

# **DISCLAIMER**

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# **Project Alliance Agreement**

## **Glenfield Junction Alliance**

**Transport Infrastructure Development Corporation**

ABN 28 458 799 157  
("TIDC")

**MVM Rail Pty Ltd**

ABN 75 057 458 705  
("MVM")

**Bouygues Travaux Publics**

ARBN 128 222 113  
("Bouygues" or "BTP")

**Macmahon Contractors Pty Ltd**

ABN 37 007 611 485  
("Macmahon")

**Parsons Brinckerhoff Australia Pty Ltd**

ABN 80 078 004 798  
("PB")

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## 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. RailCorp is a statutory state owned corporation constituted under the *Transport Administration Act 1988* and is responsible for the provision of a safe, clean and reliable passenger rail network throughout NSW. It is also responsible for the safe operation, crewing and maintenance of passenger trains and stations.
- C. The Glenfield Transport Interchange is a key element in the South West Rail Link (the "**SWRL**") involving major rail infrastructure. The primary operational objective of the Glenfield Junction Project is to facilitate the interface between the SWRL and the existing RailCorp network.
- D. The Glenfield Transport Interchange will be delivered jointly on the basis that:
  - (a) RailCorp will control all work in the "live" Rail Corridor with regard to network safety and reliability by the exercise of the RailCorp Reserved Powers;
  - (b) RailCorp will undertake signalling, track work and overhead wiring via the RailCorp Program Alliance (the "**RailCorp Glenfield Junction Project Component**"); and
  - (b) TIDC will manage the design and undertake other work necessary to deliver the Glenfield Junction Project via the Glenfield Junction Alliance, as set out in the Project Brief (the "**TIDC Glenfield Junction Project Component**", or the "**Project**").
- E. 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**

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### **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 such 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, the ALT may agree to include an additional participant to the alliance. If the ALT agrees 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.

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## **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
- (d) 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) Macmahon Contractors Pty Ltd must provide TIDC with a deed of guarantee and indemnity from Macmahon Holdings Ltd in the form of Schedule 14 on or about the date of this Agreement.
- (b) MVM Rail Pty Ltd must provide TIDC with a deed of guarantee and indemnity from Macmahon (Southern) Pty Ltd in the form of Schedule 14 on or about the date of this Agreement.
- (c) Bouygues Travaux Publics must provide TIDC with a deed of guarantee and indemnity from Bouygues Construction in the form of Schedule 14 on or about the date of this Agreement.

## **2.4 NOP Arrangements**

- (a) The details of any proposal by the NOPs to together form:
  - (i) a joint-venture;
  - (ii) a partnership;
  - (iii) a special purpose vehicle;
  - (iv) a corporation; or
  - (v) an incorporated or unincorporated entity of any kind,

for the purposes of performing the Alliance Activities or Alliance Works, must be provided to TIDC. TIDC will review the proposal and the NOPs will not implement the proposal until TIDC endorses the proposal.

- (b) To the maximum extent permitted by law, the rights and liabilities of the NOPs under this Agreement take precedence over any other rights, duties, obligations or entitlements which may arise due to any arrangement entered into by the NOPs of the type described in clause 2.4(a) above.

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### **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 RailCorp Project Manager**

The NOPs acknowledge that TIDC and RailCorp have agreed that RailCorp will have certain powers, as set out in clauses 12.2 and 12.3, with regard to that part of the Glenfield Junction Project which is conducted in the "live" Rail Corridor.

To facilitate the exercise of those powers, RailCorp have appointed a RailCorp Project Manager ("RPM").

#### **3.5 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.

#### **3.6 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 3.6.

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## **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).
- (f) 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:
  - A. an ALT Member appointed by TIDC; and
  - B. two out of the four ALT Members appointed by the NOPs, are present at the 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.

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## **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.

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## **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 those plans listed in Schedule 8 which are required to be submitted during the time of the Project Definition Phase;
- (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 21; 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 Payment for PDP Activities, no payment for non-PDP Activities**

The NOPs will be entitled to payment of the amounts set out in Schedule 7 for PDP Activities pursuant to clause 13.1.

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 50 Business Days after the Commencement Date or such other period agreed in writing by TIDC at the request of the ALT;
  - (ii) include the concept design (supplied by TIDC to the Alliance) 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 80 Business Days 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 the 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) those fully documented components of the AMP identified in Schedule 8 which are required to be submitted by this stage of the Project;
  - (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; and
  - (viii) 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(b); 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.

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## **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:
  - (i) any restriction or direction of TIDC pursuant to clause 7.2(a); and
  - (ii) entering into an SIA with TIDC and RailCorp as referred to in clause 7.2(c).

### **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) comply with the terms of any construction leases or construction licences procured by TIDC or the NOPs;
- (c) when requested by TIDC, enter into an SIA with TIDC and RailCorp for the Project in a form required by TIDC and RailCorp;
- (d) comply with all Interface Agreements, including the SIA;
- (e) maintain the Site and any other land and place required to carry out the Alliance Activities in a safe, clean and tidy condition; and
- (f) 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(f) 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 20.

## **7.10 AMP Implementation**

- (a) We will prepare and finalise all remaining plans listed in Schedule 8 as required by Schedule 8.
- (b) We will implement all of the Alliance Management Plans.

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## **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.
- (c) 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 Exchange of Information Between Government Agencies**

The Participant's acknowledge that TIDC is required to provide information about the Alliance to the NSW Government. The NOPs authorise TIDC, its employees and agents to make information concerning the NOPs available to NSW Government departments or agencies.

Such information may include, but need not be limited to, any information provided by the NOPs to TIDC and any information relating to the NOP's performance under this Agreement.

The NOPs acknowledge that any information about the NOPs from any source, including but not limited to substantiated reports of unsatisfactory performance, may be taken into account by TIDC and NSW Government departments and agencies in considering whether to offer the NOPs future opportunities for NSW Government work.

### **8.4 NOP Performance Reports**

The NOPs acknowledge that TIDC has in place processes for assessing the performance of its contractors, that these processes will apply to the NOP's performance under this Agreement, and the NOPs agree that they will participate in TIDC's "Contractor Performance Reporting" process.

### **8.5 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 licence 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 8.5.
- (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; and
  - (iii) no fee or royalty will be payable to the other Participants; and
  - (iv) the Participant must use its best endeavours to disclose to third parties which receive, use, or benefit from, the Alliance Intellectual Property Right, that the other Participants disclaim responsibility from and deny any right to rely on the Alliance Intellectual Property Right.
- (f) If a Participant licences 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 formed entirely by the Licensee.

## **8.6 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.

## **8.7 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 8.7(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.

## **8.8 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 their 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;
  - (ii) provide TIDC with copies of each written consent and waiver obtained under this clause 8.8, at TIDC's request; and
  - (iii) ensure that none of its Associates or licensors institutes, 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 8.8.

## **8.9 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 under clause 8.5(a);
  - (ii) any Intellectual Property Rights of third parties; or
  - (iii) a person's Moral Rights; and
- (b) keep TIDC fully informed of all suspected or actual infringements and claims by any person that the Work Product, or its use, infringes the Intellectual Property rights or Moral Rights of any person.

## **8.10 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 which was communicated in the course of negotiation and development of 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 the matters dealt with in clause 8.10(a).
- (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 8.10(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) 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 8.10 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 8.10(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) the 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.

## 8.11 Transparency

We acknowledge that it is of paramount importance to TIDC that all commercial aspects of this Agreement are administered in a transparent and accountable 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 these outcomes are achieved.

## 8.12 Alliance Financial Auditor

- (a) TIDC will appoint and pay the Alliance Financial Auditor ("AFA").
- (b) The AFA'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 AFA 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 AFA.
- (e) References in this Agreement to the AFA will include the authorised representatives of the AFA.

### **8.13 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 AFA 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 AFA will have the right to reproduce any of the Records referred to in clause 8.13(a).

### **8.14 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.

### **8.15 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.

## **8.16 Continuing effect**

The provisions of clauses 8.3 to 8.15 continue to operate and bind all Participants after termination of this Agreement.

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## **9. Alliance Works**

### **9.1 Subcontracts**

- (a) We will ensure that Subcontracts are entered into in accordance with the Procurement Management Plan 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 23 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; and
  - (iv) contain confidentiality provisions substantially the same as those in clause 8.10;
  - (v) contain provisions which permit assignment or novation as contemplated by clause 16.4(d); andotherwise contain provisions which will permit us to perform our obligations in clause 8.
- (c) 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.
- (d) 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.
- (e) 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.

### **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) identify and obtain any additional planning and other Approvals as may be required from time to time; 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 ensure safety and maintain a workplace free of accidents, injuries and risks to healthy and safety.
- (b) In this clause 9.4, the terms "principal contractor" and "place of work" have the same meanings assigned to those terms under the *Occupational Health and Safety Act 2000* (in this clause, **the Act**) and the *Occupational Health and Safety Regulation 2001* (in this clause, **the Regulation**).
- (c) 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

(d) We will:

- (i) 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
- (ii) ensure strict compliance with the requirements of the OH&S Plan.

## 9.5 Safety Compliance

- (a) In carrying out the Alliance Activities, we will ensure that we (and our Associates) comply with:
  - (i) the latest OH&S Plan;
  - (ii) all Statutory Requirements;
  - (iii) all proper safety directives, procedures and work instructions issued by the Principal Contractor and to the extent not inconsistent with them, by TIDC using the TIDC Reserved Powers, the Alliance Manager or personnel authorised by the ALT to issue such directives, procedures and instructions;
  - (iv) the terms of the SIA or any Interface Agreement;
  - (v) the other requirements of this Agreement relating to safety, including the provisions of Schedule 18 (Safety);
  - (vi) the TIDC Safety Management System; and

- (vii) the TIDC Accreditation.
- (b) We must be proactive in confirming and ensuring that the obligations of a Principal Contractor in that capacity are undertaken and exercised consistently with the requirements of the TIDC Accreditation and TIDC Safety Management System. Each of us will immediately inform TIDC and the Principal Contractor if it appears that they cannot.

## 9.6 Rail Safety Act 2008

- (a) The Rail Safety Act received assent on 3 December 2008. TIDC will, after consultation with the NOPs, identify any changes to contract management procedures or Alliance Activities in relation to safety which it considers necessary or appropriate to ensure safety of its rail operations as a consequence of this new legislation.
- (b) We will implement and follow the new procedures, as they will take precedence over any other existing procedures to the extent of any inconsistency.

## 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;
  - (vi) 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.

## **9.11 Statutory Functions**

- (a) The NOPs appreciate that TIDC is subject to obligations in its capacity as a statutory state owned corporation (including the TIDC Accreditation).

- (b) In executing the Project, we will ensure that our officers, employees and Subcontractors and agents do not proceed with any course of action during the execution of the Project which may prejudice or in any way detrimentally affect any of TIDC's obligations and duties in its capacity as a statutory State owned corporation (including the Accreditation).
- (c) Nothing in this Agreement will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of TIDC to exercise any of its functions and powers pursuant to any legislation.
- (d) Without limiting clause 9.11(c), anything which TIDC does, fails to do or purports to do, pursuant to its functions and powers under any legislation, will be deemed not to be an act or omission by TIDC under this Agreement.
- (e) The NOPs waive any claims which they may have against TIDC which arise under this Agreement as a result of the exercise by TIDC of its functions and powers under any legislation.

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## **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 TIDC Alliance 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.

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## **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 Activities**

- (a) Except to the extent necessary to avoid an event having, or which is 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.

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## 12. Directions by TIDC and RailCorp 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 the 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; or
- (k) anything necessary to enable TIDC to comply with its responsibilities and obligations under any Approvals, Statutory Requirements or the TIDC Safety Management System with respect to the Alliance Activities or Alliance Works;
- (l) anything TIDC judges appropriate to allow TIDC to comply with its statutory obligations or responsibilities or to preserve and satisfy the DECC Licence or TIDC's role as a determining Authority for the purposes of any Approval;
- (m) anything which affects or may affect the TIDC Accreditation; or
- (n) anything affecting any environmental or planning permit or approval,

and the Participants will abide by and implement any direction of TIDC in respect of any TIDC Reserved Power ("**TIDC Reserved Power Direction**") as though it were a decision of the ALT.

No TIDC Reserved Power Direction will invalidate this Agreement. If a TIDC Reserved Power 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, despite any other terms of this Agreement.

## **12.2 RailCorp 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 ("**RailCorp Reserved Powers**") ought to be, and is, reserved for unilateral determination by RailCorp, in RailCorp's absolute and unfettered discretion:

- (a) control and responsibility for the construction of works in the "live" Rail Corridor component of the Project; and
- (b) activities by NOPs in carrying out the Alliance Works, where those activities are conducted adjacent to the "live" Rail Corridor and have the potential to impact rail safety and network integrity.

The RPM may, subject to clause 12.3, direct the Alliance Manager in relation to the RailCorp Reserved Powers, who must then direct the Participants to carry out that direction. The Participants must immediately abide by and implement any direction of the Alliance Manager in respect of any RailCorp Reserved Power ("**RailCorp Reserved Power Direction**") as though it were a decision of the ALT.

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

## **12.3 Powers of the RPM to Suspend**

The RPM has the power to direct the NOPs to suspend carrying out parts of the Alliance Works, but only where that direction of the RPM:

- (a) pertains to activities of the NOPs being performed in areas adjacent to, or impacting on, the "live" rail corridor, where those activities have the potential to affect rail safety and network integrity; and
- (b) is not a direction to the NOPs to suspend all, or substantially all, of the Alliance Works.

The NOPs must immediately follow, and notify TIDC and the ALT of, any direction received by the NOPs from the RPM pursuant to this clause.

## **12.4 Limits on RailCorp Reserved Powers**

Nothing in clauses 12.2 and 12.3 affects:

- (a) the appointment of the Principal Contractor under clause 9.4 nor the obligations consequent upon that appointment; and
- (b) the obligations of the Alliance under clause 9.5(a) to comply with TIDC's Accreditation.

## **12.5 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 or RailCorp Reserved Power 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 TIDC Reserved Power Direction or RailCorp Reserved Power Direction will result in an adjustment to the Commercial Framework unless the TIDC Reserved Power Direction or RailCorp Reserved Power Direction is determined by the ALT to give rise to a Target Adjustment Event.

## **12.6 Impact Request**

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

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

- (a) whether the proposed TIDC Reserved Power 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 TIDC Reserved Power Direction,

and provide written notice as to its determination to TIDC.

## **12.7 Target Adjustment Events**

Upon becoming aware of a potential Target Adjustment Event which arises other than as a result of a TIDC Reserved Power Direction, the ALT 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.

## **12.8 Occurrence 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.

## **12.9 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 12.9(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 12.9.
- (c) TIDC will consider in good faith any recommendation given by the ALT under this clause 12.9 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.

## **12.10 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 Commercial Framework; and
- (d) adjusting any other aspect of the Commercial Framework including the definitions and any documents referred to in the Commercial Framework.

## **12.11 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 12.11.
- (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; or
- (iii) whether or not we made any provision for them in the Target Cost Estimate,

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 type of situations (expected to be very limited) 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 intend to make provisions within the Target Cost Estimate for other events or circumstances and risks/opportunities which will be shared collectively by us.

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## **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.
- (b) 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.
- (c) 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 the Commercial Framework and this Agreement.
- (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 AFA 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 endorsing the claimed amount; 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 clauses 13.2(c), 13.2(d) or 13.2(e).
- (i) No payment by TIDC will 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 AFA 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 AFA confirming that the amounts shown in the statement are in accordance with the terms of this Agreement.
- (l) The ALT may recommend 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) may pay or allow the amount so recommended.
- (m) If in TIDC's view 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(m) that is equal to the total likely liability of the NOPs under the Gainshare/ Painshare Regime.
- (n) 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.
- (o) At any time after a Payment Claim has been paid the AFA 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 AFA 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 the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply will be attributable, 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:
  - (i) 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.
- (e) 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).

- (f) 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 required to pay 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.
- (g) 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.
- (h) 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.
- (i) This clause shall not merge on termination of this Agreement.
- (j) The NOPs must do all things necessary under the GST Legislation to enable TIDC to deal with the NOPs as though they were a single entity for GST purposes, including registration of a partnership comprised of the NOPs for GST purposes. The NOPs must ensure that any tax invoice issued by or on behalf of the NOPs complies with the requirements of the GST Legislation and the NOPs must indemnify TIDC for any loss, cost or expense incurred by TIDC as a result of any failure of the NOPs to do so or any failure by the NOPs to comply with the requirements of the GST Legislation.

### **13.10 Long Service Levy**

TIDC will pay the Long Service Levy to the Building and Construction Industry Long Service Payments Corporation.

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## **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 negligent 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.

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## 15. Insurances and indemnities

### 15.1 RailCorp Insurance for the Alliance Works

- (a) We acknowledge that RailCorp has effected policies of works insurances on the same or substantially similar terms as those of the certificates of currency set out in Schedule 11 (the "**RailCorp Works Policy**") for all Alliance Works and Alliance Activities. RailCorp may, in its discretion, have other insureds named or included in the policies.
- (b) The Participants acknowledge that the effecting and the maintenance of the RailCorp Works Policy by RailCorp does not affect the Participant's obligations or liabilities under this Agreement.
- (c) TIDC will:

- (i) require RailCorp to maintain the RailCorp Works Policy for the duration of the Participant's relevant obligations under this Agreement; and
- (ii) notify the NOPs if the RailCorp Works Policy ceases to be in effect.

## **15.2 Liability Insurance Placed by RailCorp**

- (a) We acknowledge that RailCorp has effected a policy of liability insurance on the same or substantially similar terms as those of the certificates of currency set out in Schedule 12 (the "**RailCorp Liability Policy**") for all Alliance Works and Alliance Activities. RailCorp in its discretion, may have other insureds named or included in the policy.
- (b) The Participants acknowledge that the effecting and maintenance of the Liability Policy by RailCorp does not affect the Participants' obligations or liabilities under this Agreement.
- (c) TIDC will:
  - (i) require RailCorp to maintain the RailCorp Liability Policy for the duration of the Participant's relevant obligations under this Agreement; and
  - (ii) notify the NOPs if the RailCorp Liability Policy ceases to be in effect.

## **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. All Participants will be named as insureds under any Alliance PI Policy procured. TIDC anticipates making this decision before the Project Proposal is approved under clause 6.5(c). If TIDC decides not to effect a 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 cover with an excess / deductible of no more than the amount which the ALT determines is acceptable.
- (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, with an excess / deductible of no more than the amount which the ALT determines is acceptable, where the Subcontractor has 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 RailCorp Works Policy, the RailCorp 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 RailCorp Works Policy, the RailCorp Liability Policy, or the Alliance PI Policy as set out in Schedule 22 ("**South West Rail Link Claims Protocol**").
- (c) The Participants must comply with the terms of the policies of insurance effected for the Project, including any notification requirements under that insurance.
- (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 RailCorp Works Policy, the RailCorp 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;
- (c) the ALT must arrange for the AFA to verify that the amounts shown in the recalculation of the Final Payment Schedule are correct and in accordance with this Agreement; and
- (d) 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 AFA 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) an excess / deductible of no more than the amount which the ALT determines is acceptable;
  - (iv) from at least 60 days before any work involving asbestos or asbestos decontamination commences; and
  - (v) 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 transshipment) 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. reinstate 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 RailCorp Works Policy, the RailCorp 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 RailCorp Works Policy, the RailCorp 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 RailCorp Works Policy, the RailCorp 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:
  - (i) where 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) to the extent that the loss, damage, injury, disease, illness or death, arises out 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 AFA 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 AFA 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).

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## **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:
  - (i) any Claims in relation to a Wilful Default;
  - (ii) any obligation to account for insurance proceeds under clause 15.7; and
  - (iii) any claims for payment under clause 16.5 (Termination payment).
- (c) 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 (including Project Documentation) 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) transfer ownership of, and deliver to, TIDC, all Project Documentation;
- (f) 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
- (g) 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 (f) (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 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)(i):

- (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 24) 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.

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## **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.

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## **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 Procurement Management Plan**

The Procurement Management Plan 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) how the Participants will comply with the NSW Government Procurement Policy
- (d) how the Participants will ensure safety obligations will be met;
- (e) 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;
- (f) authority for the Alliance Manager (with the approval of the ALT) to award or execute contractual documentation on behalf of the Participants;
- (g) authority for the Alliance Manager and the AMT to administer any contractual documentation and/or commitments made on behalf of the Participants;
- (h) an authorisation process for the entering into of commitments on behalf of the Participants; and
- (i) a requirement that any proposed transaction with a Related Party 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.

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## **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
- (c) 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 of Director

**CHRISTOPHER DECCAN LOCK**

Name of Director in full



Signature of Company Secretary

**DONNA WHITE**

Name of Company Secretary in full

**Executed by MVM Rail Pty Ltd (ABN 75 057  
458 705) by its attorney under power of attorney  
dated: 10th Dec 2008**

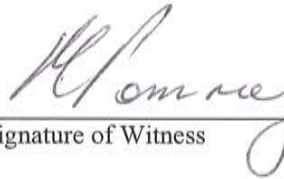
who confirms it has not received notice of  
revocation of power of attorney, in the presence of:



Signature of Attorney

**GREGORY JOHN MACKIE**

Name of Attorney in full



Signature of Witness

**RODRICK CHARLES POMROY**

Name of Witness in full

**Executed by Bouygues Travaux Publics  
(ARBN 128 222 113)** by its attorney under power  
of attorney dated: 10.12.08 VA 66

who confirms it has not received notice of  
revocation of power of attorney, in the presence of:

Signature of Attorney

Name of Attorney in full

Imad AVRILION

Signature of Witness

Name of Witness in full

Laurent PECURET

**Executed by Macmahon Contractors Pty  
Ltd (ABN 37 007 611 485)** by its attorney under  
power of attorney dated: 11th December 2008

who confirms it has not received notice of  
revocation of power of attorney, in the presence of:

Signature of Attorney

Name of Attorney in full

JOSEPH JULIAN HAUSER

Signature of Witness

Name of Witness in full

Peter Mitchell

**Executed by Parsons Brinckerhoff Australia  
Pty Ltd (ABN 80 078 004 798)** in accordance  
with section 127 of the *Corporations Act* by or in  
the presence of:

Signature of Director

Name of Director in full

Mark Dinnick

Signature of Company Secretary /other  
Director

Name of Company Secretary /other Director in  
full

Peter Hiley

## Schedule 1 – Acronyms, definitions and interpretation

Note that acronyms and defined terms used in formulae in Schedule 7 (Commercial Framework) are generally not included in the list of acronyms and definitions set out below in this Schedule 1 – they are defined within the text of Schedule 7.

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### 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
GST	Goods and Services Tax
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
SIA	Safety Interface Agreement
TOC	Target Outturn Cost
TCE	Target Cost Estimate

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### 2. Definitions

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

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

**"Agreement Particulars"** means Schedule 2.

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

**"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) it is Ready for Operations;
- (b) the Portion is 100% complete and free from any known Defects;
- (c) 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;

- (d) those tests that are required to be carried out before the Portion reaches Completion have been carried out and passed;
- (e) 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
- (f) 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).

**"DECC Licence"** means the environment protection licence granted by the Department of Environment and Climate Change under the Protection of the Environment Operations Act 1997 to TIDC and varied for the installation of the SWRL track and ancillary works, being the scheduled activity of "Railway Systems" under Schedule 1 of the *Protection of the Environment Operations Act 1997*.

**"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.

**"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.

**"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.

**"Alliance Financial Auditor"** or **"AFA"** means the person named in the Agreement Particulars.

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

**"Glenfield Transport Interchange"** means the project involving major rail infrastructure works and upgrades to Glenfield Station and rail infrastructure in the surrounding vicinity.

**"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 12.6.

**"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, such as Moral 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.

**"Long Service Levy"** means the levy TIDC is liable to pay pursuant to the *Building and Construction Industry Long Service Payments Act 1986* (NSW).

**"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), 12.5 (Impact of Reserved Powers on Commercial Framework), 12.6 (Impact Request), 12.7 (Target Adjustment Events) and 12.8 (Occurrence of Target Adjustment Events), the definition of Target Adjustment Events, or under 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.

**"NOP Safety System"** means a safety management system used by a NOP or any Associates to manage safety.

**"OH&S Plan"** means the occupational health and safety management plan prepared in accordance with clause 9.4.

**"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.

**"Procurement Management Plan"** means the plan referred to in clause 18.3 and Schedule 8.

**"Project Documentation"** means all documents, records, drawings, reports created by TIDC or the NOPs in connection with carrying out the Alliance Activities under this Agreement.

**"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 Corridor"** means the area containing the Railway 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).

**"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 successor in title or law.

**"RailCorp Program Alliance" or "RPA"** means the alliance entered into between RailCorp, Laing O'Rourke, O'Donnell Griffin and Connell Wagner, to undertake various capital works on behalf of RailCorp including the construction of track work, overhead wiring and signalling on the Glenfield Transport Interchange.

**"RailCorp Project Manager" or "RPM"** means the person appointed by RailCorp and described in clause 3.4.

**"RailCorp Reserved Powers"** means those matters as defined in clause 12.2 on which final determination is reserved for RailCorp.

**"Rail Safety Legislation"** means:

- (a) the Rail Safety Act 2008 as amended from time to time;
- (b) the Rail Safety (General) Regulation 2003;
- (c) Rail Safety (Drug and Alcohol Testing) Regulation 2003; and
- (d) any other Regulations under the Rail Safety Legislation.

**"Ready For Operations"** means the stage when the Portion 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 Party"** means a related entity of a Participant as that term is defined in the TIDC Procurement Policy.

**"Safety"** means rail safety, occupational health and safety and public safety except where those specific expressions are used individually.

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

**"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 3.5.

**"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.

**"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 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 Legislation.

**"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 Procurement Policy"** means the policy contained the TIDC document titled "TIDC Procurement Policy" and numbered CS-PO-04 2/1.0 and any amendments to it.

**"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).

**"TIDC Safety Management System"** means:

- (a) the safety management system, as defined in the Rail Safety Legislation, which has been accepted and approved by the Independent Transport Safety and Reliability Regulator for use by TIDC for the rail operations for which it is accredited under the Rail Safety Legislation; and
- (b) all or any part of a NOP Safety System which conforms to, or is consistent with, TIDC's Safety Management System; and
  - (i) is approved for use by TIDC as part of the TIDC Safety Management System; or
  - (ii) is required to be used to comply with a Statutory Requirement.

**"TIDC Safety Standard"** means one or more of the standards referred to in the TIDC document SA-SD-003/1 "Safety Management System Overview" dated July 2008 together with all supporting documents referred to in those standards (as well as any amendments to those standards or supporting documents during the course of the Project).

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

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

- (a) intentional 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;
- (c) fraud or dishonesty by a Participant in relation to this Agreement or any aspect of the Alliance Activities;
- (d) an intentional failure by the Participant to make payment which has become due under this Agreement;
- (e) an intentional failure by the Participant to honour an indemnity contained in this Agreement;
- (f) an Insolvency Event occurring in relation to a NOP;
- (g) an intentional failure by the Participant to comply with clause 8.7 (Third parties' Intellectual Property Rights) or 8.8 (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,

but not including any error of judgment, mistake, act or omission, whether negligent or not, made in good faith by that Participant.

**"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.

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### 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

<b>The other parties to this Agreement</b> <b>(Non Owner Participants or NOPs)</b>	Name: Bouygues Travaux Publics  ARBN: 128 222 113  Address: Lvl 4, 16 Giffnock Avenue, North Ryde Sydney NSW 2113
	Name: Macmahon Contractors Pty Ltd  ABN: 37 007 611 485  Address: Lvl 7, Tower B, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067
	Name: MVM Rail Pty Ltd  ABN: 75 057 458 705  Address: Lvl 7, Tower B Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067
	Name: Parsons Brinckerhoff Australia Pty Ltd  ABN: 80 078 004 798  Address: Lvl 27, Ernst and Young Centre, 680 George Street, Sydney NSW 2001
<b>Project</b>	<b>The TIDC Glenfield Junction Project Component</b>
<b>ALT Members</b> <b>(Clause 4.2)</b>	Name: Greg Mackie  Organisation: MVM Rail Pty Ltd  E-mail: GMackie@mvmrail.com.au  Phone: (02) 9855 4000  Mobile: 0417 662 295
	Name: Joe Hauser  Organisation: Macmahon Contractors Pty Ltd  E-mail: JHauser@macmahon.com.au  Phone: (02) 9855 4000  Mobile: 0407 257 566
	Name: Laurent Peguret

	<p>Organisation: Bouygues Travaux Publics</p> <p>E-mail: l.peguret@bouygues-construction.com</p> <p>Phone:</p> <p>Mobile: 0407 100 566</p>
	<p>Name: Erik Van Jaarsveld</p> <p>Organisation: Parsons Brinckerhoff Australia Ltd</p> <p>E-mail: evanjaarsveld@pb.com.au</p> <p>Phone: (02) 9272 5100</p> <p>Mobile: 0407 467 959</p>
	<p>Name: Bevan Brown</p> <p>Organisation: Transport Infrastructure Development Corporation</p> <p>E-mail: Bevan.Brown@tidc.nsw.gov.au</p> <p>Phone: (02) 9200 0200</p> <p>Mobile: 0419 232 566</p>
	<p>Name: Neil Bulgin</p> <p>Organisation: Transport Infrastructure Development Corporation</p> <p>E-mail: Neil.Bulgin@tidc.nsw.gov.au</p> <p>Phone: (02) 9200 0200</p> <p>Mobile: 0418 425 537</p>
<b>ALT Chairperson (Clause 4.3(a))</b>	Joe Hauser
<b>Alliance Manager (Clause 5.2(a))</b>	<p>Name: Leo Harnett</p> <p>Organisation: Southwest Connect</p> <p>E-mail: leo.harnett@bouyguesasia.com</p> <p>Phone:</p> <p>Mobile: 0450 146 974</p>
<b>Project Office (Clause 7.6)</b>	As agreed by the Participants
<b>Number of copies of documentation</b>	<b>4 hard copies (3 bound and 1 unbound) and 1 soft</b>

<b>(Clause 8.2(b))</b>	<b>copy.</b>	
<b>Alliance Financial Auditor (“AFA”) (Clause 8.10)</b>	To be advised by TIDC	
<b>Nominated Subcontractors (Clause 9.1(e))</b>	AW Edwards	Building Works
<b>NOP to be appointed as principal contractor (Clause 9.4(c))</b>	MVM Rail Pty Ltd	
<b>Benchmark quality assurance standard (Clause 10.1)</b>	AS/NZ ISO 9001: 2000 for design work	
	AS/NZ ISO 9002: 2000 for manufacturing and construction work	
<b>Portions (Clause 11.5)</b>	<p>All parts of the Alliance Works necessary for putting into operation the following portions:</p> <p>GT1. Glenfield Station Works;</p> <p>GT2. Railway Parade Works;</p> <p>GT3. Up East Hills Construction (includes crossover L);</p> <p>GT4. Down Main South Relief Construction (includes crossover K);</p> <p>GT5. Up Main South Relief Construction (includes SSFL relocation);</p> <p>GT6. Glenfield Junction Commissioning; and</p> <p>GT7. any other part of the Alliance Works not covered in the above portions GT1 to GT6.</p>	
<b>Addresses for service of notices (Clause 19.1(a))</b>	<p><b>TIDC</b></p> <p>Address: Level 7, Tower A Zenith Centre 821 Pacific Highway Chatswood NSW 2067</p> <p>Fax: 02 9200 0290</p> <p>Attention: John Templeman, TIDC Representative</p>	

Name: Bouygues Travaux Public

Address: Lvl 4, 16 Giffnock Avenue, North Ryde  
Sydney NSW 2113

Fax: (02) 8870 6005

Attention: Laurent Peguret

Name: Macmahon Contractors Pty Ltd

Address: Lvl 7, Tower B, Zenith Centre, 821 Pacific  
Highway, Chatswood NSW 2067

Fax: (02) 9855 4099

Attention: Joe Hauser

Name: Parsons Brinckerhoff Australia Pty Ltd

Address: Lvl 27, Ernst and Young Centre, 680 George  
Street, Sydney NSW 2001

Fax: (02) 9272 5101

Attention: Erik Van Jaarsveld

Name: MVM Rail Pty Ltd

Address: Lvl 7, Tower B, Zenith Centre, 821 Pacific  
Highway, Chatswood NSW 2067

Fax: (02) 9855 4099

Attention: Greg Mackie

### **Schedule 3 – Alliance Principles**

The Alliance Principles are as follows:

- (a) we will be relentless in delivering Value for Money and exceeding the Alliance Objectives;
- (b) we will be professional, responsible and accountable;
- (c) our decisions, actions and processes must be “best for project”;
- (d) we will share knowledge and skills to develop our individuals;
- (e) we will respect and value all stakeholders;
- (f) we will create an enjoyable working environment; and
- (g) every idea has value and everyone has a voice.

## Schedule 4 – Alliance Values

The Alliance Values are as follows:

- (a) we consider **safety**, health and well being as our top priorities;
- (b) we have passion for the team to **succeed** and continuously improve;
- (c) we **support** one another;
- (d) we have **integrity**; and
- (e) we **care** and are relentless about the outcome.



## Schedule 5 – Alliance Objectives

The Alliance Objectives are as follows:

Key Result Areas	Alliance objective
Safety	Zero Harm. Open Reporting Culture.
Schedule	Meet all milestone dates and Project commissioned and handed over in January 2013.
RailCorp Interface	Successful interface management with RailCorp. Minimise reliance on RailCorp resources.
Costs	Deliver value for money.
Operations	Zero reliability incidents.
Community	Positively engage with and minimise disruption to the community, adjacent residents, property owners and all transport users.
Stakeholders	Positively engage with and effectively manage stakeholders' interests.
Environment	Exceptional environmental management, urban design and environmental and sustainability outcomes.

## **Schedule 6 – Functions of ALT, AMT and the Alliance Manager**

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### **1. Part 1 – ALT**

#### **1.1 Competencies**

The ALT Members are expected to have complementary skills and experience that cover the following competencies:

- (a) capacity for inspirational leadership;
- (b) a relationship orientation;
- (c) understanding of and ability to lead outstanding performance (high performance);
- (d) relevant experience and technical expertise;
- (e) commercial focus;
- (f) detailed understanding of the Project and the commercial framework;
- (g) understanding of good governance and relevant experience; and
- (h) understanding of and experience in alliances.

#### **1.2 Accountabilities**

The accountabilities of the ALT are to be agreed with the Participants. Typical accountabilities include:

- (a) Creating and articulating the vision of the Alliance;
- (b) Championing the development and maintenance of a safety first and high performance culture;
- (c) Leadership oversight of the Alliance (The Alliance Manager has management oversight of the Alliance);
- (d) Developing and ensuring the Alliance Principles are adhered to during the delivery of the project;
- (e) Ensuring the Alliance Manager, the AMT and the Wider Project Team meet or exceed the Alliance Objectives and obligations and achieve project success;
- (f) Endorse the Project Proposal for submission to TIDC for approval including TOC, Schedule/Program and the AMP;
- (g) Effective and efficient decision making including resolution of differences and disagreements;
- (h) Keeping complete records of meetings;
- (i) Exercise relevant ALT delegations;

- (j) Promoting the Alliance externally;
- (k) ALT appoints the Alliance Manager and approves each member of the AMT;
- (l) Providing robust governance to the Alliance and reporting the progress and performance of the Alliance to TIDC management; and
- (m) Approving the Alliance organisational structure.

### **1.3 Responsibilities**

The responsibilities 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) endorsing 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.

#### **1.4 Delegations**

TIDC expects all ALT Members to carry out their duties in accordance with the Alliance delegation authorities.

#### **1.5 Governance**

The primary responsibility for governance under an Alliance rests with the ALT and this includes:

- (a) Understanding and administering the Project Alliance Agreement;
- (b) Compliance with the Alliance Management Plans ensuring the AMP are kept up to date;
- (c) Ensuring the Alliance Objectives are achieved;
- (d) Conducting the Alliance activities and exhibiting behaviours in a way that is consistent with the Alliance Principles;
- (e) Ensuring independent audits and estimates are properly and appropriately conducted in a timely manner and any findings closed out;
- (f) Ensuring effective implementations of delegations;
- (g) Holding regular scheduled meetings; and

- (h) Requiring and providing minimum monthly reporting.

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## **2. Part 2 – AMT**

### **2.1 Competencies**

The AMT Members are expected to have complementary skills and experience that cover the following competencies:

- (a) capacity for inspirational leadership;
- (b) a relationship orientation;
- (c) understanding of and ability to lead outstanding performance (high performance);
- (d) relevant experience and technical expertise;
- (e) commercial focus;
- (f) detailed understanding of the Project and the commercial framework;
- (g) understanding of good governance and relevant experience; and
- (h) understanding of alliances.

### **2.2 Accountabilities**

The accountabilities of the AMT members are agreed with the Alliance Manager and reviewed by the ALT. Typical accountabilities include:

- (a) articulating and delivering the vision of the Alliance;
- (b) championing the development and maintenance of a safety first and high performance culture;
- (c) developing and ensuring the Alliance Principles are adhered to during the delivery of the project;
- (d) make decisions on multi-discipline issues;
- (e) establish KPIs and the methods in which they are measured that is consistent with the KRAs;
- (f) motivate and support the wider project team to achieve outstanding outcomes in all aspects of the works;
- (g) exercise relevant AMT delegations; and
- (h) promoting the Alliance externally;

## **2.3 Responsibilities**

The responsibilities 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.

## **2.4 Delegations**

TIDC expects all AMT Members to carry out their duties in accordance with the Alliance delegation authorities.

## **2.5 Governance**

The responsibility for implementing governance practices and procedures under an Alliance is with the AMT. The AMT gives effect to the policies and procedures endorsed by the ALT. Key governance areas include:

- (a) Administering the Project Alliance Agreement;
- (b) Compliance with the Alliance Management Plan ensuring the AMP is kept up to date;
- (c) Ensuring the Alliance Objectives are achieved;
- (d) Conducting the Alliance activities and exhibiting behaviours in a way that is consistent with the Alliance Principles;
- (e) Ensuring independent audits and estimates are properly and appropriately conducted in a timely manner and any findings closed out;
- (f) Ensuring effective implementations of delegations;
- (g) Holding regular scheduled meetings;
- (h) Keeping complete records of Alliance activities, including evidence of any decisions made, agreements, actions and issues; and
- (i) Requiring and providing minimum monthly reporting.

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## **3. Part 3 – Alliance Manager**

### **3.1 Competencies**

The Alliance Manager is expected to have skills and experience that cover the following competencies:

- (a) capacity for inspirational leadership;
- (b) understanding of and ability to lead outstanding performance (high performance);
- (c) relevant experience and technical expertise;
- (d) commercial focus;
- (e) detailed understanding of the Project and the commercial framework;
- (f) understanding of good governance and relevant experience; and
- (g) understanding of and experience in alliances.

### **3.2 Accountabilities**

The accountabilities of the Alliance Manager shall typically include the following:

- (a) articulating and delivering the vision of the Alliance;
- (b) championing the development and maintenance of a safety first and high performance culture;
- (c) lead and manage the AMT and the wider project team;
- (d) developing and ensuring the Alliance Principles are adhered to during the delivery of the project;
- (e) establish a culture that will ensure that the alliance objectives are exceeded;
- (f) establish project budgets and manage project costs;
- (g) effective and efficient decision making that are consistent with the alliance principals including resolution of differences and disagreements;
- (h) keeping complete records of meetings;
- (i) exercise relevant Alliance Manager delegations;
- (j) promoting the Alliance externally;
- (k) define the roles and responsibilities of the AMT members and other direct reports;
- (l) providing robust governance to the Alliance and provide reports on the progress and performance of the Alliance to the ALT on a regular basis and as requested by the ALT; and
- (m) establish and manage the project program.

### 3.3 Responsibilities

The responsibilities of the Alliance Manager include the following:

- (a) day to day management of the AMT;
- (b) recommend the members of the AMT for selection by the ALT;
- (c) act as team leader, providing leadership to the Alliance Management Team and setting an example of the Alliance Objectives and the Alliance Principles in action;
- (d) act as a communication conduit to/from the ALT and to/from the AMT;
- (e) provide early and accurate written and verbal reports on time and budget to the ALT, at the times and in the manner required by the ALT;
- (f) undertake any payment audits or other payment processing functions required of the Alliance Manager under this Agreement;
- (g) monitor our performance under the Gainshare Regime and advise the ALT and TIDC whenever it appears that:
  - (i) the NOPs may be required to pay TIDC an amount under the Gainshare Regime; or
  - (ii) TIDC may be required to pay the NOPs an amount under the Gainshare Regime;
- (h) represent AMT issues at ALT level and make requests of the ALT in relation to those issues;
- (i) manage the program;
- (j) manage all Approvals;
- (k) be responsible for all safety issues and ensure that the AMT owns its responsibilities in that regard;
- (l) ensure all AMT members have clearly defined roles and responsibilities;
- (m) in conjunction with the AMT, implement the decisions and determinations of the ALT;
- (n) manage the Alliance Works;
- (o) perform functions as directed from time to time by the ALT;
- (p) direct the AMT in undertaking the Alliance Activities;
- (q) receive directions from the RPM in relation to the RailCorp Reserved Powers as set out in clause 12.2; and
- (r) immediately notify TIDC and the ALT of any RailCorp Reserved Powers direction received from the RPM.



## Schedule 8 – Alliance Management Plan

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### 1. Objectives

We will prepare and implement an Alliance Management Plan (AMP) that:

- (a) identifies the requirements that we are required to meet and demonstrates how these requirements will be achieved;
- (b) explains our management method for executing the Alliance Activities and the Alliance Works in a coordinated and integrated plan;
- (c) defines responsibilities, resources, processes and procedures for planning and performing the Alliance Activities and for verifying that the Alliance Activities and Alliance Works comply with the requirements of the Agreement;
- (d) covers all the management systems and discipline-specific management plans required for the execution of the Alliance Activities and Alliance Works;
- (e) aligns our, Subcontractors' and TIDC's operating processes; and
- (f) maximises the understanding and acceptance by all parties of the management processes to be used for the execution of the Alliance Activities and Alliance Works.

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### 2. Compliance

The Alliance must comply with the requirements of the following and the AMP must demonstrate how the requirements of the following, as applicable will be achieved to demonstrate compliance with:

- (a) OH&S Act (2000) and associated Regulations;
- (b) Rail Safety Legislation;
- (c) Roads Act 1993 (NSW) and associated Regulations;
- (d) Environmental Planning and Assessment Act (1979) and associated Regulations;
- (e) Independent Commission Against Corruption Act (1988) and associated Regulations;
- (f) Disability Discrimination Act (1992) and Disability Standards for Accessible Public Transport;
- (g) AS / NZS ISO 9001: 2000 Quality Management Systems - Requirements (or equivalent);
- (h) AS / NZS ISO 14001: 2004 Environmental Management Systems (or equivalent) for environmental management planning;
- (i) AS / NZS ISO 19011: 2003 Guidelines for quality and/or environmental management systems auditing;
- (j) relevant RailCorp and Australian Standards;

- (k) AS 1742.3-2002 Manual of Uniform Traffic Control Devices – Traffic Control Devices for Works on Roads;
- (l) Building Code of Australia;
- (m) Authorities;
- (n) NSW Government guidelines, standards and codes of practice for the various areas of management involved including the NSW Government Code of Practice for Procurement;
- (o) this Schedule 8 and the Agreement; and
- (p) TIDC as advised from time to time including:
  - (i) Statement of Business Ethics;
  - (ii) Fraud and Corruption Prevention Policy;
  - (iii) TIDC's Safety Management System;
  - (iv) TIDC Safety Standard;
  - (v) Project Safety Master Plan;
  - (vi) Project Risk Management Plan;
  - (vii) Crisis Management Handbook;
  - (viii) Crisis Communication Manual
  - (ix) Risk Management Policy;
  - (x) Risk Management Standard;
  - (xi) Technical Management Manual
  - (xii) Generic Commissioning Management Plan
  - (xiii) Generic Operational Readiness Plan.

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### **3. Scope**

#### **3.1 General**

The AMP comprises the following suite of discipline-specific plans:

- (a) AMP Framework Plan;
- (b) Environmental Management Plan;
- (c) Community Liaison Plan;
- (d) Property Damage Management Plan;
- (e) Safety Management Plan;

- (f) Emergency Response Plan;
- (g) Crisis Management Plan;
- (h) Risk Management Plan;
- (i) Technical Management Plan;
- (j) Authority Liaison and Approval Management Plan;
- (k) Construction and Site Management Plan;
- (l) Commissioning Management Plan;
- (m) Operational Readiness Plan;
- (n) Value for Money Plan;
- (o) TCE Development Plan;
- (p) Performance Management Plan;
- (q) Procurement Management Plan;
- (r) Cost Management Plan; and
- (s) Human Resources Management Plan.
- (t) Quality Management Plan
- (u) Technical Maintenance Plan
- (v) Safety Assurance Plan
- (w) Vesting Plan

The AMP may also include project specific plans such as:

- (x) an Ethane Gas Pipeline Management Plan.

### 3.2 Content of discipline-specific management plans

The discipline-specific management plans must at least address the matters set out below:

- (a) **Policy:** a clear statement of our policy in regards to the management discipline covered by the plan;
- (b) **Objectives:** the objectives which the plan seeks to achieve are to be listed and explained. Where possible, quantifiable targets are to be identified;
- (c) **Requirements:** the key requirements that are fundamental to the plan and its successful delivery. These typically include Authorities' consent conditions, certificates, licences, consents, permits, legislative requirements, standards, codes, programs, agreements, proposed agreements, drawings, reports, proposals and the like;

- (d) **Documents/references:** selected documents that are of ongoing importance for reference or monitoring, such as the development consent conditions. Where such documents are to be updated or are not immediately available, this should be noted in the plans;
- (e) **Procedures and processes:** procedures for the management and implementation of the relevant discipline-specific plans;
- (f) **Roles and responsibilities:** the allocation of personnel roles, responsibilities and delegation of authority, including the division within and between the Alliance and Subcontractors;
- (g) **Deliverables:** the various outputs of the management process and procedures are to be detailed including all compliance records and reports as well as demonstrating how the requirements will be achieved;
- (h) **Records:** a description of how the records of compliance, decisions and assumptions will be maintained;
- (i) **Timing:** an identification of the key milestones or targets relevant to the discipline-specific management plan and its implementation; and
- (j) **Assurance Auditing:** procedures for monitoring and collaborative assurance auditing to confirm compliance of the Alliance Activities and Alliance Works with the discipline-specific management plan and the requirements of the Agreement.

### 3.3 Development of discipline-specific management plans

We will develop the AMP and submit to the ALT for endorsement in accordance with the following schedule:

<b>Discipline-Specific Management Plan</b>	<b>Timing for Submission to ALT for Endorsement</b>
AMP Framework Plan	60 days from the date of Agreement.
Environmental Management Plan	Prior to site mobilisation
Community Liaison Plan	Prior to site mobilisation
Property Damage Management Plan	Prior to commencement of site investigation and as a design outcome, before construction
Safety Management Plan	Prior to commencement of site investigation or construction
Emergency Response Plan	For submission with Project Proposal
Crisis Management Plan	Prior to site mobilisation
Risk Management Plan	Prior to commencement of design
Technical Management Plan	Prior to commencement of design

<b>Discipline-Specific Management Plan</b>	<b>Timing for Submission to ALT for Endorsement</b>
Authority Liaison and Approval Management Plan	Prior to commencement of site investigation or construction
Construction and Site Management Plan	Prior to commencement of site investigation or construction
Commissioning Management Plan	6 months prior to commencement of first commissioning or testing event
Operational Readiness Plan	12 months prior to planned handover to RailCorp of any significant asset
Value for Money Plan	21 days from date of Agreement
TCE Development Plan	21 days from date of Agreement
Performance Management Plan	For submission with Project Proposal
Procurement Management Plan	21 days from date of Agreement
Cost Management Plan	For submission with Project Proposal
Human Resources Management Plan	For submission with Project Proposal
Ethane Gas Pipeline Management Plan	Prior to commencement of site investigation or construction
Quality Management Plan	21 days from date of Agreement
Technical Maintenance plan	6 months prior to commencement of first commissioning or testing event
Safety Assurance Plan	21 days from date of Agreement
Vesting plan	12 months prior to planned handover to RailCorp of any significant asset

We will deliver each discipline-specific management plan and subsequent revisions to TIDC for approval within 10 Business Days after the date of endorsement by the ALT.

Following receipt of a discipline-specific management plan TIDC may, in its absolute discretion, elect to:

- (a) approve the discipline-specific management plan by notice in writing to the NOPs;  
or
- (b) request the Participants to amend the discipline specific management plan and re-submit it to TIDC for approval in accordance with this Section 3.3.

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## **4. AMP Framework Plan**

The AMP Framework Plan must describe the structure and format of the AMP and detail the management system we will use to manage the Alliance Activities and Alliance Works, including information management, management of assurance audits, management of systems assurance and interaction with TIDC.

### **4.1 AMP Framework**

The AMP Framework Plan must:

- (a) provide an overview of the Alliance Objectives, Alliance Principles and targets which the AMP sets out to meet or better;
- (b) provide an overview of the development, review and approval process for the AMP;
- (c) describe how we will engage and develop with TIDC's functional groups, each discipline-specific management plan of the AMP, prior to seeking ALT endorsement;
- (d) describe the method for making changes and modifications to the AMP during the progress of the Alliance Activities and Alliance Works;
- (e) include a roadmap to the suite of discipline-specific management plans contained within the AMP;
- (f) identify the responsible person for development and updating of each discipline-specific plan of the AMP; and
- (g) describe how we will interact with TIDC's functional groups to allow the specific knowledge and experience of TIDC to be utilised for the benefit of the project.

### **4.2 Information and Technology Management**

The AMP Framework Plan must provide a clear framework, including policies, processes and procedures for information management, which are consistent with TIDC Records Management Policy and are in accordance with the Agreement and the Alliance Objectives.

The plan must meet the requirements of AS/NZS 27001: 2006 for e-security, and AS/NZS 15489:2002 for records management and must address the management of information, its security and reliability, as applicable to the delivery of the Alliance Activities and the Alliance Works.

The AMP Framework Plan must include:

- (a) an overview of the format for all Alliance documents and records and procedures to ensure that this format is translatable by TIDC's existing systems;
- (b) details of the procedures to obtain, develop, update and maintain the Asset Management Information through each phase of design, procurement, construction and commissioning;
- (c) an overview of the following systems ("Alliance Systems"):

- (i) records management system - the system for the storage, access and retrieval of all Alliance documents and records and confirmation that this system is consistent with TIDC's obligations under the Records Act;
  - (ii) communication management system - the system for collecting and recording all Alliance contact and correspondence information as required by Schedule 19 of the Agreement;
  - (iii) design management system - the system for managing all engineering transmissions;
  - (iv) risk management system – the system for identifying and recording risks, rankings, and hazards;
  - (v) quality management system;
  - (vi) environmental compliance management system - the system for ensuring and verifying compliance with legislative requirements and/or obtaining and complying with the conditions of appropriate certificates, licences, consents, permits and approvals;
  - (vii) audit management system – the system for the maintenance of all audit records;
  - (viii) time management system - the system for managing project schedules, possessions, resource requirements, and
  - (ix) defect management and interim maintenance
- (d) the procedures for providing business continuity for the above systems;
  - (e) the procedures for the application of information management to other discipline-specific plans of the AMP;
  - (f) the procedures to suit the requirements of the above policies;
  - (g) the procedures for Records Management, including:
    - (i) for providing relevant Alliance related information to TIDC, both in digital and hard copy, to ensure this data is never more than 14 days out of sync with TIDC data or an alternative period to be determined by the ALT;
    - (ii) the policy and strategies to be applied in the management of information, both digital and hard copy;
    - (iii) must include the procedures for capturing information, both digital and hard copy, identified;
  - (h) the procedures for Disaster Recovery, which must include policy and strategies to be applied in the event of a disaster including backup strategies;

- (i) the procedures for Security Management, which must include policies and strategies to be applied in conjunction with the security policy of TIDC;
- (j) document management- a list of documents to be produced by the project, showing purpose, by whom and when and where and if documents will be stored, when project is complete; and
- (k) procedures for vesting of the project.

### **4.3 Assurance Audits**

The AMP Framework Plan must describe the processes and procedures for proactively managing assurance auditing requirements necessary to fulfil our obligations under the Agreement and otherwise under Statutory Requirements and the TIDC Safety Management System. The plan must:

- (a) be consistent with the TIDC's Audit standard and its requirements;
- (b) describe the processes to manage assurance auditing requests from the ALT, Alliance Manager or a Participant, including processes to ensure collaborative auditing;
- (c) describe processes to manage the auditing of Subcontractors, including processes to ensure Subcontractors take prompt action to address deficiencies identified in the establishment or maintenance of the Subcontractors' management systems, including any Contractor Management Systems incorporated into TIDC's Safety Management System, or any plans;
- (d) identify the timeframe for close out of corrective actions identified in any audits and describe the procedures to ensure close out occurs within these timeframes;
- (e) describe the requirements for assurance audit reporting to the ALT and TIDC; and
- (f) include an audit program which details the various audits from design through to construction, testing, commissioning, handover and demobilisation phases of the Project and procedures for updating this program.

### **4.4 Systems Assurance**

The AMP Framework Plan must include a systems assurance framework which will detail a visible notation of all the reliability, availability, maintainability, and safety ("RAMS") assurance activities and deliverables required for the Alliance Activities and Alliance Works.

The system assurance framework's notation must:

- (a) use a Goal Structuring Notation as described in the Engineering Safety Management (Yellow Book) Volume 1 and 2 – Fundamentals and Guidelines; and
  - (b) include timing and responsibility for each activity and deliverable.
- The AMP Framework Plan must reference the discipline-specific Technical Management Plan and Safety Management Plan for the tools and techniques we will implement to undertake RAMS analyses during concept and detailed design, including a justification for the selection of these tools and techniques.



## 4.5 Business Ethics and Fraud and Corruption Prevention

The AMP Framework Plan must describe how we will achieve a positive culture of lawful and ethical behaviour to ensure an environment free from fraud and corruption, which is consistent with the TIDC Statement of Business Ethics and the TIDC Fraud and Corruption Prevention Policy, including the positive fraud and corruption prevention measures in relation to:

- (a) procurement;
- (b) financial transactions; and
- (c) authority delegations.

In addition the AMP Framework Plan must demonstrate how we will meet the requirements of Clause 1.7, Conflict of Interest of the PAA. As a minimum a Register containing conflict of interest statements of all relevant alliance personnel must be maintained and reviewed on a regular basis.

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## 5. Environmental Management Plan

The Environmental Management Plan ("**EMP**") must describe how we will ensure the Alliance Activities and Alliance Works will be undertaken in an environmentally responsible manner and in accordance with our environmental obligations under the Agreement and otherwise under legislative requirements.

The EMP must:

- (a) be consistent with the TIDC Environmental Policy and the TIDC Environmental Management System;
- (b) describe our Environmental Management System, ensuring that it:
  - (i) is accredited by an agency accredited under the Joint Accreditation System of Australia and New Zealand;
  - (ii) complies with NSW Government Environmental Management Systems Guidelines and AS/NZS ISO 14001:1996;
  - (iii) includes a project-specific environment management policy signed by all members of the ALT committing it to meet the environmental requirements of the Agreement; and
  - (iv) includes the use of the TIDC Planning and Environmental Compliance Monitoring System (PECOMS) for compliance monitoring,
- (c) adequately address and document any gaps resulting from a consistency check which is to be undertaken by a gap analysis between the proposed EMS and TIDC's Environmental Management System.
- (d) detail the extent to which the requirement of any certificates, licenses, consent, permits or approvals are to be fulfilled by any party other than the Alliance, or where responsibilities for any requirement are shared with other parties;
- (e) identify all certificates, licences, consents, permits and approvals that have been or will need to be obtained, including those which may be required under the

*Protection of the Environment Operations Act 1997 (NSW)*, and codes to be complied with that apply to the Alliance Activities and Alliance Works;

- (f) identify the significant environmental aspects and impacts associated with the Alliance Works;
- (g) detail the procedures to ensure the Alliance Activities and Alliance Works will be undertaken in accordance with the requirements of all applicable Authority Approvals, including any commitments and mitigation measures as identified in any environmental assessment or planning approval documentation;
- (h) detail the procedures to ensure and verify our compliance with legislative requirements and the conditions of appropriate certificates, licences, consents, permits and approvals;
- (i) detail how due diligence will be exercised throughout the performance of the Alliance's Works (see the *Protection of the Environment Operations Act 1997 (NSW)* and *Contaminated Land Management Act 1997 (NSW)*) in preventing pollution of the environment or the disposal of waste without lawful authority;
- (j) detail procedures to ensure compliance with the TIDC Construction Noise Strategy (Rail Projects) in respect of noise and vibration;
- (k) detail procedures and mitigation measures to prevent or minimise adverse environmental impacts, in accordance with the relevant legislative requirements;
- (l) describe how we will use, and demonstrate the use of ecological sustainable development principles in the design, procurement and construction of the Alliance Works;
- (m) describe the sustainability initiatives to be implemented as part of the Alliance Works;
- (n) detail the notification requirements for pollution incidents and environmental and heritage non-compliances including:
  - (i) the requirement to immediately notify TIDC and the DECC verbally of any 'pollution incident' as defined by the NSW Protection of the Environment Operations Act 1997 and then formally notify the DECC in accordance with the relevant Law; and
  - (ii) notification to TIDC of any environmental and heritage non-compliance with legislative requirements, appropriate certificates, licences, consents, permits and approvals in accordance with the requirements of Schedule 19 of the Agreement and statutory timeframes,
- (o) detail the environmental reporting requirements including to TIDC and those of the certificates, licences, consents, permits and approvals;
- (p) detail the roles and responsibilities of all relevant personnel in implementing and managing environmental management relevant to the Alliance Works, including, where relevant, personnel outside the Alliance (e.g. Environmental Management Representative, TIDC Planning & Environment Dept.);
- (q) detail the role and authority of the Environmental Management Representative (EMR) in relation to the Alliance Works;

- (r) describe our approach to Subcontractor environmental management, including procedures:
  - (i) for assessing the risks associated with the work by each Subcontractor;
  - (ii) to ensure Subcontractors are advised in writing of the relevant Planning Approval conditions or requirements and, if relevant to the Alliance Works, the Environmental Protection Licence conditions and any other applicable Authority requirements prior to commencing any work; and
  - (iii) to ensure that each Subcontractor develops and implements a site-specific environmental management plan or uses our EMP, as appropriate,
- (s) reference any and all issue-specific management plans required by the applicable Authority Approvals or otherwise to be implemented during the Alliance Works (e.g. Construction Noise and Vibration Management Plan);
- (t) reference the discipline-specific Procurement Management Plan for procedures to ensure the selection of Subcontractors include an assessment of their environmental management performance, capability and systems;
- (u) reference the discipline-specific Human Resource Management Plan for procedures ensuring our people and Subcontractors are effectively trained in environmental and heritage management prior to their commencement on site;
- (v) reference the discipline-specific Emergency Response Plan for emergency and incident (including contamination) response management procedures; and
- (w) reference the discipline-specific AMP Framework Plan for procedures to ensure corrective actions resulting from environmental audits are closed out within the required timeframe.

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## 6. Community Liaison Plan

The Community Liaison Plan must provide a clear framework, including policies, processes, and procedures for proactive communications management, which complies with our community liaison obligations.

The Community Liaison Plan must meet the requirements of Schedule 19, Community Liaison Requirements, and include the following as a minimum:

- (a) details of the community relations resources, including personnel, we will engage whilst carrying out the Alliance's Activities;
- (b) a comprehensive analysis of issues to be managed during construction, including proposed strategies to manage these issues;
- (c) a comprehensive stakeholder list, highlighting issues/interests and strategies for dealing with each stakeholder;
- (d) details of the key messages to be used in all information, including communication materials, correspondence and when responding to enquiries and complaints;
- (e) details of the proposed communication and consultation tools to be used during the course of the Project;

- (f) details of the requirements of the project environmental assessment and conditions of the Planning Approval for community and stakeholder consultation and proposed methodologies and timeframes for undertaking this consultation;
- (g) policies and procedures for handling community complaints and enquiries, and for handling of media enquiries;
- (h) details of the our nominated 24 hour contact for management of complaints and enquiries;
- (i) policies and procedures for incident management and reporting;
- (j) an indicative program for the implementation of community liaison activities which includes key dates for the commencement and conclusion of construction activities, associated impacts to the community and our proposed strategy for minimising impacts and informing the community.
- (k) policies and procedures for ensuring Subcontractors comply with the communications requirements of the Agreement;
- (l) details of activities which will be undertaken to monitor and evaluate the effectiveness of the community liaison program;
- (m) analysis of other major projects in the area with the potential to result in cumulative impacts to the community and strategies for managing these; and
- (n) details of ‘marketing’ activities we plan to undertake in relation to the Alliance Activities and Alliance Works, including procedures for obtaining approval from TIDC prior to planning and implementing any such activities.

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## **7. Property Damage Management Plan**

The Property Damage Management Plan must detail the procedures and processes we will implement to minimise, detect, assess and rectify damage to property caused by or as a result of the Alliance Works.

The plan must apply to all property (including all assets and services below ground level) on and adjacent to the Site and in the sphere of influence of the Alliance Works, including all premises, buildings, structures, utilities, railway system assets (including all RailCorp property and rolling stock owned by others), roadways, footpaths, street furniture and gutters.

The Property Damage Management Plan must include our proposed approach to the following:

- (a) provision of routine and regular advice to property owners and occupiers, about the Alliance Works in close proximity and with the potential to affect their property, in line with the community liaison requirements of the Agreement;
- (b) identification of the damage mechanisms, including trials of construction procedures and methods to help assess the risk of property damage;
- (c) selection of construction procedures and methods that minimise damage risks, including the review of, and change to, construction methodology to minimise or prevent damage;
- (d) identification of properties with the potential to be affected;
- (e) the provision of condition surveys on properties identified with the potential to be affected, addressing as a minimum:

- (i) an outline of the minimum standard required of the pre-Alliance Works condition surveys;
  - (ii) use of an independent third party, as required, to ensure compliance against the minimum standard of pre-Alliance Works condition surveys; and
  - (iii) minimisation of disruption to property owners and occupiers by completing single condition surveys in agreement with other TIDC contractors and Subcontractors,
- (f) approach for the monitoring and inspection of the condition of the properties with the potential to be affected to identify damage or risks to the property;
- (g) specific monitoring regimes and emergency and response procedures for all activities and work close to or under, and likely to affect, live rail track in accordance with RailCorp monitoring standards;
- (h) decision making for ceasing/continuance of work causing damage dependent on the level of damage;
- (i) receipt and recording of reports of and/or claims relating to damage thought to be associated with the Alliance Works, in line with community liaison requirements of the Agreement, detailed in Schedule 19;
- (j) TIDC notification and reporting requirements for:
  - (i) claims for property damage and complaints about damage and distress;
  - (ii) updates on the status of claims; and
  - (iii) results of the monitoring and the condition of properties with the potential to be affected,
- (k) decision making for appropriately compensating, or undertaking damage repair or reinstatement of property;
- (l) establishment of target response times for addressing different classes of damage and damage claims;
- (m) obtaining the property owner's acceptance, in a form agreed to by TIDC, of the compensation, repair or reinstatement work, and release from future claims and actions; and
- (n) establishment of an independent appeal panel.

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## 8. Safety Management Plan

The Safety Management Plan will describe how we will meet the requirements of TIDC's Safety Management System and all Statutory Requirements relating to safety for all Alliance Activities, including:

- (a) design and engineering;

- (b) procurement of goods and services;
- (c) construction;
- (d) commissioning and handover; and
- (e) operation, maintenance and decommissioning of the finished asset.

The Safety Management Plan will include:

- (f) a rail safety component which meets the requirements of Schedule 20, Rail Safety; and
- (g) an Occupational Health and Safety Plan which meets the requirements of Schedule 18, OH&S in Construction and which outlines how the Alliance will ensure that:
  - (i) any locations where Alliance Activities take place (including Project Sites, Alliance Sites and the Rail Corridor) where risks to health and safety are identified, assessed and eliminated or controlled; and
  - (ii) the key headings and content requirements in sections 4 and 5 of the NSW Government Occupational Health and Safety Management System Guidelines are met, so that the plan qualifies as a "Site-Specific Safety Management Plan" under those Guidelines;

The Safety Management Plan will:

- (h) be consistent, and comply, with the Project Safety Master Plan and Project Risk Management Plan developed for the Project by TIDC under TIDC Safety Standard SA-ST-003;
- (i) identify and address all mandatory requirements of the TIDC Safety Standards which must be strictly adhered to;
- (j) identify and address the Alliance's compliance obligations under the SIA and any Interface Agreements;
- (k) identify the parts of any NOP Safety System which are proposed for use by a NOP or Associate as part of the TIDC Safety Management System for the Project; and
- (l) ensure that safety-related aspects of the other plans referred to in Schedule 8 are properly integrated into TIDC's Safety Management System.

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## 9. Emergency Response Plan

The Emergency Response Plan must assist TIDC to meet its statutory legal obligations by describing how we will manage and control aspects of the Project relating to the identification, classification, management and recovery from an Emergency. The plan must comply with TIDC's Safety Management System.

The plan must include:

- (a) anticipation, assessment, mitigation, corrective actions and management of Emergencies;

- (b) notification requirements to TIDC and as required under the NSW Occupational Health and Safety Act 2000, Rail Safety Legislation and associated regulatory frameworks;
- (c) a reporting matrix;
- (d) a listing of emergency contact details for key Project personnel, key TIDC personnel, key stakeholders, emergency services, medical facilities and first aid personnel;
- (e) roles and responsibilities in the event of an Emergency;
- (f) communication processes in the event of an Emergency;
- (g) processes for the recording, reporting and investigation of an Emergency; and
- (h) an interface with TIDC's Crisis management procedures.

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## **10. Crisis Management Plan**

The Crisis Management Plan must describe how the Alliance and TIDC propose to manage and control aspects of the Project relating to the identification, classification, management and recovery from a Crisis.

The Crisis Management Plan must address TIDC's responsibilities as described in the TIDC Crisis Management Handbook and the TIDC Crisis Communication Manual.

The plan must include:

- (a) risk based identification and assessment of potential Crisis;
- (b) an overview of TIDC's approach to manage a Crisis;
- (c) identification of the key stakeholders, other stakeholders and participants in the Project and the roles and responsibilities of each of these in the event of a Crisis;
- (d) notification requirements for each of the key stakeholders and other stakeholders;
- (e) emergency response actions, including emergency evacuation procedures;
- (f) a listing of contact details for key Project personnel, key TIDC personnel, key stakeholders and emergency services;
- (g) a reporting matrix;
- (h) criteria for full or partial activation of the TIDC Crisis Management Team and required activation response;
- (i) criteria for escalation within TIDC organisation;
- (j) communication management responsibilities of TIDC with each of the key stakeholders; and
- (k) proposed approach to align communication processes between TIDC and us.

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## **11. Risk Management Plan**

The Risk Management Plan must meet the requirements of AS/NZS 4360: 2004 and address the management of all the risks applicable to the delivery of the Alliance Activities and the Alliance Works.

The Risk Management Plan must be consistent with the TIDC Risk Management Policy and the TIDC Risk Management Standard and as a minimum document:

- (a) the policy and strategies to be applied in the management of risk and opportunity;
- (b) the identification and ranking of the risks and opportunities related to the Alliance Activities and the Alliance Works;
- (c) the procedures for addressing the risks and opportunities identified;
- (d) the procedures for reviewing and updating the project risk and opportunity schedule;
- (e) the procedures for reviewing and updating the project risk and opportunity register;
- (f) the procedures for the application of risk management to other discipline-specific plans of the AMP; and
- (g) the procedures to suit the requirements of the above standard.

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## **12. Technical Management Plan**

The Technical Management Plan will describe how we the Alliance will meet the requirements of TIDC's Engineering Assurance Process, and all applicable Statutory Requirements as they affect the development of the design solutions of this Alliance.

The Technical Management Plan must be consistent with the TIDC Engineering Group Technical Management Plan. It will address four key areas:- A) Design Management, B) Inspection & Testing Management, C) Documentation Management, and D) Configuration Change Management.

### **12.1 Design Management**

The Technical Management Plan shall include a Design Management Plan, covering:

- (a) the requirements of the TIDC Safety Management System relating to design;
- (b) the preparation and management of a design program for monitoring all design activities, identifying all design submission stages required by the TIDC Engineering Group Technical Management Plan;
- (c) the establishment of works packages, taking into account the design and construction processes and activities, the interrelationships between packages, program requirements and requirements of the project brief;
- (d) processes for highlighting the identification and approval of changes between revisions of documents;
- (e) processes and schedules for obtaining information from, and providing information to, TIDC and other TIDC contractors;
- (f) the design review process for each package during the design process, including a design review schedule;



- (g) processes for managing and addressing comments made by TIDC and other stakeholders during review of design submissions and incorporation of any changes into the design with minimal rework of design packages;

## **12.2 Inspection and Testing Management**

The Technical Management Plan shall include an Inspection and Testing Management Plan, covering:

- (a) identification within design documents, the processes for evaluating minimum requirements, processes and acceptance criteria for the inspection, testing and acceptance of plant, equipment, and materials, constructed works and completed systems, including:
  - (i) off-site tests, including type, routine and factory acceptance tests;
  - (ii) on-site inspection and testing, including goods received on site, construction inspection, testing and setting to work, commissioning and site acceptance testing;
  - (iii) availability of records such as work processes requiring validation, warranty, and operating and maintenance instructions;

## **12.3 Documentation Management**

The Technical Management Plan shall include a Documentation Management Plan, covering:

- (a) the requirements of the TIDC CAD Manual
- (b) a transmittal system, including uniquely numbered documents for each submission to TIDC, and a full description of the submission documents and any changes in revised documents;
- (c) schedules of all the design documents, including document number, title and type, and work package identification, source, date received, date submitted to TIDC, other distribution, review response date, revision number and status;

## **12.4 Configuration Change Management**

The Technical Management Plan shall include a Configuration Change Management Plan, covering:

- (a) activities to fulfil all the requirements of RailCorp's configuration management process, including
  - (i) preparation of documentation and submission of changes to the configuration and operation of RailCorp's assets prior to and at the completion of each track possession;
  - (ii) procedures to ensure that construction, including temporary or staged works, will not commence until there is configuration change approval and notice;
  - (iii) preparation of documentation and submission of changes to the configuration and operation of RailCorp's assets prior to final commissioning and handover

Notice:- where the works include tunnelling, details of specific measures in relation to design practices and design review to maintain safety during tunnelling works and to demonstrate compliance with Coroner's recommendations coming out of the inquiry into the tunnelling fatality that occurred during the construction of the Cross City Tunnel project in Sydney Authority Liaison and Approval Management Plan

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## **13. Authority Liaison and Approval Management Plan**

The Authority Liaison and Approval Plan must describes our strategy and procedures for ensuring all the required certificates, licences, consents, permits and approvals (excluding those required under the discipline specific Environmental Management Plan) are obtained on time to allow the Alliance Activities and Alliance Works to proceed without delays.

The Authority Liaison and Approvals Management Plan must:

- (a) identify all the certificates, licences, consents, permits and approvals that are required to be obtained, including those from:
  - (i) any local government authority;
  - (ii) RailCorp;
  - (iii) Department of Environment and Climate Change;
  - (iv) WorkCover Authority;
  - (v) Roads and Traffic Authority;
  - (vi) services providers and utilities; and
  - (vii) emergency services authorities,
  - (viii) private landowners;
  - (ix) businesses; and
  - (x) community groups,
- (b) examine and document the process to be followed to obtain each certificate, licence, consent, permit and approval;
- (c) identify the persons responsible and their roles in the processes involved;
- (d) identify the program requirements for gaining the necessary certificates, licences, consents, permits and approvals to meet time targets; and
- (e) identify procedures for briefing all relevant parties about the certificates, licences, consents, permits and approvals received, the conditions of those certificates, licences, consents, permits and approvals and their impacts on these parties, including TIDC and other TIDC contractors.

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## **14. Construction and Site Management Plan**

The Construction and Site Management Plan must include the procedures and processes we will undertake to plan and execute the construction of the Alliance Works.

The Construction and Site Management Plan must:

- (a) detail how we will comply with our obligations under the Agreement in relation to the control, establishment, use and decommissioning of the Site including the arrangements to provide access to, within and through the Site for TIDC, RailCorp, their Associates and any other person nominated by TIDC;
- (b) determine effective construction staging that will ensure the current railway operations and the associated transport facilities' operational requirements are maintained and impact to these operations minimised during construction;
- (c) detail how impacts to passenger movement from changes to passenger access and routes during the construction staging will be managed;
- (d) describe procedures to ensure the appropriate notification of relevant emergency services prior to implementing road and pedestrian traffic modifications such as street closures or changes to station access;
- (e) detail traffic management procedures for the Site, including to manage modifications to existing roads/paths and traffic patterns, changes to public transport routes and services, impacts on residents and /or commercial enterprises, and the impact of construction traffic within the Site and outside the Site on the adjacent public road system;
- (f) describe procedures for the preparation and implementation of plans and work method statements before the start of related construction work;
- (g) describe procedures for the management of Subcontractors and their plans and work method statements;
- (h) describe the processes to ensure the compatibility of any necessary temporary works with the Alliance Works;
- (i) describes procedures for managing the occupation of, or access through, private properties;
- (j) where the works include tunnelling, detail specific measures in relation to construction practices to maintain safety during tunnelling works and to demonstrate compliance with Coroner's recommendations coming out of the inquiry into the tunnelling fatality that occurred during the construction of the Cross City Tunnel project in Sydney;
- (k) describe procedures for the programming of works to be conducted during Track Possessions in conjunction with RailCorp to ensure that RailCorp's preparatory and recommissioning works, together with the relevant parts of the Alliance Works, can be completed in the available possession times;
- (l) describe the procedures for incident reporting, including reporting associated with insurance claims;
- (m) describe spoil management procedures, including identification of spoil disposal/reuse/recycling/reprocessing locations;
- (n) include a schedule of all the inspection and test plans to be prepared and implemented for the acceptance of construction, including those to be provided by

- Subcontractors, covering all plant, equipment and materials procurement, and inspections and tests to be conducted on and off the Site;
- (o) identify all test facilities and tests to be used to ensure compliance with the technical requirements of the design documents and the Agreement;
  - (p) identify all the laboratories and other facilities to be used for quality control and compliance tests;
  - (q) describe procedures to ensure the prompt identification and recording of Defects, including process and other non-conformances, and system deficiencies, and for their rectification and the verification of the results; and
  - (r) describe procedures to demobilise the project, including demobilisation of personnel, plant and equipment and closeout of stakeholder communications.

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## **15. Commissioning Management Plan**

The Commissioning Management Plan must define all the testing and commissioning activities we will undertake as part of the Alliance's Activities and must describe RailCorp's involvement during the planning and completion of these activities.

The Commissioning Management Plan must be based on TIDC's Generic Commissioning Management Plan and on TIDC's Project Commissioning and Operational Readiness Strategy.

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## **16. Operational Readiness Plan**

The Operational Readiness Plan ("ORP") must identify the activities we will undertake to ensure that the Project is ready to operate, with all necessary operational plans and approvals in place, fully trained operating staff, all external works and related projects completed and users willing to accept the responsibility for ongoing operation and maintenance of the new facilities.

The ORP must be based on TIDC's Generic ORP and the TIDC Project Commissioning and Operational Readiness Strategy.

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## **17. Value for Money Plan**

The Value for Money Plan must describe our commitment, strategies and initiatives for how Value for Money (VFM) will be achieved and demonstrated against all Alliance Objectives.

The Value for Money Plan must build on the plan developed during the alliance procurement phase and include the following:

- (a) processes to be undertaken during the Project Definition Phase to reach alignment on the scope of the Project, including value management processes, risk assessment processes, scope control, identification of extent of works and worksites, and preparation of project definition documentation;
- (b) an overview of the procurement process audit to be undertaken during the Project Definition Phase;

- (c) processes to be used to validate the proposed KRAs and KPIs and to develop the Non-Cost Performance Measurement Procedures;
- (d) an outline of the VFM Report, which builds on the report developed during the alliance procurement phase;
- (e) processes to ensure progressive development and approval by ALT and TIDC of the VFM Report during the Project Definition Phase and the implementation phase;
- (f) the brief, outlining the roles, responsibilities, schedule of deliverables and interaction, for the Independent Estimator (IE) and Alliance Financial Auditor (AFA);
- (g) processes to ensure timely development of the independent estimate and conduct of financial audits during the Project Definition Phase;
- (h) a Remuneration Plan for new staff; and
- (i) an overview of the specific VFM processes to be undertaken during implementation and following completion, including:
  - (i) the preparation of an Executive Completion Report, which includes lessons learned and an alliance suitability score from ALT and AMT members; and
  - (ii) the preparation of the required project financial reports, including the Value for Money Report, and a report including the Actual Outturn Cost and Gainshare Distribution Proposal.

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## 18. TCE Development Plan

The TCE Development Plan must provide a guide for the AMT in the processes it will use to ensure that the TCE is established in accordance with the Alliance Principles and is based on robust estimating practices which will lead to a TOC that is supported by all the Participants as the “right number”.

The TCE Development Plan must build on the plan developed during the alliance procurement phase and include the following:

- (a) a schedule of the workshops and reviews to achieve alignment on the “right number”;
- (b) an overview of how the TCE will be developed, including:
  - (i) estimating team structure and responsibilities;
  - (ii) role of the IE and FA and how the estimating team will interact with and support the IE and FA;
  - (iii) Work Breakdown Structures (WBS);
  - (iv) process for the setting of a fixed reference design and program as the basis of the TCE;
  - (v) quantities, including how potential quantity design growth is catered for;
  - (vi) pricing coverage for determination of price estimates;

- (vii) procurement processes, including how the alliance will make procurement decisions based on best Value for Money;
  - (viii) identification of Owner's Alliance Costs;
  - (ix) escalation;
  - (x) foreign exchange;
  - (xi) linkage to the Target Adjustment Events Guidelines;
  - (xii) development of a risk-based cost contingency and handling of contingency allowances; and
  - (xiii) allowances for the Defects Correction Period (DCP),
- (c) an overview of how the TCE and TOC will be benchmarked against other projects to demonstrate the competitive nature of the TOC, including:
- (i) identification of what benchmark data is relevant for the project (i.e. ratios, indices etc); and
  - (ii) how benchmarking data will be used to check the validity of the assumptions used to develop the TCE and TOC,
- (d) an overview how the TCE will be reconciled back to the Owner's Budget; and
- (e) an overview of the content and how the TCE Report will be developed and approved by the ALT and submitted to TIDC as part of the Project Proposal.

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## 19. Performance Management Plan

The Performance Management Plan must detail the performance measures outlined in Schedule 7 of the Agreement and establish the guidelines that define how we will track and measure the performance for each KRA and KPI.

The Performance Management Plan must also describe how we will communicate the performance measures to the wider project team.

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## 20. Procurement Management Plan

The Procurement Management Plan must describe how we will manage the procurement and tendering for the engagement of Subcontractors and major suppliers during the PDP and Project Execution Phase so that the Alliance Objectives are realised.

The Procurement Management Plan must:

- (a) set our procurement objectives and targets, addressing:
  - (i) value for money, considering the benefits achieved compared to whole-of-life costs;
  - (ii) efficiency and effectiveness;
  - (iii) probity and equity; and

- (iv) effective competition,
- (b) document the project procurement strategy, including procedures and processes that address:
  - (i) Related Parties;
  - (ii) Single Action Tenders and direct negotiations;
  - (iii) buy/lease decision making;
  - (iv) use of contractor performance reviews and other performance information;
  - (v) transparency; and
  - (vi) not contracting with TIDC sanctioned contractors;
  - (vii) the practicality of forming panel/s of pre-qualified service providers for specialised or critical activities;
- (c) include delegations for procurement strategy, release of tender invitation documentation and award of contracts;
- (d) detail the procurement and tendering procedures, processes, constraints and tools including those regarding:
  - (i) identification of procurement packages;
  - (ii) establishment and approval of project master contracts and subcontract forms;
  - (iii) selection of a suitable tender method and process that suits the procurement and its level of risk, is timely, avoids unnecessary costs for tenderers and safeguards the security and confidentiality of all tenders;
  - (iv) compliance with the NSW Government Code of Practice for Procurement;
  - (v) preparation of tender documentation, including:
    - A. conditions of tendering, ensuring that:
      - 1) standard conditions in relation to NSW Government Code of Practice for Procurement are included in all tender documents;
      - 2) same tender conditions are used for each tenderer on any particular tender process;
      - 3) all requirements, including the criteria for tender evaluation are clearly stated; and
      - 4) where tenderers are encouraged to submit alternative tenders which do not fully meet the prescriptive condition of tendering, the conditions

under which these alternative tenders will be considered are specified,

B. for construction packages:

- 1) technical specification and other non-price acceptance criteria;
- 2) package management requirements, including requirements for inspection and test plans and method statements; and
- 3) provisions for the operating status of the railway system,

- (vi) the handling of tender submissions which do not meet conditions of tendering (including late submissions), to ensure that the integrity and competitiveness of the tendering process is not compromised;
- (vii) confidentiality, to ensure we do not disclose tenderer information that is intellectual property, commercial-in-confidence or otherwise confidential;
- (viii) the evaluation criteria that is consistent with the proposed contract requirements and aims to identify the tenderer offering the best value of money with due consideration of price and non-price criteria;
- (ix) the determination of evaluation criteria weighting, which is ideally set prior to calling of tenders, but no later than close of tenders;
- (x) evaluation of tenders which is based on conditions of tendering and evaluation criteria therein and ensures:
  - A. any tender which does not adequately comply with conditions of tender may be passed over;
  - B. tenders are evaluated by people with necessary skills and knowledge and free from any conflict of interest which may undermine the fairness process; and
  - C. where a tenderer offers an alternative tender, a tender for that alternative is not sought from other tenderers and we do not breach confidentiality by using information contained in alternative tenders as the basis for calling subsequent tenders,
- (xi) clarification of tenders when information in a tender is open to interpretation or not clear and is material to identifying the successful tender, ensuring the clarification process does not allow a tenderer to gain unfair advantage over other tenderers or allow the tenderer to revise or enhance its original tender;
- (xii) where none of the tenders are acceptable at the end of a competitive tendering process, conducting exhaustive tender negotiations with the most acceptable tender (based on the evaluation criteria) with the aim to achieve a tender that is mutually acceptable;
- (xiii) prohibition of “bid shopping”;



- (xiv) debriefing of tenderers whose tenders were not accepted, on request, explaining how their tender performed against the evaluation criteria (rather than against the successful tender), with the objective of assisting them to improve future tenders; and
- (xv) contractor and supplier performance review which assesses their performance in a transparent manner to inform future tender assessments,
- (e) document policies, processes and procedures for managing the involvement of local industry (that is industry in Australia and New Zealand) in providing products and services as part of the Alliance Activities, including:
  - (i) procedures for the identification of local products and capabilities;
  - (ii) procedures to allow the involvement of local industry;
  - (iii) procedures for the assessment and comparison of local products and capabilities with imported equivalents; and
  - (iv) procedures for the monitoring and reporting on the outcomes with local industry involvement.

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## 21. Cost Management Plan

The Cost Management Plan must describe our approach, processes and procedures to develop and establish transparent and robust cost management, including:

- (a) an overview of the cost management system;
- (b) details of the cost management structure and cost control structure including:
  - (i) cost codes, including linkage to the TCE elements;
  - (ii) accountabilities for cost control;
  - (iii) delegations for cost commitments, payments and contingency drawdown;
  - (iv) management of budget, budget establishment, budget allocation and budget reallocation;
  - (v) management of rates based budgets (materials and plant hire);
  - (vi) management of budget variations;
  - (vii) management of Subcontractors and suppliers variations, claims and disputes; and
  - (viii) management of contingency;
- (c) variance monthly reporting, outlining method for determining actual cost to date, accruals, earned value to date, forecast cost at completion, and forecast budget at completion;
- (d) mitigation of any cost overrun; and

- (e) active pursuit of cost opportunities.

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## 22. Human Resources Management Plan

The Human Resources Management Plan (“**HR Plan**”) must describe our strategy and procedures for effective utilisation of human resources on the Project, including:

- (a) definition of the Alliance Activities and Alliance Works team and a resources program;
- (b) the allocation of suitable trained and experienced personnel (“competent” personnel) to plan, perform and verify work;
- (c) the management of staff, Subcontractors and suppliers;
- (d) compliance with our obligations in relation to:
  - (i) the NSW Industrial Relations Act 1996;
  - (ii) equal employment opportunity;
  - (iii) the NSW Government Aboriginal Participation in Construction Implementation Guidelines;
  - (iv) the protection of employee records under the NSW Privacy and Personal Information Protection Act 1998; and
  - (v) Rail Safety (Drug and Alcohol Testing) Regulation 2003,
- (e) allocation of responsibility between us for the recruitment of personnel in accordance with our own conditions of employment;
- (f) procedures for the induction and training of all personnel covering as a minimum:
  - (i) work processes;
  - (ii) rail safety and RailCorp specific site inductions;
  - (iii) safety (OH&S);
  - (iv) community relations;
  - (v) environmental and heritage management;
  - (vi) business ethics and fraud and corruption prevention; and
  - (vii) incident reporting,
- (g) procedures for skill enhancement of personnel; and
- (h) policies and procedures to manage the industrial relations aspects during the construction and commissioning phases of the Project, which create a productive industrial relations environment for the Alliance Works in accordance with legislative requirements, codes and guidelines.

The industrial relations component of the HR Plan must be prepared, structured and implemented to comply fully with New South Wales Government Industrial Relations Management Guidelines (referred to as IR Guidelines), as applying to category 1 projects by adopting an industrial relations management objective to ensure there is continuous improvement in the management and planning of industrial relations.

In accordance with the IR Guidelines, a Project IR Plan is required to be developed before site work begins.

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## **23. Ethane Gas Pipeline Management Plan**

The Ethane Gas Pipeline Management Plan (“**EGP Plan**”) must describe how we will manage the interactions with the Ethane Gas Pipeline (“EGP”) through design, investigation, construction and commissioning phases of the Project, to ensure all the Alliance Objectives are met.

The EGP Plan must assist us to meet the requirements of the EGP owner and operator by describing procedures and processes that clearly document the actions to be implemented during each of the design, investigation, construction and commissioning phases in order to control the works around, and not impact on the long term integrity of, the EGP. The plan must comply with TIDC’s Safety Management System.

In particular, the EGP Plan must detail the activities we will undertake to:

- (a) ensure that all work carried out is in compliance with the Deed of Terms of Easement, held between RailCorp and the EGP owner;
- (b) ensure any work in the vicinity of the EGP has the necessary controls and procedures implemented to eliminate the risk to the EGP;
- (c) ensure a risk based approach is used to manage the EGP;
- (d) ensure there is a comprehensive awareness of the EGP and the associated dangers in working around the EGP among all personnel carrying out the Alliance Activities and the Alliance Works;
- (e) ensure separation of construction/production staff from EGP safety oversight; and
- (f) positively achieve “Zero impact” on the EGP.

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## **24. Quality Management Plan**

The Project Quality Plan must describe how the Alliance proposes to manage the quality management practices which are critical to the Alliance.

The Project Quality Plan must address the Alliance’s responsibilities as described in the TIDC Compliance Management Standard.

The plan must include:

- (a) quality expectations
- (b) quality responsibilities, who is responsible for each of the aspect of the quality controls in place;

- (c) the quality control methodology including process and product verification, inspection and test plans and audit processes to be applied to project management, design, construction and commissioning, based upon the risk exposures detailed in the risk register;
- (d) the means by which effective communication will be measured; and
- (e) a continual improvement process based on lessons learned from previous experience.

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## **25. Technical Maintenance Plan**

The Technical Maintenance Plan shall be prepared in compliance with RailCorp's Standard ED-ISG-21 for Technical Maintenance Plans which provides details of the RAMS procedures and analyses applied, Asset Management information to be delivered (and in what format) and the maintenance procedures and requirements for the infrastructure installed and the safety assurance procedures used with reference to the Safety Assurance Plan.

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## **26. Safety Assurance Plan**

The Safety Assurance Plan shall detail the methods and procedures by which the combined safety argument will be developed in order to have the new infrastructure accepted and accredited by ITSRR. This Plan will detail the requirements for Safety Assurance Reports for each stage of design, construction, commissioning and operational readiness for the infrastructure, demonstrating compliance with the Rail Safety Act 2008 for all aspects of the works including works carried out by RailCorp.

The Safety Assurance Plan also details how individuals and organisations are certified as having qualifications to conduct the work and how the design and final products installed will be verified as fit for service and by what means this verification will take place.

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## **27. Vesting Plan**

A Vesting Plan shall be prepared which describes the procedures, timing, infrastructure, property, documentation and method by which vesting shall occur. This Plan shall conform with TIDC's requirements for vesting and to TIDC's Project Commissioning and Operational Readiness Strategy.



**Transport Infrastructure**  
*Development Corporation*

South West Rail Link

Glenfield Junction Alliance

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Project Brief

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# 1 Introduction

The South West Rail Link (SWRL) forms part of the response of the NSW Government to issues of reliability and passenger growth on the metropolitan rail network. In December 2004, the NSW Government announced that a new rail line, the SWRL would be constructed between Glenfield and Leppington to support the population growth and provide public transport for the planned development of the South West Growth Centre. The NSW Government's Rail Clearways Program to improve capacity and reliability on CityRail's suburban network would facilitate the operation of this new line.

The SWRL is planned to be delivered in two stages with the first stage to be commissioned and handed over in January 2013.

On 31 October 2008, the NSW Minister for Transport announced that the SWRL would be delivered in stages to match population growth in Sydney's South West region. The announcement included a direction to proceed with Stage 1 - Glenfield Transport Interchange to be commissioned and handed over to RailCorp in 2013.

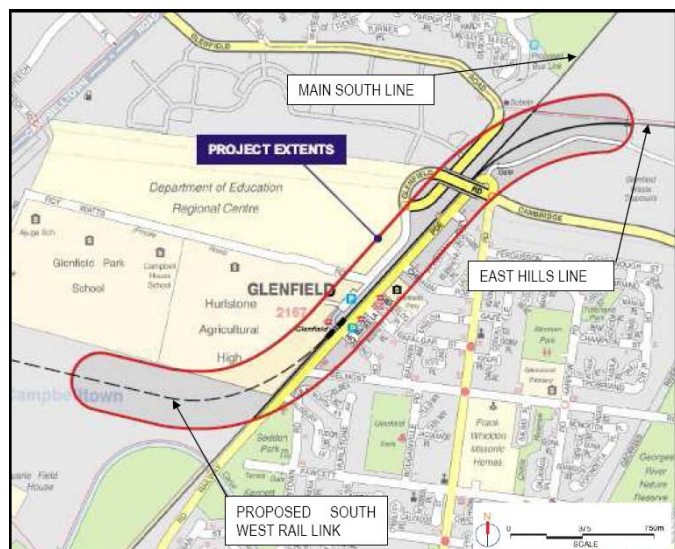
Stage 2 - SWRL Corridor from Glenfield South to Leppington would be constructed in a time consistent with land releases and population growth in the region.

## 2 The Project

The Glenfield Transport Interchange (GTI) is a key element in the delivery of the SWRL involving major rail infrastructure works at Glenfield Junction and upgrades to Glenfield Station Interchange and surrounds. The primary operational objective of the GTI is to facilitate the interface between the SWRL and the existing RailCorp network

Glenfield Junction is currently a high use, flat junction for passenger and freight services. Conflicts between train paths on the Up East Hills Line and the Down Main South Line restrict the capacity of the existing junction to approximately 15 train movements in the Up direction per hour and limit the ability to operate additional services to accommodate the forecast future growth.

Based on forecast demand, service levels through Glenfield will need to progressively increase with additional peak hour services required to respond to demand from the South West Growth Centre and the existing Glenfield to Campbelltown corridor.



Given the size of the engineering tasks required to achieve the connection, there is also an opportunity to remodel the East Hills connection to remove the existing flat junction and associated restrictions, thereby improving the capacity at Glenfield Junction.

## 2.1 Delivery of the Glenfield Transport Interchange

The Glenfield Transport Interchange will be delivered jointly by RailCorp and TIDC. In this respect, TIDC intends to establish the TIDC Glenfield Junction Alliance to carry out the works required to be delivered by TIDC for the Glenfield Transport Interchange.

TIDC and RailCorp have agreed that RailCorp oversee the works in the “live” corridor with regard to network safety and reliability and that RailCorp will undertake specialist skills works in the areas of signalling, track and overhead wiring.

As part of RailCorp’s strategy to achieve a major increase in its capacity in the signalling and electrical disciplines, RailCorp is in the process of establishing a separate alliance with the private sector, the RailCorp Program Alliance (RPA). It is expected that the RPA will undertake the construction of track work, overhead wiring and signalling on the Glenfield Transport Interchange.

## 2.2 Detailed work Elements

The scope of the Glenfield Junction Alliance works covers the full design of all elements of the Glenfield Transport Interchange including permanent way, civil, structural, building, utilities and services, track, overhead wiring and traction design, communications, electrical, rail systems and landscaping works. TIDC expects to provide signalling and HV design resources to be managed by the Glenfield Junction Alliance.

Construction, systems integration, commissioning and handover by the Glenfield Junction Alliance will be required for the elements summarised below:

- Earth and civil works for the new Down East Hills Main track connecting the Down East Hills to the new Glenfield Platform 4;
- Earth and civil works for the new Down SWRL track connecting Glenfield Platform 4 to the proposed South West Rail Line;
- Earth and civil works for the new Up East Hills Main to replace the existing flat junction north of Glenfield Station;
- Earth and civil works for the new Up SWRL track connecting the proposed South West Rail Line to the existing Glenfield Platform 1;
- Earth, civil works and track works for the realigned SSFL freight loop;
- New flyover at Glenfield North Junction to carry the Up East Hills Line over the Main South Line;
- An upgrade and refurbishment to Glenfield Station to include:
  - a fourth platform, Platform 4, to the rear of Platform 3
  - new, elevated concourse between the island platforms
  - new footbridge, square to the railway and centralised to the existing platforms, servicing the platforms and spanning the new Down relief track
  - modifications to the existing platforms to provide level access to RailCorp standards
  - provision of stairs and lifts from the new footbridge to service the platforms, Roy Watts Road and Railway Parade
  - provision of new platform canopies



- provision of CCTV, PA, customer information and help points;
- road works on Railway Parade and Roy Watts Road (line marking, kerb and guttering)
- signalised intersection at Railway Parade / Hosking Crescent
- Mini roundabout at Railway Parade / Trafalgar Street
- Minor intersection works at the intersections of Railway Parade with Trafalgar Street / Belmont Street and Salisbury Avenue
- Mid block crossing on Railway Parade
- Landscaping works in Roy Watts Road / Railway Parade
- Streetscape / street furniture along Railway Parade / Roy Watts Road
- Bus interchange (eastern side) as well as taxi and kiss-and-ride facilities to supplement the multi-storey car park;
- Embankments and cuttings, retaining walls, stormwater drainage, maintenance access tracks and landscaping;
- A new noise wall north of Glenfield Station along Railway Parade;
- Utilities adjustments and protection;
- Demolition of the existing footbridge on completion of the new footbridge;
- Provision of Asset Management Information for all components of the works; and
- Development of Safety Assurance Reports during design and for the completed works, including RAMS analysis where applicable.

At present ARTC are proposing to construct the South Sydney Freight Line prior to work starting on Glenfield Junction. There are a number of items of ARTC work that are required to be coordinated for both projects to proceed, namely:

- Diversion of Glenfield Creek;
- Widening of rail formation for SSFL loops;
- Extension of culverts crossing rail corridor; and
- Relocation of eastern freight loop to become western freight loop.

## **2.3 Additional Work Elements**

Additional work elements that may be incorporated into the project, subject to agreement with ARTC are as follows;

- Construction of the SSFL Eastern and Western Passing Loops north of Glenfield Junction including all associated works such as the Glenfield Creek diversion and services diversions.

## **2.4 Design**

The Alliance must provide the entire design necessary for the construction of the works fabrication, construction, installation, testing and commissioning of the works. The design includes the design the elements of the Works to be constructed by the RPA. The design must adhere to all current TIDC

and RailCorp Standards and the relevant RailCorp Operational User Requirements (OUR's) in addition to relevant Australian Standards and relevant legislation.

It is important the design gives full consideration to the 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 safety.

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 and any other parties as required.

### **3 Planning Approval**

On 29 August 2007, the NSW Minister for Planning granted Project Approval for the Glenfield Junction Works of the SWRL (Stage A) and Concept Approval for the remainder of the SWRL. This followed the exhibition of the Concept Plan Environmental Assessment and preparation of a Submissions Report in late 2006 and early 2007. The Concept Plan approval was subject to a number of control measures and further requirements for environmental impact assessments for the SWRL.

To progress with the design and further assessment of the SWRL, the project has been split into stages for planning approval with separate environmental assessment requirements for each. It is expected that the Alliance will ensure that required information is made available to the TIDC Planning Approvals Consultant to assist in preparation of the environmental assessments for the project as described in the below.

#### **Glenfield Transport Interchange (GTI)**

##### **Stage A: Glenfield Junction Works (including the Glenfield flyover and the establishment of associated temporary construction sites)**

Project Approval has been granted for this stage of the project as sufficient assessment was undertaken during the preparation of the EA and Concept Plan and Submissions Report.

Project Approval was granted subject to a number of conditions, including the requirement to prepare a detailed Construction Environmental Management Plan (CEMP) prior to construction commencing. This CEMP will include Noise and Vibration, Traffic and Flora and Fauna Management measures.

No additional environmental assessment or planning approvals are required for this part of the project.

### **Stage B1: Glenfield Station and Interchange**

A Review of Environmental Factors (REF) is currently being prepared for these works in accordance with the requirements of Part 5 of the Environmental Planning and Assessment Act 1979 (EP&A Act). The REF focuses on the further design and assessment of:

- The new Glenfield Station building, facilities and a new concourse bicycle/pedestrian facilities and 'easy access' (including lifts) at Glenfield Station;
- The new transport interchange including bus facilities, kiss-and-ride facilities, taxi zones and improved pedestrian and cyclist access to the station;
- Roadworks, landscape and urban design works along Railway Parade and Roy Watts Road
- The relocation of car spaces on Railway Parade & Roy Watts Road to a new multi-storey commuter car park of approximately 700 car spaces on the western side of Glenfield Station;
- An at-grade commuter car park at Seddon Park (off Salisbury Avenue) for 110 commuter car parking spaces
- Reconfiguration of the existing Glenfield Station to accommodate two island platforms, including extensions and a new platform on the eastern side (closest to Railway Parade); and
- Construction worksites, access, timing and staging.
- The REF is expected to be placed on public exhibition for comment in early 2009, following which submissions received in response to the public exhibition will be considered through the development of a Submissions Report. TIDC is the proponent and determining authority under Part 5 of the EP&A Act. Determination of the REF is expected in mid 2009.

### **Stage B2 - SWRL Corridor (including new stations and train stabling facility).**

An Environmental Assessment (EA) is required for the Stage B2 works in accordance with the requirements of Part 3A of the EP&A Act.

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 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 and Review of Environmental Factors 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 SWRL 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) Signalling approval process;
- (b) Obtaining Engineering Authority (QMP7312.1)
- (c) Engineering Waivers - Clearways Program (QMP7312.2)
- (d) TIDC Interface - Request for Information (QMP7312.32)
- (e) Project Definition Scope Design Review and Acceptance Procedure For All Works Except Signalling (QMP7312.4)
- (f) Construction, Possessions Management (QMP7313.4)
- (g) Commissioning Handover & Completion Procedure (QMP7314.3)
- (h) Operational Readiness Plan Guidelines (QMP7320.1)
- (i) TIDC Interface - Owner Provided Works (QMP7320.3)
- (j) NAI - Customer - Stakeholder Satisfaction (Incorporating Project Stakeholder Relations and Communications) (QMP8210)
- (k) Change Control and Configuration Management Plan, including
  - Project Work Interface Agreement (PWIA);
  - Work Activity Advice (WAA);
- (l) Asset Management Requirements for TIDC Rail Projects

### **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. The Alliance shall ensure that RailCorp Type Approved materials are used on the project, or identify any non-type approved materials for type approving.

## 5 Operational Requirements

The existing Glenfield Junction and Station 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, as required, 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 Alliance 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 and must follow the TIDC procedure. 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 (by RailCorp with the exception of the SSFL Freight Loop south of Glenfield Junction);
- (b) Civil engineering works;

- (c) Structures and buildings;
- (d) Building services;
- (e) Utilities;
- (f) Signalling (by RailCorp);
- (g) OHW (by RailCorp);
- (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
<b>Statutory Declaration</b>		
I, _____ of _____		Insert name of Declarant
_____ do solemnly and sincerely declare that:		
1.	I am a representative of _____ ("NOP") in the Office Bearer capacity of _____	Insert address
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:	Insert name of Contractor and ABN if applicable
a.	under the Workers Compensation Act 1987, section 175B, in the form and providing the detail required by that legislation;	insert position title of Declarant
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.	Insert name of Contract
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.

Insert the relevant  
payment period

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: \_\_\_\_\_

*(Business name)*

of \_\_\_\_\_

*(Address of subcontractor)*

has entered into a contract with \_\_\_\_\_ (Note 2)

*(Business name of principal contractor)*

ABN: \_\_\_\_\_ For work between: \_\_\_\_/\_\_\_\_/\_\_\_\_ and \_\_\_\_/\_\_\_\_/\_\_\_\_ (Note 3)

*Date*

*Date*

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

*(delete as appropriate)*

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.

For more information, please visit the WorkCover website [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au), Office of State Revenue website [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au), or Office of Industrial Relations, Department of Commerce website [www.commerce.nsw.gov.au](http://www.commerce.nsw.gov.au). Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

## Schedule 11 – Works Policy

Note: The certificate of currency below is an example only.

# MARSH

**David Torossian**  
Principal

Marsh Pty Ltd  
ABN 88 004 651 512  
Darling Park Tower 3  
SYDNEY NSW 2000  
PO Box H176  
AUSTRALIA SQUARE NSW 1215  
02 8864 8732 Fax 02 8864 8321  
david.torossian@marsh.com  
www.marsh.com.au

16 November 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.

**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

If this communication contains personal information we expect you to treat that information in accordance with the Australian Privacy Act 1988 (Cth) or equivalent. You must advise us if you cannot comply.

S:\RM General\RailCorp\Certificates of Currency\Cleerways\2007-2008\Works Master.doc

 Marsh & McLennan Companies

# MARSH

Page 2

16 November 2007

**Period of Insurance:** From 4:00 p.m. local standard time 15<sup>th</sup> November 2007 to 15<sup>th</sup> 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 15<sup>th</sup> 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:

- Macdonaldtown 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

- (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)

<b>Territorial Limits:</b>	As specified in the scope of works for Clearways program in NSW, including whilst during inland transit and off-site storage anywhere in Australia
<b>Limit of Indemnity:</b>	<p>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.</p> <p>AUD \$80,000,000 any one Occurrence / any one location</p> <p>Temporary Buildings and Contents thereof (excluding Construction tools, plant and equipment)</p> <p>AUD \$1,000,000 any one Occurrence / any one location</p>
<b>Sub-Limits of Liability:</b>	<p><b>Escalation</b> 10% of Estimated Contract Value for each separable portion of the contract works</p> <p><b>Professional Fees</b> \$8,000,000 maximum or as per scale, whichever is the lesser.</p> <p><b>Removal of Debris</b> \$8,000,000 or 10% of the loss, whichever is the lesser.</p> <p><b>Expediting Expenses</b> 25% of the loss to a maximum of \$10,000,000</p> <p><b>Transit</b> \$2,500,000 in respect of Materials in Transit maximum per Conveyance</p> <p><b>Temporary Protection</b> \$5,000,000</p>

# MARSH

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

Note: The Certificate of Currency below is an example only.

# MARSH

**David Torossian**

Principal  
Marsh Pty Ltd  
ABN 86 004 851 512  
Darling Park Tower 3  
201 Sussex Street  
SYDNEY NSW 2000  
PO Box H178  
AUSTRALIA SQUARE NSW 1215  
02 8864 8321 Fax 02 8864 8060  
david.torossian@marsh.com  
www.marsh.com.au

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 sub-contractors and other parties as required by contract or agreement in relation to the Cronulla Line Upgrading and Duplication project forming part of the Clearways Project
Class of Insurance	Public Liability
Insurer(s)	<b>Excess Layer(s)</b> Lloyds and other British, European and Australian Underwriters
Policy No.	<b>Excess Layer(s)</b> 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

If this communication contains personal information we expect you to treat that information in accordance with the Australian Privacy Act 1988 (Cth) or equivalent. You must advise us if you cannot comply.



Marsh & McLennan Companies



# MARSH

Situation Anywhere in Australia, in relation to the Cronulla Line Upgrading and Duplication 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 Torossian

Initials



Date

3-10-07

16 November 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.

Class of Insurance:	Public Liability (Primary)
Insurer:	Liberty International Underwriters
Policy Number:	414224
Insured:	<ol style="list-style-type: none"><li>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)</li><li>2. Project managers and contract managers, contractors and sub-contractors and other parties as required by contract</li><li>3. Consultants, engineers, surveyors, suppliers, manufactures 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</li></ol>
Duration of Policy:	From 15 <sup>th</sup> November 2007 at 4:00 p.m. local standard time to 15 <sup>th</sup> 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
- Cronulla 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:-

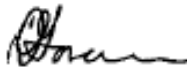
**Hornsby Platform 5 and Stabling Project**

Injury to contractors, sub-contractors and 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

4761 general/insurancesubstitutes of currency/clearways/2007-2008/primary liability cover.doc

## **Schedule 13 – Deadlock Resolution Agreement**

# Deadlock Resolution Agreement

## Glenfield Junction Alliance

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 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 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:	<i>[Name of Expert]</i>
Address:	<i>[Address for service on Expert]</i>
Fax:	<i>[Fax number for service on Expert]</i>
For the attention of:	<i>[Person's name to whom correspondence is directed]</i>
- (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 be 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 – Parent Company Guarantee

## Parent Company Guarantee

Transport Infrastructure Development Corporation  
ABN 28 458 799 157

**Rail Corporation New South Wales**  
ABN 59 325 778 353

[Guarantor]  
ABN [ ]

Deed of Guarantee and Indemnity made at \_\_\_\_\_ on \_\_\_\_\_

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

**[Guarantor] ABN [insert ABN] of [insert address] ("Guarantor")**

## Recitals

- A. RailCorp is the owner of the Project Site and will be the owner of the Alliance Works.
- B. 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.
- C. 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.

- D. 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 *[insert name, ABN and address of Alliance Participant]*

**"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).

**"Insolvency Provision"** means any law relating to insolvency, sequestration, liquidation, winding up or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or of preferences and any law under which a liquidator or trustee may set aside or avoid transactions) and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

**"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 Beneficiary (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 the Alliance Agreement or the Deed Poll or the work to be carried out or performed by the Alliance Participant under the Alliance Agreement or 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.

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## **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.

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## **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; or
- (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 clause 17.2 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.

#### **4.7 Liability Limited**

Without affecting Clause 3(b), the liability of the Guarantor is no greater than and no different to the liability of the Alliance Participant under the Alliance Agreement.

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### **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.

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## **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.

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## **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: [ ]

Name: Rail Corporation New South Wales  
Address: Level 6, 18 Lee Street, Chippendale NSW 2008  
Fax no: 02 8202 2111  
For the attention of: [ ]

Name: [ ]  
Address: [ ]  
Fax no: [ ]  
For the attention of: [ ]

(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
  - (ii) (in the case of a facsimile) on receipt of a transmission report confirming successful transmission.

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## **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 **[Guarantor] [(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



## 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)

Date

☐

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

TIDC  
ALT Member #2

MVM Rail Pty Ltd  
ALT Member

Macmahon  
Contractors Pty Ltd  
ALT Member

Bouygues Travaux  
Publics  
ALT Member

Parsons Brinckerhoff  
Australia Ltd  
ALT Member

## 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)

Date

☐ 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.

TIDC  
ALT Member #1

TIDC  
ALT Member #2

MVM Rail Pty Ltd  
ALT Member

Macmahon  
Contractors Pty Ltd  
ALT Member

Bouygues Travaux  
Publics  
ALT Member

Parsons Brinckerhoff  
Australia Ltd  
ALT Member

## Schedule 17 – Payment Certificate

<b>Part 1 – Context</b>		For amounts payable under the PAA up to and including (date)	
<div><input type="checkbox"/> Payment claim (prior to the Date of Completion, submitted to TIDC at the end of each calendar month)</div> <div><input type="checkbox"/> Payment claim (after the Date of Completion, submitted to TIDC at the end of each calendar month)</div> <div><input type="checkbox"/> Final Payment Claim (submitted to TIDC within 28 days of Date of Final Completion)</div> <div><input type="checkbox"/> Other circumstance</div>			
<b>Part 2 – Summary of Claim to Date:</b>		<b>AMOUNT (\$)</b>	
Total Reimbursable Costs			(a)
Total Fee			(b)
Gainshare			(c)
<b>Gross entitlement to date</b>			(d) = (a) + (b) + (c)
Less previous gross entitlement to date			(e)
<b>Net entitlement</b> (excluding GST)			(f) = (d) – (e)
GST applicable to net entitlement			(g) = (f) * 10%
<b>Amount payable this Payment Claim</b>			(h) = (f) + (g)
<b>Part 3 – Alliance Manager’s statements</b>			
<p>The amounts included in this Payment Claim are in accordance with the terms of the PAA.</p> <p>I certify that the Payment Claim is in order for payment by TIDC.</p> <p>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.</p> <div><input type="checkbox"/> I attach Statutory Declarations from each of the NOPs in accordance with clause 13.5 of the PAA.</div> <div><input type="checkbox"/> I attach a Tax Invoice for each NOP’s share of the Payment Claim prepared in accordance with clause 13.9 of the PAA.</div> <div><input type="checkbox"/> I attach a statement by the AFA confirming that the amounts shown in this Final Payment Claim are in accordance with the terms of the PAA.</div> <div>Signed by the Alliance Manager <div style="border: 1px solid black; width: 250px; height: 20px; display: inline-block;"></div> Date <div style="border: 1px solid black; width: 150px; height: 20px; display: inline-block;"></div></div>			
<b>Part 4 – ALT resolution</b> (for all Payment Claims)			Date
<div><input type="checkbox"/> I attach the resolution of the ALT approving the amount of this Payment Claim.</div>			

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### 1. Compliance with Statutory Requirements

The Alliance must comply with all Statutory Requirements relating to safety including, without limitation:

- (a) the Occupational Health and Safety Act 2000 (NSW) ("**OH&S Act**") and Occupational Health and Safety Regulation 2001 (NSW) ("**OH&S Regulation**");
- (b) Rail Safety Legislation;
- (c) the TIDC Accreditation; and
- (d) any other Statutory Requirements relating to safety.

---

### 2. Compliance with Codes, Standards and Guidelines

To the extent they are consistent with Statutory Requirements, the Alliance must comply with the following codes, guidelines and standards:

- (a) the NSW Government Occupational Health and Safety Management Systems Guidelines (Edition 4, June 2004); and
- (b) the NSW Government Code of Practice for Procurement (January 2005 Edition);
- (c) the TIDC Safety Standards;
- (d) RailCorp's RailSafe Network Rules;
- (e) RailCorp's RailSafe Network Procedures;
- (f) RailCorp's Infrastructure Possession Manual;
- (g) RailCorp's Safety Change Management Framework;
- (h) AS4801:2001/ISO18001:2007 Occupational Health & Safety Management Systems;
- (i) AS4292:2006 Railway Safety Management;
- (j) the Planning Approval; and
- (k) any other codes, guidelines or standards identified by TIDC as being relevant to Alliance Activities and Works.

---

### 3. TIDC Safety Management System

- (a) The Alliance and any Associates must undertake all Alliance Works and Activities under, and in compliance with, the TIDC's Safety Management System.
- (b) TIDC will identify any requirements or processes in the TIDC Safety Standards which are mandatory and must be strictly adhered to by the Participants and their Associates unless inconsistent with a Statutory Requirement.

- (c) TIDC may approve the use of all, or any part of, a Contractor Management System for Alliance Activities or Works as part of the TIDC Safety Management System, unless use of the Contractor Management System is a Statutory Requirement..
- (d) If the Alliance and any Associates become aware of any actual or potential inconsistencies between the operation or application of a NOP Safety System with any other part of the TIDC Safety System or any Statutory Requirements they must immediately notify TIDC. In the event that the inconsistencies cannot be resolved by the Alliance or its Associates, TIDC will address and resolve any such agreement using the TIDC Reserved Powers.

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## **4. Configuration Management**

- (a) 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.
- (b) 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.

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## **5. 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 parties.

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## **6. Safety Management by Participants and Associates**

The Alliance must have processes in place to ensure that all Participants and Associates comply with:

- (a) all Statutory Requirements; and
- (b) the requirements of TIDC's Safety Management System.

in relation to any aspects of the Alliance Activities and Alliance Works.

---

## **7. Safety Reports and Records**

The Alliance must:

- (a) provide monthly safety statistics in the form and using the indices required by the Alliance Manager;
- (b) on request, submit copies of relevant manuals, procedures, reports, records and other documents, including those of Subcontractors, to the Alliance Manager;
- (c) ensure that all other reports or records contemplated by the TIDC's Safety Management System are prepared, communicated and retained in accordance with its requirements.

---

## **8. Safety Audits**

The Alliance, TIDC and ITSSR will conduct audits from time to time during the Alliance Activities as required under:

- (a) the TIDC's Safety Management System;
- (b) Statutory Requirements relating to safety;

We must make available all resources including documentation and personnel to support these audits and ensure that any required corrective action arising from any audits is taken in a proper way.

## **Schedule 19 – Communications and Community Liaison**

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### **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 to be based on site for the duration of the design and construction of the Temporary Works and Alliance Works and any associated impacts;
- (c) prior to taking any unilateral action that may impact on the community, consult TIDC on any issues that may impact on the community; and
- (d) make available appropriate senior personnel (for example Environmental Manager, Design Manager, Construction Manager, technical experts) to attend meetings with the community or other stakeholders, as required.

#### **1.2 Communication management system (CMS)**

The CMS must enable the collection and recording of all contact with community and key stakeholder correspondence details. It must be updated and maintained with accurate stakeholder contact details to ensure easy identification and rapid distribution of information when required.

The CMS must capture all contacts with the community and actions resulting from these contacts within 24 hours of receiving correspondence.

Monthly reports on community contacts (detailing issues and frequency) should be sent to TIDC.

#### **1.3 Communications Control Group (CMCG)**

The CMCG will be convened by TIDC prior to the commencement of any works by us. From then the CMCG will meet fortnightly.

We are required to attend the CMCG and provide all relevant information regarding any potential impact our activity may have on the community including local residents, property owners and transport users.

At each meeting we are required to provide the following information:

- (a) A summary of current and upcoming construction works, likely impacts, and proposed communication strategies to address these.
- (b) An update on any current or emerging issues and/or any promotional opportunities.

- (c) An update on complaints received and action taken to resolve them
- (d) Other information as requested by TIDC.

The aim is for the CMCG to provide a forum to exchange information and coordinate communication and consultation activities to ensure a consistent approach to the community and other stakeholders is delivered.

Membership will comprise of representatives from the Alliance.

#### **1.4 Meetings with the community and other stakeholders**

We, and representatives from our Subcontractors, will be required to organise meetings (or to accompany TIDC) with the community or with key stakeholders, to assist in conducting consultation activities, to discuss work in progress, works upcoming, or issues pertaining to the works.

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 works, and in the resolution of community issues, as they arise and where possible. Where required by TIDC, we must provide materials for presentation and/or distribution at such meetings.

We must consider all reasonable suggestions and requests of the community. Where practical, and where it results in an improved project or process, the Alliance will, subject to ALT endorsement, incorporate the suggestions or requests into the Project.

We must ensure that the details of meetings held with all contacts with the community and key stakeholders are recorded in the CMS.

#### **1.5 Community information**

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 our Alliance Activities with the potential to impact on the community. We must comply with Annexures A and B when preparing and distributing community information.

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.

At least 5 Business Days prior to the 14-day notification period, we must submit to TIDC for approval our proposed notification materials in accordance with the process described in Annexure B. The request for approval must have been reviewed in accordance with the checklist contained within Annexure A and includes:

- (a) details of the activity and potential impacts;
- (b) proposed mitigation measures and strategy for managing the community;



- (c) proposed method and timeframe of communicating this potential impact to the community;
- (d) proposed audience list (eg letterbox drop distribution area); and
- (e) accurate and comprehensive draft community-notification content for approval.

In addition to notifying of works with the potential to impact the community, we are responsible for updating the community on a monthly basis on the status of current and upcoming construction works. We must submit the draft construction-update content to TIDC for approval at least 5 Business Days prior to distribution (as per the requirements above).

Means of advising the community may include but are not limited to flyers, newsletters, signage, posters, telephone calls, meetings and advertisements.

All information materials must be sufficiently detailed, accurate and targeted to the appropriate audience. All information materials must be of a professional quality and designed in accordance with “Guidelines for contractor notifications” section of TIDC’s Corporate Identity Style Guide.

For complex or potentially contentious issues, a communications strategy must be developed to adequately consider, address and manage the communications process.

## **1.6 Reporting to TIDC**

We will be required to provide (and explain) accurate information to TIDC regarding current and upcoming works (including works of our Subcontractors) and all associated impacts as follows:

- (a) prior to site establishment commencing: program of our Alliance Activities, scheduling, and impact minimisation measures;
- (b) monthly: works completed and upcoming, including any associated community impacts (in a format suitable for inclusion on TIDC’s website);
- (c) quarterly: works completed and upcoming, including any associated community impacts (in a format suitable for inclusion in TIDC’s project updates); and
- (d) as required: information to allow TIDC 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 Procedures detailed in the Alliance’s Crisis Management Plan as required under Schedule 8 will apply.

We will be required to be contactable on a 24-hour basis (as required).

## **1.7 Complaints and enquiries management**

We are responsible for responding to complaints and enquiries received regarding our Alliance Activities and that of our Subcontractors. Complaints and enquiries may be received through a variety of avenues including our 24-hour construction

response line or project Infoline, in writing (letter or email), direct to TIDC via telephone, in writing or direct to us or our Subcontractors.

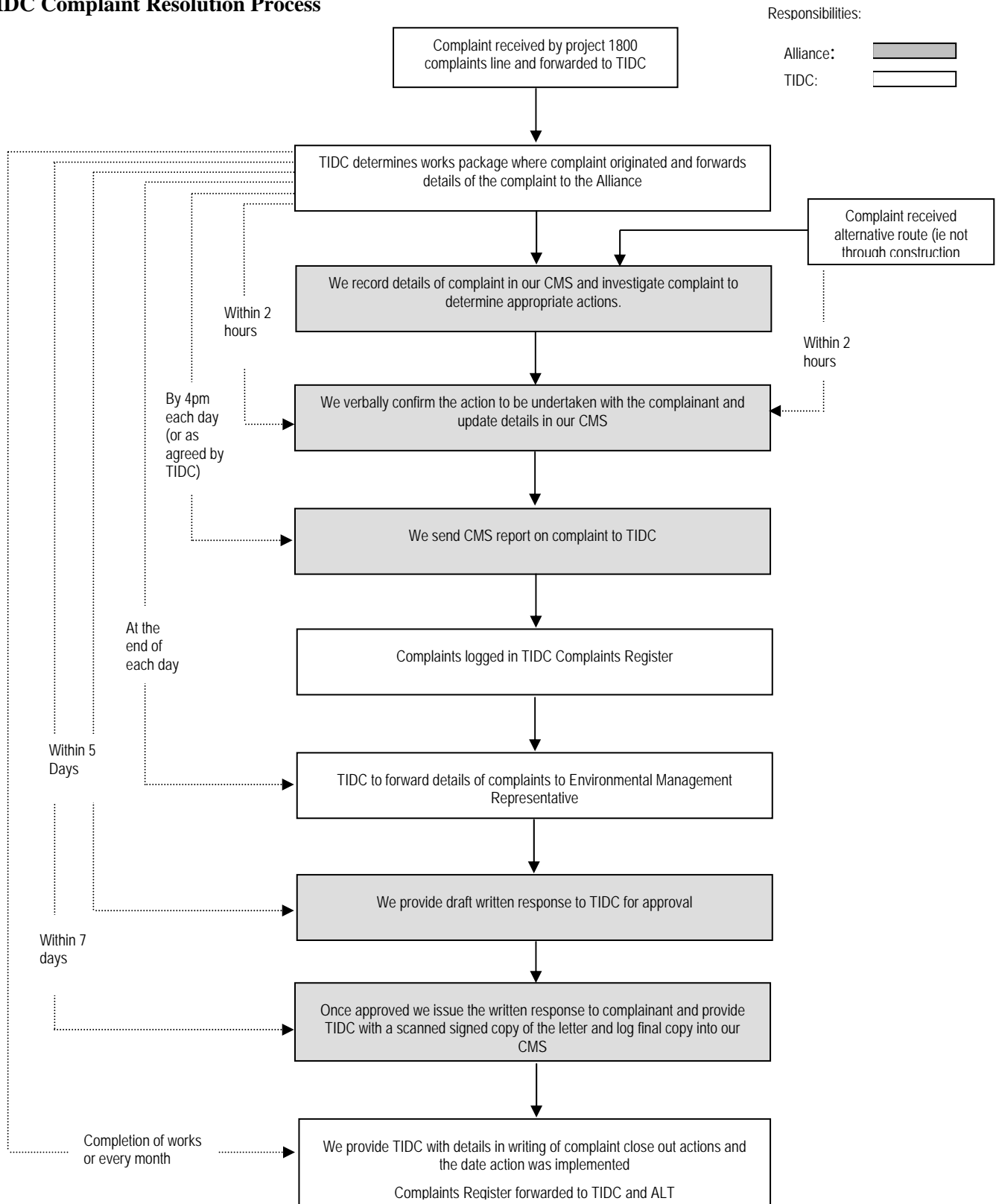
We must nominate a suitable representative to be the 24 hour contact for complaints.

In responding to complaints we must:

- (a) record details of every complaint received and how it was managed and closed out in the CMS;
- (b) investigate and determine the source of the complaint immediately. Should we determine that the complaint does not relate to our Alliance Activities we should immediately notify TIDC;
- (c) provide at least a verbal response to the complainant regarding what action is proposed. During all times when construction is being undertaken, this verbal response should be provided as soon as possible and within a maximum of 2 hours from the time of the complaint. During non-construction times, this verbal response should be provided as soon as possible and within 24 hours from the time of the complaint (unless the complainant agrees otherwise) Complaints received by email and letter should be responded to verbally as soon as possible if a phone number is provided and within a maximum of 2 hours from time of receipt. If no phone number is provided complaint should be responded to within a maximum of 24 hours for emails and one week for letters from time of receipt;
- (d) forward information on any complaints received and response times to TIDC in writing to meet requirements of the Project's Environment Protection License (EPL) each working day (TIDC to confirm);
- (e) provide a detailed written response to the complainant within 7 working days, outlining (but not limited to) the reason for the problem and the remedial action that has been taken. A draft written response is to be provided to TIDC for approval within 5 working days of receipt of the complaint;
- (f) forward a scanned signed copy of the approved written response to TIDC on the day it is sent; and
- (g) provide TIDC with details in writing of complaint close out actions and the date action was implemented.
- (h) In responding to enquiries we must:
- (i) record details of enquiries received.
- (j) provide at least a verbal response to the enquirer within 24 hours from the time of the enquiry during times when construction is being undertaken, or on the next working day during all other times (unless the enquirer agrees otherwise).
- (k) forward information on any enquiries received, and response given, to TIDC in writing to meet requirements of the Environment Protection License (EPL) each working day (TIDC to confirm).

The table below illustrates the required complaints handling and reporting process.

### TIDC Complaint Resolution Process



## 1.8 Media and Government relations

We must:

- (a) immediately make any enquiry/contact by the media known to TIDC;
- (b) not make any statement (verbal or written) or provide any photographs or illustrations to the media regarding the works without the prior written approval of TIDC;
- (c) not permit any media on a worksite without the prior written approval of TIDC;
- (d) provide TIDC with relevant information in a timely manner, as required to respond to media enquiries;
- (e) ensure all our 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.

## 1.9 Incident reporting

We must have in place appropriate incident management and crisis management procedures.

Notwithstanding the various incident reporting requirements contained in the Alliance's Crisis Management Plan, we must notify TIDC of any incident associated our Alliance Activities that may impact on the community, environment, employees, subcontractors or other stakeholders or may appear in the media.

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/or our Subcontractors must not contact or provide information 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. We must make available senior personnel to respond to the community, the media and other stakeholders when required by TIDC.

As required, we must provide TIDC with all necessary communications materials that may need to be disseminated as a result of such incidents.

Details of scale and response times for communications incident reporting are detailed in the table below.

<b>MINOR</b>	Any minor issue / incident that <b>may at some point</b> 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.	Verbal notification to TIDC within 24 hrs.  Incident/accident registers to be forwarded to TIDC on a monthly basis.
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INTERMEDIATE	Any issue / incident that is <b>likely in the short-term</b> 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.	<p>Same-day (24hr) verbal notification by us to TIDC.</p> <p><b>Note:</b> for environmental incidents, 1 hour verbal notification required.</p> <p>Report detailing the incident to be issued to TIDC within 24 hours of incident, wherever practical.</p> <p>Written incident investigation report (close out) from us within 5 days wherever practical, to TIDC.</p>
MAJOR	Any issue/incident that that <b>has attracted or will imminently attract</b> 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.	<p>Immediate verbal notification from us within 10 minutes (wherever practical) to TIDC.</p> <p>Report detailing the incident to be issued to TIDC within 4 hours, wherever practical.</p> <p>Regular verbal and/or written report updates by us as required or requested by TIDC during the life of the incident.</p> <p>Written incident investigation report (close out) by us within 5 days wherever possible to TIDC.</p>

The Contractor must ensure that all details of an incident are recorded in the CMS.

### 1.10 Site inspections by visitors

We must not organise any Site visits by community members or other stakeholders without consultation with TIDC. Where possible, we must provide TIDC with at least 48 hours prior written notice of all proposed visits.

We must accommodate regular, periodic visits to the Site by TIDC for the purpose of photography / videography for promotional purposes. 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 footage for whatever purpose TIDC deems necessary/appropriate.

### 1.11 Construction hoardings and fences

We must not place any signage (other than safety signage) on the external face of any hoarding or fence without the prior written approval of TIDC.

We will prepare signage to be placed on Site hoardings to provide the community with details of the 24-hour construction response line and any way finding signage to direct pedestrians/commuters/vehicles around the Site as appropriate.

## **1.12 Site inductions**

We must ensure our employees and the employees of our Subcontractors are adequately inducted and trained on the communication requirements of the Agreement, with particular focus on incident reporting procedures, community enquiries or complaints, and media enquiries prior to commencing work on the works.

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 for approval prior to use.

## **1.13 Accessing private property**

We must adhere to the TIDC procedure for accessing private property.

## Annexure A - TIDC communications quality checklist

This quality checklist must be completed and attached with all draft written communication provided to TIDC for review/approval.

**Communication title:**

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**Objective of communication (i.e. general update, advise of OOH work etc):**

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---

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**Date of submission to TIDC:** \_\_\_\_\_

**Date distribution to commence:** \_\_\_\_\_

**Proposed start date of any new works requiring 14 days notice:**

---

**Time period notification covers:** \_\_\_\_\_

Review/approval	Name/Position	Date
Author		
Reviewed by		
Approval by TIDC		

Checklist	Yes	No	N/A	Comment
<b>Content and context</b>				
<b>Content:</b> Does the communication clearly provide:				
• A description of each activity/event?				
• The dates, times and duration of each activity/event?				
• The location of each activity/event?				
• Information explaining the need for each activity/event?				
• Information about the impact to the community (e.g. audible works) of each activity/event?				
• Information about proposed mitigation measures to manage these impacts?				

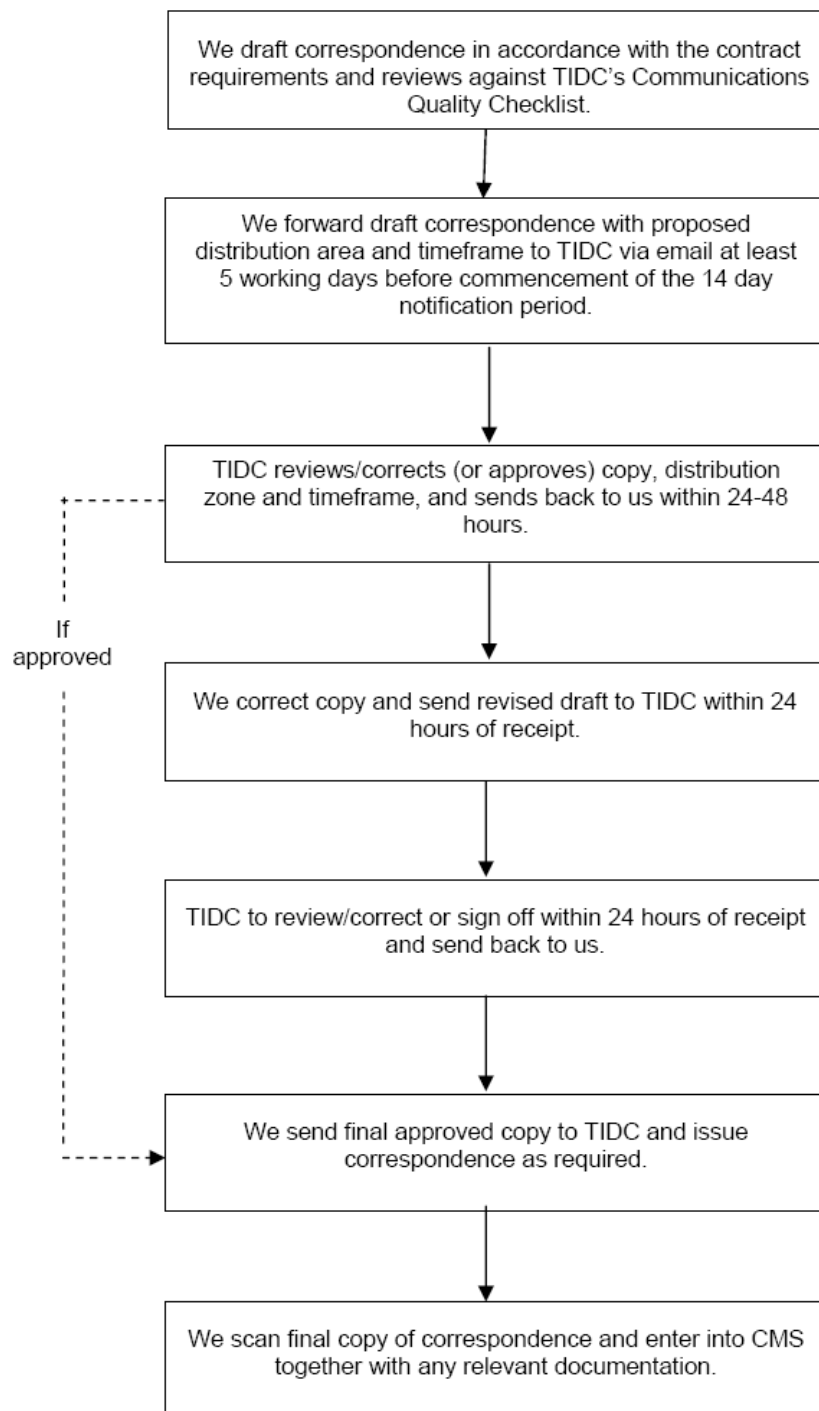
Checklist	Yes	No	N/A	Comment
<b>Distribution</b>				
• Is the proposed distribution area attached?				
<b>Out of hours work/road traffic impacts (if applicable)</b>				
• Are the details in the notification consistent with the out of hours/traffic works application(s) submitted?				
• Have the works been approved by all relevant parties (including Council or RTA if necessary)?				
• For all unapproved works, have the words 'subject to approval' been included?				
• Has justification been provided for the need for out of hours works?				
<b>Monthly construction notifications</b>				
• Have details about all current/ongoing/upcoming works been included?				
• Will an additional, more detailed notification need to be distributed closer to the date? If yes, when will the subsequent notification be distributed?				
• Is the communication consistent with other information issued to the community/stakeholders? List in comment field where appropriate other related existing/upcoming communications (i.e. advertisements, posters, signs etc).				
<b>Style and structure</b>				
• Is this <b>communication tool</b> the best way of communicating this information to the target audience?				
• Have any other additional or alternative methods been considered or implemented? If so, please list.				
• Is the most important information positioned at the beginning of the document?				
• Are the messages clear and consistent with agreed project messages?				
• Has <b>construction terminology</b> been detailed in layman's terms?				
<b>Supporting graphics.</b> If a map is included (where required):				
• Is the graphic easy to understand?				
• Are the key items, work areas, detours and/or landmarks referred to in the text easily identified?				
• Is there a legend if applicable?				
<b>Design:</b>				
• Has the entire document been reviewed for correct spelling and grammar?				
• Is the document easy to read and professionally presented?				



Checklist	Yes	No	N/A	Comment
<ul style="list-style-type: none"> <li>Are the words in the document both clear and used consistently, that is, with no jargon or repetition?</li> </ul>				
<ul style="list-style-type: none"> <li>Is the document consistent with the TIDC Style Guide?</li> </ul>				
<b>Record Keeping:</b>				
<ul style="list-style-type: none"> <li>Has this document, together with the final proof of the activity, distribution date and distribution area been saved into the CMS?</li> </ul>				

**Once approved, the communication material should be recorded into the CMS. A copy of the final should be provided to TIDC before communication is distributed.**

**Annexure B - Alliance process for approval of routine correspondence (flyers, notices, advertisements etc)**



## Schedule 20 - 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])** of [insert NOP's address] ("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 *[insert description of project site]* 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 *[insert description of works]* (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][insert NOP name] ABN  
[insert 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

## **Schedule 21 – 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 22 – South West Rail Link Claims Protocol**

### **CLAIMS PROTOCOL**

**FOR**

**SOUTH WEST RAIL LINK PROJECT**

---

## 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 South West Rail Link insurance then contact RailCorp (see Directory).

---

## 2. CLAIMS NOTIFICATION

### 2.1 Important Notice

It is a requirement of the South West Rail Link 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.

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## **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](mailto:ian.roxburgh@railcorp.nsw.gov.au)

### **TIDC**

Contact : Bevan Brown  
General Manager, Alliances

Telephone : 02-9200 0956

Fax : 02-9200 0290

Mobile : 0419 232 566

E-mail : [bevan.brown@tidc.nsw.gov.au](mailto: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](mailto:vin.gallagher@technical.net.au)

## Schedule 23 - 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 *[insert details]* (the "**NOPs**") have entered into a Project Alliance Agreement dated *[insert details]* 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 *[insert description of the works or product to be provided by the Subcontractor]* (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.
- 4. 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 24 - Deed of Novation

# Deed of Novation

[  
ABN [ ] ]

[  
ABN [ ] ]

[  
ABN [ ] ]

## Deed of Novation made at \_\_\_\_\_ on \_\_\_\_\_

**Parties**                    [ \_\_\_\_\_ ] 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.

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## 2. Condition Precedent to Novation

Clause 3 of this deed shall have no force and effect until the Effective Date.



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### **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**

As from the Effective Date:

- (a) the Substitute Party must replace any insurances effected and maintained by the Retiring Party under the terms of the Contract; and
- (b) 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.

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## **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.

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## **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.

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## **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.

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## **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

Item Description	Particulars
<b>Retiring Party</b> (clause 1.1)	.....
<b>Continuing Party</b> (clause 1.1)	.....
<b>Substitute Party</b> (clause 1.1)	.....
<b>Effective Date</b> (clause 1.1)	.....
<b>Contract</b> (clause 1.1)	..... .....
<b>State or Territory</b> (clauses 7.1 and 7.2)	.....

**Executed** as a deed.

**Executed** by **[Retiring 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

**Executed** by **[Continuing 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

**Executed** by **[Substitute Party and ABN]** by  
or in the presence of:

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Signature of Director

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Name of Director in full

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Signature of Secretary/other Director

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Name of Secretary/other Director in full