement.

(e) A Participant or the Expert may change the address to which notices and other communication can be sent to it by giving the other Participants and the Expert (as relevant) notice of the change in accordance with this clause.

10.2 Further acts and documents

Each Participant and the Expert must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Participant or the Expert) required by law or reasonably requested by another Participant or the Expert to give effect to this agreement.

10.3 Counterparts

This agreement may be executed in any number of counterparts and by each of the Participants and the Expert on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.
Annexure 1
The Deadlock

[To be inserted when it comes time for deadlock resolution]
Annexure 2
Rules for Deadlock Resolution Process

1. **Commencement**
   
The determination process begins when the Participants and the Expert enter into the agreement to which these Rules are annexed.

2. **Written Submissions**

2.1 Within 7 days after the date this determination process begins, each Participant that wishes to be involved in the determination process must give the Expert a draft written submission setting out the Participant's position as to how the Deadlock should be determined. Two or more Participants may make a joint submission under this clause 2.1.

2.2 Within 14 days after the expiry of the 7 day period referred to in clause 2.1, the Expert must meet separately with each Participant which made a draft written submission to discuss the Participant's draft written submission and the Expert's preliminary view on the Participant's draft written submission.

2.3 If, within 7 of the last of the meetings referred to in clause 2.2, the Participants are able to reach unanimity in respect of the Deadlock, the determination process will terminate immediately.

2.4 If, after 7 days after last of the meetings referred to in clause 2.2, the Participants are still unable to achieve unanimity in respect of the Deadlock, each Participant that made a draft written submission under clause 2.1 must give the Expert a final written submission setting out the Participant's position as to how the Deadlock should be determined. The Participants may, in their final written submissions, change any aspect of their draft written submission provided under clause 2.1. Two or more participants, irrespective of whether they made a joint draft written submission under clause 2.1, may make a joint submission under this clause 2.4.

2.5 At all times before the Expert has received all final written submissions under clause 2.1, the Expert:
   
   (a) must not disclose to any other Participant (including at any meeting under clause 2.2); and
   
   (b) must take all reasonable steps to ensure the confidentiality of,
   
   each Participant's draft written submission under clause 2.1 and final written submission under clause 2.4 (including any part of the Participant's position as to how the Deadlock should be determined).

2.6 Following the receipt of all final written submissions under clause 2.4, the Expert must disclose to all Participants (including any Participants that have not made any submissions under clauses 2.1 or 2.4) all written submissions information and documents received by the Expert.

2.7 If a Participant fails to make a written submission within the time prescribed, the Expert may continue with the determination process and the failure of the Participant to make the written submission within the time prescribed will not terminate or discontinue the determination process. This will be the case even if only one Participant provides a draft written submission under clause 2.1 or final written submission under clause 2.1.
3. **View**

3.1 Upon the application of a Participant or at the Expert's own volition, the Expert may at any time before the Expert has received a final written submission of any Participant under clause 2.4 direct that a view be conducted of any place or thing relevant to the Deadlock by the Expert in the presence of the Participants.

3.2 The Expert may draw any reasonable inference from what the Expert sees, hears or otherwise observes during a view.

3.3 If a Participant fails to attend a view, the Expert may nevertheless proceed with the view and the absence of that Participant will not terminate or discontinue the determination process.

4. **General**

4.1 In making a determination or conducting the determination process, the Expert must proceed in accordance with:

   (a) the agreement between the Expert and the Participants to which these Rules are annexed;

   (b) these Rules; and

   (c) the Alliance Agreement.

4.2 Except where otherwise required by these Rules, the Expert may receive information in any way the Expert thinks fit (including as inquisitor).

4.3 The Expert must:

   (a) inform the Participants of:

      (i) any relationship or interest which the Expert has with a Participant or its officers, employees, consultants or agents;

      (ii) any interest the Expert has in the matters in dispute; and

      (iii) any circumstance which might reasonably be considered to adversely affect the capacity of the Expert to act independently or impartially in relation to the Deadlock which has been referred to the Expert, immediately upon becoming aware of any such circumstances; and

   (b) upon making any disclosure under this clause 4.3, unless and until the Participants agree otherwise, terminate the proceedings.

4.4 The determination process for a Deadlock may be terminated at any time prior to the issue of the Expert's determination by the Participants giving joint written notice to the Expert terminating the determination process.

5. **The Determination**

5.1 Within 7 days of the receipt of the final written submissions under clause 2.4 (or such other period as the Expert and the Participants may agree), the Expert must:
(a) determine the Deadlock between the Participants by selecting the final written submission received under clause 2.4 which in the Expert's opinion is most closely aligned with the Alliance Principles; and

(b) notify the Participants of that determination.

5.2 The Expert must not, in its determination, impose upon the parties any position other than the position set out in the final written submission which the Expert selects under clause 5.1(a).

5.3 The determination of the Expert must:

(a) be in writing stating the Expert's determination and giving reasons;

(b) be made on the basis of the submissions (if any) of the Participants (subject to clause 2.7), the view (if any) and the Expert's own expertise; and

(c) meet the requirements of the Alliance Agreement.

5.4 Subject to clause 5.5, to the extent permitted by law, the Expert’s determination will be final and binding on the Participants and for the purposes of the Alliance Agreement will treated as a unanimous decision of the ALT in respect of the relevant Material ALT Issue to which the Deadlock relates.

5.5 If the Expert's determination contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a material mistake in the description of any person, matter or thing, or a defect of form, then the Expert must correct the determination.

6. **Modification**

These Rules may be modified only by agreement of the Participants and, if the Expert has been appointed, the Expert.
Annexure 3
The Expert’s Fees and Disbursements

[To be inserted when it comes time for deadlock resolution]
Signed as an agreement.

[Insert the appropriate execution clauses for each Participant]

Signed by the Expert [insert name] in the presence of:

[Signature]

[Name of witness]

[Signature of witness]
Schedule 14 – Form of Parent Company Guarantee

Form of Parent Company Guarantee to be provided by Ansaldo STS Australia Pty Limited

Parent Company Guarantee

Quakers Hill to Vineyard

Transport Infrastructure Development Corporation
ABN 28 458 799 157

Rail Corporation New South Wales
ABN 59 325 778 353

Ansaldo STS S.p.A
company n° 01371160662

MinterEllison

AURORA PLACE, 88 PHILLIP STREET, SYDNEY NSW 2000, DX 117 SYDNEY
TEL: +61 2 9921 8888 FAX: +61 2 9921 8123
DEED OF PARENT COMPANY GUARANTEE AND INDEMNITY

This Deed of Parent Company Guarantee and Indemnity (Guarantee) is made on ________________

between

Ansaldo STS S.p.A., a company incorporated under the Italian Law,whose registered office is in Via Paolo Mantovani 3 - 5, Genoa, Italy and company n° is 01371160662 (the Guarantor);

and

Transport Infrastructure Development Corporation ABN 28 458 799 157 a statutory state owned corporation constituted by section 18A(1) of the Transport Administration Act 1988 (NSW) of Level 7, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067 (TIDC);

and

Rail Corporation New South Wales ABN 59 325 778 353 of Level 6, 18 Lee Street, Chippendale NSW 2008 (RailCorp),

WHEREAS

(a) By an alliance agreement (the Alliance Agreement) dated on or about the date of this Guarantee executed between the NOPs, including Ansaldo STS Australia Pty Limited ABN 34 068 707 380 of 11 Viola Place Eagle Farm QLD 4009 (the Alliance Participant) and TIDC, the Alliance Participant undertook certain obligations towards TIDC;
(b) By a deed poll (the Deed Poll) dated on or about the date of the Alliance Agreement by the Alliance Participant in favour of RailCorp, the Alliance Participant undertook certain obligations towards RailCorp;
(c) It is a condition of the Alliance Agreement that the Alliance Participant procures that its controlling company provides a parent company guarantee to TIDC and RailCorp;
(d) The Guarantor, to the extent that it is necessary, has agreed to guarantee to TIDC and RailCorp the due performance of the obligations undertook by the Alliance Participant under the Alliance Agreement and the Deed Poll.

Now therefore it is agreed as follows

1. The Guarantor being the parent company of the Alliance Participant, hereby irrevocably and unconditionally guarantees to TIDC and RailCorp the correct fulfilment of obligations and undertakings of the Alliance Participant, as detailed in the Alliance Agreement and the Deed Poll.

2. As a covenant separate and distinct from that contained in clause 1, the Guarantor being the Parent Company of the Alliance Participant, hereby irrevocably and unconditionally agrees to indemnify TIDC and RailCorp and at all times to keep TIDC and RailCorp indemnified against any loss or damage suffered by TIDC and RailCorp arising out of or in connection with any failure by the Alliance Participant to perform its obligations under the Alliance Agreement or the Deed Poll duly and punctually.

3. A reference in this Guarantee to the obligations or liabilities of the Guarantor is a reference to the Guarantor's obligations or liabilities as either guarantor or indemnifier (or both) under this deed. The use of the expression "Guarantor" in this Guarantee in relation to a party must not be construed as diminishing that party's obligations as an indemnifier under this deed.

4. The Guarantor will at the written request of TIDC or RailCorp either fulfil the obligations of the Alliance Participant provided under the Alliance Agreement or the Deed Poll (as relevant) or cause the Alliance Participant or another subsidiary or subsidiaries of the Guarantor to perform the obligations of the Alliance Participant provided under the Alliance Agreement or the Deed Poll (as relevant) or pay or repay any money owed by the Alliance Participant to TIDC or RailCorp. A demand may be made by one or both of RailCorp and TIDC at anytime and from time to time after a failure by the Alliance Participant to perform any of its obligations in accordance with the Alliance Agreement and the Deed Poll.

5. The Guarantor shall be entitled to exercise towards TIDC and RailCorp all of the rights, exceptions and defences of the Alliance Participant provided under the Alliance Agreement.

6. The total liability of the Guarantor shall not in any event exceed the amount of the total liability of the Alliance Participant pursuant to the Alliance Agreement and the Deed Poll. No claim of whatsoever nature will be possible in excess of the above amount.
7. It is understood that in the case a performance bond will be issued in favour of TIDC and RailCorp, in connection with the Alliance Agreement, the performance bond shall be called before calling this Guarantee which therefore shall be intended proportionally reduced.

8. This Guarantee shall remain in full force and effect until all performances, obligations and liabilities provided under the Alliance Agreement and the Deed Poll have been fulfilled, by the Alliance Participant.

9. All terms and definitions of this Guarantee shall be read in connection with the Alliance Agreement, unless the term is differently defined in this Guarantee.

10. Notwithstanding any other provision of this Guarantee nothing in this Guarantee shall confer or purport to confer on any third party any benefit or right to enforce any term of this Guarantee.

11. Any notice to or demand on the Guarantor to be served under this Guarantee shall be delivered or sent by first class recorded delivery post or telex or fax simile transmission to the following Guarantor address: Ansaldo STS S.p.A., Via Paolo Mantovani 3-5, 16151 Genova, Italy addressed to Ansaldo STS Legal Department.

12. This Guarantee shall be exclusively governed by the law of New South Wales, Australia. All disputes arising out of or in connection with this guarantee shall be exclusively settled by the courts of New South Wales, Australia.

13. This Guarantee need not be executed by TIDC or RailCorp.

ANSALDO STS

Sergio De Luca
Form of Parent Company Guarantee to be adopted by MVM Rail Pty Ltd

Parent Company Guarantee

Quakers Hill to Vineyard

Transport Infrastructure Development Corporation
ABN 28 458 799 157

Rail Corporation New South Wales
ABN 59 325 778 353

Macmahon (Southern) Pty Limited
ABN 35 008 160 656
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Deed of Guarantee and Indemnity made at __________________________ on __________________________ 2008

Parties
Transport Infrastructure Development Corporation ABN 28 458 799 157
a statutory state owned corporation constituted by section 18A(1) of the Transport Administration Act 1988 (NSW) of Level 7, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067 ("TIDC")

Rail Corporation New South Wales ABN 59 325 778 353 of Level 6, 18 Lee Street, Chippendale NSW 2008 ("RailCorp")

(and together "the Beneficiaries", and each "a Beneficiary")

Macmahon (Southern) Pty Limited ABN 35 008 160 656 of Level 3 Durack Centre 263 Adelaide Terrace PERTH WA 6000 ("Guarantor")

Recitals
E. RailCorp is the owner of the Project Site and will be the owner of the Alliance Works.
F. TIDC has agreed to enter into the Alliance Agreement with the NOPs (including the Alliance Participant) on the condition that the Guarantor provide this Guarantee.
G. The Guarantor has agreed on the following terms and conditions to guarantee to the Beneficiaries all of the Obligations (as defined in this deed) and to indemnify the Beneficiaries against any loss arising from any failure by the Alliance Participant to perform the Obligations.
H. The Guarantor considers that by providing this Guarantee there will be a commercial benefit flowing to it.

This deed provides

1. Definitions and interpretation

1.1 Definitions
In this deed:

"Alliance Works" has the meaning given in the Alliance Agreement.

"Alliance Agreement" means the alliance agreement dated on or about the date of this deed between the TIDC and the NOPs (including the Alliance Participant).

"Alliance Participant" means MVM Rail Pty Ltd ABN 75 057 458 705 of Level 1 Tower A 112-118 Talavera Road, North Ryde NSW 2113 "ALT" has the meaning given in the Alliance Agreement.

"Deed Poll" means the deed poll dated on or about the date of the Alliance Agreement by the Alliance Participant in favour of RailCorp.

"GST" means any goods and services tax, consumption tax, value added tax or any similar tax, impost or duty imposed by any law of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia (whether in force before or coming into force after the date of this document).
"Guaranteed Money" means all money the payment or repayment of which from time to time forms part of the Obligations.

"Obligations" means all the liabilities and obligations of the Alliance Participant to the Beneficiaries (whether liquidated or not, whether contingent or presently accrued due and whether relating to the payment of money or the performance or omission of any act or thing) that are now in existence, or may hereafter come into existence, under or arising out of or in any way in connection with each of the Alliance Agreement and the Deed Poll or the work to be carried out or performed by the Alliance Participant under each of the Alliance Agreement and the Deed Poll.

"NOP" has the meaning given in the Alliance Agreement.

"Project Site" has the meaning given in the Alliance Agreement.

"Target Adjustment Event" has the meaning given in the Alliance Agreement.

1.2 Interpretation

In this deed:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

(b) the expression "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership, and a trust;

(c) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation;

(d) the word "includes" in any form is not a word of limitation; and

(e) a word importing the singular includes the plural (and vice versa).

1.3 No bias against drafting party

No term or provision of this deed will be construed against a party on the basis that the deed or the term or provision in question was put forward or drafted by that party.

2. Guarantee

2.1 Guarantee

The Guarantor irrevocably and unconditionally guarantees to the Beneficiaries the due and punctual performance by the Alliance Participant of all the Obligations.

2.2 Perform Obligations

If the Alliance Participant does not perform any of the Obligations in accordance with the Alliance Agreement and the Deed Poll, then the Guarantor must perform those Obligations in accordance with the terms of the Alliance Agreement and the Deed Poll on demand from the Beneficiaries. A demand may be made by one or both of the Beneficiaries at anytime and
from time to time after a failure by the Alliance Participant to perform any of the Obligations in accordance with the Alliance Agreement and the Deed Poll.

3. **Indemnity**

As a covenant separate and distinct from that contained in clause 2.1, the Guarantor irrevocably and unconditionally agrees to indemnify the Beneficiaries and at all times to keep the Beneficiaries indemnified against any loss or damage suffered by the Beneficiaries arising out of or in connection with:

(a) any failure by the Alliance Participant to perform the Obligations duly and punctually; or

(b) any obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from the Alliance Participant for any reason, and whether or not the Beneficiaries knew or ought to have known of that reason.

A reference in this deed to the obligations or liabilities of the Guarantor is a reference to the Guarantor's obligations or liabilities as either guarantor or indemnifier (or both) under this deed. The use of the expression "Guarantor" in this deed in relation to a party must not be construed as diminishing that party's obligations as an indemnifier under this deed.

Despite any other provision of this deed, the Guarantor’s liability to the Beneficiaries to indemnify the Beneficiaries or pay an amount under this clause 3 shall not in any circumstances exceed the liability of the Alliance Participant under the Alliance Agreement as if the Alliance Agreement was valid and binding in accordance with its terms.

4. **Nature and preservation of liability**

4.1 **Absolute liability**

The liability of the Guarantor under this deed is absolute and is not subject to the performance of any condition precedent or subsequent by the Alliance Participant or the Guarantor. This deed binds each person who has executed it notwithstanding that it may not have been executed by any other person, whether named as a party or not.

4.2 **Unconditional liability**

The liability of the Guarantor under this deed will not be affected by any act, omission, matter or thing which, but for this clause 4.2, might operate in law or in equity to reduce or release the Guarantor from the Guarantor's liability, including:

(a) the Beneficiaries granting time, waiver or other indulgence or concession to, or making any composition or compromise with the Alliance Participant or the Guarantor;

(b) the Beneficiaries not exercising or delaying in the exercise of any remedy or right they have for the enforcement of the Alliance Agreement or the Deed Poll or any Obligation;

(c) any laches, acquiescence or other act, neglect, default, omission or mistake by the Beneficiaries;
(d) any variation to the Alliance Agreement or the Deed Poll or any Obligation, whether or not that variation imposes any additional liability on the Alliance Participant or the Guarantor;

(e) the transfer, assignment or novation by the Beneficiaries, the Alliance Participant or the Guarantor of any of their rights under the Alliance Agreement or the Deed Poll or under any other Obligation;

(f) any release of the Alliance Participant or the Guarantor from the Alliance Agreement or the Deed Poll or any Obligation or any security held for the performance of any of the Obligations;

(g) the loss of any security or any variation in the order of priorities relating to that security;

(h) any failure by the Beneficiaries to disclose to the Guarantor any fact, circumstance or event relating to the Beneficiaries or the Guarantor at any time before or during the currency of this deed;

(i) any change in the constitution or nature of the Alliance Participant or the Beneficiaries, or any change in any other circumstance relating to the Alliance Agreement or the Deed Poll;

(j) any act, omission or thing done under or in connection with the Alliance Agreement, including:

   (i) any decision of the ALT;

   (ii) any decision of an expert under clauses 4.5 and 17 of the Alliance Agreement;

   (iii) any direction by TIDC including under clause 12.1 of the Alliance Agreement; and

   (iv) any Target Adjustment Event.

4.3 Void or voidable transactions

If a claim is made that any payment, receipt or other transaction to or in favour of the Beneficiaries is void, voidable or capable of being set aside under any Insolvency Provision or for any other reasons and that claim is upheld, conceded or compromised, then:

(a) the Beneficiaries will immediately become entitled as against the Guarantor to all the rights in respect of the Obligations to which it would have been entitled had the payment, receipt or other transaction not occurred; and

(b) the Guarantor must immediately do all things and execute all documents as the Beneficiaries may reasonably require to resolve those rights.
4.4 Claim on the Guarantor

The Beneficiaries are not required to make any claim or demand on the Alliance Participant, or to enforce the Alliance Agreement or the Deed Poll, or any other right, power or remedy against the Alliance Participant, before making any demand or claim on the Guarantor.

4.5 Insolvency

The Guarantor must not lodge any proof of debt or similar claim in insolvency of the Alliance Participant in competition with the Beneficiaries. The Guarantor irrevocably appoints the Beneficiaries as its attorneys to prove in the insolvency of the Alliance Participant for all money to which the Guarantor may be entitled from the Alliance Participant.

4.6 Interests several

The interests of the Beneficiaries under this deed are several. Each obligation from the Guarantor to each Beneficiary is that Beneficiary's separate and independent right and property. Each Beneficiary has the right to protect and enforce its rights arising under or in connection with this deed without joining any other Beneficiary in any proceedings for this purpose.

5. No set-off or deduction

All payments by the Guarantor under this deed must be free of any set-off or counterclaim and without deduction or withholding. If any deduction or withholding must be made by law then the Guarantor must pay to the Beneficiaries any additional amounts as are necessary to ensure that the Beneficiaries receive the full amount of the obligation or liability which the Alliance Participant has not paid.

6. Expenses and GST

6.1 Expenses

The Guarantor must on demand reimburse the Beneficiaries for and keep the Beneficiaries indemnified against all expenses, including, without limitation, legal fees, costs and disbursements on a solicitor/own client basis, incurred by the Beneficiaries in connection with the preparation, enforcement, attempted enforcement of, or preservation of any rights under, this deed.

6.2 Goods and Services Tax

If the Beneficiaries are or becomes liable to pay any GST (including any penalty) in respect of any supply it makes under, or in connection with, the Alliance Agreement or the Deed Poll or this deed ("GST Liability") then:

(a) to the extent that an amount is payable by the Guarantor to the Beneficiaries under this deed for that supply - the amount will be increased by the full amount of the GST Liability; and

(b) otherwise - the Guarantor will indemnify and keep the Beneficiaries indemnified for the full amount of the GST Liability.
7. Governing law and jurisdiction

7.1 Governing law

This deed is governed by and will be construed according to the laws of New South Wales.

7.2 Jurisdiction

(a) The Guarantor irrevocably submits to the non-exclusive jurisdiction of the courts and appellate courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought relating in any way to this deed.

(b) The Guarantor irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within paragraph (a) of this clause.

8. Notices

Any communication under or in connection with this deed:

(a) must be in writing;

(b) must be addressed as shown below:

Name: Transport Infrastructure Development Corporation
Address: Level 7, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067
Fax no: 02 9200 0289
For the attention of: Bevan Brown

Name: Rail Corporation New South Wales
Address: 9-13 Unwins Bridge Road, Sydenham NSW 2044
Fax no: 02 9563 7423
For the attention of: Mark Harris, Network Asset Integration

Name: Macmahon (Southern) Pty Limited
Address: Level 3 Durack Centre 263 Adelaide Terrace PERTH WA 6000
Fax no: (08) 9365 1186
For the attention of: the Company Secretary

(or as otherwise notified by that party to the other party from time to time);

(c) will be deemed to be duly given, served or made in relation to a party if it is:

(i) delivered during business hours to the address of that party set out in this deed; or

(ii) sent by facsimile to the number specified; and

(d) will be deemed to be given, served or made:

(i) (in the case of a letter delivered personally) on delivery; and
9. Severance

Any provision of this deed which is illegal, void or unenforceable will be ineffective only to the extent of that illegality, voidness or unenforceability without invalidating the remaining provisions of this deed.

10. Counterparts

This deed need not be executed by the Beneficiaries.

Executed as a deed.

Executed by Macmahon (Southern) Pty Limited ABN 35 008 160 656 by or in the presence of:

<table>
<thead>
<tr>
<th>Signature of Director</th>
<th>Signature of Secretary/other Director</th>
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<tbody>
<tr>
<td>Name of Director in full</td>
<td>Name of Secretary/other Director in full</td>
</tr>
</tbody>
</table>
Schedule 15 – Certificate of Completion

Part 1 (by the Alliance Manager)

I believe that the Alliance Works for Portion [XXX] have no outstanding Defects (unless noted otherwise below) and to the best of my knowledge, having made reasonable enquiry, that the Alliance Works for Portion [XXX] have reached Completion.

I believe the Date of Completion should be declared to be: 

I request that the ALT consider this matter and, pursuant to clause 11.3:

a) sign Part 2 below confirming that Completion has been reached and confirming the date I have nominated or a different date as appropriate; or

b) issue a list of outstanding Alliance Works required to achieve Completion.

Further comments / notes

Signed by Alliance Manager

Date

Part 2 (to be completed / signed by all ALT Members)

We concur with the Alliance Manager that the Alliance Works for Portion [XXX] reached Completion on: 

or

We agree that the Alliance Works for Portion [XXX] reached Completion, but have determined that the Date of Completion should be:

or

The Alliance Works for Portion [XXX] have NOT reached Completion. Outstanding Alliance Works required to achieve Completion are noted on the attached list.

TIDC

ALT Member #1

ALT Member #2

TIDC

ALT Member #1

ALT Member #2

NOP #1

ALT Member #1

ALT Member #2

NOP #1

ALT Member #1

ALT Member #2

NOP #2

ALT Member #1

ALT Member #2

NOP #2

ALT Member #1

ALT Member #2

NOP #3

ALT Member #1

ALT Member #2

NOP #3

ALT Member #1

ALT Member #2

NOP #5

ALT Member #1

ALT Member #2

NOP #5

ALT Member #1

ALT Member #2

NOP #4

ALT Member #1

ALT Member #2

NOP #4

ALT Member #1

ALT Member #2

NOP #5

ALT Member #1

ALT Member #2

NOP #3

ALT Member #1

ALT Member #2

NOP #5

ALT Member #1

ALT Member #2

NOP #3

ALT Member #1

ALT Member #2
## Schedule 16 – Certificate of Final Completion

### Part 1 (by the Alliance Manager)

The Defects Liability Period having expired, and not being aware of any outstanding Defects, the Alliance Works have reached Final Completion.

I believe the Date of Final Completion should be declared to be: [ ]

I request that the ALT consider this matter and, pursuant to clause 11.4:

- a) sign Part 2 below confirming that Final Completion has been reached and confirming the date I have nominated or a different date as appropriate; or
- b) issue a list of what the ALT considers to be outstanding to achieve Final Completion or to perform or observe the relevant obligation.

Further comments / notes:

[ ]

Signed by Alliance Manager

**Date**

### Part 2 (to be completed / signed by all ALT Members)

- We concur with the Alliance Manager that the Alliance Works reached Final Completion on: [ ]

  or

- We agree that the Alliance Works reached Final Completion, but have determined that the Date of Final Completion should be: [ ]

  or

- The Alliance Works have NOT reached Final Completion. Outstanding Alliance Works required to achieve Final Completion are noted on the attached list.

<table>
<thead>
<tr>
<th>TIDC ALT Member #1</th>
<th>TIDC ALT Member #2</th>
<th>NOP #1 ALT Member #1</th>
<th>NOP #1 ALT Member #2</th>
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<table>
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<tr>
<th>NOP #2 ALT Member #1</th>
<th>NOP #2 ALT Member #2</th>
<th>NOP #3 ALT Member #1</th>
<th>NOP #3 ALT Member #2</th>
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<tr>
<th>NOP #4 ALT Member #1</th>
<th>NOP #4 ALT Member #2</th>
<th>NOP #5 ALT Member #1</th>
<th>NOP #5 ALT Member #2</th>
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## Schedule 17 – Payment Certificate

### Part 1 – Context

For amounts payable under the PAA up to and including (date)

- Payment claim (prior to the Date of Completion, submitted to TIDC at the end of each calendar month)
- Payment claim (after the Date of Completion, submitted to TIDC at the end of each calendar month)
- Final Payment Claim (submitted to TIDC within 28 days of Date of Final Completion)
- Other circumstance

### Part 2 – Summary of Claim to Date:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Reimbursable Costs</td>
<td>(a)</td>
</tr>
<tr>
<td>Total Fee</td>
<td>(b)</td>
</tr>
<tr>
<td>Gainshare</td>
<td>(c)</td>
</tr>
<tr>
<td><strong>Gross entitlement to date</strong></td>
<td>(d) = (a) + (b) + (c)</td>
</tr>
<tr>
<td>Less previous gross entitlement to date</td>
<td>(e)</td>
</tr>
<tr>
<td><strong>Net entitlement (excluding GST)</strong></td>
<td>(f) = (d) − (e)</td>
</tr>
<tr>
<td>GST applicable to net entitlement</td>
<td>(g) = (f) * 10%</td>
</tr>
<tr>
<td><strong>Amount payable this Payment Claim</strong></td>
<td>(h) = (f) + (g)</td>
</tr>
</tbody>
</table>

### Part 3 – Alliance Manager’s statements

The amounts included in this Payment Claim are in accordance with the terms of the PAA.

I certify that the Payment Claim is in order for payment by TIDC.

Pursuant to clause 13.2(g) of the PAA, TIDC must pay the NOPs, or the NOPs must pay TIDC as the case may be, the amounts shown above.

I attach Statutory Declarations from each of the NOPs in accordance with clause 13.5 of the PAA.

I attach a Tax Invoice for each NOP’s share of the Payment Claim prepared in accordance with clause 13.9 of the PAA.

I attach a statement by the Financial Auditor confirming that the amounts shown in this Final Payment Claim are in accordance with the terms of the PAA.

Signed by the Alliance Manager

Date

### Part 4 – ALT resolution (for all Payment Claims)

I attach the resolution of the ALT approving the amount of this Payment Claim.

Date
### Schedule 17 – Payment Certificate

<table>
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ME_7955942_1 (W2003)
Schedule 18 – Occupational Health and Safety

1. Statutory requirements

The Alliance must comply with the requirements of:

(a) the Occupational Health and Safety Act 2000 (NSW) ("OH&S Act") and Occupational Health and Safety Regulation 2001 (NSW) ("OH&S Regulation");

(b) the NSW Government Occupational Health and Safety Management Systems Guidelines (Edition 4, June 2004); and

(c) the NSW Government Code of Practice for Procurement (January 2005 Edition)

The Alliance must have in place processes to:

(d) identify the requirements of relevant OH&S statutory and other requirements;

(e) develop and implement actions to ensure compliance; and

(f) monitor compliance with statutory and other requirements.

The Alliance must develop, implement and maintain an occupational health & safety management system that is accredited by a NSW Government agency, and that complies with the NSW Occupational Health and Safety Management Systems Guidelines (Edition 4, June 2004), and make available to TIDC on request copies of procedures and records.

2. Risk management

The Alliance’s risk management system must:

(a) identify safety hazards associated with all aspects of the Alliance Activities including, but not limited to, hazards arising from:

(i) Alliances activities,

(ii) Subcontractors activities,

(iii) materials, equipment and plant provided by suppliers.

(b) assess the risks associated with each hazard;

(c) develop appropriate control measures and Safe Work Methods to eliminate or mitigate risks; and

(d) include methods of monitoring control measures to ensure that they are effective.
3. **OH&S in Design**

The Alliance’s design processes must ensure that:

(a) design of Works under the Alliance, including temporary works eliminates or mitigates OH&S risks including those identified in the Project Risk Log; and

(b) design review and verification activities and records include verification that the design process has eliminated or mitigated OH&S risks.

4. **OH&S in construction.**

4.1 **Site specific OH&S plans**

The Alliance must develop and implement site specific OH&S plans for each work site, that:

(a) describe each OH&S hazard and its likely impact;

(b) identifies the risk level assessed for each hazard;

(c) defines (or makes reference to) specific control measures, including safe work methods to be implemented to eliminate or mitigate risks;

(d) defines (or makes reference to) methods to be used to monitor effectiveness of safe work methods and control measures; and

(e) identifies the person(s) responsible for monitoring implementation of the control measures and Site communication procedures.

4.2 **Induction and training**

The Alliance must have processes in place to ensure that OH&S competencies have been identified for all tasks and personnel are assessed against these competencies prior to commencing Alliance Activities.

The Alliance must maintain records of competencies and competency assessments.

The Alliance must develop a project specific occupational health and safety induction program for personnel working on Site including contractors personnel, subcontractors and consultants and any staff employed by subcontractors and consultants. The project occupational health and safety induction program must include:

(a) general health and safety induction; covering the requirements set out in Clause 217 of the OH&S Regulation;

(b) work activity based health and safety induction covering the requirements set out in Clause 218 of the OH&S Act; and

(c) site-specific health and safety induction covering but not limited to:

(i) the requirements of site specific OH&S plans;

(ii) communication processes;
(iii) emergency procedures, including evacuation procedures;
(iv) site security procedures;
(v) any other issues relevant to the Site; and

(d) pre-start muster/pre-work briefing covering but not limited to:
(i) the progress of the job;
(ii) any changes of work areas for the day (change in planning);
(iii) incidents and breaches;
(iv) complaints received;
(v) plant and traffic changes; and
(vi) introductions for new employees.

The Alliance must have processes in place to ensure that all Alliance’s personnel, subcontractors, consultants and employees of subcontractors and consultants undergo site induction training prior to commencing work on Site.

The Alliance must keep records of all inductions given to persons in accordance with Clause 223 of the *Occupational Health and Safety Regulation 2001*.

### 4.3 Visitors Safety Induction

The Alliance must develop a visitor’s safety induction program and must ensure that all visitors invited or brought onto the Site receive such induction prior to entering the Site. Visitors must remain in the company of a Site inducted person whilst on Site. The visitor’s safety induction must include:

(a) Site safety rules;
(b) Site specific hazards and controls to be adhered to on Site;
(c) safe access, egress and amenities; and
(d) emergency evacuation procedures.

The Alliance must train and induct all visitors invited or brought onto the Site and keep records of all inductions given to visitors.

The Alliance must ensure that any visitors required to enter the Rail Corridor on a regular basis, obtain a Rail Industry Safety Induction (RISI).

Details of all inductions received by the Alliance’s employees, its subcontractors and consultants engaged in the carrying out work on Site and visitors invited or brought onto the Site must be recorded on each individual’s Project OH&S Induction Card or Visitors Safety Induction Pass as the case maybe.
4.4 **Hours of work and rest provisions**

The Alliance must prepare and implement a fatigue management plan that:

(a) for work that the Rail Safety Act 2002 (NSW) applies to, is in accordance with the Rail Safety Act 2002 (NSW); and

(b) for work that the OH&S Act applies to, is in accordance with the OH&S Act.

5. **Accident and Incident Management**

5.1 **Processes and procedures**

Prior to commencing physical work at any Site, the Alliance must have processes and procedures in place to effectively manage OH&S accidents and incidents including:

(a) promptly notifying the Alliance Manager verbally of any incident, accident or occurrence resulting in a near miss, physical injury or harm, or any lost time due to injury;

(b) providing the Alliance Manager with a written report giving details of the incident, accident or occurrence within 48 hours of it occurring;

(c) promptly notifying the Alliance Manager of any unsafe work practice or environment that has the potential to cause physical injury or harm;

(d) procedures for determining the root cause of incidents, accidents and occurrences resulting in injuries that cause lost time implementing corrective actions to prevent recurrence of such incident, accidents and occurrences;

(e) providing the Alliance Manager within 3 days of the incident, accident or occurrence a report documenting the corrective actions to be implemented and how the effectiveness of the corrective actions will be monitored;

(f) nominating to the Alliance Manager the person(s) who will be available and responsible for responding to, recovering from, and investigating accidents and incidents, and initiating corrective actions during and outside normal working hours;

(g) procedures for contacting the responsible persons; and

(h) responsibility for notifying the Alliance Manager promptly of any changes to such nominations and procedures.

5.2 **Serious Accident and Dangerous Occurrence Reports**

The Alliance must:

(a) immediately notify WorkCover and the Alliance Manager of any serious accident or dangerous occurrence and then formally notify WorkCover in accordance with the relevant Law, using the prescribed form, and immediately supply an additional copy to the Alliance Manager;
(b) supply a written report about the matter to the Alliance Manager in the form directed;

(c) immediately notify the Alliance Manager of any Prohibition and Improvement Notice ("PIN") or on-the-spot fine issued by WorkCover or any potentially notifiable events; and

(d) provide the Alliance Manager with a copy of the PIN or fine notice and written details of the corrective action taken by the NOPs to rectify the circumstances which led to the issue of the PIN or fine notice and to prevent recurrence of those circumstances.

5.3 Return to work
The Alliance must develop and implement a Return to Work Plan and associated procedures.

The Alliance must have processes in place to ensure that:

(a) subcontractors have in place OH&S management systems that comply with the requirements of the NSW Government Occupational Health and Safety Management Systems Guidelines (Edition 4, June 2004) and which are appropriate for the work being undertaken by the subcontractor;

(b) risks associated with the work of each subcontractor are identified in Alliance’s Site-specific OH&S plan;

(c) where appropriate, ensure that each subcontractor develops and implements a 'Site-specific OH&S Management Plan' that is compatible with Alliance’s OH&S arrangements and complies with the Occupational Health and Safety Management Systems Guidelines (Edition 4, June 2004); and

(d) for smaller and lower risk work scopes, the subcontractor's are required to use the Alliance’s OH&S Management Plan (instead of establishing its own 'Site-specific Safety Management Plan') and submit 'Safe Work Method Statements' for all the work activities assessed as having safety risks before work commences.

7. OH&S Reports and Records.
The Alliance must:

(a) provide monthly safety statistics in the form and using the indices required by the Alliance Manager; and

(b) on request, submit copies of relevant manuals, procedures, reports, records and other documents, including those of subcontractors, to the Alliance Manager.

8. Drugs and alcohol
The Alliance must comply with:
(a) the requirements of the *Rail Safety Act* (2002) pertaining to alcohol and drugs. In particular Schedule 1 of the *Rail Safety Act* (2002) and Rail Safety (Drugs and Alcohol Testing) Regulation (2003) provides that a person doing work on and about the track may be tested for alcohol or drugs and may be required to provide blood or urine samples and/or be breath tested. If any of the tests prove to be positive, the person in question may be charged with a criminal offence by the New South Wales Police Service; and

(b) TIDC’s alcohol and drugs policy prohibits persons affected by alcohol or drugs from working on any projects and at any Site. A copy of this Policy is available from TIDC. TIDC may have any person suspected of being under the influence of alcohol or drugs while on Site:

(i) excluded from carrying out the Alliance Activities;

(ii) tested by an authorised officer, medical practitioner or the New South Wales Police Service in accordance with Schedule 1 of the *Rail Safety Act* (2002); and

(iii) removed from the Site.

The Alliance must have processes in place to ensure that all its employees, subcontractors and consultants, and employees of subcontractors and consultants, engaged in carrying out the Alliance Activities are alcohol and drug free and co-operate with the Alliance in administering the requirements of this clause. All Alliance’s employees, subcontractors and consultants may be subject to drug and alcohol testing in accordance with TIDC’s Drug and Alcohol Policy and the Rail Safety (Drug and Alcohol Testing) Regulation (2003).

The drug and alcohol testing process is completely random and can target any worker, including employees of TIDC, the NOPs, other contractors or any of the Alliance’s subcontractors and consultant’s, within the Site. Random drug and alcohol testing could occur at any time and on any person regardless of their position within their employer’s organisation during the currency of the Works under the Alliance.

The Alliance must ensure that all personnel are aware that at the commencement of each shift, regardless of the time of day and the day of the week, a person signing on to commence work will be declaring themselves to be free of drugs and alcohol. However, the drug testing guidelines indicate that persons may return a positive drug test up to one month after taking some substances. Therefore, even though a person may believe he or she is free from drugs (or alcohol) he or she may return a positive result requiring that he or she be stood down from his or her duties.

TIDC reserves the right to undertake testing for drugs and/or alcohol on any person at any time whilst on the Site, including within the Alliance’s Site amenities or facilities.

9. **Personal protective equipment (PPE)**

The Alliance must ensure that each person authorised to enter the Rail Corridor:

(a) wears and keeps closed at the front an orange safe-working vest with retro reflective strips approved by RailCorp and in accordance with Australian Standard AS 4906;
(b) wears protective footwear which provides ankle support and impact resistance (elastic sided boots are not acceptable);

(c) wears a safety helmet, clothing, hearing and eye protective equipment appropriate to the environment in which they work or enter; and

(d) does not wear any red or green clothing or non-collared shirts such as tee shirts and singlets.

10. Audit and review

10.1 Internal audit program

The Alliance must develop an internal audit program to verify continued compliance of the Alliance’s OH&S management system with the Occupational Health and Safety Management Systems Guidelines (Edition 4, June 2004) and effectiveness of OH&S Management Plan.

The audit program must cover the Alliance’s activities as well as those of its subcontractors and must include the following as a minimum:

(a) three monthly systems audits of the operation of the Alliance’s OH&S Management Plan and regulatory compliance;

(b) monthly on-Site construction Site safety condition and compliance audits;

(c) subcontractor safety compliance audits, initially within four weeks of a subcontractor's commencement and then in accordance with an audit schedule that suits the performance of the subcontractor; and

(d) weekly work area audits confirming compliance with method statements, and risk identification and control of hazard procedures.

10.2 Audits by TIDC

TIDC will conduct audits on our OH&S activities from time to time during the Alliance Activities. We must make available all resources including documentation and personnel to support these audits. The audits will be carried out as collaborative audits involving the Alliance personnel and technical specialists.

11. Defibrillator

At each major first aid room provided in accordance with the OH&S Regulation, we must also provide a defibrillator and suitable training to our first aid workers for its use.
Schedule 19 – Community Liaison Requirements

1. General community liaison obligations

We must:

(a) ensure the design and implementation of communications and community relation activities meet all KRA objectives, including the communications KRA, to ensure communications and community relation activities are designed to engage positively with and minimise disruption to the community, adjacent residents, property owners and all transport users;

(b) appoint suitably qualified and experienced community relations personnel for the duration of the works to fulfil the communications requirements of this Agreement;

(c) comply with TIDC’s policies/protocols regarding community liaison, communication and information management as described in this Schedule 19 and meet the reasonable needs and desires of the community regarding its involvement and consultation;

(d) develop and implement a community liaison plan ("Community Liaison Plan" or "CLP"), in accordance with the requirements of this Schedule 19;

(e) develop and implement a communication management system ("Communication Management System" or "CMS") in accordance with the requirements of this Schedule 19;

(f) establish and manage community liaison groups ("Community Liaison Groups" or "CLGs") in accordance with the requirements of this Schedule 19;

(g) ensure our Subcontractors comply with the Community Liaison Plan and the Communication Management System;

(h) be proactive in providing the community with accurate and adequate information on the status of works and any associated impacts;

(i) prior to taking any unilateral action that may impact on the community, consult TIDC’s General Manager, Communications on any issues that may impact on the community; and

(j) make available appropriate senior personnel (for example environmental manager, design manager, construction manager and technical experts) to attend meetings with the community or other Stakeholders, as required.

2. Specific community liaison obligations

2.1 Community Liaison Plan

The CLP must provide a clear framework, including policies, processes, and procedures for proactive communications management, which complies with the community liaison
obligations of this Agreement and the KRAs. The plan must be submitted to the TIDC General Manager, Communications for review.

We must review the CLP biannually, and submit any changes to the CLP to the TIDC General Manager, Communications for review and approval. We are responsible for implementing the CLP, once the TIDC General Manager, Communications has approved the plan.

The CLP must include the following as a minimum:

(a) methodology compliant with all KRAs;
(b) a comprehensive analysis of issues to be managed during design and construction, including proposed strategies to manage these issues;
(c) a comprehensive Stakeholder list, highlighting issues/interests and strategies for dealing with each audience;
(d) details of key messages to be used in information/communication materials/correspondence and when responding to enquiries and complaints;
(e) details of proposed communication and consultation tools to be used during the course of the Project;
(f) policies/procedures for handling media and community complaints/enquiries (consistent with TIDC’s existing protocols);
(g) policies/procedures for incident management and reporting (consistent with TIDC’s existing protocols);
(h) a program for the implementation of community liaison activities. This program should include key dates for the commencement and conclusion of consultation and construction activities, associated impacts to the community, and the our proposed strategy for minimising impacts and informing the community;
(i) details of community relations resources, including personnel, to be employed by us;
(j) policies and procedures for ensuring Subcontractors comply with the communication requirements of this Agreement; and
(k) details of activities which will be undertaken to monitor and evaluate the effectiveness of the community liaison program.

2.2 Communication Management System (CMS)

The CMS must enable the collection and recording of all contact and correspondence details. It must be updated and maintained with accurate Stakeholder contact details to ensure easy identification and rapid distribution of information as and when required.

The CMS must capture all contacts with the community and actions resulting from these contacts within 24 hours of receiving the correspondence.

Monthly reports on community contacts (detailing issues and frequency) should be sent to TIDC’s General Manager, Communications.
2.3 Meetings with the community and other Stakeholders

We, and representatives from our Subcontractors, may from time to time be required by TIDC's General Manager, Communications to attend meetings with the community and with key Stakeholders to consult on design development/options and discuss work in progress, works upcoming, and issues pertaining to the works relating to the Alliance Activities.

We must ensure that suitable persons are available to attend such meetings (including after-hours), and are adequately informed and suitably qualified to participate, including taking the lead in detailing the progress of consultation activities, design development and construction works, and in the resolution of community issues, as they arise and where possible.

We must consider all suggestions and requests of the community. Where practicable, and where it results in an improved Project or process, we will incorporate the suggestions or requests into the Project. Justifiable reasons for incorporation of suggestions and requests, after agreement by TIDC's General Manager, Communications, Will be communicated back to the community.

We must ensure that the details of meetings held with all contacts with the community and key Stakeholders are recorded in the CMS.

2.4 Community Liaison Groups (CLGs)

Prior to the commencement of construction, we must establish community liaison CLGs for the Project. We will be responsible for providing the secretariat function and responsibilities for the CLGs (including meeting costs and distribution of materials).

All meetings of the CLG are recorded and minuted by us, and must be chaired by an independent community liaison representative ("ICLR").

CLG meetings will be held monthly (or as otherwise agreed by CLG members), and comprise representatives of local communities, relevant local government bodies, and other appropriate Stakeholders.

We must appoint a community relations manager, who must participate in all CLG meetings. The construction manager should also attend all of these meetings to provide an update on construction works. When required, other relevant representatives of the us or technical experts will also be required to attend (for example, the environment manager, design manager and others).

In particular, the we must:

(a) establish and manage CLGs that include relevant community representation;
(b) record and distribute minutes to CLG members within 2 weeks of hosting the meeting;
(c) provide agenda and presentation at each meeting on relevant topics (as required by our community relations manager, the ICLR, or CLG members) including construction progress and upcoming works, likely impacts, the proposed mitigation measures, environmental management and performance etc;
(d) table relevant plans in draft form to provide CLG members the opportunity to review and comment prior to finalisation; and
consider all reasonable suggestions and requests of the ICLR and CLG members.

2.5 **Marketing and promotional opportunities**

We must not unilaterally develop marketing or promotional materials (including but not limited to signage, displays, media articles, advertisements, presentations at conferences, technical papers or other corporate materials) relating to the Alliance Activities without the prior written approval of TIDC’s General Manager, Communications.

We must submit draft marketing/promotional materials relating to the Alliance Activities to TIDC’s General Manager, Communications for review at least 5 days prior to their distribution date or print deadline.

We must proactively identify positive media and/or community relations opportunities and inform TIDC’s General Manager, Communications, of these opportunities in a timely manner. We may be responsible for actioning these opportunities or assisting TIDC’s General Manager, Communications in the same.

Community open days, community consultation workshops, meetings, or promotional displays may be arranged at intervals, to provide the community with information about design development, upcoming construction activities and mitigation measures that will be implemented relating to the Alliance Activities to reduce impacts on the community. We must provide information, resources and/or staff to present/answer questions at these events.

2.6 **Community notification**

During construction, we must proactively notify the community and key Stakeholders of current and upcoming development and/or construction works including those activities of our Subcontractors, and of any other of the Alliance Activities with the potential to impact on the community.

In particular, for any activity with the potential to impact on any member of the community, we must adequately advise the community at least 14 days prior to such activity being undertaken.

In addition to notifying of works with the potential to impact, we are responsible for updating the community on a monthly basis, on the status of current and upcoming construction works relating to the Alliance Activities.

Means of advising the community may include but are not limited to flyers, newsletters, signage, posters, telephone calls, meetings, advertisements etc.

All information materials must be of a professional quality. Maps, plans and diagrams should be used to ensure changes occurring in the local community are effectively communicated.

All information materials should be sent to TIDC’s General Manager, Communications for review prior to distribution.

2.7 **Routine community correspondence**

Routine community correspondence refers to all construction and Project information to be disseminated to members of the community and/or Stakeholders (e.g. local businesses). This
includes flyers, direct mail, newsletters, fact sheets, advertisements, display materials and other general information about the Alliance Works.

The timing and nature of such correspondence is governed by this Agreement. Every effort should be made to meet the stated community involvement and communication goals of the CLP through forward planning.

The purpose of routine community correspondence is to provide relevant, timely and accurate information to either targeted or broader community and Stakeholder members. All written community correspondence should comply with the TIDC corporate style guide.

All community correspondence we prepare should be sent to TIDC's General Manager, Communications to review/approve prior to distribution. The details of this correspondence (including information on timing and distribution) should be recorded in the CMS.

Attachment A is a flow-chart outlining the approval process for routine community correspondence.

We must meet the approval process timelines under this Agreement.

2.8 Information to TIDC's representative

We will be required to provide (and explain) accurate information to TIDC’s General Manager, Communications, regarding current and upcoming works (including works of our Subcontractors) relating to the Alliance Activities and all associated impacts as follows:

(a) prior to Site establishment commencing: program of the Alliance Activities, scheduling, and impact minimisation measures;

(b) monthly: works completed and upcoming, including any associated community impacts (also to be provided in a written format suitable for inclusion on the TIDC website);

(c) quarterly: works completed and upcoming, including any associated community impacts (also to be provided in a written format suitable for inclusion in a TIDC quarterly newsletter); and

(d) as required: information to allow TIDC's General Manager, Communications, to be kept abreast of construction activities and/or community impacts, and to allow timely responses to community and media enquiries and/or complaints.

In the event of an emergency situation, the incident reporting procedure (as detailed in Attachment B) will apply.

A representative of the Participants will be required to be contactable on a 24-hour basis (as required).

2.9 Complaints and enquiries management

We are responsible for responding to complaints and enquiries received regarding the Alliance Activities (including the activities of our Subcontractors). TIDC has established a 24-hour construction response line 1800 775 465 to provide a dedicated contact point for any complaints regarding construction works. The response line is managed via a call centre that
immediately directs complaints to an on-duty TIDC representative via a pager system. All complaints relating to the Alliance Activities will be forwarded to us.

Complaints and enquiries may also be received through a variety of avenues including TIDC’s Infoline (1800 684 490), 24-hour construction response line (1800 775 465), in writing (email or via letter), or direct to the us and our Subcontractors at the Site, via telephone or in writing (email or via letter).

In responding to complaints we must:

(a) record details of every complaint received and how it was managed and closed out in the CMS, as required by Attachment C;

(b) record details of every complaint received and how it was managed and closed out in the CMS, as required by Attachment C;

(c) provide at least a verbal response to the complainant regarding what action is proposed as soon as possible and within a maximum of 2 hours from the time of the complaint (unless the complainant requests otherwise);

(d) information on any complaints received, response times and details of any actions/investigation occurring must be forwarded to TIDC in writing by 4pm each working day. (TIDC is then responsible for providing a copy of all complaints received to the Environmental Management Representative (EMR) by 5pm each day); and

(e) provide a detailed written response to the complainant within seven (7) calendar days, outlining (but not limited to) the reason for the problem and if appropriate the remedial action that has been taken (unless the complainant requests otherwise). A draft of the written response should be forwarded to TIDC’s General Manager, Communications for review/approval within 4 days of receiving the complaint. TIDC will approve and return the written response to us to distribute within 48 hours of receipt. A scanned signed copy of the written response should be logged into the CMS and forwarded to TIDC for its records.

Attachment C depicts the process and timeline for handling and recording complaints.

In responding to enquiries we must:

(f) record the details of enquiry received and how it was managed and closed out in the CMS;

(g) provide at least a verbal response to the enquirer as soon as possible and within 2 hours of receiving a verbal enquiry and within 7 days of receiving a written enquiry (unless the enquirer requests otherwise); and

(h) forward information on any enquiries received and response given to TIDC in writing by 4pm each working day.
2.10 **Media and Government Relations**

We must in relation to the Alliance Activities:

(a) immediately make known and refer any enquiry/contact by the media or elected government representatives (or their staff) to TIDC’s General Manager, Communications;

(b) not make any statement (verbal or written) or provide any photographs or illustrations to the media or elected government representatives (or their staff) regarding the Alliance Works without the prior written approval of TIDC’s General Manager, Communications;

(c) not permit any media or elected government representatives (or their staff) on the Site without the prior written approval of TIDC’s General Manager, Communications;

(d) provide TIDC’s General Manager, Communications, with relevant information in a timely manner, as required to respond to enquiries from media or elected Government representatives (or their staff);

(e) ensure all Subcontractors comply with these requirements; and

(f) record all media contacts and articles generated into the CMS and send copies of articles through to TIDC’s General Manager, Communications.

2.11 **Incident reporting**

Reporting and managing issues and incidents is critical to the successful delivery of the Alliance Activities. We must have in place appropriate incident management and crisis management procedures, and must submit these for review to TIDC’s General Manager, Communications.

We must notify TIDC’s General Manager, Communications, of any incident associated with the Alliance Activities that may impact on the community, environment or other Stakeholders or may appear in the media. In the event that TIDC’s General Manager, Communications, cannot be contacted, then immediate contact should be made with TIDC’s General Manager, Communications’ nominated delegate. In the event the nominated delegate is not contactable, the Alliance should proceed to the next delegate on the list – and so forth until contact has been achieved.

We must comply with TIDC’s incident reporting procedure as set out in Attachment B. The procedure divides incidents into 3 categories of major, intermediate and minor. We will need to exercise judgement in determining whether the incident is minor, intermediate, or major.

We must provide TIDC’s General Manager, Communications, with out of hours contact details of nominated delegates along with the key personnel who may provide advice or assistance in managing an incident. The nominated delegates must be aware of these procedures.

We must ensure that all employees and Subcontractors are adequately inducted on the requirements for incident management and reporting.

In the event of an incident, we and our Subcontractors must not contact or provide information relating to the Alliance Activities to any person (other than that which is required to directly
manage the incident), including any Stakeholder, the media or the public, without the prior approval of TIDC’s General Manager, Communications. We must make available senior personnel to respond to the community, the media and other Stakeholders when required by TIDC’s General Manager, Communications.

As and when required by TIDC’s General Manager, Communication, we must provide TIDC’s General Manager, Communications, with all necessary communications materials that may need to be disseminated as a result of such incidents.

### 2.12 Site inspections by visitors

We must not organise any Site visits by community members or other Stakeholders without consultation with TIDC’s General Manager, Communications. Where possible, we must provide TIDC with at least 48 hours prior written notice of all proposed visits.

Where required by TIDC’s General Manager, Communications, our representatives must at all times accompany such visitors whilst on the Site. We must keep and have available a record of all Site visits and visitors, and comply with the OH&S Management Plan requirements for such visits.

We must have available a reasonable quantity of safety equipment to allow for Site visits such as for community open days.

We must accommodate regular, periodic visits to the Site by TIDC’s General Manager, Communications for the purpose of photography / videography for promotional purposes. Our suitably qualified and informed representative is required to accompany TIDC’s General Manager, Communications, on these Site visits to provide information on the works being filmed. Any photographs and/or film footage taken becomes the property of TIDC who may, without our approval, use the photographs and/or film footage for whatever purpose TIDC deems necessary/appropriate.

### 2.13 Construction hoardings and fences

We must not in performing the Alliance Activities place any signage (other than safety signage) on the external face of any hoarding or fence without the prior written approval of TIDC’s General Manager, Communications.

We will prepare signage to be placed on Site hoardings to provide the community with details of the 24-hour construction response line.

We must provide, as requested, the resources and personnel required to assist with the provision and/or installation of any signage or graphics required, on the hoardings nominated by TIDC’s General Manager, Communications. This includes way finding signage to direct pedestrians/commuters/vehicles around the Site.

Hoardings must be well maintained, including the immediate (within 24 hours) removal of any graffiti or unauthorised posters.

### 2.14 Site inductions

Prior to commencing work, we must ensure that our employees and the employees of our Subcontractors are adequately inducted and trained on the communication requirements of this
Agreement, with particular focus on incident reporting procedures, community enquiries, complaints and media management.

We must periodically carry out further inductions of persons previously inducted to ensure the communications procedures remain clear.

The proposed induction must be submitted to TIDC’s General Manager, Communications, for approval prior to use.
Attachment A
TIDC process for approval of routine correspondence (flyers, notices, advertisements etc)

Alliance drafts correspondence in accordance with the Contract requirements and reviews against TIDC Quality Checklist

Alliance forwards draft correspondence with proposed distribution area and timeframe to relevant TIDC Communications Representative via email

TIDC Communications Representative to review/correct (or approve) copy, distribution zone and timeframe, and send back to Alliance within 24-48 hours

If approved

Alliance to correct copy and send revised draft to TIDC Communications Representative within 24 hours of receipt

TIDC Communications Representative to review/correct or sign off within 24 hours of receipt and send back to Alliance

Alliance to issue correspondence as required and send final approved copy to TIDC Communications Representative
**Attachment B**
**Incident reporting procedure**

The procedure described in this table does not in any way limit any requirements upon us under this Agreement or otherwise at law in respect of an obligation to notify other parties or TIDC, or the timing of such notification.

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<tr>
<th>INCIDENT REPORTING</th>
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<tr>
<td><strong>Definition</strong></td>
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<tr>
<td>MINOR</td>
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<td>Any minor issue / incident that <strong>may at some point</strong> attract the attention of the media, the Minister for Transport, a local MP, or the broader community – including industrial, community impact, legal, and commercial issues.</td>
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<td>INTERMEDIATE</td>
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<td>Any issue / incident that <strong>likely in the short-term</strong> to attract the attention of the media, the Minister for Transport, a local MP, or the broader community – including safety, industrial, community impact, legal, and commercial issues.</td>
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## INCIDENT REPORTING

<table>
<thead>
<tr>
<th>Definition</th>
<th>Action</th>
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<tbody>
<tr>
<td><strong>MAJOR</strong></td>
<td>Any issue/incident that that <strong>has attracted or will imminently attract</strong> the attention of the media, the Minister for Transport, a local MP, or the broader community – including safety, industrial, community impact, legal, and commercial issues.</td>
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</tbody>
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Attachment C
TIDC complaint resolution process

Responsibilities
TIDC  
Alliance

- Call centre receives complaint via construction response line and forwards to TIDC's General Manager, Communications.
- TIDC's General Manager, Communications forwards details of the complaint to the Alliance.
- We record details of complaint into our CMS and investigate complaint and determine appropriate actions.
- We verbally confirm the action to be undertaken with the complainant and record details in our CMS.
- We send CMS report or complaint to TIDC's General Manager, Communications.
- TIDC's General Manager Communications records details of complaint management/resolution into TIDC's complaints register.
- TIDC forwards complaints register to environmental management representative (EMR).
- We send draft written response to TIDC for approval.
- TIDC approves response and sends back to us to issue.
- We send written response to complainant, a scanned copy of the signed letter to TIDC (for their records) and log final copy into CMS.
- Complaints register forwarded to ALT.

Complaint received alternate route (i.e. not through construction response line)
Schedule 20 – Rail Safety

1. Statutory requirements

The Alliance must comply with the requirements of all relevant statutory and other requirements including:

(a) Rail Safety Act 2002 (NSW) and the Rail Safety (General) Regulation 2003;
(b) Rail Safety (Drug and Alcohol Testing) Regulation 2003;
(c) RailCorp's RailSafe Network Rules;
(d) RailCorp's RailSafe Network Procedures;
(e) RailCorp's Infrastructure Possession Manual;
(f) RailCorp's Safety Change Management Framework;
(g) Australian Standard AS4292 for railway safety management; and
(h) the Planning Approval to the extent identified in the Contract.

The Alliance must have in place processes to:

(i) identify the requirements of relevant statutory and other requirements;
(j) develop and implement actions to ensure compliance; and
(k) monitor compliance with statutory and other requirements.

2. Rail Safety Accreditation

The Alliance must undertake all work under this Agreement pursuant to, and in accordance with, the requirements of the TIDC Accreditation.

Appropriate systems, procedures and records must be developed, implemented, maintained and made available to TIDC upon request to ensure compliance with these requirements.

3. Rail Safety Management

In accordance with the TIDC “Rail Safety Accreditation”, the Alliance must develop, implement, update and maintain a Rail Safety Management System which includes to:

(a) develop, review and update thereafter the Project Safety Change Plan;
(b) develop the Project Risk Schedules and initial Project Hazard Logs and review and update these every month thereafter to include new risks and hazards as they are identified and proposed mitigation actions and status for all project risks and hazards; and
(c) develop, review and update thereafter the Safety Assurance Report (SARs).
4. **Rail Safety in Design**

The Alliance’s design processes must:

(a) ensure that all rail safety hazards identified in the Project Hazard Log are addressed during the design process and ensure that the design work eliminates or mitigates risks to the operation and maintenance of the rail system from these hazards;

(b) ensure that safety interface issues are addressed in the design and incorporated into the appropriate design reports;

(c) maintain and retain records of design decisions, assumptions and calculations, including those relating to safety hazards and interface issues;

(d) ensure that design review and verification include consideration of safety hazards and interface issues; and

(e) develop and implement procedures for certification of design staff to carry out rail safety work in accordance with the *Rail Safety Act 2002* (NSW).

5. **Configuration management**

RailCorp has a configuration management process in place where, if there are any changes proposed to either the temporary or permanent rail infrastructure, the proposal must go through the local region Configuration Board for review and approval prior to implementation. The main aim of this process is to ensure that all relevant parties are aware of the change, and that the change meets the stakeholder’s requirements and adequately addresses risks, safety, technical and operational issues.

The Alliance must document and submit to the Alliance Manager the necessary information and attend meetings and briefings with RailCorp, in order to fulfil all requirements of the RailCorp configuration management process.

6. **Rail Safety Interfaces**

Within 28 days of the date of this Agreement and prior to commencement of work within the Rail Corridor, the Alliance must enter into a Safety Interface Agreement with RailCorp and any other relevant party.

7. **Subcontractor management**

The Alliance’s processes for managing subcontractors must ensure that:

(a) subcontractors have appropriate systems and practices in respect of rail safety and that they comply with those systems and practices;

(b) subcontractors personnel are qualified to undertake rail safety work as required; and

(c) subcontractor personnel are trained and inducted on site specific rail safety procedures.
8. **Incident management and reporting**

The Alliance must:

(a) immediately notify the Alliance Manager in writing if any "notifiable occurrence" (within the meaning of that term under the *Rail Safety Act 2002* (NSW)) occurs during the performance of the work or the work of subcontractors (which notification must comply with the time and information requirements for the report which is required by section 64 of the *Rail Safety Act 2002* (NSW)); and

(b) advise the Alliance Manager in writing of investigations undertaken and corrective actions taken.

9. **Commissioning**

The Alliance commissioning processes must include:

(a) evaluation that potential rail safety hazards identified in the Project Hazard Log have been adequately addressed during design, construction and testing and that hazard elimination or mitigation is effective;

(b) arrangements that may affect RailCorp operating systems and services; and

(c) procedures to manage interfaces with RailCorp operational and maintenance activities and other contractors.

10. **Audit and review**

10.1 **Rail Safety Accreditation Audits**

The Alliance must develop and implement an internal audit program that ensures compliance of its activities and those of its subcontractors with the TIDC Rail Safety Accreditation requirements and the requirements of the *Rail Safety Act 2002* (NSW).

The minimum frequency of audits to be conducted by the Alliance is:

(a) **Track Possession work**: an audit must be conducted prior to each Possession or closedown period to ensure that all procedures, processes and arrangements required for effective management and completion of the Possession are in place;

(b) **Competency Assessment**: a minimum of 2 audits per year must be conducted of processes in place to assess competency of Alliance’s personnel, including subcontractors and their personnel.

(c) **Engineering Authority**: a minimum of two audits per year of the process for obtaining authority to undertake design tasks and assuring that the design meets all necessary legislative, safety and operating requirements.

(d) **Drug and Alcohol Policy**: a minimum of one audit per year of the policy and processes for ensuring that personnel involved in Rail Safety Work are drug and alcohol free.
(c) **Fatigue Management**: a minimum of two audits per year of processes in place for managing and monitoring fatigue in Alliance’s personnel, including subcontractors and their personnel. Additional audits may be required where there are major works occurring during weekend Possessions, or close down periods.

(f) **Incident Reporting**: a minimum of two audits per year of incident reporting processes to determine if they satisfy the requirements of the *Rail Safety Act 2002* (NSW) and the *Occupational Health and Safety Act 2000* (NSW) and other relevant legislative requirements.

### 10.2 Audits by TIDC

TIDC reserves the right to conduct audits of NOP's activities covering the above issues from time to time during the contract. We must make available all resources including documentation and personnel to support these audits. The audits will be carried out as collaborative audits involving the Alliance’s personnel and technical specialists.
Schedule 21 – Form of NOP Deed Poll in favour of RailCorp

This deed poll ("Deed Poll") made the day of 20

By: [insert name of NOP] (ABN [insert NOP's ABN]) ("NOP"),

in favour of: Rail Corporation New South Wales (ABN 59 325 778 353) a corporation constituted by section 4(1) of the Transport Administration Act 1988, of Level 6, 18 Lee Street, Chippendale NSW 2008 ("RailCorp").

Recitals

A. RailCorp operates the commuter rail system in Sydney, including the section of the Richmond Line between Quakers Hill and Vineyard Stations where the Works are to be undertaken by the NOP and others.

B. Transport Infrastructure Development Corporation (ABN 28 458 799 157) a statutory state owned corporation constituted by section 18A(1) of the Transport Administration Act 1988 (NSW), of Level 7, Tower A Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067, is responsible for developing certain major railway systems and other major transport projects ("TIDC").

C. TIDC is responsible for procuring the execution and completion of certain works to complete the duplication of Quakers Hill to Vineyard section of the Richmond Line (the "Works") on behalf of RailCorp and the New South Wales Government, and has entered into an agreement ("PAA") with the NOP and others to achieve this.

D. RailCorp is relying on TIDC to procure the NOP (with others) to execute and complete the Works in accordance with the PAA to ensure that RailCorp will satisfy, among other things, its obligation to provide an operating commuter rail system.

E. RailCorp will suffer loss if TIDC does not procure the NOP to execute and complete the Works in accordance with the PAA.

F. It is a condition of the PAA that the NOP executes this Deed Poll.

This deed witnesses that the NOP hereby covenants, warrants and agrees with and for the benefit of RailCorp as follows:

1. It will comply with its obligations under the PAA.

2. Upon Completion of the Works, the Works will satisfy the requirements of the PAA.

3. The aggregate of NOP's liability to RailCorp under this Deed Poll and the NOP's liability to TIDC under the PAA:

   (a) will not exceed the liability which the NOP would have had under the PAA if the PAA had named, in place of TIDC, RailCorp and TIDC jointly and severally; and

   (b) is subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the PAA.

4. Any provision of this Deed Poll which seeks to limit or exclude a liability of the NOP is to be construed as doing so only to the extent permitted by law.
5. RailCorp may assign or charge the benefits and rights accrued under this Deed Poll.

6. This Deed Poll is governed by the laws of the State of New South Wales.

7. This Deed Poll may not be revoked or otherwise modified without the prior written consent of RailCorp.

8. Where terms used in this Deed Poll are defined in the PAA, those terms have the meaning given to them in the PAA.

**Executed** as a deed poll.

**Executed by** [insert NOP name] ABN [insert ABN] by or in the presence of:

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<th>Signature of Director</th>
<th>Signature of Secretary/other Director</th>
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<tr>
<th>Name of Director in full</th>
<th>Name of Secretary/other Director in full</th>
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Schedule 22 – PDP Activities

- Planning and design activities, including design development and constructability reviews necessary for the process of obtaining Planning Approval
- Consultation with affected property owners/occupants in relation to managing impacts of the Project during construction
- Value management/value engineering and constructability workshops
- Development of alliance systems & procedures
- Alliance team/culture development
- Development of Key Result Areas and Key Performance Indicators
- Preliminary Site works and investigations
- Identification and ordering of long lead materials as agreed in writing by TIDC
Schedule 23 – Clearways Claims Protocol

CLAIMS PROTOCOL

FOR

CLEARWAYS PROJECTS

August 2007
1. INTRODUCTION

1.1 The purpose of this claims protocol is to facilitate prompt and proper communication between all parties to ensure efficient claims management. This will assist in providing an immediate response to reported incidents and the prompt resolution of valid claims.

All interested parties should be provided with a copy of this protocol and, whilst it does not purport to cover every situation it should provide sufficient information upon which to act.

If there is doubt concerning any matter in connection with the Clearways insurance then contact RailCorp (see Directory).

2. CLAIMS NOTIFICATION

2.1 Important Notice

It is a requirement of the Clearways insurance policies that insurers are to be advised immediately of any incident that is likely to give rise to a claim under the policies. Failure to do so may invalidate cover otherwise provided by that policy.

2.2 Reporting

2.2.1 In the event of an incident that may give rise to a claim under the insurance policies, contractors are to immediately notify the “TIDC Project Manager” consistent with the agreed TIDC incident reporting procedures.

2.2.2 Following receipt of this advice the TIDC Project Manager must:

   For all personal injury claims and all major, serious and/or significant incidents

   Notify RailCorp IMMEDIATELY by telephone. Confirmation of this advice must be provided by fax or e-mail within 24 hours of the incident.

   For all other incidents

   RailCorp is to be notified by fax or e-mail within 24 hours of the incident.

2.2.3 RailCorp will notify insurers of all reported incidents.

2.2.4 For all claims expected to exceed the deductible, RailCorp will appoint the Loss Adjuster to investigate and report on the claim. Details on the reporting arrangements and timeframes are set out in Section 4.

3. ACTIONS TO BE TAKEN

Where a claim is to be reported to insurers, the following arrangements are to apply.

3.1 CONTRACT WORKS

3.1.1 Incident Report

The incident report must include as a minimum the following information:
(a) Description of the incident including details on the location of damage as shown on a site plan, parties involved, etc

(b) A complete description of the extent of ALL damage caused by the incident.

(c) Photographic evidence of the damage preferably before clearance of debris.

(d) Advice on whether the loss affects permanent or temporary work.

(e) Details on sub-contract works affected; specify the sub-contractor(s) affected.

(f) Details of witnesses and copies of statements obtained from any witnesses or relevant personnel.

3.1.2. Quantum and Costing

The Loss Adjuster in association with the TIDC Delivery Manager and relevant contractors will prepare estimates of quantum and costs. The following information must be maintained:

(a) A detailed schedule of proposed reinstatement works identifying the following:

(i) Debris removal

(ii) Materials required

(iii) Labour costs

(iv) Specialist subcontractors

(v) Consultants

(vi) Travel and accommodation

(vii) Consumables

(viii) Alterations

(ix) Pre-existing damage

(x) Other

b) Records to validate utilisation of labour, plant and equipment.

c) Secure delivery notes and invoices for materials and services used in reinstatement works.

Overheads are to be separately identified.
3.2 THIRD PARTY BODILY INJURY OR DEATH AND/OR PROPERTY LOSS

3.2.1 Important Notice

Parties are not to admit/accept liability or make any offer, compromise, payment or settlement without the prior written consent of the insurer and RailCorp. It is a condition stipulated in the policy and a breach of this condition could prejudice the outcome of the claim.

If a contractor receives any letter of demand or notice of claim from a third party or through their solicitors, any writ, summons, proceedings, impending prosecution or inquest, they are to be immediately forwarded to RailCorp.

Note that in the event of personal injury or damage, as much evidence as possible should be left available for inspection by the Loss Adjuster, providing this does not cause further damage or danger.

3.2.2 Incident Report

The incident report must include as a minimum the following information:

a) Description of the incident including details on the location of the incident shown on a site plan, parties involved, causes, etc. Identify potential third party claimants.

b) A complete description of the extent of ALL injuries and/or property damage/loss caused by the incident.

c) Photographic evidence of the circumstances of the incident including evidence of property damage/loss preferably before clearance of debris.

d) Details of witnesses and copies of statements obtained from any witnesses or relevant personnel.

3.2.3 Quantum and Costing

The Loss Adjuster in association with the TIDC Project Manager and relevant contractors will prepare estimates of quantum and costs. All records and supporting documentation must be maintained.

4. LOSS ADJUSTER’S REPORTING PROCEDURES

4.1 Upon being advised of an incident that may give rise to a claim under the insurance policies, RailCorp will appoint on behalf of all insured's the loss adjuster to attend on site and investigate the incident.

4.2 The following reporting arrangements are intended to apply:

- initial inspection and immediate advice on the same day or within 24 hours of notification;
- first report within 5 working days; and
- subsequent reports as required.
4.3 The Loss Adjuster’s reports will be submitted to RailCorp who will then provide them to all other relevant parties.

4.4 For all major incidents the Loss Adjuster will be appointed on behalf of the insured and insurers. As necessary, RailCorp may appoint solicitors to protect the insured’s and insurers’ interests in anticipation of or in the event of litigation for major losses.

**Rail Corporation New South Wales**

**Transport Infrastructure Development Corporation**

**August 2007**

**DIRECTORY**

**The Insured**

Principal: Rail Corporation New South Wales and any subsidiary or affiliated companies constituted at inception of this Insurance or subsequently.

Contractors: Transport Infrastructure Development Corporation and any subsidiary and affiliated companies and/or all other contractors and/or all subcontractors and/or agents of any tier.

Consultants, Suppliers and Vendors of any tier whilst engaged in carrying out work associated with the Project on or about the Project Site.

Other Parties (as required and agreed under contract)

Each for their respective rights and interests.

**CONTACTS**

**RAILCORP**

Contact: Ian Roxburgh
General Manager, Risk and Insurance
Telephone: 02-8922 4001
Fax: 02-8922 4008
Mobile: 0411 250 100
E-mail: ian.roxburgh@railcorp.nsw.gov.au

**TIDC**

Contact: Bevan Brown
General Manager, Commercial
Telephone: 02-9200 0956
Fax: 02-9200 0290
Mobile: 0419 232 566
E-mail: bevan.brown@tidc.nsw.gov.au

**LOSS ADJUSTER**

**Technical Assessing**

Contact: Vin Gallagher
Telephone: 02-9889 2800
Fax : 02-9889 2400
Mobile : 0417 067 629
E-mail : vin.gallagher@technical.net.au
Schedule 24 - Subcontractor deed

Deed Poll made at on 20

By , ABN of ("Subcontractor")

In favour of Transport Infrastructure Development Corporation ABN 28 458 799 157 and its successors and assigns ("TIDC")

Recitals

A. Transport Infrastructure Development Corporation, ABN 28 458 799 157 ("TIDC") and (the "NOPs") have entered into a Project Alliance Agreement dated pursuant to which the NOPs have agreed to carry out certain work under the Project Alliance Agreement ("Works").

B. The Subcontractor has an agreement (the "Subcontract") with one of the NOPs ("Relevant NOP") for the execution and completion and/or supply of the (the "Subcontract Works") for the Works.

C. It is a condition of the Subcontract that the Subcontractor executes this deed poll.

This deed poll provides

1. The Subcontractor:
   (a) warrants that:
      (i) in performing the Subcontract Works, it will exercise the standard of skill, care and diligence that would be expected of a contractor experienced in and expert in the provision of the type of services required by TIDC;
      (ii) it will comply with its obligations under the Subcontract;
      (iii) upon completion of the Works, the Subcontract Works will satisfy the requirements of the Subcontract; and
      (iv) the Subcontract Works do not and will not infringe any patent, registered design, trademark or name, copyright or other protected right; and
   (b) acknowledges that in performing the Subcontract Works it will owe a duty of care to TIDC.

2. TIDC may assign or charge the benefits and rights accrued under this deed poll.

3. This deed poll is governed by the laws of the State of New South Wales.

Executed as a deed poll
Executed by the Subcontractor
by or in the presence of:

Signature of Director

Name of Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full
Schedule 25 - Deed of Novation
Deed of Novation

[ ]
ABN [ ]

[ ]
ABN [ ]

[ ]
ABN [ ]

[ ]
ABN [ ]
Deed of Novation made at [ ] ABN [ ] of [ ]
("Retiring Party")

[ ] ABN [ ] of [ ]
("Continuing Party")

[ ] ABN [ ] of [ ]
("Substitute Party")

Recitals

A. The Retiring Party and the Continuing Party are parties to the Contract.

B. The Retiring Party and the Substitute Party have asked the Continuing Party to agree to the novation of the Contract on the terms and conditions of this deed.

C. The Continuing Party has agreed to the novation of the Contract on the terms and conditions of this deed.

This deed provides

1. Definitions and interpretation

1.1 Definitions

Defined terms in the Contract have the same meanings in this deed, unless the contrary intention appears.

In this deed:

"Claim" means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise.

"Continuing Party" means the party identified as the Continuing Party in the Schedule.

"Contract" means the agreement between the Retiring Party and the Continuing Party described in the Schedule.

"Contract Guarantees" means the guarantees issued or required to be issued under the Contract in respect of the performance by a party to the Contract, by a bank or insurer and, where required by the Contract, by or a Related Entity of that party.

"Effective Date" means the date identified as the Effective Date in the Schedule.

"GST" means the Goods and Services Tax as defined in the A New Tax System (Goods and Services) Act 1999 (Cth.).

"Liability" means all liabilities, losses, Claims, damages, outgoings, costs and expenses of whatever description.
"Related Entity" has the meaning ascribed to that term in section 9 of the Corporations Act 2001 (Cth).

"Retiring Party" means the party identified as the Retiring Party in the Schedule.

"Substitute Party" means the party identified as the Substitute Party in the Schedule.

1.2 Interpretation

In this deed:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

(b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

(c) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(d) a reference to a party includes that party’s executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

(e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;

(f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

(g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

(h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;

(i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(j) "includes" in any form is not a word of limitation; and

(k) a reference to "$" or "dollar" is to Australian currency.

2. Condition Precedent to Novation

Clause 3 of this deed shall have no force and effect until the Effective Date.
3. **Novation**

3.1 **Novation**

(a) The parties novate the Contract so that, on and from the Effective Date, the Substitute Party and the Continuing Party are parties to a new agreement on the same terms as the Contract.

(b) Any reference in the Contract to the Retiring Party shall, on and from the Effective Date, be read as a reference to the Substitute Party.

3.2 **Assumptions of rights and obligations**

(a) On and from the Effective Date, the Substitute Party:

(i) will be bound by and shall comply with the terms of the Contract as amended by this deed, and shall enjoy the rights and benefits conferred on the Retiring Party under the terms of the Contract; and

(ii) will assume the obligations and Liability of the Retiring Party under the terms of the Contract,

which arise on or after the Effective Date.

(b) The Continuing Party will comply with the terms of the Contract on the basis that on and from the Effective Date the Substitute Party has replaced the Retiring Party under the Contract in accordance with this deed.

(c) Nothing in this deed affects the rights and obligations of the Continuing Party and Retiring Party which have accrued before the Effective Date.

3.3 **Release by Continuing Party**

(a) The Continuing Party releases the Retiring Party from:

(i) any obligation or Liability under or in respect of the Contract; and

(ii) any action, claim and demand it has against the Retiring Party under or in respect of the Contract,

which arise on or after the Effective Date.

(b) This release does not affect any rights the Continuing Party may have against the Substitute Party as a result of the assumption by the Substitute Party under the terms of this deed of the obligations and Liability of the Retiring Party under the terms of the Contract on and from the Effective Date.

3.4 **Release by Retiring Party**

The Retiring Party releases the Continuing Party from:

(a) any obligation or Liability under or in respect of the Contract; and
(b) any action, Claim and demand it has, or but for this clause would have had against the Continuing Party under or in respect of the Contract,

which arise on or after the Effective Date, except that nothing in this clause affects the obligations of the Continuing Party to the Substitute Party under the Contract which arise on or after the Effective Date.

### 3.5 Key Personnel

For the purposes of the terms of the Contract, the Continuing Party:

(a) consents to key personnel under the Contract being replaced with personnel having similar experience as those key personnel (the "Replacement"); and

(b) acknowledges and agrees that the Replacement will be in compliance with the terms of the Contract as amended by this deed.

### 3.6 Insurance

(a) As from the Effective Date:

(i) the Substitute Party must replace any insurances effected and maintained by the Retiring Party under the terms of the Contract; and

(ii) the Continuing Party must take the necessary steps to ensure that, for all insurances required to be effected by the Continuing Party under the terms of the Contract, the Substitute Party is named in place of the Retiring Party as required by the Contract.

### 3.7 Subcontracts

For the purposes of the terms of the Contract, the Continuing Party:

(a) consents to the novation to the Substitute Party of any and all agreements with subcontractors (including consultants and suppliers) engaged by the Retiring Party in connection with the Contract ("Subcontracts");

(b) to the extent that any one or more of the Subcontracts are not able to be novated to the Substitute Party, consents to the Retiring Party and the Substitute Party entering into contractual or other arrangements (including assignments) to ensure that the Retiring Party’s rights under, benefits of and interests in such Subcontracts are passed to or enjoyed by the Substitute Party; and

(c) acknowledges and agrees that novations referred to in paragraph (a) above and the contractual or other arrangements referred to in paragraph (b) above have been made in accordance with the terms of the Contract.

### 3.8 Replacement of Guarantees

The Continuing Party and the Substitute Party must replace or procure the replacement of the Contract Guarantees with guarantees on similar terms in favour of:
(a) in the case of the Continuing Party, the Substitute Party; and
(b) in the case of the Substitute Party, the Continuing Party.

4. **Overriding effect**

The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Contract relating to any requirement for consent to assignment of the Contract so far as any such provisions would apply with respect to the novation of the Contract from the Retiring Party to the Substitute Party.

5. **Representations and warranties**

5.1 **Authority**

Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this deed.

5.2 **Authorisations**

Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms.

5.3 **Binding obligations**

Each party represents and warrants to each other party that this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

6. **Duties, Costs and Expenses**

6.1 **Stamp Duty**

The Substitute Party must pay all stamp duty, duties or other taxes of a similar nature (including but not limited to any fines, penalties and interest) in connection with this deed or any transaction contemplated by this deed (except to the extent the terms of the Contract provide otherwise).

6.2 **Costs**

The Retiring Party and the Substitute Party must pay the reasonable costs and expenses of the Continuing Party in negotiating, preparing and executing this deed.

6.3 **GST**

The parties agree that:
(a) with any payment of amounts payable under or in connection with this deed including without limitation, by way of indemnity, reimbursement or otherwise, the party paying the amount must also pay any GST in respect of the taxable supply to which the amount relates;

(b) the party receiving the payment will provide a tax invoice; and

(c) the payment of any amount referred to in paragraph (a) which is a reimbursement or indemnification of a cost, expense, loss or liability will exclude any part of the amount for which the other party can claim an input tax credit.

7. General

7.1 Governing Law

This deed is governed by and must be construed according to the laws of the applicable State or Territory set out in the Schedule.

7.2 Jurisdiction

Each party irrevocably:

(a) submits to the non-exclusive jurisdiction of the courts of the applicable State or Territory set out in the Schedule, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and

(b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 7.2(a).

7.3 Amendments

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

7.4 Waiver

(a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.

(b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.

(c) No waiver of a breach of a term of this deed operates as a waiver of any other breach of that term or of a breach of any other term of this deed.
7.5 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

7.6 Severance

If at any time a provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

(a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or

(b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

7.7 Further acts and documents

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

7.8 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party.
## Schedule

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Particulars</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retiring Party (clause 1.1)</td>
<td>...........................................................................................................</td>
</tr>
<tr>
<td>Continuing Party (clause 1.1)</td>
<td>...........................................................................................................</td>
</tr>
<tr>
<td>Substitute Party (clause 1.1)</td>
<td>...........................................................................................................</td>
</tr>
<tr>
<td>Effective Date (clause 1.1)</td>
<td>...........................................................................................................</td>
</tr>
<tr>
<td>Contract (clause 1.1)</td>
<td>...........................................................................................................</td>
</tr>
<tr>
<td>State or Territory (clauses 7.1 and 7.2)</td>
<td>...........................................................................................................</td>
</tr>
</tbody>
</table>
Executed as a deed.

Executed by [Retiring Party and ABN] by or in the presence of:

Signature of Director

Name of Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

Executed by [Continuing Party and ABN] by or in the presence of:

Signature of Director

Name of Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full
Executed by [Substitute Party and ABN] by or in the presence of:

_________________________________________  _______________________________________
Signature of Director                          Signature of Secretary/other Director

_________________________________________  _______________________________________
Name of Director in full                       Name of Secretary/other Director in full