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Project Alliance Agreement Epping to Thornleigh Third Track Alliance

Transport for NSW

ABN 18 804 239 602
("TfNSW")

Leighton Contractors Pty Limited

ABN 98 000 893 667
("NOP1")

Abigroup Contractors Pty Limited

ABN 40 000 201 516
("NOP2")

VERSION 8

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Epping to Thornleigh Third Track Alliance Agreement made at Sydney on

4th March 2013

Parties

Transport for NSW ABN 18 804 239 602 a NSW Government agency constituted by section 3C(1) of the *Transport Administration Act 1988* (NSW) of Level 6, 18 Lee St, Chippendale NSW 2008 ("**TfNSW**")

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. TfNSW is a NSW Government agency 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 NSW Government agency 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 Epping to Thornleigh Third Track (the "**ETTT**") is a key project in the Northern Sydney Freight Corridor program. The primary operational objective of the Northern Sydney Freight Corridor program is to expand track capacity to enable better coordination of freight and passenger services. The ETTT does this by providing an additional northbound (uphill) track between Epping and Pennant Hills, connecting into the existing refuge track between Pennant Hills and Thornleigh (the "**Project**").
- D. The NOPs were selected to enter into this Agreement following their participation in a three stage selection process, culminating in the Proposal Development Phase.
- E. This Agreement sets out the basis on which we will complete the Alliance Activities.
- F. Capitalised words and acronyms are defined in Schedule 1. The rules regarding the interpretation of this Agreement are also set out in Schedule 1.

Operative provisions

1. Behavioural commitments

1.1 Alliance Objectives and Alliance Principles

We will:

- (a) adopt all reasonable measures to ensure that the Alliance Objectives are achieved;
- (b) conduct the Alliance Activities in a way which is consistent with the Alliance Principles and will take all reasonable steps to ensure that our Associates involved in carrying out the Alliance Activities do likewise; and



- (c) exhibit behaviours consistent with the Alliance Principles so as to achieve the Alliance Objectives within an ethical, positive, dynamic and results-oriented culture amongst those associated with carrying out the Alliance Activities.

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

1.2 Co-operation and innovation

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

- (a) meeting or exceeding the Alliance Objectives and fully complying with the Alliance Principles;
- (b) producing outstanding results for the Project;
- (c) ensuring that the Alliance Activities are carried out in a co-ordinated and efficient manner;
- (d) creating a win-win position for each of the Participants; and
- (e) ensuring the successful completion of the Works in accordance with this Agreement.

1.3 Commitment to act in good faith

- (a) We will act in good faith in carrying out the Alliance Activities and will:
 - (i) be fair, reasonable and honest;
 - (ii) do all things reasonably expected of us by the others to give effect to the spirit and intent of this Agreement; and
 - (iii) not impede or restrict each other's performance of the Alliance Activities.
- (b) 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.
- (c) Where TfNSW or the Principal's Representative is entitled under this Agreement to make a decision or determination, give or withhold consent or perform any other act or omission in its absolute discretion (including under clause 13), TfNSW or the Principal's Representative (as applicable) will not be subject to the obligation to act in good faith or to the other requirements of clause 1.3(a).

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 or 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 recommend to the Principal's Representative that an additional participant be included in the Alliance. If the Principal's Representative (in its absolute discretion) agrees on such a course (in writing):

- (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 (subject to the Principal's Representative's approval).

2. Primary performance obligations

2.1 Primary performance obligations of Participants

We will collectively perform the Alliance Activities:

- (a) in accordance with the Works Brief, the TSRs and the governance obligations as set out in Schedule 8;
- (b) in a careful, diligent, skilful and workmanlike manner;
- (c) so that the Works:
 - (i) are fit for their intended purposes as stated in, or reasonably inferred from, the Works Brief and this Agreement; and

- (ii) comply with the requirements of the Works Brief 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 TfNSW

TfNSW 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) NOP1 must provide TfNSW with a deed of guarantee and indemnity from the entity named in the Agreement Particulars in the form of Schedule 12 within 5 Business Days after the Commencement Date.
- (b) NOP2 must provide TfNSW with a deed of guarantee and indemnity from the entity named in the Agreement Particulars in the form of Schedule 12 within 5 Business Days after the Commencement Date.

2.4 NOP Arrangements

- (a) The NOPs confirm that they have entered (or will, within 5 Business Days of the Commencement Date, enter) into an arrangement with each other for the purposes of performing the Alliance Activities (which may include a partnership, special purpose vehicle, a corporation or an incorporated or unincorporated entity of another kind) pursuant to an agreement or memorandum of understanding (**Partnership Agreement**) in the form set out in Exhibit K.
- (b) Nothing in the Partnership Agreement will in any way affect the rights and obligations of the parties under this Agreement and any duty or obligation, if any, created by the Partnership Agreement will be subordinate to the NOPs obligations under this Agreement.
- (c) The NOPs must not amend the Partnership Agreement without TfNSW's consent (which will not be unreasonably withheld but which may be withheld where the proposed amendment will have any effect on this Agreement, the performance of the Works or the compensation payable to the NOPs under this Agreement).
- (d) Any costs or expenses incurred by any of the NOPs in the administration, operation or conduct of the Partnership Agreement, other than procurement obligations or liabilities entered into by the NOPs on behalf of the Participants, must be paid for by the NOPs and will not be Reimbursable Costs.

3. Governance and management

3.1 Alliance Leadership Team

The Alliance Leadership Team ("ALT") has been established in accordance with clause 5 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 6 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 6.2 to lead the AMT and report to the ALT.

3.4 Senior Executive Review Group

The Senior Executive Review Group (SERG) has been established in accordance with clause 4 to review the progress of the Project at a higher level than the ALT and to make recommendations about the Project to the Participants.

3.5 Principal's Representative

- (a) The Principal's Representative appointed by TfNSW at the Commencement Date is set out in the Agreement Particulars.
- (b) The Principal's Representative will give directions and carry out all its other functions under this Agreement as the agent of TfNSW (and not as an independent certifier, assessor or valuer) and is subject to the directions of TfNSW.
- (c) TfNSW may at any time:
 - (i) replace the Principal's Representative by notifying the NOPS; or
 - (ii) appoint additional persons to exercise any functions of the Principal's Representative in accordance with clause 3.5(d).
- (d) TfNSW may:
 - (i) by written notice to the NOPS appoint additional persons to exercise any of TfNSW's functions under this Agreement;
 - (ii) not appoint more than one person to exercise a specific function under this Agreement; and
 - (iii) revoke any appointment under clause 3.5(d)(i) by notice in writing to the NOPS.
- (e) All references in this Agreement to TfNSW include a reference to the Principal's Representative and any other representatives appointed under this clause 3.5.

3.6 NSFC Project Control Group

- (a) Pursuant to the NSFC MOU, one or more NSFC Project Control Groups (NSFC PCG) may be formed by the NSFC Steering Committee to exercise week-to-week oversight over the Project.
- (b) The membership, role and function of a particular NSFC PCG will be agreed and documented by the NSFC Steering Committee at the time of the NSFC PCG's formation.

- (c) The Participants must provide all reasonable assistance necessary to enable each NSFC PCG to carry out its role and functions in relation to the Project as agreed by the NSFC Steering Committee in accordance with clause 3.6(b).

4. SERG

4.1 Establishment and Functions

We have established the SERG to:

- (a) ensure that the health of the Alliance and the performance of the ALT is monitored; and
- (b) provide a forum for communication between senior management of the Participants and the ALT with respect to the performance of the Alliance and related corporate issues.

The functions of the SERG are more fully described in Part 1 of Schedule 6 (Functions of SERG, ALT, AMT and the Alliance Manager).

4.2 SERG Members

- (a) We each appoint the senior executive named in the Agreement Particulars to participate in the SERG (**SERG Members**).
- (b) A Participant may only appoint a person as a SERG Member if they are not directly involved in the Alliance as an ALT Member or in any other capacity.
- (c) Each Participant may replace its SERG Member with the consent of the other SERG Members (which will not be unreasonably withheld).

4.3 SERG Chairperson

- (a) The SERG will agree on the appointment of a SERG Member as the SERG Chairperson.
- (b) The SERG Chairperson will convene and chair the meetings of the SERG.
- (c) The SERG will appoint another SERG Member as the SERG Chairperson or reappoint the existing SERG Chairperson every six months, or as otherwise agreed by the SERG. The existing SERG Chairperson will remain the SERG Chairperson until such time as the SERG appoints another SERG Member as SERG Chairperson.

4.4 Meetings of the SERG

- (a) Any of us may call a meeting of the SERG, and each of us must ensure that our respective SERG Members attend the meeting.
- (b) The SERG may invite key persons to attend the meetings including the ALT, the Alliance Manager, TfNSW's Project Director and the Principal's Representative.
- (c) The SERG may also invite, as agreed, other relevant persons to attend meetings or seek expert advice as needed.

4.5 Minutes of SERG meetings

- (a) The SERG Chairperson will nominate a secretary to:
 - (i) attend all SERG meetings;
 - (ii) provide the SERG Members with an agenda for each SERG meeting;
and
 - (iii) record the resolutions and actions arising out of each SERG meeting.
- (b) The secretary will issue a copy of the minutes of the meeting to each SERG Member who attended the meeting within 5 Business Days after the relevant meeting.
- (c) Each SERG 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 a SERG Member does not accept the minutes as accurate, the SERG Member must promptly provide any amendments to the minutes to the secretary and the secretary must promptly issue amended minutes to each SERG Member who attended the meeting for approval. The procedures set out in this clause 4.5 will apply to the amended minutes.
- (d) Following acceptance of the minutes by each SERG Member who attended the meeting, the minutes will be deemed to be the official record of the relevant meeting and the secretary will issue a copy of the minutes to any SERG Member who did not attend the meeting.

5. Alliance Leadership Team

5.1 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 2 of Schedule 6 (Functions of SERG, ALT, AMT and the Alliance Manager).

5.2 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 and who have the necessary authority and delegation to make decisions in relation to the rights and liabilities of their respective organisation. 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 or emergencies for each ALT Member.
- (e) A Participant may only appoint persons as Alternative ALT Members who fulfil the requirements set out in clause 5.2(c).

- (f) 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).
- (g) The Alliance Manager may not act as an ALT Member or Alternative ALT Member.
- (h) Within 3 months after the date of being appointed an ALT Member, each ALT Member must obtain, and thereafter maintain until completion of the Alliance Activities, a:
 - (i) Rail Safety Worker Competency; and
 - (ii) current RISI Card.

5.3 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.

5.4 Meetings of the ALT

- (a) The ALT will:
 - (i) hold a meeting as soon as practicable after the Commencement Date;
 - (ii) hold meetings at least once every calendar month and otherwise when considered necessary by a majority of the ALT Members;
 - (iii) not hold a meeting unless at least one ALT Member appointed by each Participant is present at that meeting; and
 - (iv) determine the procedures and rules for those meetings.
- (b) Each ALT Member present at a meeting of the ALT will be entitled to cast one vote. Wherever possible, all votes must be cast at meetings of the ALT.
- (c) The ALT may conduct a meeting even though the ALT Members are not at the same location, provided that all ALT Members who wish to participate in that meeting are linked by an agreed method of instant voice recognition.
- (d) Within 30 days of signing this Agreement, TfNSW will provide to the ALT a briefing on the strengths and weaknesses of the AMT. The ALT will agree on an action plan with TfNSW to address any matters raised.

5.5 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 5.5(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 18.1(d) will apply.

5.6 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 who attended the meeting for approval. The procedures set out in this clause 5.6 will apply to the amended minutes.
- (d) Following acceptance of the minutes by each ALT Member who attended the meeting, the minutes will be deemed to be the official record of the relevant meeting and the secretary will issue a copy of the minutes to any ALT Member who did not attend the meeting.

5.7 Reports to the SERG

- (a) The ALT will ensure that a copy of the Alliance's monthly report is forwarded to the SERG, unless requested by the SERG not to do so.
- (b) Seven days prior to each scheduled SERG meeting, or as requested by the SERG, the ALT will provide a special report to the SERG (the **ALT Performance Report**) addressing:
 - (i) the performance of the Alliance in relation to its objectives;
 - (ii) the performance of the ALT accountabilities with particular focus on how the ALT has been providing and will continue to provide superior leadership to the Alliance;
 - (iii) any critical issues that require corporate support; and
 - (iv) the status of any issues that the ALT has been unable to unanimously agree and the ALT's actual or proposed course of action.
- (c) The initial ALT Performance Report will also include the following:
 - (i) an analysis of the ALT's structure and composition;
 - (ii) the makeup and terms of reference of any committees;
 - (iii) processes and relationship including:
 - A. the split between ALT and AMT responsibilities;

- B. the ALT's role and responsibilities;
 - C. the frequency and quality of information flows and presentations it receives;
 - D. the frequency of ALT meetings and attendance by Participants;
 - E. the decision-making processes of the ALT;
 - F. how the Alliance reports to the individual Participant organisations; and
 - G. the issues related to succession planning of the ALT.
- (d) Each subsequent ALT Performance Report will report by exception on the above items in addition to any other matters the SERG might request.

6. Alliance Management Team and Alliance Manager

6.1 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 3 of Schedule 6 (Functions of SERG, ALT, AMT and the 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.

6.2 Appointment of Alliance Manager

- (a) Subject to clause 6.2(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.

6.3 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 4 of Schedule 6 (Functions of SERG, ALT, AMT and the Alliance Manager).

6.4 Interface between Alliance Manager and ALT

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

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

6.5 Approaches to Employees

Until the Date of Final Completion, none of us will directly or indirectly approach an employee of one of the other Participants involved in the Alliance Activities with the intention of encouraging or persuading them to change employers without the prior written consent of that Participant.

7. Environmental Management

7.1 Environment Protection Licence

(a) In this clause 7.1:

EPL means an Environment Protection Licence;

EPL NOP means the NOP specified in the Agreement Particulars who will obtain an EPL in respect of the Alliance Activities;

NOP's EPL means the EPL described in clause 7.1(b);

POEO Act means *Protection of the Environment Operations Act 1997* (NSW).

TfNSW's EPL means the EPL described in clause 7.1(c); and

TfNSW's EPL End Date means the date notified by TfNSW to the Participants of when TfNSW intends that its EPL will cease to apply to the Alliance Activities.

(b) The EPL NOP must obtain an EPL in respect of the Alliance Activities.

(c) TfNSW may, in its absolute discretion, obtain an EPL in respect of the Alliance Activities which would be in force for a limited period until TfNSW's EPL End Date.

(d) The EPL NOP must keep TfNSW informed of:

(i) the progress of the EPL NOP's application for the NOP's EPL; and

(ii) without limiting clause 7.1(d)(i), the date on which it is likely the NOP's EPL will come into force.

(e) If the EPA informs the EPL NOP, in effect, that the EPA is ready, willing and able to grant the NOP's EPL so that the NOP's EPL will come into force on and from a date which is earlier than TfNSW's EPL End Date (as at the time of the EPA's information) (**Proposed NOP EPL Date**), then:

(i) without limiting clause 7.1(d), the EPL NOP must promptly inform TfNSW of that information; and

- (ii) unless TfNSW notifies the EPL NOP in writing otherwise, the parties will be taken to have agreed that TfNSW's EPL End Date is the Proposed NOP EPL Date.
- (f) The parties acknowledge and agree that if TfNSW obtains an EPL in respect of the Alliance Activities, TfNSW's EPL may be obtained by means of a variation to an existing EPL or by means of a new EPL.
- (g) If TfNSW obtains an EPL in respect of the Alliance Activities, we must:
 - (i) ensure that the Alliance Activities are carried out in accordance with TfNSW's EPL;
 - (ii) provide TfNSW with all documents and information which TfNSW requests, or which are reasonably likely to be required, in order for TfNSW to comply with TfNSW's EPL in connection with the Alliance Activities; and
 - (iii) without limiting clause 7.1(g)(i):
 - A. inform TfNSW if it is likely that, or it is proposed that, any Alliance Activities will be carried out on land, or in a way, which is not authorised by TfNSW's EPL; and
 - B. if TfNSW elects to request a variation of TfNSW's EPL to authorise those Alliance Activities, assist TfNSW to apply for and obtain that variation on terms satisfactory to TfNSW.
- (h) If TfNSW obtains an EPL in respect of the Alliance Activities and, acting reasonably, suspects that there has been or is likely to be an Alliance Activities Non-Compliance, TfNSW may issue the Participants with a notice requiring them to immediately take such steps as the notice specifies, and such other steps as are reasonably necessary to ensure any or all of the following:
 - (i) if the Alliance Activities Non-Compliance has not yet occurred, that it does not occur;
 - (ii) if the Alliance Activities Non-Compliance has occurred, that it stops and that it and any consequences of it are remedied to TfNSW's satisfaction; and
 - (iii) if an Authority has issued a notice or order in respect of the actual or likely Alliance Activities Non-Compliance, that the notice or order is satisfied,

and we must comply with such notice.

7.2 Environmental Representative

We acknowledge and agree that:

- (a) TfNSW has appointed the party named in the Agreement Particulars to be the Environmental Representative;
- (b) the Environmental Representative:
 - (i) is independent of the parties;

- (ii) shall oversee the implementation of all environmental management plans and monitoring programs required under the Planning Approval;
- (iii) shall advise us upon achievement of the outcomes contemplated in the Planning Approval;
- (iv) shall advise TfNSW and the Principal's Representative on the Participants' compliance with the Planning Approval; and
- (v) shall have the authority and independence to:
 - A. direct the Participants as to; or
 - B. advise the Principal's Representative to direct the Participants as to,
 - reasonable steps the Participants must take to avoid or minimise unintended or adverse environmental impacts; and
- (c) the Participants must comply with the directions of the Environmental Representative or the Principal's Representative as contemplated by clause 7.2(b)(v).

8. Commencement and access and care of the Site

8.1 Commencement

We will commence performing the Alliance Activities on the Commencement Date. However, the commencement of any Alliance Activities on the Project Site is subject to:

- (a) any restriction or direction of TfNSW pursuant to clause 8.2(d)(i); and
- (b) provision by the NOPs of the deed poll in favour of TfNSW and RailCorp as referred to in clause 8.2(f).

8.2 Site access for the Participants

- (a) We acknowledge that:
 - (i) access to the Project Site will be provided progressively to the Participants as set out in Schedule 22; and
 - (ii) Exhibit H contains drawings of the Project Site.
- (b) Subject to clause 8.2(c) and any other provision of this Agreement affecting access, TfNSW must:
 - (i) give, or ensure the Participants have, access to the Project Site in accordance with Schedule 22 and by the dates set out in Schedule 22 (and if a period is specified in relation to access to a part of the Project Site, then by the last day of that period); and
 - (ii) once access to a part of the Project Site is provided to the Participants, thereafter continue to allow, or ensure that the Participants are continued to be allowed, access to that part of the Project Site.
- (c) We acknowledge and agree that:

- (i) TfNSW is not obliged to give the Participants access to any part of the Project Site until:
 - A. the Principal Contractor has submitted the Project Safety Management Plan to the Principal's Representative for review under clause 10.10 and:
 - 1) the Principal's Representative has issued the notice referred to in clause 10.10(b)(iii) in respect of it; or
 - 2) the relevant period of time in clause 10.10(b) has expired and the Principal's Representative has not rejected it or made comments on it (except, in the case of comments, where the Principal Contractor has responded to the comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 10.10(c));
 - B. the Participants have:
 - 1) submitted the Environmental Management Plan and the Construction and Site Management Plan, as required by the TSR Prelude, to the Principal's Representative for review under clause 9.3 and:
 - a) the Principal's Representative has issued the notice referred to in clause 9.3(d)(ii)C in respect of each of them; or
 - b) the relevant period of time in clause 9.3(d)(ii) has expired and the Principal's Representative has not rejected any of them or made comments on any of them (except, in the case of comments, where the Participants have responded to the comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 9.3(e));
 - 2) effected the insurance policies to be effected by each Participant under clause 16;
- (ii) access to the Site or any part thereof may be subject to restrictions that:
 - A. exist under any Third Party Agreement;
 - B. exist under the terms of any easement, right of way or other dealing or interest in favour of any Authority or other person; or
 - C. are specified in Schedule 22;
- (iii) without limiting clause 8.10(a), TfNSW is not obliged to carry out any work or provide any facilities to the Participants which may be necessary

to enable the Participants to obtain access to the Site or carry out the Alliance Activities; and

- (iv) TfNSW and others will engage Other Contractors to work upon or in the vicinity of the Site at the same time as the Participants.
- (d) We must:
 - (i) comply with all reasonable restrictions and directions of TfNSW in relation to access to the Project Site or any part of the Project Site by the Participants, Subcontractors or other parties, such as service providers;
 - (ii) comply with the terms of any construction leases or construction licences procured by TfNSW or the NOPs;
 - (iii) without limiting Schedule 11, comply with all Third Party Agreements and the Interface Agreement;
 - (iv) maintain the Site in a safe, clean and tidy condition; and
 - (v) on completing work at the Site and as a condition precedent to Completion:
 - A. remove all Construction Plant, Temporary Works and all surplus materials and rubbish from the Site; and
 - B. leave the whole of the Site in a safe, clean and tidy condition.
- (e) TfNSW's obligations under clause 8.2(a) and clause 8.2(b) in respect of the Project Site will cease upon the issue of the Certificate of Final Completion, except to the extent specified otherwise in Schedule 22.
- (f) The NOPs must:
 - (i) within 5 Business Days of the Commencement Date; and
 - (ii) as a condition precedent to any obligation of TfNSW to pay the NOPs any amount under clause 14.2,

provide to TfNSW two copies of the deed poll in the form of Schedule 34 executed by the NOPs.

Without limiting clause 8.2(d)(iii) TfNSW agrees that it will comply with those obligations under the Interface Agreement that Schedule 11 provides are to be performed by TfNSW and not by the Participants.

8.3 Alliance to acquire access

We will, subject to clause 8.9(a)(ii) and clause 8.10, obtain all necessary access to the Remote Sites and Extra Land.

8.4 Site access for TfNSW

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

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

8.5 Access protocols

Any person who is given access pursuant to clauses 8.2, 8.3 or 8.4 must be required to fully comply with:

- (a) all access protocols established by the Participants;
- (b) any Site safety regulations, Site rules and directions of the Principal Contractor with respect to work health and safety.

8.6 Care of the Works

- (a) From the Commencement Date until the Date of Completion, we will be responsible for the care of the Works, the Construction Plant 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 Works, any Construction Plant 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 11.3 (Defects) until the date on which the Certificate of Final Completion is approved and completed by the Principal's Representative under clause 12.4 (Certificate of Final Completion).

8.7 Reinstatement

We will promptly make good any loss or damage to the Works, the Construction Plant or any unfixed goods or materials that occurs during any period in which we are responsible for their care under clause 8.6 (Care of the Works).

8.8 Temporary Works

- (a) The Participants must carry out all Temporary Works required to execute the Alliance Activities so that the Alliance Works are fit for their intended purposes as stated in, or reasonably inferred from, the Works Brief and this Agreement.
- (b) Where any Temporary Works are to be carried out on any property, the Participants must give written notice to the Principal's Representative identifying such property and describing the Temporary Works to be performed on such property. Such notice must:
 - (i) be given prior to the date on which the Participants intend to commence the Temporary Works; and
 - (ii) specify the intended commencement and completion dates.
- (c) The Participants must keep a register of all notices under clause 8.8(b) and make this register available to the Principal's Representative and TPD's Property Group for inspection and copying at all reasonable times.
- (d) Upon being given access to any property for the purpose of carrying out any Temporary Works, the Participants must promptly carry out those Temporary Works in a manner which:

- (i) minimises inconvenience and disruption to the owners, occupiers and users of the property; and
 - (ii) complies with the requirements set out in the TSRs.
- (e) The Participants must:
- (i) reinstate any property upon which any Temporary Works have been carried out to a state that is equivalent to the state it was in immediately prior to the Participants obtaining access; and
 - (ii) otherwise repair any damage or degradation to any part of any property arising out of or in any way in connection with the performance of its obligations under this clause 8.8.
- (f) The completion of all Temporary Works under this clause 8.8 is a condition precedent to Completion of the Alliance Works or any Portion.

8.9 Remote Sites and Extra Land

- (a) We acknowledge and agree that:
- (i) the Remote Works form part of the Alliance Works or the Temporary Works;
 - (ii) the location of the Remote Sites may not be fixed and, in such cases, must be determined by the Participants in consultation with TfNSW and any relevant entity who is to take the benefit of the Remote Works; and
 - (iii) we will comply with all directions of the owners, occupiers or persons providing access to the respective Remote Sites or Extra Land, including in respect of any Service connection points.
- (b) We must:
- (i) subject to clause 8.10, procure the occupation or use of or relevant rights over any land or buildings in addition to the Project Site, including any land owned by RailCorp which is necessary or which may be required for the purposes of carrying out the Alliance Activities;
 - (ii) carry out all activities and procure all Services necessary to make the Remote Sites and Extra Land suitable for use by the Participants; and
 - (iii) as a condition precedent to Completion of the Alliance Works or each Portion:
 - A. rehabilitate any Remote Sites and Extra Land in accordance with the requirements of all relevant Authorities and other relevant persons; and
 - B. unless not required by the Principal's Representative (acting reasonably), provide to the Principal's Representative a properly executed certificate in the form of Schedule 21 or a release on terms otherwise satisfactory to the Principal's Representative from all claims or demands (whether for damages or otherwise howsoever arising) from the owner or

occupier of, and from other persons having interest in, any Remote Sites or Extra Land.

8.10 Property Acquisition

- (a) TfNSW will procure access to the Project Site for us.
- (b) Any permanent property rights required in relation to the Project Site must be acquired by TPD's Property Group (on behalf of TfNSW). We must involve the Principal's Representative as early as possible in the process of planning any Alliance Activities that involve such rights. The Principal's Representative will then involve TPD's Property Group as required.
- (c) We must identify in the Alliance's project delivery program milestone dates by which we must notify the Principal's Representative of required property acquisitions in connection with the Project Site (including leases and licences).
- (d) The milestone dates identified in the Alliance's project delivery program must be no less than 12 months prior to the dates by which the applicable property acquisition is required.
- (e) We may also request the Principal's Representative's assistance in obtaining access to land other than the Project Site (including Extra Land and Remote Sites), in which case:
 - (i) we must provide notice to the Principal's Representative in writing containing the details of any such request;
 - (ii) the Principal's Representative will then notify TPD's Property Group; and
 - (iii) TPD's Property Group may, in its absolute discretion, provide such assistance or decline to do so.
- (f) Upon:
 - (i) receiving written notice from us requesting the Principal's Representative's and TPD's Property Group's involvement in any matters referred to in clause 8.10(b); or
 - (ii) agreeing to assist us in relation to a request made under clause 8.10(e),TPD's Property Group will allocate appropriate resources to manage such matters on behalf of and in collaboration with us.
- (g) Any costs incurred by TfNSW or TPD's Property Group:
 - (i) in relation to the Project Site, will be borne by TfNSW and will not be taken into account in calculating the actual outturn cost for the purposes of the Commercial Framework; and
 - (ii) in relation to any Remote Sites or Extra Lands, will be TfNSW Alliance Costs.
- (h) In carrying out the Alliance Activities we will ensure that we, the Principal's Representative and TPD's Property Group comply with all applicable requirements of the TSRs.

8.11 Condition Surveys

- (a) TfNSW has undertaken a condition survey of the properties listed in Exhibit E. We may undertake further condition surveys of these listed properties.
- (b) Subject to clause 8.8(d), we must identify and prepare a condition survey (**Condition Survey**) of all property that could be affected or damaged by the Alliance Activities (including any condition surveys required by the Planning Approval).
- (c) The Condition Survey referred to in clause 8.11(b):
 - (i) must be undertaken in accordance with the property management plan described in the TSR Prelude (**Property Management Plan**) and the Planning Approval;
 - (ii) may only be undertaken after the Property Management Plan has been approved by the Principal's Representative (which approval will not be unreasonably withheld);
 - (iii) must be undertaken by suitably skilled, qualified and experienced personnel or Subcontractors approved by the AMT;
 - (iv) must be repeated immediately prior to the Completion of the Alliance Works or a Portion by the same personnel or Subcontractors referred to in clause 8.11(c)(iii), or such other as the AMT may reasonably approve; and
 - (v) is subject to any conditions of access and use in clause 1.3 of Schedule 22.
- (d) We must prepare the Condition Survey referred to in clause 8.11(b) a minimum of two weeks prior to commencing any work on the Project Site, or on any other land which is necessary for performing the Alliance Activities or undertaking the Works, where that work could damage property on or off the Site.

8.12 Third Party Agreements

- (a) We:
 - (i) acknowledge that TfNSW has entered or will enter into the Third Party Agreements;
 - (ii) must:
 - A. unless otherwise expressly specified in Schedule 11, comply with, satisfy, carry out and fulfil the conditions and requirements of all Third Party Agreements, including those conditions and requirements that TfNSW is required, under the terms of the Third Party Agreements, to comply with, satisfy, carry out and fulfil; and
 - B. comply with and fulfil any conditions, obligations or requirements allocated to us in Schedule 11 that are additional to or more stringent or onerous than the conditions and requirements described in clause 8.12(a)(ii)A;

- (iii) must assist TfNSW in any way that TfNSW reasonably requires to enable TfNSW to perform the obligations identified for TfNSW to perform in Schedule 11;
 - (iv) must comply with any reasonable directions of the Principal's Representative (who will have regard to any reasonable submissions made by the Participants to the Principal's Representative) in relation to compliance with the relevant conditions and requirements of each Third Party Agreement;
 - (v) must, where a Third Party Agreement provides for TfNSW to provide a document, notice or information to the Third Party, provide such document, notice or information to TfNSW (and not to the Third Party) within a reasonable time sufficient for TfNSW to review and comment on the document, notice or information and provide it to the Third Party within the time period required by a Third Party Agreement;
 - (vi) must, in carrying out the Alliance Activities:
 - A. ensure that no act or omission of the Participants constitutes, causes or contributes to any breach by TfNSW of its obligations to the Third Party under the Third Party Agreement; and
 - B. otherwise act consistently with the terms of the Third Party Agreement; and
 - (vii) acknowledge that to the extent that a Third Party Agreement contains a provision pursuant to which the Third Party is stated to make no representation as to a state of affairs, the Participants agree that TfNSW similarly makes no representation to them in respect of that state of affairs in the same way as if the relevant terms of the Third Party Agreement were set out fully in this Agreement.
- (b) We acknowledge that:
- (i) as at the date of this Agreement, the terms and conditions of the Third Party Agreements identified in the Agreement Particulars as "Draft" have not been finalised between TfNSW and the relevant Third Party (each a **Draft Third Party Agreement**);
 - (ii) following finalisation of any Draft Third Party Agreement after the date of this Agreement:
 - A. TfNSW must promptly give the Participants a copy of the executed version of the Draft Third Party Agreement and amendments (if any) to Schedule 11 arising out of the execution of the Draft Third Party Agreement (**Revised Allocation**); and
 - B. we must comply with the final terms of each Third Party Agreement (subject to the obligations to be performed by TfNSW in accordance with the Revised Allocation).

8.13 Co-operation with Other Contractors

- (a) Without limiting clause 8.14, the Participants must:

- (i) permit Other Contractors to carry out their work;
 - (ii) fully co-operate with Other Contractors;
 - (iii) carefully coordinate and interface the Alliance Activities with the work carried out or to be carried out by Other Contractors; and
 - (iv) carry out the Alliance Activities so as to minimise any interfering with, disrupting or delaying the work of Other Contractors.
- (b) We will use best endeavours to ensure that each of the Other Contractors that undertakes Other Contractor Work executes a deed poll in favour of the Principal Contractor and TfNSW in the form set out in Schedule 33.

8.14 Co-operation with Interface Contractors

We:

- (a) acknowledge that:
 - (i) the Interface Work forms part of the Project;
 - (ii) the Alliance Activities interface with the Interface Work;
 - (iii) Interface Contractors will be executing work on parts of the Site or adjacent to the Site, at the same time as we are performing the Alliance Activities;
 - (iv) the timing of the Interface Contractors' activities is not yet known;
 - (v) it will require certain design and work methodology input from Interface Contractors to coordinate the design of the Works with the Interface Work;
 - (vi) Interface Contractors will require us to provide design and work methodology information to them to coordinate the design of the Interface Work with the Works and we must provide this in a timely manner; and
- (b) must at all times:
 - (i) permit Interface Contractors to execute the Interface Work on the applicable parts of the Site or on any adjacent property to the Site:
 - A. at the same time as we are performing the Alliance Activities; and
 - B. at the times agreed with the Interface Contractor,

and for this purpose ensure they have safe, clean and clear access to those parts of the Site or property adjacent to the Site required by them for the purpose of carrying out their work;
 - (ii) protect the Works and other improvements on the Site from accidental damage by Interface Contractors and provide means of receiving, storing and protecting goods and equipment supplied by Interface Contractors;

- (iii) fully co-operate with Interface Contractors, and do everything necessary to:
 - A. facilitate the execution of work by Interface Contractors, including providing Interface Contractors with such assistance as may be reasonably required; and
 - B. ensure the effective coordination of the design and construction of the Works with the design and construction of the Interface Work;
- (iv) carefully coordinate and interface the Alliance Activities with the Interface Work, and for this purpose:
 - A. make proper allowance in all programs for Interface Work;
 - B. review all programs provided by Interface Contractors and confirm that they adequately allow for the Alliance Activities and the interfaces of the Interface Work with the Alliance Activities;
 - C. monitor the progress of the Interface Work;
 - D. notify the Principal's Representative of any interface or sequence of activities that may affect the commencement, progress or Completion of the Works or any Portion;
 - E. provide the Interface Contractors with sufficient information about the current and expected Alliance Activities to assist them to coordinate their Interface Work with the Alliance Activities; and
 - F. must cooperate, meet with, liaise, and share information so that we and the relevant Interface Contractor each comply with the provisions of the relevant Environment Protection Licence and other Approvals;
- (v) perform the Alliance Activities so as to minimise any interference with or disruption or delay to the Interface Work;
- (vi) be responsible for coordinating the Alliance Activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, Interface Contractors' personnel and work, including providing to the Principal's Representative work method statements for those parts of the Works which are adjacent to or interface with any Interface Work, at least 15 Business Days prior to commencing the work described in the work method statement;
- (vii) work directly with Interface Contractors to complete the design of the Works and provide all necessary information to the Interface Contractor in respect of the Works to permit the Interface Contractor to complete the design of the Interface Work;
- (viii) attend interface coordination meetings with Interface Contractors and others each 14 days, or at other times to be advised by the Principal's Representative, to review current and future issues, including the

exchange of information, status, problems, solutions, and newly identified interfaces;

- (ix) when information is required from an Interface Contractor, give at least 10 days (except in special circumstances), and at all times reasonable, written notice to that Interface Contractor requesting such information and specifying the date by which such information is required, with a copy to the Principal's Representative;
- (x) ensure that any written notice given under sub-paragraph (ix) provides the Interface Contractor with the longest possible time for the provision of the information;
- (xi) when any information is requested by Interface Contractors, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the Interface Work with the Works or the Alliance Activities:
 - A. provide the information to the Interface Contractor, with a copy to the Principal's Representative, within the time requested by the Interface Contractor provided that this time is reasonable;
 - B. ensure that such information is provided to Interface Contractors by the requested dates; and
 - C. ensure and warrant that the information provided is accurate; and
- (xii) use our best endeavours to resolve any problems, and work closely and iteratively, with Interface Contractors, including providing design options, iterations, and work methodologies, to achieve the best solution to such problems, related to:
 - A. the provision of information;
 - B. the obtaining of information;
 - C. the adequacy of information provided to, or received from, Interface Contractors;
 - D. the compatibility of the Works with the Interface Work;
 - E. coordination in accordance with this clause 8.14; and
 - F. technical issues with the information provided to, or received from, Interface Contractors;
- (c) must, in the event that despite using our best endeavours, and working closely and iteratively with the Interface Contractors, the Participants and any Interface Contractor fail to resolve a problem between them:
 - (i) give written notice to the Principal's Representative with a copy to the Interface Contractor describing the problem; and
 - (ii) attend any coordination meetings as requested by the Principal's Representative, and in good faith work with those present to attempt to resolve the problem;

- (d) must promptly advise the Principal's Representative of all matters arising out of the liaison with Interface Contractors that may involve a change to design or construction work under this Agreement or otherwise have an adverse effect upon the Alliance Activities; and
- (e) acknowledge that conditions similar to those in this clause 8.14 applying to us will apply to all Interface Contractors engaged by TfNSW, whether working on the Site or any other site.

8.15 Interface Disputes

- (a) Where we have complied with all of our obligations in clause 8.14, we must promptly give the Principal's Representative written notice of any interface issue or dispute with any Interface Contractor.
- (b) Upon receipt of our notice under clause 8.15(a), the Principal's Representative may:
 - (i) within 5 Business Days convene a meeting between us, the relevant Interface Contractor and any other relevant person; and
 - (ii) work in good faith with us and the Interface Contractor to resolve the issues or dispute.

8.16 Track Possessions and Power Isolations

- (a) The table in Schedule 31 identifies the currently available Track Possessions and power isolations.
- (b) TfNSW will liaise with RailCorp to procure the Track Possessions set out in Schedule 31.
- (c) We acknowledge that we will not have exclusive access to any track the subject of a Track Possession and must:
 - (i) without limiting clauses 8.13 or 8.14, coordinate our activities with whoever else is sharing the relevant Track Possession; and
 - (ii) allow RailCorp and Other Contractors to pass through any track the subject of the relevant Track Possession.
- (d) If we require a Track Possession or power isolation in addition to the Track Possessions and power isolations identified in clause 8.16(a) for the performance of the Alliance Activities (**Additional Track Possession or Power Isolation**) and require TfNSW to liaise with RailCorp in this regard, we must provide no less than:
 - (i) 26 weeks prior written notice in respect of each Additional Track Possession or Power Isolation that falls on a weekend; or
 - (ii) 20 weeks prior written notice in respect of each Additional Track Possession or Power Isolation that falls on a weeknight or which requires a power isolation only, and identify whether a power isolation is required during the requested Additional Track Possession or Power Isolation.
- (e) Following receipt of a request for an Additional Track Possession or Power Isolation under clause 8.16(d), TfNSW may assist us to obtain the requested Additional Track Possession or Power Isolation, but is under no obligation to do so

and in no way guarantees that the requested Additional Track Possession or Power Isolation will be granted by RailCorp.

- (f) If an Additional Track Possession or Power Isolation is granted by RailCorp, we:
 - (i) must make the necessary arrangements for the Additional Track Possession or Power Isolation in accordance with clause 5.4 of the TSR Prelude; and
 - (ii) acknowledge that we must pay for any costs payable for the relevant Additional Track Possession or Power Isolation and that these costs will be taken into account in calculating the actual outturn cost for the purposes of the Commercial Framework.
- (g) We must effectively and efficiently utilise each Track Possession.
- (h) We acknowledge and agree that RailCorp may alter or cancel any Track Possession, power isolation or Additional Track Possession or Power Isolation at any time.

8.17 TfNSW Supplied Items

TfNSW will make available the TfNSW Supplied Items.

9. Design, documents and auditing

9.1 Supply of design and documents by TfNSW

- (a) TfNSW may provide the Participants with design, documentation and specifications from time to time.
- (b) The NOPs will not (and will ensure that their Subcontractors do not) use, copy or reproduce the design, documentation or specifications provided by TfNSW for any purpose other than for the Works.
- (c) The design, documentation and specifications provided by TfNSW will remain the property of TfNSW and will be returned by the NOPs to TfNSW if requested in writing by TfNSW (provided that the NOPs may retain one copy for their records).

9.2 Supply of design and other documents

We will:

- (a) prepare Design Documentation and other documentation as is necessary to enable the Participants to construct the Works and otherwise carry out the Alliance Activities;
- (b) provide TfNSW with:
 - (i) copies of all such Design Documentation and other documentation as it may require from time to time;
 - (ii) a complete set of Asset Management Information for the completed Alliance Works; and
 - (iii) any certificates, designs, documentation, surveys, approvals, programs or notices so that TfNSW is able to fulfil its responsibilities and obligations under all applicable Approvals with respect to the Works.

9.3 Submission for review by Principal's Representative

- (a) The Participants must submit the Design Documentation, the Alliance Management Plan, all other management plans and any other document (each of which in this clause 9.3, will be referred to as a **Document**) which is required to be submitted for the review of TfNSW or the Principal's Representative under a provision of this Agreement or the TSRs:
 - (i) progressively and in a timely manner to ensure that the Alliance Activities are commenced, progressed and completed by the times required under this Agreement, and by the times or within the periods:
 - A. required by this Agreement or the TSRs;
 - B. in the absence of a time or period in this Agreement or the TSRs, identified in the Alliance's project delivery program; or
 - C. in the absence of a time or period in the Alliance's project delivery program, required by the Principal's Representative; and
 - (ii) under cover of a written notice entitled "Submit for Review", which identifies:
 - A. the Document; and
 - B. the provision of this Agreement under which the Document is submitted.
- (b) Where the Document being submitted under clause 9.3(a) is Design Documentation, it must:
 - (i) be accompanied by:
 - A. the Alliance Certificate of Design Compliance;
 - B. in respect of the Detailed Designer, the Detailed Designer's Certificate of Design Compliance;
 - C. in respect of the Signalling Designer, the Signalling Designer's Certificate of Design Compliance; and
 - D. in respect of any other Designers, the Designers' Certificates of Design Compliance;
 - (ii) where the design the subject of the Design Documentation must have Approval prior to being implemented, then the Participants must with the Document submit evidence (to the reasonable satisfaction of the Principal's Representative) of the relevant Approval.
- (c) A Document will be deemed not to have been submitted to the Principal's Representative unless and until:
 - (i) the Document covers, fully details and co-ordinates the whole of discrete areas of work so as to allow the area of work to be fully understood; and

- (ii) the Participants have otherwise complied with this clause 9.3, in addition to any other requirement of this Agreement relating to the submission of that Document.
- (d) The Principal's Representative may:
- (i) direct that any Document the Participants:
 - A. previously submitted is a Document that is to be reviewed under the provisions of this clause 9.3; and
 - B. is obliged to submit will be reviewed under the provisions of this clause 9.3;
 - (ii) after the submission of a Document that satisfies the requirements of clause 9.3(b) and 9.3(c) (where applicable), review the Document, or any resubmitted Document, prepared and submitted by the Participants and:
 - A. reject the Document (and state reasons) if in its opinion the Document (or any part) does not comply with the requirements of this Agreement;
 - B. make comments on the Document, or request clarification or additional information; or
 - C. notify the Participants that it has no (or has no further) comments to make,

within relevantly, the later of:

 - D. where a time or period is stated in the TSRs for a specific Document, that time or the expiry of that period; and
 - E. for all other Documents, 15 Business Days from submission.
- (e) If any Document is:
- (i) rejected or deemed to be rejected, the Participants must submit an amended Document to the Principal's Representative within 10 Business Days after the date of such rejection or deemed rejection and this clause 9.3 will re-apply; or
 - (ii) not rejected and the Principal's Representative responds to the submission with comments, or requests clarification or additional information, the Participants must respond to the comments or request within 5 Business Days or such other period as may be directed by the Principal's Representative.
- If the Participants:
- (iii) respond to the Principal's Representative's comments or request within the period referred to in clause 9.3(e)(ii) in a manner satisfactory to the Principal's Representative, the Principal's Representative will notify the Participants that it has no (or no further) comments to make within 5 Business Days of that response; or
 - (iv) fails to respond to the Principal's Representative's comments or request within the period referred to in clause 9.3(e)(ii) in a manner satisfactory

to the Principal's Representative, or the Principal's Representative does not give a notice under clause 9.3(e)(iii):

- A. the Document will be deemed to be rejected;
- B. the Principal's Representative shall, by notice in writing, confirm that the Document has been rejected; and
- C. clause 9.3(e)(i) will apply.

(f) The Participants must not commence construction of any part of the Works to which any Document applies, unless:

- (i) the Principal's Representative has notified the Participants under clause 9.3(d)(ii)C that it has no (or has no further) comments to make; or
- (ii) the relevant period of time in clause 9.3(d)(ii) has expired and the Principal's Representative has not rejected the Document or made any comments on the Document (except, in the case of comments, where the Participants have responded to the Principal's Representative's comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 9.3(e)),

and the AFC Design Documentation exists for that element of the Works.

(g) The Participants must not amend for construction purposes any Document that has been submitted to the Principal's Representative and, in respect of which:

- (i) the Principal's Representative has given the Participants the notice referred to in clause 9.3(d)(ii)C; or
- (ii) the relevant period of time in clause 9.3(d)(ii) has expired and the Principal's Representative has not rejected it or made any comments on it (except, in the case of comments, where the Participants have responded to the comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 9.3(e)),

unless the Participants submit the proposed amendments to the Principal's Representative, in which case this clause 9.3 will re-apply.

(h) In considering, reviewing, commenting upon, or rejecting any Document, the Principal's Representative may:

- (i) consult with;
- (ii) take into account any views or requirements of; and
- (iii) direct the Participants to comply with the lawful requirements of, any relevant Authority.

(i) The Participants acknowledge and agree that they have made allowances in the Alliance's project delivery program for the time required for:

- (i) all relevant Authorities to review its design;

- (ii) the submission, review, comment, rejection and all other design development processes contemplated by the Third Party Agreements; and
 - (iii) the issue of Configuration Change Notices during development of the design.
- (j) The restrictions on the commencement of any part of the Works in this clause 9.3 are in addition to any restrictions that exist elsewhere in this Agreement, including under any Third Party Agreement.
 - (k) For the purposes of calculating time under this clause 9.3, the days between 24 December and 7 January shall not be counted as Business Days.

9.4 AMP and TSR Implementation

We will:

- (a) prepare and finalise the Alliance Management Plan and all remaining plans listed in the TSRs as required by the TSRs;
- (b) implement the Alliance Management Plan (including all sub-plans) and comply with its requirements in performing the Alliance Activities; and
- (c) comply with the requirements of the TSRs and Schedule 8.

9.5 Exchange of Information Between Government Agencies

The Participants acknowledge that TfNSW is required to provide information about the Alliance to the NSW Government. The NOPs authorise TfNSW, 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 TfNSW 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 TfNSW and NSW Government departments and agencies in considering whether to offer the NOPs future opportunities for NSW Government work.

9.6 NOP Performance Reports

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

9.7 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 9.7.
- (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 for any purposes other than for or in connection with the Project or the Alliance Activities, 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 to the extent 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 borne entirely by the Licensee.

9.8 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.

9.9 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 (the "**Indemnifier**") will indemnify each other Participant (an "**Indemnified Participant**") against all Claims, losses or expenses each Indemnified Participant incurs as a result of a breach by the Indemnifier of clause 9.9(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.

9.10 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 TfNSW and RailCorp;
 - (ii) provide TfNSW with copies of each written consent and waiver obtained under this clause 9.10, at TfNSW's request; and
 - (iii) ensure that none of its Associates or licensors institutes, maintains or supports any claim or proceedings for infringement by TfNSW of any of the NOP's Associates', or licensors' Moral Rights in the Work Product.
- (b) Each Participant (the "**Indemnifier**") must indemnify each other Participant (an "**Indemnified Participant**") 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 an Indemnified Participant or RailCorp) or any claim or proceedings, that an Indemnified Participant or RailCorp may sustain or incur as a result of a breach of this clause 9.10 by the Indemnifier.

9.11 Claims

We must:

- (a) provide, at no cost to the other Participants, all reasonable assistance required by a Participant or RailCorp to defend a claim or any proceedings arising from defending any claim for the infringement of:
 - (i) Intellectual Property Rights vested in a Participant under clause 9.7(a);
 - (ii) any Intellectual Property Rights of third parties; or
 - (iii) a person's Moral Rights; and
- (b) keep the Participants 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.

9.12 Confidentiality

- (a) Except for the efficient performance of the 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 Works or the Project or which was communicated in the course of negotiation and development of this Agreement, without obtaining TfNSW's prior written consent (which consent can be withheld in the absolute discretion of TfNSW).

(b) Each NOP must:

- (i) execute and submit to TfNSW within 14 days of this Agreement a Confidentiality Undertaking; and
- (ii) ensure that all employees of the NOP that have access to the information described in the Confidentiality Undertaking are aware of their obligations under the terms of the Confidentiality Undertaking.

(c) The NOPs must take all reasonable steps to protect the confidentiality of all information relating to the Agreement, the Works and the Project.

(d) Clause 9.12(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 9.12 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 TfNSW of that requirement;
- (ii) takes all lawful measures available, and allows TfNSW 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 9.12(f)(iii), TfNSW may publish or otherwise disclose parts of this Agreement and information concerning the terms of this Agreement to NSW Government departments or agencies or as otherwise required by law; and
- (ii) TfNSW may be required to publish information concerning this Agreement:
 - A. in accordance with the GIPA Act in response to an access application under Part 4 of that Act or as part of its disclosure obligations for government contracts in the government contracts register under Part 3, Division 5 of that Act;

- B. under any similar or replacement legislation to the GIPA Act; or
 - C. by the Auditor-General or Parliament;
- (iii) the Commercial Framework is commercial-in-confidence (as defined in Part 3, Division 5 of the GIPA Act) and will not be disclosed except:
- A. to RailCorp or the employees, contractors or advisors of TfNSW 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 TfNSW; or
 - D. with the written consent of the NOPs.
- (g) The disclosure of information as contemplated by this clause does not relieve the NOPs of any of their confidentiality obligations under this Agreement.
- (h) Each NOP must provide to TfNSW:
- (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 TfNSW reasonably requires to comply with its obligations under the GIPA Act.
- (i) Within three Business Days of receiving a written request by TfNSW, each NOP must give TfNSW:
- (i) full and immediate access to information contained in records held by the NOP that:
 - A. relate to the NOP carrying out the Alliance Activities;
 - B. has been collected by the NOP from members of the public to whom the NOP provides or offers to provide services in carrying out the Alliance Activities; and
 - C. the NOP has received from TfNSW to enable the NOP to carry out the Alliance Activities; and
 - (ii) such other assistance as TfNSW may reasonably require in order to meet its obligations under the GIPA Act.

9.13 Public Disclosure

- (a) The NOPs must not, and must ensure that their Related Parties and Subcontractors do not, make any public disclosures, announcements or statements in relation to the Project or TfNSW's involvement in the Project without the prior written consent of the Principal's Representative. If such disclosure, announcement or statement is required as a matter of law, such consent will not be unreasonably withheld.

- (b) The terms of any Subcontract must contain a public disclosure clause substantially the same as clause 9.13(a).

9.14 Transparency

We acknowledge that it is of paramount importance to TfNSW 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.

9.15 Financial Auditor

- (a) TfNSW will appoint and pay a Financial Auditor ("FA") for the Alliance.
- (b) The FA's overriding brief from TfNSW is to audit and verify the Reimbursable Costs and to ensure that in respect of all payments made pursuant to this Agreement, the Participants receive their entitlement in accordance with clause 14.2 (Invoices and payment).
- (c) The Alliance Manager must ensure that any reports or advice from the FA 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, TfNSW may appoint a different person or company to be the FA.
- (e) References in this Agreement to the FA will include the authorised representatives of the FA.

9.16 Audit of Records

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 16.8 (Accounting for insurance proceeds) or clause 16.13 (Accounting for third party payments and recoveries), the NOPs are required to provide:

- (a) detailed breakdowns of any Reimbursable Costs which have been aggregated on a monthly basis; and
- (b) TfNSW and the FA the right to:
 - (i) audit the process by which Reimbursable Costs are incurred and recorded by the Participants;
 - (ii) have access at all reasonable times to the personnel and Records of the Participants that are related to Reimbursable Costs (such access is not to be unreasonably withheld); and
 - (iii) reproduce any Records referred to in clause 9.16(b)(ii).

9.17 Overpayments

- (a) If the FA, in pursuing its overriding obligations as described in clause 9.15(b), identifies that a NOP has been paid an amount that is greater than that to which it is entitled under clause 14 (the **Overpayment Amount**), then the Overpayment Amount will become a debt due and payable from the NOP to TfNSW.

- (b) An Overpayment Amount determined by the FA in accordance with clause 9.17(a) may, subject to the Principal's Representative's determination (in its absolute discretion) as to whether or not the Overpayment Amount is material, incur simple interest at the Default Rate from the day after the date on which the NOP received the Overpayment Amount to (and including) the date on which the Overpayment Amount is repaid to TfNSW.

9.18 Retention of Records

- (a) Due to the "open book" nature of this Agreement, the NOPs must provide to TfNSW at its request copies of all Records regarding the Reimbursable Costs or the Alliance Activities.
- (b) Copies of the Records referred to in clause 9.18(a) must be provided to TfNSW in accordance with the Compensation Audit Plan.

9.19 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.

9.20 Continuing effect

The provisions of clauses 9.5 to 9.19 continue to operate and bind all Participants after termination of this Agreement.

9.21 Detailed Designer and Signalling Designer

We acknowledge that:

- (a) prior to the Commencement Date, TfNSW:
 - (i) engaged the Detailed Designer and the Signalling Designer to carry out the design of the Alliance Works; and
 - (ii) made payments to the Detailed Designer and the Signalling Designer for the design of the Alliance Works;
- (b) the NOPs were given the opportunity to review:
 - (i) the status of the design documentation prepared by the Detailed Designer and the Signalling Designer; and

- (ii) the progress of the Detailed Designer and the Signalling Designer against the milestones specified in their respective agreements with TfNSW;
- (c) the TOC is based on:
 - (i) the version of the design documentation contained in the Works Brief, which was developed from the version of the design documentation attached to the Request for Proposal and the subsequent versions of the design documentation provided to the NOPs during the Proposal Development Phase; and
 - (ii) amounts estimated by the NOPs during the Proposal Development Phase to be payable for the design of the Alliance Works by the Detailed Designer and the Signalling Designer (including an estimate of amounts paid to the Detailed Designer and the Signalling Designer by TfNSW prior to the Commencement Date);
- (d) no Target Adjustment Event will arise in any way out of or in connection with:
 - (i) any amounts paid or payable to the Detailed Designer or the Signalling Designer for the design of the Alliance Works carried out up to and including the Commencement Date (including any amounts paid or payable to the Detailed Designer or the Signalling Designer for the design of Alliance Works carried out up to and including the Commencement Date exceeding any relevant amounts allowed in the TOC); or
 - (ii) the status of the design documentation as it appears in the Works Brief; and
- (e) any amounts paid by TfNSW to the Detailed Designer or the Signalling Designer in relation to the design of Alliance Works, whether before or after the Commencement Date, will be TfNSW Alliance Costs.

10. Works

10.1 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 ALT must approve a standard form contract to be used for all Subcontracts, including Subcontracts with Key Subcontractors.
- (c) Any proposed Subcontract that contains material changes to the standard form contract approved by the ALT in accordance with clause 10.1(b) must be submitted to and approved by the ALT prior to execution.
- (d) 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 TfNSW may from time to time require) with TfNSW and RailCorp creating a duty of care in favour of TfNSW and RailCorp in relation to the works or services to be

- conducted under the Subcontract, unless TfNSW decides in its absolute discretion that a deed is not necessary;
 - (ii) be approved by the Alliance Manager;
 - (iii) contain an assignment of Alliance Intellectual Property Rights by the Subcontractor to the Participants;
 - (iv) contain confidentiality provisions substantially the same as those in clause 9.12;
 - (v) contain provisions which permit assignment or novation as contemplated by clause 17.3(d);
 - (vi) contain provisions which will permit us to perform our obligations in clause 9; and
 - (vii) contain the requirements regarding public liability insurance as set out in clause 16.5(b).
- (e) 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.
- (f) If a NOP engages a Subcontractor, the NOP must:
- (i) where required in writing by either the ALT or TfNSW, 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 TfNSW;
 - (ii) ensure that the Subcontractor (and their subcontractors) execute a Confidentiality Undertaking and provide this to the Principal's Representative within 7 days of the engagement of that Subcontractor; and
 - (iii) where the Subcontractor is to carry out design work or other professional services, unless not required by the Principal's Representative, use our best endeavours (which must include complying with the Procurement Management Plan) to procure that Subcontractor to execute a deed in the form of Schedule 30 and provide this to the Principal's Representative within 7 days of the engagement of that Subcontractor.

10.2 Key Subcontractors

- (a) The Key Subcontractors specified in the Agreement Particulars have been pre-approved by TfNSW to carry out the parts of the Works specified in the Agreement Particulars in relation to those Key Subcontractors.
- (b) A NOP must obtain the prior written approval of the ALT before replacing or removing a Key Subcontractor, or requiring that Key Subcontractor to carry out parts of the Works other than those which are specified for that Key Subcontractor in the Agreement Particulars.

10.3 Nominated Subcontractors

- (a) We:
 - (i) must not enter into any Subcontract with a Prohibited Subcontractor;
 - (ii) must enter into a Subcontract with each of those Nominated Subcontractors specified in the Agreement Particulars in respect of the relevant Nominated Subcontract Work; and
 - (iii) agree that no act or omission of a Nominated Subcontractor will affect our obligations under this Agreement.
- (b) TfNSW makes no representation as to any Nominated Subcontractor's:
 - (i) quality of work;
 - (ii) timeliness of work;
 - (iii) availability to perform the relevant Nominated Subcontract Work; or
 - (iv) creditworthiness.

10.4 Novation of Detailed Designer

We acknowledge that:

- (a) as part of their Final Project Proposal, the NOPs submitted an executed deed of novation for the novation of the professional services contract with the Detailed Designer to a NOP or to the NOPs jointly;
- (b) the deed of novation was held in escrow by TfNSW until the Commencement Date; and
- (c) the deed of novation is now released from escrow and is binding upon TfNSW and the NOP or NOPs by whom it was executed (as applicable).

10.5 Deed Poll by NOPs in favour of RailCorp

We acknowledge that:

- (a) we agree to give RailCorp the benefit of certain rights in accordance with the deed poll provided by the NOPs in favour of RailCorp, without affecting the allocation of risk under this Agreement;
- (b) as part of their Final Project Proposal, each NOP submitted an executed deed poll in favour of RailCorp;
- (c) the deed polls were held in escrow by TfNSW until the Commencement Date; and
- (d) the deed polls are now released from escrow and are binding upon the NOPs.

10.6 Related entity transactions

A NOP must obtain the prior written approval of the ALT before entering into an agreement with, or engaging the services of, a Related Party of that NOP in relation to the performance of the Alliance Activities.

10.7 Statutory Requirements

- (a) In carrying out the Alliance Activities, we will:
 - (i) comply with all Statutory Requirements (including all Approvals);
 - (ii) without limiting clause 10.7(a)(i):
 - A. identify and obtain any additional planning and other Approvals as may be required from time to time; and
 - B. unless otherwise expressly specified in Schedule 10, comply with the requirements of the Planning Approvals and all other Approvals, including those conditions and requirements that TfNSW is required, under the terms of the Approvals, to comply with; and
 - C. in respect of any:
 - 1) Approvals which are to be obtained by TfNSW after the date of this Agreement (including the Planning Approval); or
 - 2) conditions and requirements of Approvals which pursuant to Schedule 10 are to be satisfied or fulfilled by TfNSW,

provide TfNSW with such reasonable assistance as may be reasonably required by TfNSW to enable TfNSW to obtain the Approvals or satisfy or fulfil the conditions and requirements; and
 - (iii) ensure that all Subcontractors do likewise.
- (b) Without limiting clause 10.7(a)(i), TfNSW will obtain the Planning Approval.

10.8 Subcontractor warranties

- (a) We will use our best endeavours (which must include complying with the Procurement Management Plan) to obtain written warranties in favour of TfNSW and RailCorp from Subcontractors, to the extent such warranties are relevant, that any:
 - (i) 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
 - (ii) 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.
- (b) We will use our best endeavours (which must include complying with the Procurement Management Plan) to obtain from each Subcontractor:
 - (i) a signed deed poll in the form of Schedule 23 (and provide an original of this to TfNSW); and

- (ii) the warranties listed in Schedule 24 for the warranty period stipulated in Schedule 24 in the form set out in Schedule 18 in favour of TfNSW, RailCorp and any other entity nominated by the Principal's Representative from time to time.

10.9 Work 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 health and safety.
- (b) In this clause 10.9, the terms "principal contractor", "workplace" and "construction project" have the same meanings assigned to those terms under the *Work Health and Safety Act 2011 (NSW)* (in this clause, **the Act**) and the *Work Health and Safety Regulation 2011 (NSW)* (in this clause, **the Regulation**).
- (c) For the purpose of the WHS Legislation and this Agreement, the Works and any Other Contractor Work is taken to be part of the same 'construction project'.
- (d) Without limiting our obligations under any other provision of this Agreement, we agree as follows:
 - (i) TfNSW:
 - A. engages the NOP specified in the Agreement Particulars (the "**Principal Contractor**") as the principal contractor in respect of the Alliance Activities and (except to the extent that the Principal's Representative directs otherwise in writing) all Other Contractor Work; and
 - B. authorises the Principal Contractor to have management and control of each workplace at which the Alliance Activities and the Other Contractor Work are to be carried out and to discharge the duties of a principal contractor under the WHS Legislation;
 - (ii) the Principal Contractor:
 - A. accepts the engagement and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation;
 - B. must ensure that all Subcontractors comply with their respective obligations under the Act and the Regulation;
 - C. must 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;
 - D. must 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 Regulation; and
 - E. must immediately inform the other Participants in writing of all incidents involving injury to any person arising during the carrying out of the Alliance Activities.

- (e) Each NOP:
 - (i) acknowledges and agrees that it is accredited under the OHS Accreditation Scheme; and
 - (ii) must comply with all the requirements of, and maintain accreditation under, the OHS Accreditation Scheme while building work (as defined in section 5 of the *Fair Work (Building Industry) Act 2012* (Cth)) is carried out.

10.10 Project Safety Management Plan

- (a) We acknowledge that:
 - (i) the Principal Contractor has prepared a draft Project Safety Management Plan that was submitted to TfNSW as part of the Final Project Proposal;
 - (ii) the Principal Contractor must submit a final Project Safety Management Plan to the Principal's Representative:
 - A. so as to ensure that there is no delay or disruption to the Alliance Activities and in any event no later than 10 Business Days after the date of this Agreement; and
 - B. under cover of a written notice entitled "Submit for Review", which identifies the Project Safety Management Plan and that it is submitted under this clause 10.10;
 - (iii) we must not commence any of the Alliance Activities to which the Project Safety Management Plan applies unless:
 - A. the Principal's Representative has issued the notice referred to in clause 10.10(b)(iii) in respect of it; or
 - B. the relevant period of time in clause 10.10(b) has expired and the Principal's Representative has not rejected it or made comments on it (except, in the case of comments, where the Principal Contractor have responded to the comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 10.10(c)); and
 - (iv) the Principal Contractor must, in any event, finalise the Project Safety Management Plan so as to ensure that there is no delay or disruption to the Alliance Activities and in any event in accordance with the requirements of this Agreement to the satisfaction of the Principal's Representative.
- (b) The Principal's Representative may review the Project Safety Management Plan, or any resubmitted Project Safety Management Plan and within 15 Business Days after its submission:
 - (i) reject the Project Safety Management Plan (and state reasons) if in its opinion the Project Safety Management Plan (or any part) does not comply with the requirements of this Agreement;

- (ii) make comments on the Project Safety Management Plan, or request clarification or additional information; or
 - (iii) notify the Principal Contractor that it has no (or has no further) comments to make.
- (c) If the Project Safety Management Plan is:
- (i) rejected or deemed to be rejected, the Principal Contractor must submit an amended Project Safety Management Plan to the Principal's Representative within 10 Business Days after the date of such rejection or deemed rejection and this clause 10.10 will re-apply; or
 - (ii) not rejected and the Principal's Representative responds to the submission with comments, or requests clarification or additional information, the Principal Contractor must respond to the comments or request within 10 Business Days or such other period as may be directed by the Principal's Representative.
- If the Principal Contractor:
- (iii) responds to the Principal's Representative's comments or request within the period referred to in clause 10.10(c)(ii) in a manner satisfactory to the Principal's Representative, the Principal's Representative will notify the Principal Contractor that it has no (or no further) comments to make within 5 Business Days of that response; or
 - (iv) fails to respond to the Principal's Representative's comments or request within the period referred to in clause 10.10(c)(ii) in a manner satisfactory to the Principal's Representative, or the Principal's Representative does not give a notice under clause 10.10(c)(iii):
 - A. the Project Safety Management Plan will be deemed to be rejected;
 - B. the Principal's Representative shall, by notice in writing, confirm that the Project Safety Management Plan has been rejected; and
 - C. clause 10.10(c)(i) will apply.
- (d) Without limiting any requirement of the WHS Legislation, the TSRs or this Agreement, the Project Safety Management Plan must:
- (i) set out in adequate detail the procedures the Principal Contractor will implement to manage the Alliance Activities from a work health and safety perspective;
 - (ii) describe how the Principal Contractor proposes to ensure the Alliance Activities are performed consistently with Statutory Requirements; and
 - (iii) address the matters specified in the TSRs.
- (e) After the Project Safety Management Plan has been finalised, the Principal Contractor must:

(i) continue to correct any defects in or omissions from the Project Safety Management Plan (whether identified by the Principal's Representative or the Principal Contractor); and

(ii) regularly review and, as necessary, revise the Project Safety Management Plan in accordance with the WHS Legislation,

and submit an amended draft of its Project Safety Management Plan to the Principal's Representative, after which clauses 10.10(b) and 10.10(c) will reapply (to the extent applicable).

(f) The Principal Contractor must document and maintain detailed records of inspections or audits undertaken as part of the Project Safety Management Plan.

(g) We must:

(i) provide all assistance required by the Principal Contractor in preparing the Project Safety Management Plan and any revisions to the Project Safety Management Plan; and

(ii) carry out the Alliance Activities in accordance with, and otherwise implement, the latest Project Safety Management Plan.

10.11 Safety Compliance

(a) In carrying out the Alliance Activities, we will ensure that we (and our Associates) comply with:

(i) the latest Project Safety Management Plan;

(ii) the Serious Incident Protocol attached to this Agreement as Schedule 27 (which is to be signed by all ALT Members);

(iii) all Statutory Requirements;

(iv) all proper safety directives, procedures and work instructions issued by the Principal Contractor and to the extent not inconsistent with them, by TfNSW using the TfNSW Reserved Powers, the Alliance Manager or personnel authorised by the ALT to issue such directives, procedures and instructions;

(v) the terms of the Interface Agreement and any Third Party Agreement;

(vi) the other requirements of this Agreement relating to work health, safety and rehabilitation management including the applicable provisions of the TSRs;

(vii) our obligations under the WHS Legislation, including the obligation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter; and

(viii) the TfNSW Accreditation.

(b) We will carry out the Alliance Activities:

(i) safely and in a manner that does not put the health and safety of persons at risk; and

(ii) in a manner that protects property.

If TfNSW reasonably considers there is a risk to the health and safety of people or damage to property arising from the Alliance Activities, TfNSW may direct the NOPs to change their manner of working or to cease working.

(c) We must:

- (i) notify the Principal's Representative immediately (and in any event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the Alliance Activities;
- (ii) institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with the WHS Legislation including the due diligence obligation contained therein;
- (iii) provide the written assurances obtained pursuant to clause 10.11(c)(ii), together with written assurance(s) from us about our ongoing compliance with the WHS Legislation, to the Principal's Representative; and
- (iv) provide the Principal's Representative with a written report at each ALT Meeting, on all work health, safety and rehabilitation matters (including matters concerning or arising out of, or in connection with, this clause 10.11), or any other relevant matters as the Principal's Representative may require from time to time, including a summary of our compliance with the WHS Legislation;
- (v) in carrying out the Alliance Activities, ensure that we (and our Associates) do anything necessary to enable TfNSW to comply with its responsibilities and obligations under the TfNSW Safety Management System; and
- (vi) cooperate with all Other Contractors and TfNSW to ensure that all parties are able to comply with their respective obligations under the WHS Legislation.

(d) Each of us will immediately inform TfNSW and the Principal Contractor if we become aware that the Principal Contractor is not complying with its obligations as principal contractor.

(e) If requested by the ALT or TfNSW or required by the WHS Legislation, a NOP shall produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the ALT or TfNSW (as applicable).

10.12 Rail Safety Accreditation

- (a) We must undertake all Alliance Activities pursuant to, and in accordance with the requirements of, the TfNSW Accreditation.
- (b) We must develop, implement and maintain appropriate systems, procedures and records and make these available to TfNSW upon request, to ensure compliance with these requirements.

10.13 Rail Safety Work

We will ensure that any person carrying out rail safety work (as defined in section 8 of the *Rail Safety National Law* (NSW)) for or on behalf of the Alliance in relation to the Alliance Activities has Rail Safety Worker Competency.

10.14 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 TfNSW 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.

10.15 Industrial relations

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.

10.16 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 TfNSW;
- (b) comply with TfNSW's instructions required to enable TfNSW 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.

10.17 National Greenhouse and Energy Reporting Act 2007 (Cth)

We acknowledge and agree that:

- (a) if any of the Alliance Activities, or the activities of any of our personnel, in connection with the Alliance Activities (the **Relevant Matters**) constitute a "facility" within the meaning of the NGER Legislation, then, for the purposes of the NGER Legislation, the NOP identified in the Agreement Particulars has operational control of that facility (the **NGER NOP**) and will comply with any obligations arising in respect of the NGER NOP's activities under the NGER Legislation;
- (b) if, despite the operation of clause 10.17(a), TfNSW incurs, or (but for this clause) would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with any of the Relevant Matters, and the NGER Legislation provides that such liability can be transferred by TfNSW or the NSW Government or any of its agencies to the NGER NOP, the NGER NOP must, on the written request of TfNSW, do all things reasonably necessary to ensure the liability is transferred to the NGER NOP;
- (c) if TfNSW requests it, the NGER NOP must provide Greenhouse Data to TfNSW:
 - (i) to the extent that, in a manner and form that, and at times that, will enable TfNSW to comply with the NGER Legislation irrespective of whether TfNSW or the NGER NOP or any other person has an obligation to comply with the NGER Legislation in connection with any Relevant Matters; and
 - (ii) otherwise as requested by TfNSW from time to time;
- (d) the NGER NOP must also provide to TfNSW all Greenhouse Data and other information which the NGER NOP provides to any other person under the NGER Legislation in connection with any Relevant Matters, at the same time as the NGER NOP provides that Greenhouse Data or other information to that other person;
- (e) the NGER NOP must:
 - (i) collect and record all such Greenhouse Data as may be required to enable reporting under the NGER Legislation or enable the NGER NOP to discharge its obligations under this clause 10.17, and keep that Greenhouse Data for at least 7 years after the end of the year in which the Relevant Matters occur; and
 - (ii) permit any persons appointed or authorised by TfNSW to examine, monitor, measure, copy, audit and/or verify the Greenhouse Data and co-operate with and provide all reasonable assistance to any such persons (including by doing such things as giving access to premises, plant and equipment, producing and giving access to documents and answering any relevant questions);
- (f) TfNSW may provide or otherwise disclose the Greenhouse Data and any other information which TfNSW obtains under this clause 10.17 to any other person, and may otherwise use the Greenhouse Data and other information for any purpose as TfNSW sees fit; and
- (g) nothing in this clause 10.17 is to be taken as meaning that TfNSW has agreed to perform any statutory obligation that the NGER NOP may have regarding the provision of Greenhouse Data to any authority.

10.18 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) TfNSW 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 Works or a Portion.

10.19 Statutory Functions

- (a) The NOPs appreciate that TfNSW is subject to obligations in its capacity as a NSW Government agency.
- (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 TfNSW's obligations and duties in its capacity as a NSW Government agency.
- (c) Nothing in this Agreement will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of TfNSW to exercise any of its functions and powers pursuant to any legislation.
- (d) Without limiting clause 10.19(c), anything which TfNSW 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 TfNSW under this Agreement.
- (e) The NOPs waive any claims which they may have against TfNSW which arise under this Agreement as a result of the exercise by TfNSW of its functions and powers under any legislation except to the extent that this gives rise to a Target Adjustment Event.

10.20 Commonwealth Funding

- (a) The NOPs:
 - (i) acknowledge that the Project will be partially funded by the Commonwealth in accordance with the NSFC MOU; and
 - (ii) must:
 - A. provide TfNSW with any information or assistance reasonably required in relation to reporting or attendance at meetings; and
 - B. prepare any reports reasonably required by the Principal's Representative (including those referred in the Commonwealth Government's document entitled "Notes on Administration for the Nation Building Program"),

to ensure that TfNSW is able to comply with its obligations under the NSFC MOU, the Head MOU, the Nation Building Program Act and any other memorandum of understanding or arrangement between the State of NSW and the Commonwealth Government that may apply to the Project from time to time.

- (b) Assistance for the purposes of clause 10.20(a) includes permitting a person authorised by the Australian Government Minister administering the Nation Building Program Act, at all reasonable times, to:
 - (i) inspect any work involved in the carrying out of the Project; and
 - (ii) inspect and make copies of any documents relating to the Project.
- (c) In all publications, promotional and advertising materials, public announcements and activities in relation to the Project, the Alliance must acknowledge the financial support that it has received from the Australian Government. Such acknowledgement must be in a manner approved by the Principal's Representative prior to its use.

10.21 Options

- (a) The Principal's Representative may, by written notice given to the Participants at any time within the period stated in Schedule 32, exercise any Option. Commencing upon the issue of such a notice by the Principal's Representative, we must perform our obligations under this Agreement on the basis that the Commercial Framework, the Works Brief and the provisions of this Agreement will be adjusted as set out in Schedule 32 for the relevant Option.
- (b) For the avoidance of doubt:
 - (i) TfNSW is not under any obligation whatsoever to exercise any Option; and
 - (ii) no Target Adjustment Event will arise in respect of TfNSW not exercising any Option.
- (c) Where TfNSW does not exercise its discretion to exercise an Option, TfNSW may, either by itself or by third parties, undertake the work contemplated by the relevant Option.
- (d) The exercise of the Option by the Principal's Representative under this clause 10.21 will not relieve the Participants from their liabilities or obligations (including those arising out of any warranties given under this Agreement) whether under this Agreement or otherwise according to any Law.

11. Quality

11.1 Quality assurance

We are committed to ensuring that the 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.

11.2 Certificates

- (a) Together with each Payment Claim and at the Completion of each Portion, the Participants will submit to the Principal's Representative:
 - (i) the Alliance Certificate of Construction Compliance;

- (ii) in respect of the Detailed Designer, the Detailed Designer's Certificate of Construction Compliance;
- (iii) in respect of the Signalling Designer, the Signalling Designer's Certificate of Construction Compliance; and
- (iv) in respect of any other Designers, the Designers' Certificates of Construction Compliance,

identifying the work covered.

- (b) Each of the certificates provided by the Participants in accordance with clause 11.2(a) will be accompanied by a register prepared by the Participants for each of the following matters:
 - (i) management plans, method statements and inspection and test plans;
 - (ii) records of all compliance and other associated test records showing achievement of the acceptance criteria identified in the above inspection and test plans;
 - (iii) deficiency notices; and
 - (iv) concessions granted for non-conforming work.
- (c) Prior to the execution by:
 - (i) the Designers of the Designers' Certificates of Construction Compliance;
 - (ii) the Detailed Designer of the Detailed Designer's Certificate of Construction Compliance (where applicable); and
 - (iii) the Signalling Designer of the Signalling Designer's Certificate of Construction Compliance (where applicable),

the Participants must provide the Designers with a copy of each of the registers referred to in clause 11.2(b). Such registers must be provided to the Designers within a timeframe that allows them to review and consider such registers and to make any enquiries necessary to satisfy themselves of the compliance before executing the relevant certificates.

11.3 Defects

- (a) TfNSW 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 TfNSW under clause 11.3(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.

If the ALT considers that the part of the Alliance Works identified as a Defect in a notice issued by TfNSW under clause 11.3(c) is not a Defect, a Participant may by

written notice to the other Participants and TfNSW request that the issue be resolved in accordance with clause 18.2.

- (c) On receipt of any notice under clause 11.3(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) If TfNSW gives a notice under clause 11.3(a) during the Defects Notification Period, the Defects Notification Period will be extended in relation to the particular defect identified in the notice by a period of 12 months, commencing on the date of rectification of the Defect.
- (e) TfNSW will be entitled to rectify a Defect itself or engage others to do rectification work if TfNSW 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 11.3(a).
- (f) Where TfNSW rectifies a Defect pursuant to clause 11.3(e), any costs reasonably incurred by TfNSW in doing so will be treated as TfNSW Alliance Costs.
- (g) The NOPs will be reimbursed in accordance with the Commercial Framework for the costs reasonably incurred by them in rectifying Defects pursuant to clause 11.3(c).
- (h) 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.

12. Time, progress and Completion

12.1 Progress and Date for Completion

- (a) We will:
 - (i) except as otherwise approved by the Alliance Manager, progress the Alliance Activities in accordance with the Alliance's project delivery program; and
 - (ii) without limiting clause 12.1(a)(i), achieve Completion of the Alliance Works by the Date for Completion.
- (b) The Date for Completion may only be adjusted by the ALT and any such changes must be approved by TfNSW.

12.2 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 TfNSW or pursuant to clause 17.5(d)(i).

- (b) If TfNSW considers that suspension of the whole or part of the Alliance Activities is necessary or appropriate for any reason, TfNSW may direct that we suspend the progress of the whole or part of the Alliance Activities for such time as TfNSW decides and we will promptly suspend that part of the Alliance Activities.
- (c) TfNSW may direct that we are to recommence the whole or the relevant part of the Alliance Activities at any time.
- (d) If TfNSW requires a suspension under this clause 12.2, the ALT will recommend whether the Commercial Framework should be adjusted to take into account the effect of the suspension and clause 13.4 will apply.
- (e) We will use all reasonable endeavours to mitigate costs whether arising during the period of, or as the result of, any suspension.

12.3 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 other than the minor Defects listed on the Certificate of Completion which:
 - A. do not prevent the Alliance Works or the Portion from being Ready for Operations; and
 - B. can be corrected without prejudicing the convenient use of the Alliance Works or the Portion; and
 - (ii) to the best knowledge of the Alliance Manager, having made reasonable enquiries, the Alliance Works or the Portion have reached Completion.
- (b) If the ALT concurs with the Alliance Manager that we have achieved Completion, the ALT will complete Part 2 of the Certificate of Completion and submit it to the Principal's Representative for approval.
- (c) If the Principal's Representative agrees that Completion has been achieved, the Principal's Representative will complete Part 3 of the Certificate of Completion and indicate the Date of Completion.
- (d) If the ALT or the Principal's Representative does not consider that Completion has been achieved:
 - (i) the ALT or the Principal's Representative (as applicable) will complete the relevant Part of the Certificate of Completion indicating details of work that the ALT or the Principal's Representative considers to be outstanding to achieve Completion and submit the Certificate of Completion to the Alliance Manager; 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.
- (e) If the ALT considers that Completion has been achieved but the Principal's Representative does not agree, and a NOP wishes to pursue the issue, the NOP may

by written notice to the other Participants and TfNSW request that the issue be resolved in accordance with clause 18.2.

- (f) 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 12.3.
- (g) Upon the completion and issue of a Certificate of Completion under this clause 12.3:
 - (i) we must hand over the Alliance Works or the Portion to TfNSW; and
 - (ii) we must correct all minor Defects listed in the approved Certificate of Completion as soon as possible after the Date of Completion.

12.4 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 agrees that Final Completion has been achieved, the ALT will complete Part 2 of the Certificate of Final Completion and submit it to the Principal's Representative for approval.
- (c) If the Principal's Representative agrees that Final Completion has been achieved, the Principal's Representative will complete Part 3 of the Certificate of Final Completion and indicate the Date of Final Completion.
- (d) If the ALT or the Principal's Representative 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 or the Principal's Representative (as applicable) will complete the relevant Part of the Certificate of Final Completion indicating what the ALT or the Principal's Representative considers to be outstanding to achieve Final Completion or to perform or observe the relevant obligation under this Agreement; and submit the Certificate of Final Completion to the Alliance Manager; 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.
- (e) If the ALT considers that Final Completion has been achieved but the Principal's Representative does not agree, and a NOP wishes to pursue the issue, the NOP may by written notice to the other Participants and TfNSW request that the issue be resolved in accordance with clause 18.2.
- (f) 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 12.4.

12.5 Portions

- (a) In addition to any Portions described in the Agreement Particulars, the ALT or the Principal's Representative 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.

13. Directions by TfNSW and Target Adjustment Events

13.1 TfNSW Reserved Powers

Although the Participants intend that decisions affecting the Works will be made collectively as required by clause 5.5 (Decisions of ALT), each Participant acknowledges that the final decision on the following matters ("**TfNSW Reserved Powers**") ought to be, and is, reserved for unilateral determination by TfNSW in its absolute and unfettered discretion:

- (a) functional requirements, scope and design parameters for the 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 Works);
- (b) timing or sequencing of the Alliance Activities (including the Date for Completion);
- (c) urgent protection of people, property, the Works or the environment (including the right to give directions under clause 10.11(b));
- (d) media and other communications (including those referred to in clauses 9.12(a) and 9.13(a));
- (e) communications and interface issues with Stakeholders;
- (f) Site access arrangements (including the right to give directions under clause 8.2(d)(i));
- (g) protection of any items of cultural heritage value;
- (h) exercise of an Option under clause 10.21;
- (i) the issue of a Defects notice under clause 11.3(b), or the right to rectify a Defect itself or engage others to do so in accordance with clause 11.3(e);
- (j) a suspension or recommencement of the Alliance Activities under clause 12.2;
- (k) the determination of a Portion under clause 12.5; or
- (l) anything necessary to enable TfNSW to comply with its responsibilities and obligations under any Approvals, Statutory Requirements or the TfNSW Safety Management System with respect to the Alliance Activities or the Works;
- (m) anything TfNSW judges appropriate to allow TfNSW to comply with its statutory obligations or responsibilities or to obtain, preserve and satisfy the Environment Protection Licence or TfNSW's role as a determining Authority for the purposes of any Approval;

- (n) anything which affects or may affect the TfNSW Accreditation;
- (o) anything affecting any environmental or planning permit or approval;
- (p) the removal of an ALT Member or an AMT Member;
- (q) approval of the inclusion of an additional participant in the Alliance and of any necessary amendments to the Commercial Framework in accordance with clause 1.9;
- (r) [not used];
- (s) the replacement of the Principal's Representative or the appointment of additional persons to exercise any functions of the Principal's Representative under clause 3.5(c) and the revoking of such an appointment under clause 3.5(d)(iii);
- (t) the right in accordance with clause 8.8(c) to inspect and copy the Participants' register of notices given under clause 8.8(b);
- (u) the right to determine whether the terms of a release to be given under clause 8.9(b)(iii)B are satisfactory;
- (v) the right to determine the scheduling of interface coordination meetings under clause 8.14(b)(viii) and to request attendance at coordination meetings under clause 8.14(c);
- (w) the decision to convene a meeting in respect of an interface issue or dispute under clause 8.15;
- (x) rights in accordance with clause 9.3 to give directions regarding the submission and review of Documents, to determine whether the Participants' responses to comments from the Principal's Representative are satisfactory, to review and give notices in respect of Documents submitted by the Participants and to consult with and take into account any views or requirements of any Authority;
- (y) the disclosure of parts of this Agreement and information concerning the terms of this Agreement to NSW Government departments or agencies or as otherwise required by law under clause 9.12(f)(i);
- (z) the right to appoint a different person or company to be the FA under clause 9.15(d);
- (aa) the decision under clause 9.17(b) as to whether an Overpayment Amount determined by the FA is material;
- (bb) whether it is necessary for a Subcontract to include a requirement in accordance with clause 10.1(d)(i) that the relevant Subcontractor execute a deed with TfNSW and RailCorp creating a duty of care in favour of TfNSW and RailCorp in relation to the works or services to be conducted under the Subcontract;
- (cc) a decision in accordance with clause 10.1(f)(iii) that a NOP is not required to procure from a Subcontractor an executed deed in the form of Schedule 30;
- (dd) the right under clause 10.8(b) to nominate another entity to receive the benefit of the warranties to be obtained from Subcontractors;
- (ee) the right to direct that the "Principal Contractor" appointed in accordance with clause 10.9(d) is not the principal contractor in respect of Other Contractor Work;

- (ff) rights in accordance with clause 10.10 to review and give notices in respect of the Project Safety Management Plan, to determine a timeframe for responses required from the Participants and whether such responses are satisfactory and to approve the final Project Safety Management Plan and any further amended drafts submitted in accordance with that clause;
- (gg) the right to request that the Participants include certain relevant matters in the written reports to be given at each ALT Meeting in accordance with clause 10.11(c)(iv);
- (hh) the right under clause 10.11(e) to request evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety produced by a NOP and to determine whether such evidence is satisfactory;
- (ii) the right to request Greenhouse Data from the NGER NOP, to appoint or authorise a person to carry out tasks in relation to that data and to use or disclose that data in accordance with clause 10.17;
- (jj) approval of the manner in which the Alliance acknowledges financial support from the Australian Government under clause 10.20(c);
- (kk) the right to undertake work contemplated by an Option or to engage a third party to do so in accordance with clause 10.21(c);
- (ll) the right to approve a change to the Date for Completion under clause 12.1(b);
- (mm) approval of whether Completion has been achieved under clause 12.3(c) and whether Final Completion has been achieved under clause 12.4(c);
- (nn) the right to determine at any time that any part of the Alliance Works will be regarded as a Portion under clause 12.5(a);
- (oo) approval of a recommendation by the ALT that a Target Adjustment Event has occurred (under clause 13.4(b)), that the Commercial Framework should be adjusted (under clause 14.1(c)) and that a Payment Claim may include amounts for Reimbursable Costs incurred more than 6 months prior to the date of the Payment Claim (under clause 14.2(d));
- (pp) the right to carry out any part of the Works omitted or deleted by a TfNSW Reserved Power Direction under this clause 13.1;
- (qq) the right to issue an Impact Request to the ALT under clause 13.2 prior to giving a TfNSW Reserved Power Direction;
- (rr) the right to issue a Payment Schedule at any time in accordance with clause 14.2(f);
- (ss) the right to approve the form of statement to be given by the FA under clause 14.2(g)(iv);
- (tt) the right to pay or allow an interim payment recommended by the ALT in accordance with clause 14.2(n);
- (uu) the right to retain amounts from monthly payments to the NOPs in accordance with clause 14.2(o);
- (vv) the right to request evidence and documentation in relation to materials at the Site for which the NOPs wish to be paid under clause 14.3;

- (ww) the right to make direct payments to workers or Subcontractors of a NOP under clause 14.6 out of money due and payable to that NOP;
- (xx) the right in accordance with clause 14.7 to make direct payments to workers or Subcontractors of a NOP and to recover the amount so paid from the NOPs as a debt due;
- (yy) the right in accordance with clause 14.8 to set off monies owed by TfNSW to a NOP against money owed to TfNSW by that NOP and to recover from the NOP any debt or balance that remains owing after such set off;
- (zz) the right to have other insureds named or included in insurance policies effected by TfNSW under clause 16;
- (aaa) the decision to terminate this Agreement where TfNSW has such a right under this Agreement and the right thereafter to complete the uncompleted part of the Alliance Works itself or to engage any other person to do so under clause 17.1;
- (bbb) if this Agreement is terminated under clause 17.1 or clause 17.5, the right under clause 17.2(a) to take and use the whole or any part of the Works and the right under clause 17.3(d) to request the Participants to assign or novate to TfNSW all rights and benefits under Subcontracts;
- (ccc) the right to give directions in accordance with clause 17.3 following termination of this Agreement;
- (ddd) the right to request in accordance with clause 17.6(f) that a Defaulting Participant do such things as are necessary to assist the other Participants in the performance of the Alliance Activities;
- (eee) the right to give directions in accordance with clause 20.18 for the removal from any part of the Alliance Activities of a person engaged on the Works who has been found to have engaged in corrupt conduct; and
- (fff) approval under clause 20.19 of any amendment proposed to the management systems set out in the Agreement Particulars,

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

No TfNSW Reserved Power Direction will invalidate this Agreement. If a TfNSW Reserved Power Direction omits or deletes any part of the Works TfNSW 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 TfNSW under this Agreement or by law may be exercised solely for the benefit of TfNSW, despite any other terms of this Agreement.

13.2 Impact Request

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

If TfNSW issues an Impact Request, the ALT must promptly make a recommendation as to:

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

and provide written notice as to its determination to TfNSW.

If TfNSW subsequently gives the TfNSW Reserved Power Direction, the procedure in clause 13.4 will apply.

13.3 Target Adjustment Events

- (a) The AMT must give the ALT an initial notice of any potential Target Adjustment Event within 90 calendar days after a member of the Alliance first became aware of the circumstances giving rise to the potential Target Adjustment Event, except where the potential Target Adjustment Event is the result of a TfNSW Reserved Power Direction for which TfNSW has issued an Impact Request.
- (b) The AMT must subsequently submit further relevant details of the potential Target Adjustment Event to the ALT including any submissions or recommendations it believes are appropriate.
- (c) There will be no adjustments made to the Commercial Framework if initial notice of the potential Target Adjustment Event is not given to the ALT within 90 calendar days of its first occurrence.
- (d) The ALT must consider any such details that it receives at its next scheduled meeting and consider:
 - (i) whether there is a Target Adjustment Event; and
 - (ii) if so the adjustments, if any, to be made to the Commercial Framework, and the procedure in clause 13.4 will apply.

13.4 Adjustments to Commercial Framework

- (a) If the ALT believes that a Target Adjustment Event has occurred, or will occur, (including a TfNSW Reserved Power Direction which the ALT believes gives rise to a Target Adjustment Event), the ALT will:
 - (i) consider what adjustments, if any, should be made to the Commercial Framework to take into account the Target Adjustment Event; and
 - (ii) make a recommendation to the Principal's Representative that a Target Adjustment Event has occurred, or will occur, and of any adjustment that should be made to the Commercial Framework to take into account the Target Adjustment Event.
- (b) The Principal's Representative must review the recommendation and, in its absolute discretion:
 - (i) approve the recommendation made by the ALT, in which case the Commercial Framework will be adjusted in accordance with the ALT's recommendation; or

- (ii) not approve the recommendation made by the ALT, in which case the Principal's Representative must issue a notice to the ALT stating that it does not approve the ALT's recommendation and providing its reasons for withholding its approval.
- (c) If the ALT receives a notice under clause 13.4(b)(ii) it must consider the reasons provided by the Principal's Representative and may submit a new recommendation to the Principal's Representative, in which case clause 13.4(b) will reapply.
- (d) If the Principal's Representative does not approve a second recommendation made by the ALT, and a NOP wishes to pursue the issue, the NOP may by written notice to the other Participants request that the issue be resolved in accordance with clause 18.2.

13.5 ALT may recommend a change to the Works

- (a) The ALT may, at any time, recommend to TfNSW a change to the functional requirements, scope and design parameters for the 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 Works).
- (b) Any recommendation under clause 13.5(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) include details of any additional costs that would be incurred by TfNSW if the change were implemented (other than as a result of an adjustment to the Commercial Framework), including additional operation, maintenance and/or decommissioning costs;
 - (iii) include details of any impacts on the Planning Approval and any additional property impacts that may result from the proposed change;
 - (iv) confirm that the Works will be fit for their intended purposes as stated in, or reasonably inferred from, the Works Brief and this Agreement, notwithstanding the proposed change; and
 - (v) clearly indicate that it is a recommendation given under this clause 13.5.
- (c) TfNSW will consider any recommendation given by the ALT under this clause 13.5 but we acknowledge and agree that TfNSW may accept (with or without conditions) or reject the recommendation in its absolute and unfettered discretion.
- (d) If TfNSW accepts the recommendation TfNSW 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 (in which case the change to the Works will constitute a Target Adjustment Event).
- (e) If TfNSW 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.

13.6 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.

13.7 Target Adjustment Guidelines

- (a) When the ALT and the Principal's Representative are considering whether a circumstance or event justifies a change in any of the targets in the Commercial Framework and related terms, they will act consistently with the Target Adjustment Guidelines and this clause 13.7.
- (b) We will share all risks and opportunities associated with the delivery of the Works, regardless of whether or not:
 - (i) those risks/opportunities are within our control; or
 - (ii) we could (or should) reasonably have foreseen them; or
 - (iii) we made any provision for them in the TOC,except for those types of risks/opportunities that we have specifically agreed will be retained solely by a particular Participant either in this Agreement or the Target Adjustment Guidelines.
- (c) We acknowledge that:
 - (i) the list of scenarios in the Target Adjustment Guidelines for which risk/opportunity is shared is not exhaustive;
 - (ii) the list of scenarios in the Target Adjustment Guidelines for which risk/opportunity is retained unilaterally by TfNSW is exhaustive; and
 - (iii) there are no other types of situations other than those listed in the Target Adjustment Guidelines where the risk/opportunity is retained unilaterally by TfNSW.

14. Payments

14.1 Compensation for Works

- (a) TfNSW will pay the NOPs for carrying out the Alliance Activities in accordance with clause 14.2 and the Commercial Framework.
- (b) Payment to the NOPs pursuant to clause 14.1(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:

- (i) in accordance with clause 13.4, where there is a Target Adjustment Event;
- (ii) in accordance with clause 1.9 (Future addition of Participants); or
- (iii) if:
 - A. 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;
 - B. the ALT makes a recommendation to the Principal's Representative that the Commercial Framework should be adjusted, providing details of the proposed adjustment; and
 - C. the Principal's Representative, in its absolute discretion, approves the recommendation made by the ALT.

14.2 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 TfNSW a single Payment Claim, in relation to the work done by the Participants during the relevant period.
- (b) A Payment Claim submitted by the Alliance Manager pursuant to 14.2(a) will:
 - (i) include, at a minimum, the information set out in Schedule 17; and
 - (ii) be accompanied by:
 - A. if a design package has been completed:
 - 1) the Alliance Certificate of Design Compliance;
 - 2) in respect of the Detailed Designer, the Detailed Designer's Certificate of Design Compliance;
 - 3) in respect of the Signalling Designer, the Signalling Designer's Certificate of Design Compliance; and
 - 4) in respect of any other Designers, the Designers' Certificate of Design Compliance; and
 - B. the Certificates of Construction Compliance.
- (c) 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.
- (d) A Payment Claim must not include any amounts for Reimbursable Costs incurred more than 6 months prior to the date of the Payment Claim unless, in relation to a particular Reimbursable Cost:

- (i) the ALT agrees otherwise and makes a recommendation to the Principal's Representative to allow payment of the Reimbursable Costs; and
 - (ii) the Principal's Representative approves the recommendation.
- (e) TfNSW 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.
- (f) Subject to clause 14.2(e), TfNSW may issue a Payment Schedule at any time even if the Alliance Manager has not lodged a Payment Claim.
- (g) The following conditions must be satisfied before TfNSW is obliged to make any payment to the NOPs under this clause 14.2:
 - (i) if required under clause 14.9, 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 FA in a form approved by TfNSW 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 14.5 and clause 8.2(f).
- (h) We agree that any separate payment made by TfNSW 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 14.2.
- (i) Subject to clause 14.2(g), TfNSW will pay the NOPs (or the NOPs will pay TfNSW as the case may be) the amounts stated in a Payment Schedule in accordance with clause 14.2(j).
- (j) Payment by TfNSW to the NOPs or by the NOPs to TfNSW (as the case may be) under clause 14.2(i) will be made no later than 10 Business Days after TfNSW issues a Payment Schedule in accordance with clauses 14.2(e) or 14.2(f).
- (k) No payment by TfNSW 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 FA and TfNSW.
- (l) Nothing in this clause 14.2 limits or otherwise affects TfNSW'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).

- (m) In relation to TfNSW Alliance Costs incurred by TfNSW, TfNSW will submit to the Alliance Manager, at the times or periods required by the ALT and as otherwise determined by TfNSW a statement:
 - (i) of its TfNSW Alliance Costs for the relevant month; and
 - (ii) by the FA confirming that the amounts shown in the statement are in accordance with the terms of this Agreement.

TfNSW must submit all TfNSW Alliance Costs to the Alliance Manager within 6 months of incurring the relevant TfNSW Alliance Costs.

- (n) 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 TfNSW or the NOPs (as the case may require) may pay or allow the amount so recommended.
- (o) If in TfNSW's view it becomes likely that the NOPs will be required to pay TfNSW an amount under the Gainshare/ Painshare Regime, TfNSW may retain such amounts from the monthly payments under clause 14.2(i) so that TfNSW has retained a total amount under this clause 14.2(o) that is equal to the total likely liability of the NOPs under the Gainshare/ Painshare Regime.
- (p) 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 16.8 (Accounting for insurance proceeds) or 16.13 (Accounting for third party payments); or
 - (ii) matters have been deliberately or fraudulently concealed by a Participant.
- (q) At any time after a Payment Claim has been paid the FA 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 FA 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.

14.3 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 Works then, where the value of the materials is more than \$100,000 or if otherwise requested by TfNSW, the Payment Claim under clause 14.2(a) must include evidence and documentation to establish to the satisfaction of TfNSW that:
 - (i) the materials exist;
 - (ii) unencumbered ownership will pass to TfNSW on or before payment by TfNSW; and

- (iii) the materials are properly stored at the Site, labelled as the property of TfNSW and insured in the name of TfNSW and the relevant NOP supplying it.
- (b) The amount to be paid will be the value of the materials as determined by TfNSW in accordance with the principles set out in the Commercial Framework.

14.4 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.

14.5 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 9 (Statutory Declaration);
 - (ii) including the details required by Schedule 9 (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.

14.6 TfNSW may make direct payments on request

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

14.7 TfNSW may pay on court order

TfNSW 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 TfNSW 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 Works; and
- (b) a statutory declaration that no money has been paid under the court order.

14.8 Set-off

- (a) Without prejudice to any other rights, TfNSW may deduct from any monies which may be, or become, payable to a NOP any money due from that NOP to TfNSW under this Agreement.
- (b) Nothing in this clause 14.8 will affect the right of TfNSW to recover from the NOP the whole of any debt or any balance that remains owing by that NOP after deduction.

14.9 GST

- (a) In this clause 14.9:
- (i) **"GST"** and other terms used in this clause 14.9 (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 14.9(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 14.9(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 14.9(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 14.9(f) any additional amount referred to in paragraph 14.9(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 TfNSW 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 TfNSW for any loss, cost or expense incurred by TfNSW 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.

14.10 Long Service Levy

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

15. Remedies and liabilities

- (a) Subject to clauses 15(d) and 15(e), to the extent permitted by law, the respective rights, obligations and liabilities of each of us as set out in this Agreement (including the deed poll in Schedule 34) exclusively govern our rights in relation to this Agreement and the Works and we do not have any other rights or remedies arising out of or in connection with this Agreement and the 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 15(a) and 15(b) is to be adopted.
- (d) To the extent permitted by law and despite any other provisions of this Agreement (except clause 15(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, the deed poll in Schedule 34, at law, in equity, under statute or otherwise) with respect to any breach of this Agreement (or the deed poll in Schedule 34) or any negligent act, error or omission in connection with the Works or this Agreement (including the deed poll in Schedule 34), except to the extent that the breach, act, error or omission constitutes a Wilful Default.
- (e) Nothing in this Agreement, including clauses 15(a), 15(d), 17.1 or 18 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.

16. Insurances and indemnities

16.1 Insurance for the Works

- (a) The Participants acknowledge that TfNSW has effected contract works insurance on the same or substantially similar terms as those set out in Exhibit D (the "**Works Policy**") for all Works and Alliance Activities. TfNSW 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 Works Policy by TfNSW does not affect the Participant's obligations or liabilities under this Agreement.
- (c) TfNSW will:
 - (i) maintain the Works Policy for the duration of the Participant's relevant obligations under this Agreement; and
 - (ii) notify the Participants if the Works Policy ceases to be in effect.

16.2 Liability Insurance

- (a) The Participants acknowledge that TfNSW has effected public liability insurance on the same or substantially similar terms as those set out in Exhibit D (the "**Liability Policy**") for all Works and Alliance Activities. TfNSW 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 TfNSW does not affect the Participants' obligations or liabilities under this Agreement.
- (c) TfNSW will:
 - (i) maintain the Liability Policy for the duration of the Participant's relevant obligations under this Agreement; and
 - (ii) notify the Participants if the Liability Policy ceases to be in effect.

16.3 Alliance professional indemnity insurance

- (a) The Participants acknowledge that TfNSW will effect professional indemnity insurance within 15 Business Days of the Commencement Date on the same or substantially similar terms as those set out in Exhibit D (the "**Alliance PI Policy**").
- (b) TfNSW, 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 TfNSW does not affect the Participants' obligations or liabilities under this Agreement.
- (d) TfNSW will use all reasonable endeavours to maintain the Alliance PI Policy for a period of 6 years after the Date of Final Completion.

16.4 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 11.3, 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 TfNSW for TfNSW's statutory liability to persons employed by any NOP.
- (c) The Participants will ensure that every Subcontractor is similarly insured.

16.5 Subcontractors' insurance

- (a) The Participants will use all reasonable endeavours to ensure that all Subcontractors (excluding Designers, who are subject to the requirements in clause 16.6):
 - (i) 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 is providing services in a professional capacity;

- (ii) have appropriate insurance for plant and equipment and for any work or other items intended for incorporation into the Works while ever that work or those items are not covered by the Works Policy;
 - (iii) have and maintain insurance against liability for death of or injury to its employees including liability by statute and at common law; and
 - (iv) 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.
- (b) A Participant that engages a Subcontractor must ensure that the terms of the Subcontract provide that:
- (i) TfNSW has effected public liability insurance under this Agreement which covers the rights and interests of the Subcontractor and its liabilities to third parties in accordance with the insurance policy;
 - (ii) a copy of this insurance policy will be made available to the Subcontractor;
 - (iii) the public liability insurance is subject to the exclusions, conditions and excesses noted on the policy; and
 - (iv) each Subcontractor must:
 - A. satisfy itself of the nature and extent of TfNSW's insurance; and
 - B. if required by the Subcontractor, take out insurance to:
 - 1) insure any risks not insured by TfNSW's insurance; or
 - 2) cover any such exclusions, conditions or excesses in that insurance,
 which the Subcontractor wants to insure against or cover.

16.6 Designers' Insurance

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

- (a) have, and maintain for a period of six years after their work on the Project is complete, professional indemnity insurance for an amount not less than \$20 million, with an excess/deductible of no more than the amount which the ALT determines is acceptable;
- (b) have a minimum of \$10 million public liability insurance cover in the joint names of the Designer and each Participant, covering the Participants and Designers for their respective rights and interests, and their liabilities to third parties and to each other, with an excess/deductible of no more than the amount which the ALT determines is acceptable;
- (c) have and maintain insurance against liability for death of or injury to its employees including liability by statute and at common law; 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 Designer.

16.7 Notices of potential claims

- (a) The relevant NOP will, as soon as practicable, inform TfNSW and the ALT in writing of any occurrence which may give rise to a claim or potential claim under the Works Policy, 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 TfNSW and the ALT informed of subsequent developments concerning the claim.
- (b) The Participants must, despite any other provision of this Agreement, comply in all respects with procedures for notifying a claim under the Works Policy, Liability Policy or the Alliance PI Policy as set out in Schedule 28 ("**ETTT Insurance 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 TfNSW and the ALT pursuant to clause 16.7(a) in respect of any occurrence which may give rise to a claim or potential claim under the Works Policy, Liability Policy or the Alliance PI Policy concerning Subcontractors under that NOP's control or direction.

16.8 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 14.1(c) (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 FA 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 TfNSW, or TfNSW 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 FA of the Final Payment Schedule.

This clause 16.8 survives termination of this Agreement.

16.9 Other insurances by NOPs

- (a) The NOPs will obtain and maintain insurance (or ensure that insurance is obtained and maintained) 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 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 TfNSW pursuant to the Commercial Framework, TfNSW 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 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 or 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 Works or the Alliance Activities.
- (d) The NOPs will obtain and maintain marine transit insurance for any part of the 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 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 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) the NOPs must ensure that:
 - A. TfNSW 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 all of the insured; 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 TfNSW about that fact, matter or thing at least 30 days prior to the insurer giving any notice of cancellation; and
 - (ii) we must ensure that we do not do anything which prejudices the insurance policy; and
 - (iii) the NOPs must ensure that they:
 - 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 TfNSW 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.

16.10 Cross liability

Any insurance required to be effected by the Participants, the NOPs or the Subcontractors 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).

16.11 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 TfNSW.

16.12 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 16.12(a):
- (i) includes legal costs in connection with the claim against the Indemnified Participant (on a solicitor and own client basis and whether incurred by or awarded against the Indemnified Participant);
 - (ii) will be reduced proportionally to the extent that an act or omission of the Indemnified Participant or its Associates contributed to the loss, damage, injury, disease, illness or death; and
 - (iii) is limited to the greater of:
 - A. any amount which the Indemnifier recovers or is entitled to recover under the Works Policy, the Liability Policy or the Alliance PI Policy; and
 - B. any amount which, but for a failure of the Indemnifier to comply with its obligations under this Agreement, the Indemnifier would have recovered or been entitled to recover under the Works Policy, the Liability Policy or the Alliance PI Policy,with respect to the Indemnifier's liability to the Indemnified Participant under clause 16.12(a).
- (c) To avoid circularity, a reference in clause 16.12(b)(iii) to any amount which the Indemnifier recovers or is entitled to recover under the Works Policy, the Liability Policy or the Alliance PI Policy, is a reference to the maximum amount which the Indemnifier would have received payment or been indemnified for under the relevant insurance policy if:
- (i) clause 15 did not affect that liability and the limitation in clause 16.12(b)(iii) did not apply;
 - (ii) the insurance policy were interpreted disregarding clauses 15 and 16.12(b)(iii); and
 - (iii) the Indemnifier had paid each Indemnified Participant in full the amount of its liability (being its liability unlimited by clauses 15 and

16.12(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 15 or 16.12(b)(iii) to limit the Indemnifier's ability to recover any amount under any insurance policy.
- (e) Clause 16.12(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.

16.13 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 14.1(c) (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 FA 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 TfNSW, or TfNSW 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 FA of the relevant recalculated and verified Final Payment Schedule.
- (b) 16.13(a) does not apply to amounts recovered from an insurer under an insurance policy. That situation is dealt with in clause 16.8 (Accounting for insurance proceeds).

17. Termination

17.1 Notice of termination

Notwithstanding any express or implied term of this Agreement and without prejudice to any of TfNSW's other rights under this Agreement or otherwise, TfNSW 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.

17.2 Effect of termination

- (a) If this Agreement is terminated under clauses 17.1 or 17.5, TfNSW may take and use, in any way, the whole or any part of the Works (including any work carried out by the Participants during the Proposal Development Phase).
- (b) On and from the date on which this Agreement is terminated under clause 17.1 or 17.5 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 16.8; and
 - (iii) any claims for payment under clause 17.4 (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 17.1 or 17.5.

17.3 Actions following termination

If this Agreement is terminated under either clause 17.1 or 17.5, we will immediately:

- (a) cease work under this Agreement;
- (b) protect property (including Project Documentation) in our possession in which TfNSW 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 TfNSW in writing, assign or novate to TfNSW all rights and benefits under Subcontracts;
- (e) transfer ownership of, and deliver to, TfNSW, all Project Documentation;
- (f) provide TfNSW with possession of all materials and other things on the Site or off-Site and deliver to TfNSW all necessary documents, which are required for the Alliance Works; and
- (g) comply with any directions of TfNSW, including any directions to carry out the activities or do the things referred to in clauses 17.3(a) to (f) (inclusive).

17.4 Termination payments

Subject to TfNSW'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 TfNSW under clause 17.1 or by the NOP's under clause 17.5(d)(ii), TfNSW will pay the NOPs or the NOPs will pay TfNSW, as the case may be, the difference between:

- (a) the sum of (without any double counting):
 - (i) the amounts payable for the Alliance Activities carried out prior to the date of termination which will in respect of the Gainshare/Painshare Regime be determined on a just and equitable basis by the ALT;
 - (ii) the cost of materials reasonably ordered by the NOPs for the Works, which they are legally liable to accept, but only if the materials become the property of TfNSW 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 TfNSW;
 - (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 TfNSW on or after termination; and
- (b) an amount equal to any amounts which TfNSW previously paid to the NOPs.

17.5 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 (or such longer period agreed by the Principal's Representative, acting reasonably) 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 TfNSW, do either or both of the following by joint written notice to TfNSW:

- (i) wholly or partly suspend the Alliance Activities until the default has been remedied; and/or
- (ii) terminate this Agreement.

17.6 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 17.5(c)(ii):

- (a) the other Participants may employ and pay other persons to replace the NOP in the performance of the Alliance Activities and may use all design documentation, Temporary Works and Construction Plant provided by the NOP and necessary to perform the Alliance Works;
- (b) the Defaulting Participant will promptly, if required by the other Participants, assign or novate to TfNSW 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, within a reasonable period determined by the ALT (being at least 10 Business Days), the other Participants may remove and/or sell any such Temporary Works, Construction Plant or other property (but without such other Participants being responsible for any loss or damage);
- (d) without limiting clause 14.8, the Defaulting Participant will be entitled to payment (in accordance with the any relevant rates contained in this Agreement) for any Temporary Works, Construction Plant and other property provided by it which the ALT requires it to leave on Site for a period after the Defaulting Participant's exclusion from participation in the Alliance Activities;
- (e) 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
- (f) the Defaulting Participant must execute all deeds and documents (including, for the purposes of assigning or novating to TfNSW or another NOP any Subcontract, a deed of novation in the form of Schedule 25), and do all such things required by TfNSW as are reasonably necessary to assist the other Participants in the performance of the Alliance Activities.

18. Resolution of Disagreements

18.1 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 18.2.
- (e) The parties agree that nothing in this clause 18.1 limits the rights of any party to take such action as may be necessary to enforce its rights under clauses 15(e) and 15(f).

18.2 Deadlock resolution procedure

This clause 18.2 applies where a Participant gives a written notice pursuant to clause 11.3(b), 12.3(e), 12.4(e), 13.4(d) or 18.1(d). Where such a notice is given 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 11.3(b), 12.3(e), 12.4(e), 13.4(d) or 18.1(d); or
- (b) if no expert is determined by the ALT pursuant to clause 18.2(a) or the expert determined by the ALT pursuant to clause 18.2(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 29.

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:
 - (i) the ALT is still unable to achieve unanimity; or
 - (ii) the ALT and the Principal's Representative are still unable to agree,
 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.

In making his or her determination the expert will do so on a de novo basis and will not be constrained by any agreement or decision by the ALT or any rejection, refusal or failure to agree by the Principal's Representative, on the relevant Disagreement.

The Participants agree that the position set out in the final submission selected by the expert will be treated as:

- (j) a unanimous decision of the ALT in respect of the relevant Material ALT Issue; or
- (k) a unanimous decision of the ALT and the Principal's Representative regarding the matter in respect of which the notice was given under clause 11.3(b), 12.3(e), 12.4(e) or 13.4(d),

for the purposes of this Agreement.

19. Value for Money

19.1 Value for money

The Participants agree that it is a fundamental obligation of the Alliance to:

- (a) ensure and deliver value for money to TfNSW and demonstrate value for money to all Stakeholders and key interested parties; and
- (b) carry out the Alliance Activities so as to achieve the objectives of the VfM Statement.

19.2 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 GIPA Act.

20. Miscellaneous Provisions

20.1 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 20.1(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.

20.2 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 10.1),

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.

20.3 Governing law

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

20.4 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.

20.5 Tariff concessions

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

20.6 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.

20.7 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.

20.8 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 Works issued or entered into prior to the Commencement Date.

20.9 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.

20.10 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.

20.11 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.

20.12 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.

20.13 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.

20.14 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.

20.15 Survival after termination

- (a) 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.
- (b) For clarity, and without limiting clause 20.15(a), clauses 9.12, 14.8, 15, 16.12, 17 and 20 will continue to have effect after any termination as referred to in clause 20.15(a).
- (c) For the avoidance of doubt any term of this Agreement which continues to apply after the termination of this Agreement (including those referred to in clause

20.15(b)), will continue to operate after the exclusion of a NOP from further participation in the performance of the Alliance Activities.

20.16 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.

20.17 Australian Government Requirements

- (a) We must comply with the Building Code 2013 (Building Code). Copies of the Building Code are available at www.deewr.gov.au/BuildingCode.
- (b) Compliance with the Building Code will not relieve us from our responsibility to perform this Agreement, or from liability for any Defect in the Works arising from compliance with the Building Code.
- (c) Where a change in this Agreement is proposed and that change would affect compliance with the Building Code, we must submit a report to the Commonwealth specifying the extent to which our compliance with the Building Code will be affected.
- (d) We must maintain adequate records of the compliance with the Building Code by:
 - (i) us;
 - (ii) our Subcontractors;
 - (iii) our related entities (as defined in section 3(2) of the Building Code).
- (e) We must provide, and will ensure our Subcontractors and related entities (as defined in section 3(2) of the Building Code) provide, the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, with access to:
 - (i) inspect any work, material, machinery, appliance, article or facility;
 - (ii) inspect and copy any record relevant to the Project and the Alliance Activities; and
 - (iii) interview any person,as is necessary to demonstrate our compliance with the Building Code.
- (f) We agree that we and our related entities (as defined in section 3(2) of the Building Code) will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, to produce a specified document within a specified period, in person, by fax or by post.
- (g) We acknowledge that if we do not comply with the requirements of the Building Code in the performance of this Agreement such that a sanction is applied by the Minister for Employment and Workplace Relations, the Code Monitoring Group or the Commonwealth, without prejudice to any rights that would otherwise accrue, those parties will be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged

by us or a related corporation in respect of work funded by the Commonwealth or its agencies.

- (h) While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders, the Participants may give preference to subcontractors and consultants that have a demonstrated commitment to:
 - (i) adding and/or retaining trainees and apprentices;
 - (ii) increasing the participation of women in all aspects of the industry; or
 - (iii) promoting employment and training opportunities for Indigenous Australians in regions where significant Indigenous populations exist.
- (i) We must not appoint a Subcontractor in relation to the Works where:
 - (i) the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations; or
 - (ii) the Subcontractor has had an adverse court or tribunal decision (not including decisions under appeal) for a breach of workplace relations law, work health and safety law, or workers' compensation law and the Subcontractor has not fully complied, or is not fully complying with the order.
- (j) We must ensure that all Subcontracts impose obligations on Subcontractors equivalent to the requirements of this clause.

20.18 Corrupt Conduct

TfNSW may direct to have removed, within a stated time, from any part of the Alliance Activities, any person engaged on the Works (including a Subcontractor) who has been found to have engaged in corrupt conduct (as defined by the *Independent Commission Against Corruption Act 1988* (NSW)) by the Independent Commission Against Corruption.

20.19 Management Systems

We have agreed to use the management systems set out in the Agreement Particulars, which shall not be amended without the prior written approval of TfNSW.

20.20 Exclusion of Proportionate Liability

To the extent permitted by law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of each of the Participants under this Agreement whether these rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

Without limiting the above, the rights, obligations and liabilities of the Participants under this Agreement with respect to proportionate liability are as specified in this Agreement and not otherwise, whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

20.21 Body or authority ceases to exist

If a body or an authority (other than a party) referred to in this Agreement ceases to exist, reference to it is to be taken to be to the body or authority that replaces it or, if it is not

replaced, that then serves substantially the same functions. Reference to the head or other officer of the body or authority that has ceased to exist is to be taken to be to the head or other officer of the body or authority that replaces it or serves substantially the same function.


Executed as an agreement

Signed by **Transport for NSW ABN 18 804 239 602** by its authorised delegate in the presence of:


Signature of witness

Justine Gray
Full name of witness

Executive Coordinator
Position


Christopher Deccan Lock
Deputy Director General
Transport Projects Division
Transport for NSW

Signed by **Leighton Contractors Pty Limited ABN 98 000 893 667** in accordance with section 127 of the Corporations Act 2001 (Cth):


Signature of director
Peter Jeremy Hicks

Full name of director




Signature of company secretary/director

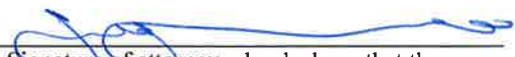
SHEILA CHOI
Full name of company secretary/director

Signed, sealed and delivered for and on behalf of **Abigroup Contractors Pty Limited ABN 40 000 201 516** by its attorney under a power of attorney dated 1 March 2013

in the presence of:


Signature of witness

ETHAN WEISZ
Full name of witness


Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

LLOYD ANTHONY FREELAND
Full name of company attorney



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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.

1. Acronyms

The following acronyms are used in this Agreement

ALT	Alliance Leadership Team
AMP	Alliance Management Plan
AMT	Alliance Management Team
ETTT	Epping to Thornleigh Third Track
FA	Financial Auditor
GST	Goods and Services Tax
KRA	Key Result Area
KPI	Key Performance Indicator
NOP	Non Owner Participant
PAA	Project Alliance Agreement
SERG	Senior Executive Review Group
TOC	Target Outturn Cost

2. Definitions

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

"Acting Alliance Manager" means the person appointed by the ALT under clause 6.2(b)(ii).

"Additional Track Possession or Power Isolation" has the meaning given to that term in clause 8.16(d).

"AFC Design Documentation" means the Design Documentation which:

- (a) in the Participants' opinion, is sufficiently developed and complete that it can be used for the purpose of constructing the relevant part of the Works and may be submitted for review by the Principal's Representative under clause 9.3;
- (b) is submitted by the Participants in accordance with clause 9.3 and in respect of which the preconditions to submission set out in clause 9.3 have been satisfied;
- (c) where relevant, has received a Configuration Change Notice;
- (d) is marked by the Alliance "AFC" or "Approved for Construction" in accordance with the TSRs; and
- (e) is issued by the Participants to TfNSW for its records.

"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 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 Works Brief) including the design, construction, commissioning, integration, bringing to operational readiness and handover of the Alliance Works to TfNSW and the provision of Temporary Works and Construction Plant.

"Alliance Certificate of Construction Compliance" means a certificate from the Participants in the form set out in Schedule 14 certifying that the procurement and construction of the work packages complies with the requirements of this Agreement.

"Alliance Certificate of Design Compliance" means a certificate from the Participants in the form set out in Schedule 13 certifying that the Design Documentation complies with the requirements of this Agreement.

"Alliance Development Deed" means the deed entitled "Alliance Development Deed" entered into between TfNSW and the NOPs dated 17 September 2012.

"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 TfNSW under clause 9.1 and all Intellectual Property Rights associated with them.

"Alliance Leadership Team" or **"ALT"** means the alliance leadership team established under clause 5.1.

"Alliance Management Plan" or **"AMP"** means the suite of plans referred to and described in the TSRs.

"Alliance Management Team" or **"AMT"** means the alliance management team established by the ALT under clause 6.1.

"Alliance Manager" or **"AM"** means the person appointed by the ALT under clause 6.2 and includes any Acting Alliance Manager appointed from time to time.

"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 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 TfNSW 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 5.2(d) to act as the alternative of that ALT Member.

"ALT Chairperson" means the chairperson of the ALT as referred to in clause 5.3(a) and appointed from time to time under clause 5.3(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 5.2. Where the context permits, references to an "ALT Member" include an Alternative ALT Member of that ALT Member.

"ALT Performance Report" means the report described in clause 5.7(b).

"AMT Member" means a member of the AMT established by the ALT under clause 6.1(a).

"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 TfNSW condition or approval in connection with the 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 Works.

"Asset Lands" are the lands so identified in Schedule 22.

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

"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.

"Bank Bill" means a bill of exchange (as defined in the *Bills of Exchange Act 1909* (Cth)) that has been accepted by a bank authorised under a law of the Commonwealth of Australia or any state to carry on banking business.

"Bank Bill Rate" for a period, means the rate, expressed as a yield per cent per annum (rounded up (if necessary) to 4 decimal places) that is quoted as the average bid rate on the Reuters monitor system page "BBSY" (or any page that replaces that page) at about 10.10 am (Sydney time) on the first day of the relevant period for which the rate is sought, for Bank Bills that have a tenor in months which is closest to the period, provided that if there is a manifest error in the calculation of that average bid rate or if no average bid rate is so published for Bank Bills of that tenor by about 10.30 am then the Bank Bill Rate shall be the bid rate specified by TfNSW, having regard to the rates otherwise bid for Bank Bills having a tenor as described above at or around that time.

"Best For Project" means an approach, determination, decision, outcome, solution or resolution which is consistent with the aim of ensuring that the Works are fit for their intended purpose and constitute value for money to the State, consistent with the stated objectives of the Alliance rather than the achievement of self-serving goals (such as maximising the NOPs' profit).

"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 12.3(b).

"Certificate of Final Completion" means the certificate referred to in clause 12.4(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.

"Certificates of Construction Compliance" means the:

- (a) Alliance Certificate of Construction Compliance;
- (b) Detailed Designer's Certificate of Construction Compliance;
- (c) the Signalling Designer's Certificate of Construction Compliance; and
- (d) Designers' Certificates of Construction Compliance.

"Change in Law" means (if it takes effect after the Commencement Date):

- (a) a change in an existing Law (other than a change in an Approval); or
- (b) a new Law (other than a new Approval),

compliance with which:

- (c) has a direct effect on the Participants carrying out the Alliance Activities; and
- (d) directly results in an increase or decrease in the Participants' costs of carrying out the Alliance Activities,

but excludes:

- (e) a change in an existing Law in respect of Taxes or a new Law in respect of Taxes; and

- (f) a change in an existing Law or a new Law which, as at the Commencement Date:
- (i) was published or of which public notice had been given (even as a possible change in an existing Law or a possible new Law); or
 - (ii) a party experienced and competent in the delivery of works and services similar to the Alliance Works or the Alliance Activities (as applicable) would have reasonably foreseen or anticipated,
- in substantially the same form as the change in an existing Law or new Law eventuating after the Commencement Date.

"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.

"Code of Practice" has the meaning given to that term in clause 20.17.

"Commencement Date" means the date of this Agreement.

"Commercial Framework" means the commercial framework set out in Schedule 7 (Commercial Framework), as adjusted in accordance with this Agreement from time to time.

"Commonwealth" means the Commonwealth of Australia.

"Compensation Audit Plan" means the plan of this name prepared in accordance with Schedule 7.

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

- (a) the Alliance Works are, or the Portion is, complete except for minor Defects:
 - (i) which do not prevent the Alliance Works or the Portion from being Ready for Operations; and
 - (ii) which can be corrected without prejudicing the convenient use of the Alliance Works or the Portion;
- (b) 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 Alliance Works or the Portion have been issued;
- (c) those tests that are required to be carried out before the Alliance Works or the Portion reaches Completion have been carried out and passed;
- (d) all testing, training, documents and other information associated with the Alliance Works or the Portion and essential for the use, operation and maintenance of the Alliance Works or the Portion have been supplied to TfNSW including but not limited to all Subcontractors' warranties, operating manuals, licences, access codes, as-built drawings or work-as-executed drawings; and
- (e) any other things required to be done under this Agreement as part of the Alliance Works or the Portion (as applicable), or before (or as conditions precedent to) Completion, have been done.

"Condition Survey" has the meaning given in clause 8.11(b).

"Confidentiality Undertaking" means a confidentiality undertaking in the form set out in Schedule 26.

"Configuration Change Notice" means a notice of that name issued by RailCorp in respect of Design Documentation.

"Construction and Site Management Plan" means the plan of that name described in the TSRs.

"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.

"Critical Design Review" has the meaning given to that term in the TSRs.

"Date for Completion" means the date which is specified in the Agreement Particulars as the date by which the Alliance Works will be brought to Completion, as adjusted in accordance with the Agreement.

"Date of Completion" means the date stated in a Certificate of Completion approved and completed by the Principal's Representative in accordance with clause 12.3(c) (or such other date as may be determined by an expert pursuant to clause 18).

"Date of Final Completion" means the date stated in a Certificate of Final Completion approved and completed by the Principal's Representative in accordance with clause 12.4(c) (or such other date as may be determined by an expert pursuant to clause 18).

"Default Rate" means in respect of a period, a rate equivalent to 3% per annum above the Bank Bill Rate for that period.

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

"Defect" means:

- (a) any defect or omission in the Alliance Works and includes any damage caused to the Alliance Works by any one of us in the course of performing the Alliance Works; or
- (b) any aspect of the Alliance Works which is not in accordance with the requirements of this Agreement.

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

- (a) the date which is 12 months after the Date of Completion;
- (b) the date which is 12 months after the last Defect notified under clause 11.3 has been rectified in accordance with clause 11.3.

"Design Documentation" means all design documentation (including design standards, design reports, durability reports, construction descriptions, specifications, models, samples, prototypes, calculations, drawings, digital records, computer software and all other relevant data) in computer readable and written forms, or stored by any means, required by this Agreement or necessary to be produced by the Participants or a Designer to design and construct the Works.

"Designer" means each Subcontractor engaged by one or more of the Participants to undertake the design of the Works (or any part) and includes the Detailed Designer and the Signalling Designer.

"Designers' Certificate of Construction Compliance" means the certificate from:

- (a) the most senior member of the Designer's team engaged in the design of the Works (and where there is more than one design discipline involved in the relevant package or element, then the most senior member in each relevant discipline) involved in the design of the relevant package or element; and
- (b) where relevant, each of those members of the Designer's team engaged in the design of the Works who hold Engineering Authority,

in the form set out in Schedule 14 certifying that the procurement and construction of the work packages complies with the requirements of this Agreement.

"Designers' Certificate of Design Compliance" means the certificate from:

- (a) the most senior member of the Designer's team engaged in the design of the Works (and where there is more than one design discipline involved in the relevant package or element, then the most senior member in each relevant discipline) involved in the design of the relevant package or element; and
- (b) where relevant, each of those members of the Designer's team engaged in the design of the Works who hold Engineering Authority,

in the form set out in Schedule 13 certifying that the Design Documentation complies with the requirements of this Agreement.

"Detailed Designer" means AECOM Australia Pty Limited ABN 20 093 846 925.

"Detailed Designer's Certificate of Construction Compliance" means a signed certificate of construction compliance in the form attached to the professional services contract that has been executed by the Detailed Designer.

"Detailed Designer's Certificate of Design Compliance" means a signed certificate of design compliance in the form attached to the professional services contract that has been executed by the Detailed Designer.

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

"Document" has the meaning given to that term in clause 9.3(a).

"Draft Third Party Agreement" has the meaning given to that term in clause 8.12(b)(i).

"Engineering Authority" means the engineering authority issued by TfNSW in accordance with RailCorp's Engineering Design Competency System (EPA 241).

"Environment" has the same meaning as in the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth).

"Environment Protection Licence" means an environment protection licence granted by the Department of Environment and Climate Change under the *Protection of the Environment Operations Act 1997* (NSW).

"Environmental Management Plan" means the plan of that name described in the TSRs.

"Environmental Representative" means the person appointed by TfNSW and named in the Agreement Particulars.

"Extra Land" means the land or buildings referred to in clause 8.9(b)(i).

"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.

"Final Payment Claim" means the Payment Claim made pursuant to clause 14.1(c) (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.

"Final Project Proposal" means the proposal submitted by the NOPs in accordance with the Alliance Development Deed..

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

"Gainshare" has the meaning given to that term in the Commercial Framework.

"Gainshare/Painshare Regime" has the meaning given to that term in the Commercial Framework.

"GIPA Act" means the *Government Information (Public Access) Act 2009* (NSW).

"Greenhouse Data" means all data, information, records and reports of the type that a registered corporation or any other person may be required or entitled to provide under the NGER Legislation, including as to:

- (a) greenhouse gas emissions, energy production or energy consumption; and
- (b) reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any greenhouse gas project,

relating to any aspect of any Relevant Matters.

"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.

"Head MOU" means the memorandum of understanding titled "National Partnership Agreement on Implementation of Major Infrastructure Projects in New South Wales, 2009-2014" between the Commonwealth and New South Wales, dated 6 March 2009 and as varied on 12 June 2009.

"Impact Request" means a notice from TfNSW to the ALT, requesting the ALT to make a determination under clause 13.2.

"Insolvency Event" means:

- (a) a NOP becomes, is declared to be, is taken under any applicable law to be, admits to or informs TfNSW 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.

"Intellectual Property" means all rights in 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.

"Intellectual Property Rights" means all present and future rights conferred by statute, common law or equity in or in relation to Intellectual Property. 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 Agreement" means an interface agreement between TfNSW and RailCorp for the purposes of the Rail Safety Legislation, a copy of which (as at the Commencement Date) is contained in Exhibit J.

"Interface Contractor" means an Other Contractor listed in the Agreement Particulars, or otherwise identified by the Principal's Representative, as an Interface Contractor, that is carrying out, or that will carry out, Interface Work.

"Interface Work" means the work to be executed by Interface Contractors, which will interface with or affect or be affected by the Alliance Activities and the Works, including that described in the Works Brief.

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

"Key Subcontractors" means the Subcontractors agreed by TfNSW at the Commencement Date and specified in the Agreement Particulars.

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

"Law" means, for the purposes of the definition of Change in Law:

- (a) Commonwealth, New South Wales or local government legislation, including ordinances, instruments, codes of practice, policy and statutory guidance (but excluding the Building Code of Australia, any other building codes, or Standards Australia codes), requirements, regulations, by-laws and other subordinate legislation;
- (b) principles of law or equity established by decisions of courts; and
- (c) Approvals (including any condition or requirement under them).

"Long Service Levy" means the levy payable under 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 10.1 (Subcontracts), clause 10.6 (Related entity transactions), clause 11.3(h) (Defects), 12.1 (Adjustment of Date for Completion), 12.2(d) (Suspension of Alliance Activities), 12.3(b) (Certificate of Completion), 12.4(b) (Certificate of Final Completion), 13.2 (Impact Request), 13.3 (Target Adjustment Events) and 13.4 (Adjustments to Commercial Framework), 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.

"Nation Building Program Act" means the *Nation Building Program (National Land Transport) Act 2009* (Cth).

"NGER Legislation" means *National Greenhouse and Energy Reporting Act 2007* (Cth), related regulations and legislative instruments.

"NGER NOP" means the NOP referred to in clause 10.17(a) and identified in the Agreement Particulars.

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

"Nominated Subcontractor" means a Subcontractor identified in the Agreement Particulars to whom the Participants must subcontract the relevant Nominated Subcontract Work.

"Nominated Subcontract Work" means that supply of goods or services specified in the Agreement Particulars that may only be performed by the relevant Nominated Subcontractor.

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

"NSFC MOU" means the Memorandum of Understanding in relation to the Northern Sydney Freight Corridor between the Commonwealth of Australia and The Crown in right of the State of New South Wales, dated 7 December 2011.

"NSFC Project Control Group" or "NSFC PCG" means a group formed by the NSFC Steering Committee as described in clause 3.6(a).

"NSFC Steering Committee" means the steering committee established under the NSFC MOU which consists of the Chief Executive Officers (or agreed designated alternates) from:

- (a) TfNSW (Chair);
- (b) Commonwealth Department of Infrastructure and Transport;
- (c) ARTC; and
- (d) RailCorp.

"OHS Accreditation Scheme" means the Australian Government Building and Construction OHS Accreditation Scheme established by the *Fair Work (Building Industry) Act 2012* (Cth).

"Option" means an option referred to in Schedule 32.

"Other Contractor" means RailCorp or any contractor, consultant, artist, tradesperson or other person engaged by TfNSW or others to do work, including any Interface Contractors but not including the NOPs and their Subcontractors.

"Other Contractor Work" means the works to be undertaken by an Other Contractor engaged by TfNSW or the Alliance on the Site during any period in which the Principal Contractor has been engaged as principal contractor in respect of the Site.

"Overpayment Amount" has the meaning given to that term in clause 9.17(a).

"Painshare" has the meaning given to that term in the Commercial Framework.

"Participant" means TfNSW 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 TfNSW under clause 14.2(e).

"Planning Approval" means the approval for the Project under the *Environmental Planning and Assessment Act 1979* (NSW) (including any determination in respect of the Project based on an environmental assessment under that Act), as modified, updated or supplemented 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 TfNSW determines is a portion pursuant to clause 12.5(a).

"Preliminary Design Review" has the meaning given to that term in the TSRs.

"Principal Contractor" has the meaning given in clause 10.9(d)(i)A.

"Principal's Representative" means the representative appointed by TfNSW as referred to in clause 3.5(a).

"Procurement Management Plan" means the plan of that name referred to and described in the TSRs.

"Prohibited Subcontractor" means:

- (a) any Subcontractor:
 - (i) who has made an admission to the Independent Commission Against Corruption that it has engaged in; or
 - (ii) in respect of whom the Independent Commission Against Corruption has made a finding that it has engaged in, corrupt conduct as defined in the *Independent Commission Against Corruption Act 1988* (NSW); or
- (b) any Subcontractor employing an employee in respect of whom paragraphs (a)(i) or (a)(ii) apply.

"Project" means the project as defined in paragraph C of the Background of this Agreement.

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

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

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

"Project Safety Management Plan" means the plan of that name prepared by the Principal Contractor and developed under clause 10.10.

"Project Site" means:

- (a) the Asset Lands, Temporary Lands and other places described in Schedule 22; and
- (b) any other lands and places made available to the Participants by TfNSW for the purposes of this Agreement,

and excludes the Remote Sites and Extra Land.

"Proposal Development Phase" means the phase of the procurement process as described in the Request for Proposal and as set out in the Alliance Development Deed.

"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 (i.e. tunnel, building or retaining walls) or everywhere within 15 metres of the outermost rails. It may exclude areas that have received an exemption from rail industry safety induction ("RISI Exemption") for the period of the exemption.

"Rail Safety Legislation" means:

- (a) the *Rail Safety National Law* (NSW) as amended or replaced from time to time;
- (b) the *Rail Safety National Law National Regulations 2012* (NSW); and
- (c) any other Regulations under the Rail Safety Legislation.

"Rail Safety Worker Competency" means the level of competence described in section 117 of the *Rail Safety National Law* (NSW).

"RailCorp" means Rail Corporation New South Wales, a NSW Government agency constituted by section 4(1) of the *Transport Administration Act 1988* of Level 6, 18 Lee Street, Chippendale, New South Wales and its successor in title or law.

"Railway Track" means the rails fastened on sleepers or transoms and founded on ballast or bridge decking, associated signalling and overhead wiring components (in electrified areas).

"Ready For Operations" means the stage when 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 body corporate as defined in the *Corporations Act 2001* (Cth) and any other entity determined by the Principal's Representative to be a related party for the purposes of this Agreement.

"Relevant Matters" has the meaning given to that term in clause 10.17(a).

"Remote Sites" are lands, other than the Project Site, on which Remote Works must be constructed.

"Remote Works" are those parts of the Alliance Works or Temporary Works that must be constructed on Remote Sites, including:

- (a) minor roadworks;
- (b) landscaping;
- (c) any item of work required by any Approval to be constructed outside the Project Site;
- (d) any item of work required by the Third Party Agreements to be constructed outside the Project Site; and
- (e) connections to, augmentation of and construction of any Service on a Remote Site.

"Request for Proposal" means the Request for Proposals for the Project, entitled "Northern Sydney Freight Corridor - Epping to Thornleigh Third Track Alliance Request for Proposals" issued by TfNSW on 4 July 2012.

"Revised Allocation" has the meaning given to that term in clause 8.12(b)(ii).

"RISI Card" means the card issued to a person after that person has completed a rail industry safety induction.

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

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

"**SERG Chairperson**" means the person appointed under clause 4.3(a).

"**SERG Member**" means, in respect of a Participant, a person appointed by that Participant as a member of the SERG and named in the Agreement Particulars, as replaced from time to time in accordance with clause 4.2(c).

"**Service**" includes any service, facility or item of public or private infrastructure (including railway systems, pedestrian and vehicular corridors, water, electricity, gas, ethane, fuel, telephone, existing drainage, sewerage, industrial waste disposal and electronic communications service).

"**Signalling Designer**" means Parsons Brinckerhoff Australia Pty Limited ABN 80 078 004 798.

"**Signalling Designer's Certificate of Construction Compliance**" means a signed certificate of construction compliance in the form attached to the professional services contract that has been executed by the Signalling Designer.

"**Signalling Designer's Certificate of Design Compliance**" means a signed certificate of design compliance in the form attached to the professional services contract that has been executed by the Signalling Designer.

"**Site**" means the Project Site, the Remote Sites and the Extra Land.

"**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 Works.

"Subcontractor" means any person engaged by a Participant (including a Designer and 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.

"System Definition Review" has the meaning given to that term in the TSRs.

"Target Adjustment Event" means:

- (a) a TfNSW Reserved Power Direction which the ALT and the Principal's Representative agree justifies a modification to the Commercial Framework (as determined in accordance with clause 13.4);
- (b) a change to the Works recommended by the ALT and accepted by TfNSW pursuant to clause 13.5, which the ALT and the Principal's Representative agree justifies a modification to the Commercial Framework (as determined in accordance with clause 13.4); and
- (c) an event or circumstance of a type which the Participants have agreed that the associated risk/opportunity will be borne unilaterally by TfNSW, as specified in Target Adjustment Guidelines.

"Target Adjustment Guidelines" means the document in Schedule 20.

"Target Outturn Cost" or **"TOC"** means the target outturn cost ascertained in accordance with the Commercial Framework and approved by TfNSW, as adjusted (if at all) in accordance with this Agreement.

"Taxes" means, for the purposes of the definition of Change in Law, income, stamp, indirect or other taxes, levies, imposts, deductions, charges, duties (including import duty), compulsory loans and withholdings (including financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person) together with interest thereon or penalties, if any, and charges, fees or other amounts made on, or in respect thereof.

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

"Temporary Lands" are the lands so identified in Schedule 22.

"Temporary Works" means works (including processes and other things) used for the purpose of carrying out the Alliance Activities, but which do not form part of the Alliance Works.

"TfNSW Accreditation" means the accreditation held by TfNSW pursuant to the Rail Safety Legislation.

"TfNSW Alliance Costs" means any cost incurred directly by TfNSW 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 TfNSW Alliance Costs.

"TfNSW Reserved Powers" means those matters as defined in clause 13.1 on which the final decision is reserved for a determination by TfNSW or the Principal's Representative (rather

than being decided collectively by the Participants or unanimously by the ALT Members on the ALT).

"TfNSW Reserved Power Direction" has the meaning given in clause 13.1.

"TfNSW Safety Management System" means:

- (a) the safety management system, as defined in the Rail Safety Legislation, for use by TfNSW 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 is consistent with TfNSW's Safety Management System and:
 - (i) is approved for use by TfNSW; or
 - (ii) is required to be used to comply with a Statutory Requirement.

"TfNSW Supplied Items" means the items set out in Schedule 19.

"Third Party" means a party to a Third Party Agreement other than TfNSW and the Participants.

"Third Party Agreements" means all deeds, agreements, protocols and other arrangements with other owners, occupiers, tenants or potential tenants of the Site to which TfNSW or the Participants are parties, including:

- (a) the agreements referred to in Schedule 11 in respect of which:
 - (i) where the agreement has been executed by all parties to the agreement, a copy of the agreement; or
 - (ii) where the agreement has not been executed, a draft of the agreement, appears in Exhibit I; and
- (b) any such agreements entered into after the date of this Agreement.

"TPD's Property Group" means the property group of the Transport Projects Division of TfNSW.

"Track Possession" means a period during which the Participants have access to Railway Track for the purpose of carrying out the Alliance Activities including for the purpose of rectifying Defects.

"TSRs" or "TfNSW Standard Requirements" means the standard requirements of TfNSW attached to this Agreement as Exhibit A.

"TSR Prelude" means the document entitled "TfNSW Standard Requirements - TSR Prelude" contained in the TSRs.

"VfM Statement" means the Value for Money Statement set out in Exhibit G.

"WHS Legislation" means:

- (a) the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2011* (NSW); and

- (b) any legislation in other States and Territories of Australia addressing work health and safety which applies to the Works.

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

- (a) wilful and 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 9.9 (Third parties' Intellectual Property Rights) or 9.10 (Moral Rights);
- (h) an intentional 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 TfNSW 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 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.

"Works" means the Alliance Works and the Temporary Works.

"Worksite" means those parts of the Site identified in clause 2 of Schedule 22.

"Works Brief" means the document set out in Exhibit B.

3. Interpreting this Agreement

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

The following rules also apply in interpreting this Agreement, unless the context indicates a contrary intention:

- (a) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (b) "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 a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation ;
- (d) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (e) 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;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) 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;
- (h) 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;
- (i) "includes" in any form is not a word of limitation;
- (j) a reference to "\$" or "dollar" is to Australian currency;
- (k) TfNSW is a reference to TfNSW in its capacity as the client for the performance of the Alliance Activities (except in the definition of "Participant" in Schedule 1, where it is a reference to TfNSW in its capacity as a Participant in the Alliance);
- (l) "we", "our", "us" or "the parties" is a reference to the Participants, including TfNSW in its capacity as a Participant in the Alliance and not in its capacity as the client for the performance of the Alliance Activities; and
- (m) a decision of the ALT includes a direction, determination, approval, authorisation, consent, agreement, recommendation or requirement of the ALT.


4. Order of precedence

- (a) In the event of any inconsistency, ambiguity or discrepancy between the requirements of the Works Brief and the Principal's Design (as defined in the Works Brief) ("**Principal's Design**") and the requirements of the remainder of this Agreement then to the extent of any inconsistency, ambiguity or discrepancy, the higher, or more onerous, or more rigorous, requirement will apply.
- (b) In the event of any other inconsistency, ambiguity or discrepancy between the various documents comprising this Agreement then:

- (i) where the inconsistency, ambiguity or discrepancy is between two or more documents that together comprise the Works Brief, then to the extent of any inconsistency, ambiguity or discrepancy, the higher, or more onerous, or more rigorous, requirement will apply; and
 - (ii) otherwise, to the extent of any inconsistency, ambiguity or discrepancy, the order of precedence in Schedule 2 applies.
- (c) The Works Brief, the Principal's Design and the Planning Approval are to be regarded as mutually explanatory and anything contained in one but not in the other will be equally binding as if contained in all, so as to ensure that the Works comply with this Agreement and are fit for their intended purposes as stated in, or reasonably inferred from, the Works Brief and this Agreement.

	Phone: [REDACTED] Mobile: [REDACTED]
	Name: [REDACTED] Organisation: Abigroup Contractors Pty Limited E-mail: [REDACTED] Phone: [REDACTED] Mobile: [REDACTED]
	Name: [REDACTED] Organisation: Abigroup Contractors Pty Limited E-mail: [REDACTED] Phone: [REDACTED] Mobile: [REDACTED]
	Name: [REDACTED] Organisation: Transport for NSW E-mail: [REDACTED] Phone: [REDACTED] Mobile: [REDACTED]
	Name: [REDACTED] Organisation: Transport for NSW E-mail: [REDACTED] Phone: [REDACTED] Mobile: [REDACTED]
ALT Chairperson (Clause 5.3(a))	To be determined by the ALT

Alliance Manager (Clause 6.2(a))	Name: [REDACTED] Organisation: Leighton Contractors Pty Limited E-mail: [REDACTED] Phone: [REDACTED] Mobile: [REDACTED]
NOP to obtain Environment Protection Licence (clause 7.1)	Leighton Contractors Pty Limited
Environmental Representative (Clause 7.2(a))	Sinclair Knight Merz Pty Limited (Contact: [REDACTED])
Third Party Agreements (Clause 8.12)	<ul style="list-style-type: none"> (a) Interface Agreement between TfNSW and RailCorp (b) [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] (i) Agreement between Ausgrid and TfNSW for the Connection of Developments for: <ul style="list-style-type: none"> (i) (Project Number: SC03726) new Kiosk Substation s.62030 'Cheltenham Station', remove Kiosk Substation s.5477 'the Crescent Cheltenham' and relocate assets (ii) (Project Number: SC03708) Electricity Network Connction at: Pennant Hills

	<p>Station Yarrara Rd Pennant Hills, NSW 2120</p> <p>(iii) (Project Number: SC03863) Epping to Thornleigh Third Track Project – Ref 43 – Asset Relocation Rail Corridor alongside Wongala Crescent, near Sherwood Close Beecroft</p> <p>(iv) </p> <p>(v) Agreement between Ausgrid and TfNSW for Small Asset Relocation Projects (Project Number: SC03870) Asset Relocation - Epping to Thornleigh Third Track Project Reference 32 - Transport for NSW Rail Corridor Alongside The Crescent (near Murray Rd) & Sutherland Road (near Glenelg Pl), Beecroft</p> <p>(j) Short Form Contract (SFC No. 4226), between Ausgrid and TfNSW for investigation and design for relocation of pole on 66kV feeder 813 at Beecroft Road due to Railway Upgrade</p> <p>(k) Head Developer Works Deed (Case number: 128758), between Sydney Water Corporation and TfNSW</p>
<p>Interface Contractors (Clause 8.14)</p>	<p>United Group Limited (digital train radio system)</p> <p>Automatic train protection (ATP) contractor</p> <p>Electronic ticketing system (ETS) contractor</p> <p>2kV to 11kV signalling power supply upgrade contractor</p> <p>RailCorp and its subcontractors (for RailCorp maintenance and renewal work)</p> <p>Leighton Contractors (M2 Upgrade Project)</p> <p>North West Rail Link contractor/s</p> <p>Transport access program contractor/s for works at Pennant Hills station and interchange</p>
<p>Financial Auditor ("FA")</p>	<p>Pitcher Partners Pty Ltd</p>

(Clause 9.15)			
Key Subcontractors (Clause 10.2(a))		Nil	
Nominated Subcontractors and Nominated Subcontract Work: (Clause 10.3 and Schedule 1, clause 2) <ul style="list-style-type: none"> • Detailed Designer (for detailed design, as set out in Appendix A of Exhibit B) • Signalling Designer (for signalling design, as set out in Appendix B of Exhibit B) • RailCorp (for RailCorp contractor works, as set out in Appendix G of Exhibit B) • SLR (for operational noise and vibration - acoustic technical advisor) <p>Supply only items as set out in the table below:</p>			
Equipment Group	Nominated Subcontract Work (supply only)	Specific requirements (additional to all applicable standards, regulations and codes)	Nominated Subcontractors (supply only)
Turnout Steel Components	Standard Crossing		VAE, PRE, Flowserve (TKL), or Congifer
	CV or Manganese Crossings		
	Monobloc In Bearer		
	Turnouts		
	Catchpoints		
Sleepers	HD Concrete Sleepers (FASTCLIP)		Rocla
	HD Concrete Sleepers (Pandrol'e')		
	MD Concrete Sleepers (FASTCLIP)		

	MD Concrete Sleepers (Pandrol'e')		
	Concrete Bearers		
Overhead Wiring	Catenary		Olex
	Contact		Metal Manufactures
	Droppers (sets) and Inspan Feeders		RailCorp (Mfg by RailCorp REC)
Signalling Equipment	SSI / GEC		Westinghouse / Alstom (United Group)
	Track Circuits		Jeumont Schneider / ML / CSEE
	Signal Cupboards	Jeumont Schneider Track Circuits - SC07420000EQ (June 1999)	Marciano Industries / Kevin Webber Sheetmetal / KG Sheetmetal
	Relays		Westinghouse
	Microlock		Union Switch
Track Jewellery	Rail Welding Kits - Plain line		Railtech / Thermit
	Rail Welding Kits - T/O & C/P		
	E Clips		Pandrol
	FishBolts		Greg Sewell Forgings
	Fishplates		Westray Engineering
	Screw Spikes		Delkor Rail
	Lock Spikes		Pandrol
Cables	Low Smoke Halogen Free Cables		Olex
	33kv	Testing of HV Cables - EP20 00 00 20SP	Olex / Pirelli
Transformers	1500Volt DC		Mitsubishi Australia

/Switchgear /Electrical	Circuit Breakers		
	Outdoor DC Reactor		Transformer Manufacturing Company
	1500V DC Isolator		Australian Rail Technology
	Common Equipment Panel		United Group
	Trackside Isolator		Edward Keller / Australian Rail Technology
	SCADA RTU		Foxboro (Invensys), Logica CMG, Kingfisher
	Battery Charger		Cordex by Complete power solutions
	Batteries		Hoppecke or Battery Energy or Sonnenschein
	2kV polemount transformers)		RailCorp - from RailCorp stores (existing spares
	11kV/415V kiosk (Ausgrid)	Ausgrid standards & requirements	To meet Ausgrid requirements
	LV Switchboard		
	DC Switchboard		Red Spot
	Rail-Earth Contactor		United
Lifts	Platform Lifts	Spec E2 in RailCorp Term Contract C03282	Liftronics
Rail	60kg Head Hardened Rail		Onesteel
	60kg Plain Carbon		
	Glued Insulated Joints		Bathurst Rail Fab. Centre
Ballast	Truck Quantities		Boral RailCorp Quarries
	Train Quantities		
NOP to be appointed as principal contractor		Leighton Contractors Pty Limited	

(Clause 10.9(d))	
NOP to have operational control under the NGER Legislation (Clause 10.17(a))	Leighton Contractors Pty Limited
Benchmark quality assurance standard (Clause 11.1)	ISO 9001:2008
Portions (Clause 12.5)	<p>Portion 1: All parts of the Alliance Works necessary for bringing into operation all of the stations (namely, Epping, Cheltenham, Beecroft and Pennant Hills Stations) and rail infrastructure.</p> <p>Portion 2: The completion of the remainder of the Alliance Works, other than any Defects in Portion 1.</p>
Addresses for service of notices (Clause 20.1(a))	<p>Transport for NSW</p> <p>Address: Level 5, Tower A Zenith Centre 821 Pacific Highway Chatswood NSW 2067</p> <p>Fax: 02 9200 0290</p> <p>Attention: Principal's Representative</p>
	<p>Name: Leighton Contractors Pty Limited</p> <p>Address: Level 4, Tower A 799 Pacific Highway Chatswood NSW 2067</p> <p>Fax: (02) 9414 3500</p> <p>Attention: XXXXXXXXXX</p>
	<p>Name: Abigroup Contractors Pty Limited</p> <p>Address: Level 20, The Zenith Tower B 821 Pacific Highway Chatswood NSW 2067</p> <p>Fax: (02) 9499 0450</p> <p>Attention: XXXXXXXXXX</p>
Management Systems (Clause 20.19)	<ul style="list-style-type: none"> • P6 (or the latest Primavera, for scheduling); • Team Binder for document control;

	<ul style="list-style-type: none"> • Scenario for defect management; and • TfNSW Transport Projects Division (TPD) Incident Management System
Date for Completion (Section 2 of Schedule 1)	<p>Portion 1: 13 June 2016</p> <p>Portion 2: 4 September 2016</p>
Order of precedence (Section 4 of Schedule 1)	<p>(a) General conditions of the Agreement and the Schedules; then</p> <p>(b) the TSRs; then</p> <p>(c) the Works Brief; then</p> <p>(d) the Exhibits not specifically stated in paragraph (b) or paragraph (c).</p>

Schedule 3 – Alliance Principles

- (a) The Participants intend to share all risks and opportunities associated with the Alliance Activities and the delivery of the Alliance Works, regardless of whether or not:
 - (i) those risks/opportunities are within the Participants’ control; or
 - (ii) the Participants could (or should) reasonably have foreseen them; or
 - (iii) the Participants made any provision for them in the TOC,except for those types of risks/opportunities that we have specifically agreed and documented in the Target Adjustment Guidelines or this Agreement which will be retained solely by TfNSW or a particular NOP.
- (b) Complete transparency in all arrangements.
- (c) We either all win or we all lose - win/lose outcomes are not acceptable.
- (d) Equitable sharing of risk and benefit, so that Gainshare/Painshare is linked to real risks and benefits that TfNSW considers affect the value of the project. Note that equitable does not necessarily mean equal or symmetrical.
- (e) The only way for a NOP to earn exceptional returns is for the Alliance to deliver exceptional (superior) performance in areas that TfNSW considers to be of additional value.
- (f) TfNSW is committed to the NOPs being able to earn 100% of available Gainshare entitlements through outstanding performance.
- (g) Overall Painshare for each NOP is capped at the value of that NOP’s Fee.
- (h) No express cap on Gainshare (although upside potential is inherently limited).
- (i) In the event of a very poor outcome all the NOPs should reach their respective Painshare caps at the same time.
- (j) The Commercial Framework should enable the Alliance to make Best For Project resourcing decisions without unfairly penalising the Participant that provides those resources.
- (k) We accept that Reimbursable Costs will not include costs incurred in substantial breach of agreed governance obligations.

Schedule 4 – Alliance Values

Alliance Values to be determined by the ALT.

Schedule 5 – Alliance Objectives

The Alliance Objectives are as follows:

Areas	Alliance Objective
Cost	Demonstrate value for money in delivering the Alliance Works
Safety	Zero harm to workers and the public Zero rail-related incidents
Schedule	Effectively utilise available possessions Meet all key milestone dates Designs delivered to agreed milestones
Quality	Compliant designs Demonstrated assurance in construction
Operations	No unplanned disruption to rail network operations No unplanned disruption to other assets
Community	Minimise community disruption Positive engagement with community stakeholders
Environment	Minimise environmental impacts Designs compliant with sustainability guidelines

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

1. Part 1 - SERG

1.1 Role

The SERG provides an opportunity for senior and experienced representatives of the Participants to come together and contribute any ideas to further enhance the performance of the Alliance or to take action within their own organisation to address concerns. SERG Members are to:

- (a) be an influencer for the Alliance; and
- (b) assist in expediting high level Participant decisions or help remove impediments beyond the control and/or responsibility of the ALT.

1.2 Competencies

SERG Members are expected to have complementary skills and experience in, and a good understanding of:

- (a) alliances;
- (b) the Project, the PAA and the commercial framework; and
- (c) the role of the ALT.

1.3 Responsibilities

- (a) The SERG may consider any matter relating to the Alliance and the corporate issues of the Participants that are impacting on or impacted by the Alliance.
- (b) Notwithstanding the above, the SERG's responsibilities are to:
 - (i) review the health of corporate relationships between the Participants;
 - (ii) review relevant areas of relevant key corporate risks such as reputation, public scrutiny, legislative compliance in areas of rail safety, work health and safety, environmental and corporate law;
 - (iii) confirm the ALT members are appropriate, trained and available for their ALT responsibilities; and
 - (iv) review the performance of the ALT for consistency with their accountabilities and the Alliance Principles and values.
- (c) The SERG may provide relevant advice to the ALT and/or the Participants' management to improve the Alliance's health or performance.
- (d) The SERG has no decision making, dispute resolution or approval responsibility. Those responsibilities remain with the ALT as set out in the PAA and this Schedule 6.

2. Part 2 – ALT

2.1 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.

2.2 Accountabilities

The accountabilities of the ALT are to be agreed with the Participants. 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) Effective and efficient decision making including resolution of differences and disagreements;
- (g) Keeping complete records of meetings;
- (h) Exercise relevant ALT delegations;
- (i) Promoting the Alliance externally;
- (j) ALT appoints the Alliance Manager and approves each member of the AMT;
- (k) Providing robust governance to the Alliance and reporting the progress and performance of the Alliance to TfNSW management; and
- (l) Approving the Alliance organisational structure.

2.3 Responsibilities

The responsibilities of the ALT include the following:

- (a) provide strategic guidance and leadership to the Participants;
- (b) empower and support the AMT;
- (c) establish and maintain a strong performance orientation by championing and recognising outstanding results in all Alliance Objectives;
- (d) support outstanding performance;
- (e) set the example for alliance behaviour;
- (f) ensure corporate management support;
- (g) ensure that each Participant contributes its best available personnel and other resources to the Project;
- (h) use best endeavours to ensure that the Participants comply with this Agreement;
- (i) 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 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;
- (j) ensure that the Alliance Manager has clear objectives, responsibilities and delegated authority to lead the AMT;
- (k) establish the AMT including the appointment of the AMT members, after appropriate consultation with the Participants;
- (l) ensure implementation of effective and efficient systems and controls;
- (m) set, review and revise limits of delegated authority, as appropriate;
- (n) monitor the health and performance of the Project;
- (o) endorsing the AMP and any subsequent modifications to it;
- (p) review and, where the ALT determines it to be necessary, approve appropriate supplements to the insurances set out in clause 16 of this Agreement;
- (q) ensure that appropriate controls, delegations, systems and procedures are embodied within the detailed plans which comprise the AMP and TSR and that the requirements of each plan are adhered to;
- (r) 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;

- (s) 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 recommend adjustments where necessary;
- (t) review and, if appropriate, approve proposed performance targets (both cost and non-cost) for the Project;
- (u) review and, if appropriate, recommend any Target Adjustment Event;
- (v) deal with any Disagreements between Participants;
- (w) initiate and/or approve the commitment of resources to carry out the Alliance Activities and provide corporate support where necessary;
- (x) report progress and performance of the Alliance Works to senior management of the Participants;
- (y) implement any Directions received from TfNSW in relation to any TfNSW Reserved Power; and
- (z) discharge such other functions of the ALT set out in this Agreement.

2.4 Delegations

TfNSW expects all ALT Members to carry out their duties in accordance with the Alliance delegation authorities. Each ALT Member shall have the necessary authority and delegation to make decisions on behalf of its organisation in relation to the rights and liabilities of such organisation.

2.5 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, TSRs and ensuring they 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.

3. Part 3 – AMT

3.1 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.

3.2 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) report on performance against KPI and KRA measurement framework;
- (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;

3.3 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.

3.4 Delegations

TfNSW expects all AMT Members to carry out their duties in accordance with the Alliance delegation authorities as agreed by the ALT from time to time. The position, authority or delegation held by AMT members within their respective NOP organisations do not apply to the AMT Members in the performance of the Alliance Activities or in connection with the Project.

3.5 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 and TSRs ensuring both 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;
- (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.

4. Part 4 – Alliance Manager

4.1 Role

- (a) The Alliance Manager is vital to the success of the Alliance. The Alliance Manager needs to provide leadership and put in place the drivers to implement the vision of the Alliance and empower the Alliance Management Team to deliver the Project and meet the key objectives. Creating and sustaining an environment which actively encourages a safety first and high performance culture is also a key role.

- (b) The Alliance Manager must also ensure the effective and robust governance of the Alliance. Governance is defined as the act of governing, exercising authority with responsibility for making and enforcing rules and laws and directing or strongly influencing behaviour. There are clear elements of leadership, direction and control in effective governance.

4.2 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.

4.3 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) submitting any proposed material changes to the AMP to the ALT for consideration and endorsement;
- (l) bringing possible scope changes to the attention of the ALT;
- (m) understanding and administering the PAA;

- (n) compliance with the AMP, including discipline specific plans, and ensuring the AMP is kept up to date;
- (o) define the roles and responsibilities of the AMT members and other direct reports;
- (p) 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
- (q) establish and manage the Alliance's project delivery program.

4.4 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) establishing project budgets and managing project costs, risks and opportunities;
- (e) act as a communication conduit to/from the ALT and to/from the AMT;
- (f) 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;
- (g) in conjunction with the AMT, implementing the decisions and determinations of the ALT;
- (h) undertake any payment audits or other payment processing functions required of the Alliance Manager under this Agreement;
- (i) monitor our performance under the Gainshare/Painshare Regime and advise the ALT and TfNSW whenever it appears that:
 - (i) the NOPs may be required to pay TfNSW an amount under the Gainshare/Painshare Regime; or
 - (ii) TfNSW may be required to pay the NOPs an amount under the Gainshare/Painshare Regime;
- (j) represent AMT issues at ALT level and make requests of the ALT in relation to those issues;
- (k) manage the Alliance's project delivery program;
- (l) manage all Approvals;
- (m) managing the processes that demonstrate value for money;
- (n) recognising that, in the role, the AM is fully accountable to the ALT and not to his or her line manager;
- (o) be responsible for all safety issues and ensure that the AMT owns its responsibilities in that regard;

- (p) ensure all AMT members have clearly defined roles and responsibilities;
- (q) in conjunction with the AMT, implement the decisions and determinations of the ALT;
- (r) manage the Works;
- (s) perform functions as directed from time to time by the ALT; and
- (t) direct the AMT in undertaking the Alliance Activities.

4.5 Value for Money

- (a) In using alliances for the delivery of major projects TfNSW must ensure that a value for money outcome is achieved. To ensure and demonstrate a value for money outcome the AM must have this issue at the forefront in making decisions throughout the life of the Alliance.
- (b) The requirements for a Value for Money Plan are set out in the TSRs. The AM must ensure that:
 - (i) the Value for Money Plan is implemented;
 - (ii) the Value for Money Plan is at the forefront of all decisions made in relation to the Alliance Activities;
 - (iii) value for money is a regular agenda item at AMT and ALT meetings; and
 - (iv) a Value for Money Report is progressively developed throughout the life of the Alliance and post Completion in collaboration with TfNSW.

Schedule 7 – Commercial Framework

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Acronyms and definitions

In addition to those identified in Schedule 1, the following acronyms and abbreviations are used in this Schedule 7.

AOC	Actual Outturn Cost
ERO	Employment-related on-costs
FTOC	Final Target Outturn Cost
ICAC	Independent Commission Against Corruption
KPS	KRA Performance Score
LAFHA	Living away from home allowance
MEM	Major Event Modifier
RCAP	Reimbursable Cost Accounting Plan
RC	Reimbursable Costs
TfNSW	Transport for NSW
TFR	Total fixed remuneration
TOC	Target Outturn Cost
TR	Total remuneration

In this Schedule:

"Actual Outturn Cost" or **"AOC"** means the actual outturn cost for the Alliance Works as calculated in accordance with S7-6.2;

"Target Adjustment" means an adjustment to the TOC, any targets used to determine Gainshare/Painshare or any other change to the Commercial Framework as determined in accordance with clause 13 of this Agreement and this Schedule 7; and

"Target Outturn Cost" or **"TOC"** means the target outturn cost for the Alliance Works as set out in Table 1 of Appendix 1 to this Schedule 7, as adjusted by any Target Adjustments.

S7-1 Overview and general provisions

S7-1.1 Overview of compensation model

S7-1.1.1 The Commercial Framework will be based on the following Alliance Principles:

- a) The Participants intend to share all risks and opportunities associated with the Alliance Activities and the delivery of the Alliance Works, regardless of whether or not:
 - i. those risks/opportunities are within the Participants' control; or
 - ii. the Participants could (or should) reasonably have foreseen them; or
 - iii. the Participants made any provision for them in the TOC,except for those types of risks/opportunities that we have specifically agreed and documented in the Target Adjustment Guidelines or this Agreement which will be retained solely by TfNSW or a particular NOP.
- b) Complete transparency in all arrangements.
- c) We either all win or we all lose - win/lose outcomes are not acceptable.
- d) Equitable sharing of risk and benefit, so that Gainshare/Painshare is linked to real risks and benefits that TfNSW considers affect the value of the project. Note that equitable does not necessarily mean equal or symmetrical.
- e) The only way for a NOP to earn exceptional returns is for the Alliance to deliver exceptional (superior) performance in areas that TfNSW considers to be of additional value.
- f) TfNSW is committed to the NOPs being able to earn 100% of available Gainshare entitlements through outstanding performance.
- g) Overall Painshare for each NOP is capped at the value of that NOP's Fee.
- h) No express cap on Gainshare (although upside potential is inherently limited).
- i) In the event of a very poor outcome all the NOPs should reach their respective Painshare caps at the same time.
- j) The Commercial Framework should enable the Alliance to make Best For Project resourcing decisions without unfairly penalising the Participant that provides those resources.
- k) We accept that Reimbursable Costs will not include costs incurred in substantial breach of agreed governance obligations.

S7-1.1.2 Each NOP will be compensated in accordance with the following 3-part compensation model, for carrying out the Alliance Activities:

Reimbursable Costs ('RC')	Each NOP will be paid 100% of the direct costs and project-specific overheads it actually incurs in performing the Alliance Activities including costs of rework and rectification of errors and mistakes (subject to compliance with the governance obligations and delegation authorities identified in the Alliance Management Plan and applicable TSRs).
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Fee	The Fee is intended to provide each NOP with: a) an appropriate contribution towards recovery of its corporate overheads, and b) an equitable level of profit consistent with the Alliance achieving an AOC equal to the TOC and achieving, but not exceeding, the minimum condition of satisfaction (“MCOS”) targets in each Key Result Area (“KRA”).
Gainshare /Painshare	Payments of Gainshare by TfNSW to the NOPs, or payments of Painshare by the NOPs to TfNSW, to reflect an agreed sharing of the gain/pain where the actual performance of the Alliance is superior/inferior to agreed MCOS targets in cost and other KRAs.

S7-1.2 All payments subject to validation

S7-1.2.1 All payments made pursuant to this Agreement are subject to investigation and validation by the Financial Auditor (“FA”) to ensure that they are in accordance with this Schedule 7. We will adopt procedures and systems as required to enable payments to be made in accordance with this Schedule 7 and to be validated by the FA.

S7-1.2.2 TfNSW will only be liable to reimburse costs to the NOPs to the extent such costs are verified by the FA. Any payment made by TfNSW shall be on account only and subject to a final verification audit by the FA.

S7-1.3 Application of GST

S7-1.3.1 All references to amounts and payments in this Schedule 7 are exclusive of GST unless stated otherwise.

S7-1.4 The initial Target Outturn Cost

S7-1.4.1 The agreed TOC for delivering the Alliance Works is shown in Table 1 of Appendix 1 to this Schedule 7, together with a summary of the make-up of the TOC. This is the TOC prior to any Target Adjustments (the “initial TOC”). A more detailed breakdown of the initial TOC is set out in Exhibit C.

S7-2 Reimbursable Costs

S7-2.1 Definition of Reimbursable Costs

S7-2.1.1 Reimbursable Costs will be determined in accordance with the following principles:

- a) Reimbursable Costs are costs that are wholly and specifically incurred in performing the obligations of the Alliance.
- b) A NOP cannot recover any contribution to its corporate overhead costs or expenses or derive any profit or unreasonable advantage from the utilisation of its people, plant, equipment or resources.
- c) A NOP cannot recover anything that is not a properly incurred cost or expense directly incurred by the NOP in performing the Alliance Activities. A NOP can only recover a maximum of 100% of any specific cost or expense properly incurred by it in performing the Alliance Activities. There must not be any duplicate recovery of any cost or expense or allowance for cost or expense (i.e. no double dipping).
- d) A NOP cannot recover any cost incurred by a NOP prior to the Commencement Date, unless by written agreement with TfNSW.
- e) A NOP cannot recover any costs incurred in breach of the Procurement Management Plan.
- f) A NOP cannot recover any cost incurred other than in compliance with the governance obligations and delegation authorities identified in the Alliance Management Plan and applicable TSRs.
- g) Any and all costs, losses, expenses or damages suffered or incurred by a Defaulting Participant arising out of or in connection with a Wilful Default will not be Reimbursable Costs.
- h) Other than payment of Fees and Gainshare/Painshare under this Agreement, funds received or receivable by a NOP which arise from Alliance Activities will be credited in the reduction of Reimbursable Costs.
- i) Any item, cost or expense excluded by this Schedule 7 or by a decision of the ALT will not be Reimbursable Cost.

S7-2.1.2 Detailed definitions of what is or is not a Reimbursable Cost, category-specific conditions for each type of cost to be a Reimbursable Cost, and the basis for NOPs to recover each category of Reimbursable Cost are set out in the following appendices to this Schedule 7:

- a) employee-related Reimbursable Cost provisions are set out in Appendix 2; and
- b) non-employee-related Reimbursable Cost provisions are set out in Appendix 3.

For clarity, for a cost to be a Reimbursable Cost, where category-specific conditions apply to a cost category they apply in addition to non-category-specific conditions identified elsewhere in this Agreement.

S7-2.1.3 In case of any inconsistency between the principles for determining Reimbursable Costs mentioned in clause S7-2.1.1 and the detailed provisions mentioned in clause S7-2.1.2, the detailed provisions of clause S7-2.1.2 will prevail to the extent of that inconsistency. We acknowledge that:

- a) there may be minor differences between the cost figures which would result from strict application of the overall principles mentioned in clause S7-2.1.1 and application of the detailed definitions mentioned in clause S7-2.1.2;
- b) adoption of the detailed definitions mentioned in clause S7-2.1.2 enable us to simplify some aspects of determination and recovery arrangements for Reimbursable Costs; and
- c) the process that gave rise to this Agreement has enabled the Fee component of the initial TOC (as proposed by the NOPs and agreed by TfNSW) to allow for recovery of any sums ordinarily regarded by a NOP as a project cost but not defined as a Reimbursable Cost under this Agreement.

S7-2.1.4 Where there is uncertainty about whether a cost is a Reimbursable Cost the ALT will make a determination having regard to the provisions of this Schedule 7, the recommendations of the FA, the findings of the investigations carried out by the FA prior to the Commencement Date ("Establishment Audits") and the FA's interpretation of this Schedule 7.

S7-2.2 Arrangements for identification and recovery of Reimbursable Costs

S7-2.2.1 Prior to execution of this Agreement the FA conducted the Establishment Audits on the financial systems of the NOPs to clarify the methods of identifying Reimbursable Costs, and to develop:

- a) a Reimbursable Cost Accounting Plan ("RCAP") for each NOP identifying procedures and parameters to identify Reimbursable Costs in accordance with this Agreement; and
- b) a Compensation Audit Plan ("CAP") outlining the audit process which will be used by the FA to ensure that payments under this Agreement are in accordance with the provisions of this Schedule 7.

S7-2.2.2 The parameters developed via the Establishment Audits enabling recovery of Reimbursable Costs for individual NOPs are set out in the following Appendices:

- a) Reimbursable Cost recovery arrangements for Abigroup Contractors Pty Limited are set out in Appendix 4 to this Schedule 7;
- b) Reimbursable Cost recovery arrangements for Leighton Contractors Pty Limited are set out in Appendix 5 to this Schedule 7.

S7-2.2.3 Where a parameter referred to in clause S7-2.2.2 is identified as being subject to periodic review and adjustment, such adjustment will be identified by the FA via the Compensation Audit Plan process, and notified to the ALT. In the absence of ALT agreement to the contrary the modified parameter will be adopted for the purposes of Reimbursable Cost recovery in accordance with the FA's recommendations.

S7-2.3 Provisions relating to TfNSW Alliance Costs

S7-2.3.1 TfNSW Alliance Costs are costs incurred directly by TfNSW (other than a payment made to a NOP in accordance with this Agreement) in relation to the Alliance Activities. TfNSW Alliance Costs include costs incurred by TfNSW in the following categories:

- a) costs associated with TfNSW staff working on Alliance Activities including wages, salaries and associated EROs;
- b) costs of engaging third parties for provision of materials, subcontracts, goods or services required to perform the Alliance Activities;

- c) costs in providing or arranging any security to be provided to any subcontractor or supplier;
- d) costs associated with claims from third parties to the extent that such costs are not covered by insurances in accordance with clause 16;
- e) costs paid by TfNSW to Authorities in connection with the Alliance Activities or the Works; and
- f) any other cost which is specified in this Agreement to be a TfNSW Alliance Cost or which the ALT agrees is a TfNSW Alliance Cost.

S7-2.3.2 The make-up of the TOC shown in Table 1 of Appendix 1 identifies estimated TfNSW Alliance Costs.

S7-2.3.3 Any funds received or receivable by TfNSW in relation to the Alliance Activities will be credited in the reduction of TfNSW Alliance Costs to the extent that they are a reimbursement to TfNSW of costs paid by TfNSW which form part of the TfNSW Alliance Costs.

S7-3 Fee

S7-3.1 General

S7-3.1.1 The Fee payable to a NOP under this clause S7-3 will be deemed to fully compensate that NOP for:

- a) all direct and indirect expenditure by that NOP associated with the Alliance Activities,
- b) the costs and expense of its corporate overhead structure, and
- c) its corporate profit expectations;

not otherwise covered by Reimbursable Costs (as determined under clause S7-2) or the Gainshare/Painshare Regime (as determined under clause S7-4).

S7-3.2 Fixed Fee subject only to Target Adjustments

S7-3.2.1 Rather than determining the Fee by applying an agreed percentage to actual Reimbursable Costs, under this Agreement the Fee for each NOP and all NOPs is fixed at the dollar amount provided within the TOC, and only subject to change in the event of a Target Adjustment.

S7-3.2.2 In the event of a redistribution of scope between Alliance Participants after the Commencement Date, the Fee for each NOP and all NOPs will remain fixed at the dollar amount provided within the TOC, and only subject to change in the event of a Target Adjustment.

S7-3.2.3 The Fee for each NOP, prior to any Target Adjustment, is shown within the build-up of the initial TOC in Table 1 of Appendix 1 to this Schedule 7.

S7-3.2.4 In the event of a Target Adjustment, the change in each NOP's Fee will be determined in accordance with clause S7-5 and clause 13 of this Agreement.

S7-4

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Appendix 1 (Schedule 7) – Target Outturn Cost Summary

Table 1

Target Outturn Cost summary	
TfNSW Alliance Costs	████████
Reimbursable Costs	████████
Fee	████████
Total initial Target Outturn Cost (TOC)	\$264,836,603

Table 2

Fee % "NOP1" (Leighton Contractors Pty Limited)	████████
Fee % "NOP2" (Abigroup Contractors Pty Limited)	████████

Appendix 2 (Schedule 7) – [REDACTED]

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Appendix 3 (Schedule 7) – [REDACTED]

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Appendix 4 (Schedule 7) –

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Appendix 5 (Schedule 7) –

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Schedule 8 – Alliance Governance

This Schedule describes the typical TfNSW governance requirements within and around the Alliance for all Participants. This Schedule should be read in conjunction with:

- (a) the relevant clauses of the PAA;
- (b) the TSR Prelude, for additional project specific requirements and timing for Alliance Management Plan submissions; and
- (c) the TSR Alliances, which describes the requirements and processes the Alliance must develop and implement as a minimum to ensure Alliance Activities are appropriately carried out and managed.

1. Importance of good governance in the Alliance

1.1 General governance obligations

The Alliance collectively shares and manages the risks and opportunities of delivering the Project. The Alliance Leadership Team (ALT) is accountable to deliver on these objectives and manage the associated risks and opportunities in respect of each objective. The Participants also share some of their individual corporate risks and opportunities in coming together in the Alliance.

Delivering on these objectives relies on the Alliance to ensure good governance controls are in place. TfNSW has two roles in respect of the Project as both the client for the performance of the Alliance Activities and as an Alliance "Participant", and hence requires an appropriate governance framework within the Alliance (as a Participant) and around the Alliance (as the client or owner). The overall governance and leadership within the Alliance is provided by the ALT made up of two senior representatives from TfNSW and one or two senior representatives from each of the Non Owner Participants (NOPs).

1.2 TfNSW's governance elements around the Alliance

TfNSW has a strong focus on governance around its projects whatever the contract model. TfNSW operates on a matrix basis with accountability for the project sitting with the Director, Project Delivery, who reports to the Deputy Director General (DDG) of Transport Projects Division. Support for the project is provided by the Transport Projects functional groups.

Delegations of authority for TfNSW staff and the various TfNSW functions are derived from and approved by the Director General of TfNSW.

The role of client will be filled by the DDG of Transport Projects, or a senior executive of TfNSW, who is independent of the ALT, as delegated by the DDG of Transport Projects to act as Principal's Representative. The role of TfNSW as a "Participant" requires each TfNSW ALT representative to act on a Best For Project basis.

Figure 1 below sets out the governance around the Alliance.

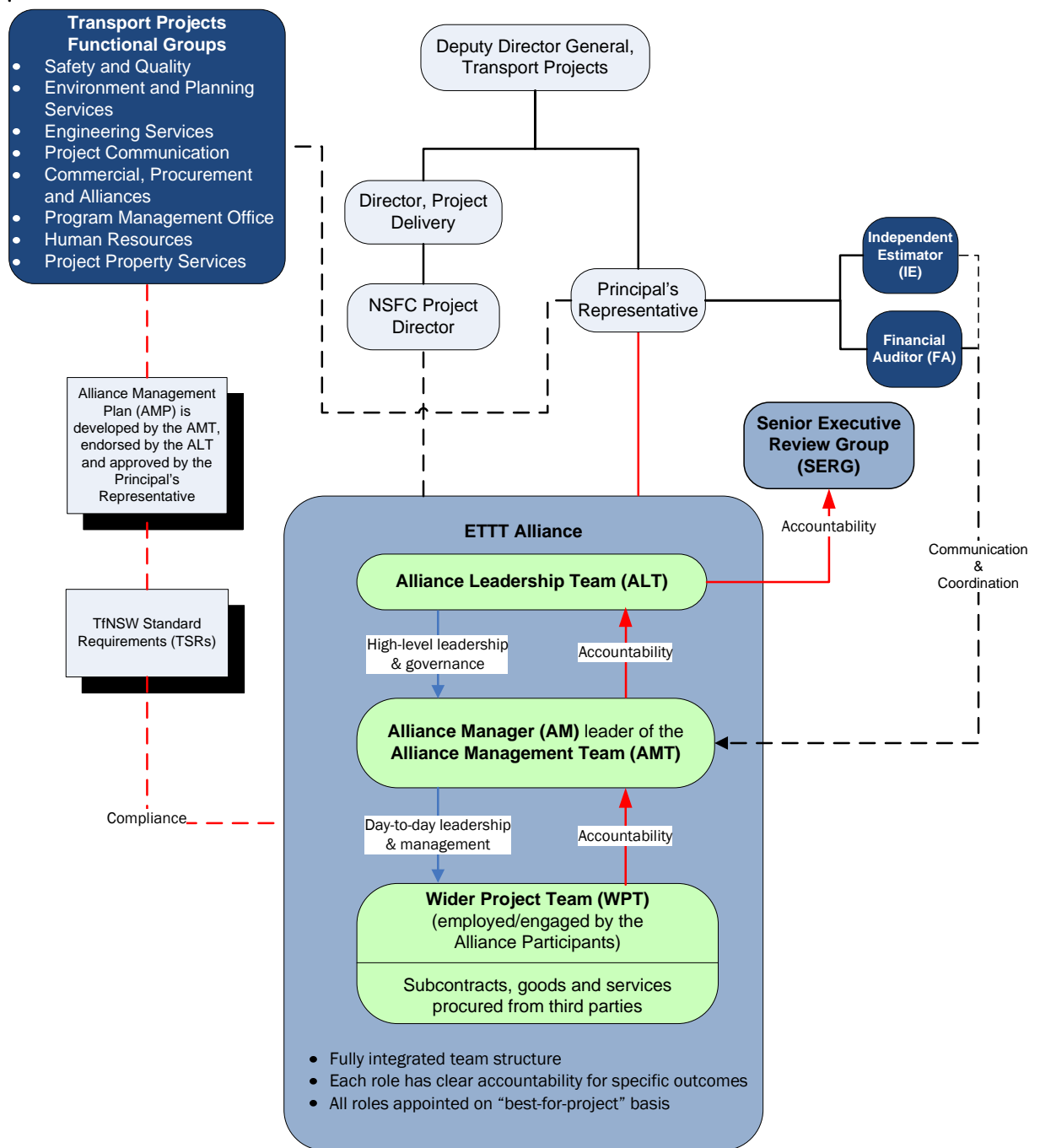


Figure 1: TfNSW Governance and interfaces for the Alliance

Table 1 below sets out the governance elements of TfNSW around the Alliance:

Table 1: Governance elements of TfNSW around the Alliance

Element	Governance Function
Alliance Objectives	TfNSW has established clear objectives and Key Results Areas (KRAs) for the project and these are documented in the PAA.
Alliance	The TfNSW organisational structure to support the governance of the Alliance

Element	Governance Function
Governance Structure	<p>provides:</p> <ul style="list-style-type: none"> • clear lines of accountability and delegation from the DDG of Transport Projects to the Principal's Representative for PAA administration; • separation of roles that may potentially conflict; • clear roles and responsibilities; and • an appropriate mix of attributes, experience and capabilities of TfNSW staff around and within the Alliance.
Separation of Roles	<p>The Principal's Representative is always a different individual to the TfNSW ALT Members.</p> <p>Functions of TfNSW as the Principal are discharged separate from the Alliance.</p> <p>The PAA provides TfNSW Reserved Powers in respect of key areas for TfNSW.</p>
Roles and Responsibilities	<p>TfNSW staff working around the Alliance such as senior project managers, project managers and project engineers have the accountabilities as set out in their TfNSW position descriptions.</p>
Attributes and Capabilities of TfNSW Staff	<p>TfNSW staff in key governance roles are project director, principal managers, senior project managers and/or relevant staff in the TfNSW's commercial (alliance) function group.</p>
TfNSW Delegations	<p>The key features relating to the implementation of TfNSW's delegation of authority around the Alliance includes:</p> <ul style="list-style-type: none"> • TfNSW staff outside of the Alliance remain subject to the TfNSW delegation of authority for their role; • TfNSW staff in the Alliance cannot exceed their TfNSW delegation of authority; • senior TfNSW staff will be ALT members; and • a relatively low level of delegation set by TfNSW is provided to the Alliance Manager (AM) and the Alliance Management Team (AMT).
TfNSW Delegations under the PAA	<p>The DDG of Transport Projects delegates specific functions/obligations of the PAA to the Principal's Representative whose involvement in the Alliance is limited to exercising the responsibilities of the Principal's Representative.</p>
Administration of the PAA	<p>The PAA requires appropriate administration by the Principal's Representative.</p>
Financial Audits	<p>TfNSW maintains a financial audit regime that features:</p> <ul style="list-style-type: none"> • monthly progress claim audits; • quarterly transaction audits with significant sampling; and • procurement and contract administration sampling. <p>The Financial Auditor (FA) also provides advisory services in order to leverage learnings across TfNSW and other Alliances.</p>

Element	Governance Function
	The FA is accountable to TfNSW and not to the Alliance as set out in clause 9.15 of this Agreement.
Alliance Management Plan (AMP)	The requirements for the AMP are set out in the TfNSW Standard Requirements (TSRs). Transport Projects' functional groups are involved with the Alliance in the development of the AMP prior to the formal approval of the AMP by TfNSW. Any departures or inconsistencies within the TSRs need to be communicated from the Alliance through the Principal's Representative who will consult with the discipline specific experts from Transport Projects' functional groups.
Collaborative Audit process	TfNSW's collaborative audit program applies to the Alliance and all parts of the AMP and the requirements for collaborative audit are set out in TSR Prelude.
Reporting	Requirements for regular reporting are set out in TSR Alliances.
Project Control Groups	The Project has a Project Control Group (PCG) as set out in clause 3.6 of this Agreement.

1.3 Expected governance elements within the Alliance

TfNSW's development of the Alliance governance model builds on its earlier experience in Alliances, TfNSW's governance practices, lessons from other client organisations and industry leading practice.

Meeting these accountabilities relies on the Alliance ensuring good controls are in place and in particular that TfNSW's minimum requirements as included in the TSRs are met by the Alliance.

Figure 2 below sets out the typical governance within the Alliance.

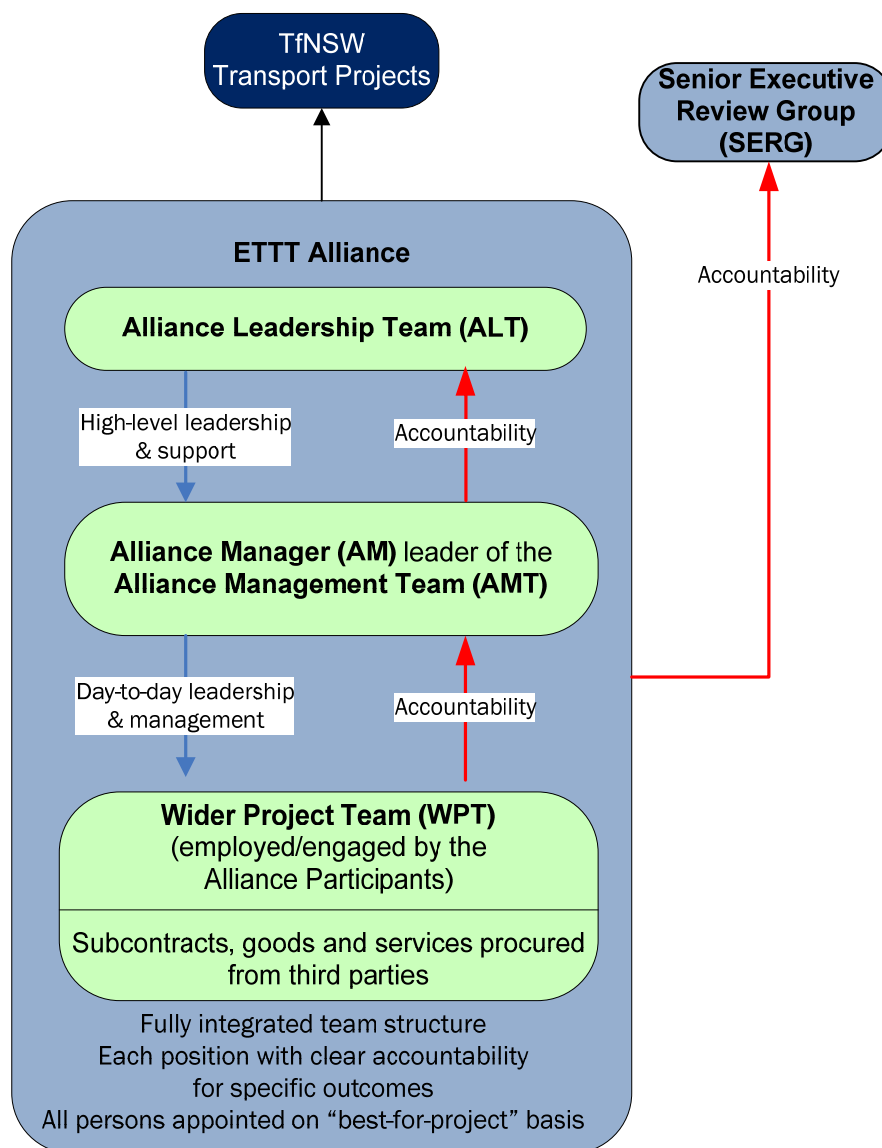


Figure 2: Alliance Governance Structure

Table 2 below sets out the governance elements within TfNSW’s Alliances:

Table 2: Governance elements within the Alliance

Element	Governance Function
Alliance Objectives	The Alliance has agreed to TfNSW’s objectives and its KRAs for the project and these are documented in this Agreement in Schedule 5 and Schedule 7 respectively.
Organisation and accountabilities	The organisational structure in Figure 2 above supports the governance of the Alliance where, as set out in clause 3 of this Agreement: <ul style="list-style-type: none"> the ALT is accountable under this Agreement to TfNSW through the Principal’s Representative; the ALT is responsible for providing various reports, in particular “The ALT Performance Report”, to the Senior Executive Representative Group

Element	Governance Function
	<p>(SERG);</p> <ul style="list-style-type: none"> • accountability is from the Wider Project Team (WPT) to the Alliance Management Team (AMT) to the AM to the ALT; • each ALT Member is accountable to their organisation in accordance with their delegations; • the ALT approves the Alliance’s detailed organisation structure and the appointees to the AM and AMT roles; and • all positions within the Alliance have clear roles and responsibilities.
<p>Alliance Leadership Team (ALT)</p>	<p>ALT requirements are set out in clause 5 of this Agreement.</p> <p>Overall governance and high-level leadership is provided by the ALT made up of two senior representatives from TfNSW and one or two senior representatives from each of the NOPs.</p> <p>ALT Members must have sufficient authority to deal effectively and efficiently with the kind of decisions that the ALT will be called upon to make. On those occasions where matters are outside their level of delegated authority, ALT Members must be able to secure timely support from higher authorities for proposed ALT decisions.</p>
<p>ALT Member Attributes and Capabilities</p>	<p>Schedule 6 of this Agreement sets out the competencies and accountabilities of the ALT.</p> <p>Collectively, the members of an ALT should have complementary skills and experience that demonstrate the following attributes:</p> <ul style="list-style-type: none"> • ability to influence a strong safety culture; • capacity for inspirational leadership; • a relationship orientation; • understanding of and ability to lead outstanding performance (high performance); • relevant experience and technical expertise including where relevant live rail experience; • a commercial focus; • a detailed understanding of the Project and the commercial framework; • an understanding of good governance and relevant governance experience; and • an understanding of and experience in Alliances.
<p>Decision Making</p>	<p>Consistent with the principle of a <i>‘peer relationship where all participants have an equal say’</i>, decisions of the ALT are required to be unanimous as set out in clause 5.5 of this Agreement. However the final decision on certain matters is reserved for unilateral determination by TfNSW (Reserve Powers as set out in clause 13.1 of this Agreement) or a particular NOP where this is necessary to ensure decision-making that is consistent with the Alliance framework and statutory requirements. All decisions are made based on formal submissions from the AMT and AM. A resolution log of ALT decisions is maintained.</p>

Element	Governance Function
	Decisions made within the Alliance are done so on a Best For Project basis.
Delegations of Authority	<p>Within the Alliance, the financial and non-financial decision making are set out in the Alliance TSR and any changes are to be approved by the ALT. Delegations need to be consistent with participant organisation delegations and where there is a difference these need to be addressed.</p> <p>TfNSW requires that the TfNSW ALT Members exercise their functions as ALT members within their TfNSW delegations authority. As such, prior to binding TfNSW as a participant in certain ALT unanimous decisions, the TfNSW ALT Member is required to obtain the necessary approvals from the relevant TfNSW authority.</p> <p>To improve transparency and control for the ALT, the level of delegation provided to the AM is set by TfNSW and is low compared to typical private sector project managers.</p>
Alliance Management Plan	<p>The AMP must set out how the Alliance will manage and deliver the Alliance objectives. It is prepared in accordance with the TfNSW's Standard Requirements (TSRs) and incorporates;</p> <ul style="list-style-type: none"> • the processes for decision making and management within the Alliance governance and control framework; • management approach to all delivery areas including procurement, contract administration and cost management; • specific roles and responsibilities; • policies (financial and non-financial); and • audit approach and reporting requirements. <p>The AMP and any material amendments are endorsed by the ALT and then approved by the Principal's Representative.</p>
Reporting	Requirements for regular reporting are set out in TSR Alliances.
Audit	<p>TfNSW's collaborative audit program applies to the Alliance and all parts of the AMP and the requirements for collaborative audit are set out in TSR Prelude. The Financial Audits of the Alliance transactions by TfNSW as the Principal are a fundamental part of the full open book element of the Alliance model. The FA is accountable to TfNSW and not to the Alliance as set out in clause 9.15 of this Agreement.</p>

1.4 Alliance Delegation of Authority

The Alliance must set out delegation of authorities (financial and non-financial) to establish the appropriate delegations to authorise staff in identified positions to make management, personnel and commercial decisions.

The ALT determines the levels of authority to be delegated to the Alliance staff for decision making. These delegations need to be consistent with each of the Participant's organisations and where there is a difference these need to be addressed. The TfNSW ALT members are required to obtain the necessary approvals from TfNSW.

Delegations must be exercised in accordance with AMP. The delegations are assigned to individual positions and not to individual personnel. Any amendments to the delegation limits must be submitted for ALT approval with a detailed explanation of the change.

TfNSW has set out the expected delegations of authority (financial and non-financial) in the TSR Alliances for the Alliance to adopt when developing its alliance delegations of authority.

2. Governance around Reimbursable Costs

The definition of what is or is not Reimbursable Costs is outlined in Schedule 7 of the PAA. As part of the Commercial Framework principles, Participants agree that Reimbursable Costs will not include costs incurred in substantial breach of agreed governance obligations.

Substantial breaches of the agreed governance obligations are characterised by failure to comply with the requirements of the:

- Procurement Management Plan;
- Cost Management Plan (as required by TSR Alliances);
- Financial delegation schedule; and
- Applicable time bar requirements as defined in the PAA.

3. Governance around Target Adjustment Events

The governance obligations associated with Target Adjustment Events are outlined in clause 13 of this Agreement.

4. Governance around innovation

One of the main opportunities in an Alliance is the ability to explore value for money options to achieve reduced costs and/or additional value added benefits for Alliance Works. The Alliance will have the ability to utilise the vast range of skills of its Participants to explore any innovative options that may benefit the Alliance.

Any perceived innovation opportunity identified must be clearly communicated by the Alliance to the AMT. The AMT, upon being satisfied that the identified innovation opportunity exists, must notify the ALT who can then make a recommendation regarding the proposed innovation opportunity to TfNSW in accordance with clause 13.5(a) of this Agreement. The provisions of clause 13.5 will then apply.

Schedule 9 – Statutory Declaration

Statutory Declaration	<i>Oaths Act (NSW) Ninth Schedule</i>														
<p><i>I,</i></p> <p><i>of</i></p> <p><i>.....</i></p> <p><i>do solemnly and sincerely declare that:</i></p> <p>1. <i>I am the representative of:</i></p> <p><i>.....</i></p> <p>("NOP")</p> <p><i>in the Office Bearer capacity of:</i></p> <p><i>.....</i></p> <p>2. <i>The NOP has a contract with TfNSW:</i></p> <p><i>.....</i></p> <p>("the Contract").</p> <p>3. <i>I personally know the facts which I have set out in this declaration.</i></p> <p>4. <i>All employees who have at any time been engaged by the NOP for work done under the Contract:</i></p> <p style="margin-left: 20px;">(a) <i>have been paid all remuneration and benefits to the date of this declaration payable to them by the NOP in respect of their employment on work under the Contract; and</i></p> <p style="margin-left: 20px;">(b) <i>have otherwise had accrued to their account all benefits to which they are entitled from the NOP as at the date of this declaration in respect of their employment on work under the Contract pursuant to any award, enterprise agreement, act or regulation,</i></p> <p><i>with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below:</i></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 40%;"><i>Employee:</i></td> <td style="width: 40%;"><i>Amount unpaid or not accrued:</i></td> </tr> <tr> <td><i>.....</i></td> <td><i>.....</i></td> </tr> <tr> <td><i>.....</i></td> <td><i>.....</i></td> </tr> <tr> <td><i>.....</i></td> <td><i>.....</i></td> </tr> <tr> <td><i>.....</i></td> <td><i>.....</i></td> </tr> <tr> <td><i>.....</i></td> <td><i>.....</i></td> </tr> <tr> <td><i>.....</i></td> <td><i>.....</i></td> </tr> </table> <p>5. <i>All subcontractors and suppliers to the NOP have been paid all moneys which as at</i></p>	<i>Employee:</i>	<i>Amount unpaid or not accrued:</i>	<i>.....</i>	<i>.....</i>	<i>.....</i>	<i>.....</i>	<i>.....</i>	<i>.....</i>	<i>.....</i>	<i>.....</i>	<i>.....</i>	<i>.....</i>	<i>.....</i>	<i>.....</i>	<p><i>insert full name of Declarant</i></p> <p><i>insert address</i></p> <p><i>insert name of NOP, and ACN if applicable</i></p> <p><i>insert position title of Declarant</i></p> <p><i>insert name of Contract</i></p> <p><i>insert names and addresses of the unpaid employees, the amounts unpaid, and whether in respect of wages, allowances, holiday pay, long service leave and payments and superannuation</i></p>
<i>Employee:</i>	<i>Amount unpaid or not accrued:</i>														
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the date of this declaration have been claimed by them to the NOP for the performance of work under the Contract (as applicable) and the supply of materials for use in work under the Contract, with the exception of the subcontractors and suppliers and the respective unpaid amounts listed below:

Subcontractor or supplier:

Amount unpaid:

.....
.....
.....
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.....

6. *In all cases where a subcontractor or supplier to the NOP has provided services and/or materials in respect of the Contract and has submitted a claim to the NOP for these services or materials which as at the date of this statutory declaration would have been due and payable but which the NOP disputes, the reasons for such dispute have been notified in writing to the subcontractor or supplier by the NOP prior to the date of this statutory declaration. Where such dispute relates to part only of the subcontractor or supplier's claim, that part of the claim not in dispute has been paid by the NOP to the subcontractor or supplier as at the date of this statutory declaration except for the amounts listed in 5 above.*
7. *The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the NOP have been complied with by the NOP.*
8. *The NOP has been informed by each subcontractor to the NOP (except for subcontracts not exceeding \$25,000 at their commencement) by statutory declaration in equivalent terms to this declaration (made no earlier than the date 14 days before the date of this declaration):*
 - (a) *that their subcontracts with their subcontractors and suppliers comply with the requirements of the Contract relating to payment of employees and subcontractors;*
 - (b) *that all their employees and subcontractors, as at the date of the making of such a declaration:*
 - (i) *have been paid all remuneration and benefits due and payable to them by; or*
 - (ii) *had accrued to their account all benefits to which they are entitled from; subcontractor of the NOP or from any other subcontractor (except for subcontracts not exceeding \$25,000 at their commencement) in respect of any work under the Contract; and*
 - (c) *of details of any amounts due and payable or benefits due to be received or*

entitlement etc.

insert names and addresses of the unpaid subcontractors and suppliers, the amounts owing and whether in respect of materials supplied, work performed etc

<p>accrued described in 8(b) above which have not been paid, received or accrued,</p> <p>except for the following subcontractors to the NOP who have failed to provide such a declaration:</p> <table border="0"> <tr> <td style="text-align: right; vertical-align: top;">Subcontractor:</td> <td style="text-align: right; vertical-align: top;">Due amount unpaid:</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> </table>	Subcontractor:	Due amount unpaid:	<p>insert names and addresses of the NOP's subcontractors who have not submitted a declaration, and unpaid amounts due or otherwise due to each of them by the NOP in respect of this claim</p>
Subcontractor:	Due amount unpaid:										
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<p>9. Where a subcontractor to the NOP has provided a declaration as in 8 above, and it includes unpaid amounts or benefits either not received or not accrued, details of the subcontractor, details of the affected employees, suppliers and subcontractors of the subcontractor, and the respective amounts or benefits either unpaid or not accrued are as follows:</p> <table border="0"> <tr> <td style="text-align: right; vertical-align: top;">Employee, subcontractor or supplier:</td> <td style="text-align: right; vertical-align: top;">Amount unpaid or not accrued:</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> </table>	Employee, subcontractor or supplier:	Amount unpaid or not accrued:	<p>insert names of the subcontractors, the name and addresses of the unpaid employees, subcontractors and suppliers and amounts listed as unpaid or not accrued to them.</p>
Employee, subcontractor or supplier:	Amount unpaid or not accrued:										
.....										
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<p>10. In relation to the statutory declaration provided by each subcontractor to the NOP, I am not aware of anything to the contrary of what is contained therein, and on the basis of the contents of those statutory declarations, I believe that information to be true.</p>											
<p>11. 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 (NSW), Payroll Tax Act 2007 (NSW) and Industrial Relations Act 1996 (NSW) which is a written statement:</p> <ul style="list-style-type: none"> (a) under section 175B of the Workers Compensation Act 1987 in the form and providing the detail required by that legislation; (b) under section 18(6) of schedule 2 of part 5 of the Payroll Tax Act 2007 in the form and providing the detail required by that legislation; and (c) under section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation. 											
<p>12. I personally know the truth of the matters which are contained in this declaration</p>											

<p><i>and the attached Subcontractor's Statement.</i></p> <p>13. <i>All statutory declarations and Subcontractor's Statements received by the NOP from subcontractors were:</i></p> <p>(a) <i>given to the NOP in its capacity as 'principal contractor' as defined in the Workers Compensation Act 1987 (NSW), the Payroll Tax Act 2007 (NSW) and the Industrial Relations Act 1996 (NSW) ("Acts"); and</i></p> <p>(b) <i>given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.</i></p> <p>14. <i>I am not aware of anything which would contradict the statements made in the statutory declarations or written statements provided to the NOP by its subcontractors, as referred to in this declaration.</i></p>	
<p><i>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.</i></p> <p><i>Declared at on</i></p> <p style="text-align: center;"><i>(place) (day) (month) (year)</i></p> <p>.....</p> <p><i>(Signature of Declarant)</i></p> <p><i>Before me:</i></p> <p>.....</p> <p><i>(Signature of person before whom the declaration is made)</i></p> <p>.....</p> <p><i>(Name of the person before whom the declaration is made)</i></p> <p>.....</p> <p><i>(Title* of the person before whom the declaration is made)</i></p>	
<p>* <i>The declaration must be made before one of the following persons:</i></p> <ul style="list-style-type: none"> - <i>where the declaration is sworn within the State of New South Wales:</i> <ul style="list-style-type: none"> (i) <i>a justice of the peace of the State of New South Wales;</i> (ii) <i>a solicitor of the Supreme Court of New South Wales with a current practising certificate; or</i> (iii) <i>a notary public.</i> - <i>where the declaration is sworn in a place outside the State of New South Wales:</i> <ul style="list-style-type: none"> (i) <i>a notary public; or</i> 	

(ii) any person having authority to administer an oath in that place.

And as a witness, I certify the following matters concerning the person who made this statutory declaration (the **declarant**):

1. I saw the face of the declarant.

[OR]

I did not see the face of the declarant because the declarant was wearing a face covering, but I am satisfied that the declarant had a special justification for not removing the covering.

2. I have known the declarant for at least 12 months.

[OR]

I have confirmed the declarant's identity using the following identification document:

[insert description of ID document]

.....
(Signature of witness)

STATEMENT

Note to the parties

For the purpose of this Statement:

- “the subcontractor” is the Non Owner Participant (NOP); and

- “the principal contractor” is Transport for NSW (TfNSW).

**REGARDING WORKERS COMPENSATION, PAYROLL TAX AND
REMUNERATION (Note 1-see back of form)**

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 *Payroll Tax Act 2007* (NSW), and s127 *Industrial Relations Act 1996* (NSW) where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period & Statement retention, and Offences under various Acts.

Subcontractor: ABN:

(Business name)

of

(Address of Subcontractor)

has entered into a contract with ABN:

(Business name of principal contractor)

(Note 2)

Contract number/identifier

(Note 3)

This Statement applies for work between/...../..... and/...../..... inclusive,

(Note 4)

subject of the payment claim dated/...../.....

(Note 5)

I, a Director or a person authorised by the

Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. You must tick one box.

(Note 6)

- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/..... /.....

(Note 7)

- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid.

(Note 8)

- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007* (NSW), the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement.

(Note 9)

- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above.

(Note 10)

- (f) Signature Full name

- (g) Position/Title Date/..... /.....

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987* (NSW).

NOTES

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 *Payroll Tax Act 2007* (NSW) and section 127 of the *Industrial Relation Act 1996* (NSW). If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called the **subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's 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 contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of section 127 of the *Industrial Relations Act 1996* (NSW), a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* (NSW) 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* (NSW) 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.'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance 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. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.

9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. 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 the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website 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.

Schedule 10 – Action in complying with Planning Approval

We acknowledge that:

- (a) the application for the Planning Approval has not yet been determined;
- (b) it is anticipated that the conditions of the Planning Approval will require that the Project be carried out in accordance with the documents referred to in Exhibit F, unless there is an inconsistency between those documents and the conditions of the Planning Approval, in which case the conditions of the Planning Approval will prevail;
- (c) the Department of Planning and Infrastructure has issued standard and model conditions of approval for linear infrastructure and that a number of those conditions which are relevant to the Project could be imposed in the Planning Approval. Those conditions of the standard and model conditions that TfNSW considers could be imposed in the Planning Approval based on its assessment of the Project are set out in Exhibit M. Exhibit M has been prepared as a guide only and does not reflect the final conditions of the Planning Approval;
- (d) the table below is based on the anticipated environmental management measures which are anticipated to form part of the conditions of the Planning Approval;
- (e) once the Planning Approval has been obtained:
 - (i) we must comply with and fulfil all the conditions of the Planning Approval except to the extent that the responsibility to fulfil a condition is allocated to TfNSW in the table below (and to the extent that the relevant anticipated condition is equivalent to a final condition of the Planning Approval); and
 - (ii) TfNSW may (in its absolute discretion) amend the allocation of responsibilities to TfNSW in the table below to reflect the final conditions of the Planning Approval and we must comply with such amended allocation of responsibilities; and
- (f) nothing specified in the table below (or in any revised table) as being a responsibility of TfNSW will relieve us from complying with any obligation of this Agreement whether set out in this Schedule 10 or set out elsewhere in this Agreement including any obligation under TSR E1.

Environmental management and mitigation measures (as set out in the Environmental Impact Statement and as updated in section 6 of the Northern Sydney Freight Corridor - Epping to Thornleigh Third Track - draft Submissions Report dated December 2012)

ID number	Environmental management measures	Extent of TfNSW's responsibility for the specified environmental management and mitigation measure
EIS Section 19.1.3	<i>Independent audit and surveillance</i>	
	Independent auditing and surveillance of environmental performance would be undertaken by the EMR (as described in the environmental management and mitigation measures included in Exhibit F) appointed by TfNSW.	TfNSW will appoint the Environmental Representative.
	<i>Detailed Design - Ecology</i>	
A.2	A biodiversity offset strategy would be developed to mitigate the residual impacts of the ETTT proposal. The object of this strategy would be to fulfil the need to improve or maintain biodiversity values, as required under Part 5.1 of the <i>Environmental Planning and Assessment Act 1979</i> (NSW).	TfNSW will develop and implement a biodiversity offset strategy to mitigate the residual impacts of the ETTT proposal, including offsets procurement.
	<i>Construction - Stakeholder engagement</i>	
K.3	24 hour complaint and enquiry numbers (1800 684 490 and 1800 775 465, respectively) and an email address (projects@transport.nsw.gov.au) would be established for the duration of construction.	TfNSW will establish and control the complaints and enquiries line for the duration of construction, with all contacts being referred to the Alliance. The Alliance will be responsible for all follow up actions.
	<i>Operation - General</i>	
X.1	Contingency management would be managed in line with RailCorp's existing procedures	All post Completion operational measures (other than those required in this Agreement to be carried out by the Alliance during the Defects Notification Period), will be vested to RailCorp by TfNSW for implementation by RailCorp.
	<i>Operation - Ecology</i>	
Y.1	Post-construction weed control activities would be undertaken in accordance with RailCorp's existing weed control protocols.	All post Completion operational measures (other than those required in this Agreement to be carried out by the Alliance during the Defects Notification Period), will be vested to RailCorp by TfNSW for implementation by

ID number	Environmental management measures	Extent of TfNSW's responsibility for the specified environmental management and mitigation measure
		RailCorp.
	<i>Operation – Surface and groundwater quality</i>	
AA.1	Operational water quality impacts would be managed in accordance with RailCorp's existing environmental management and maintenance procedures.	All post Completion operational measures (other than those required in this Agreement to be carried out by the Alliance during the Defects Notification Period), will be vested to RailCorp by TfNSW for implementation by RailCorp.
	<i>Operation – Surface and groundwater quality</i>	
AB.1	Potential erosion and sedimentation impacts would be managed through the implementation of RailCorp's operational and management procedures.	All post Completion operational measures (other than those required in this Agreement to be carried out by the Alliance during the Defects Notification Period), will be vested to RailCorp by TfNSW for implementation by RailCorp.

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Schedule 11 - Action in complying with Third Party Agreements and Interface Agreement

The provisions of any Third Party Agreement dealing with security or insurance (or the retention by TfNSW via this Schedule 11 of the obligation to perform any such provisions) does not affect the Participants' obligations under this Agreement.

TfNSW is responsible for complying with the provisions of the deeds and agreements stated below only to the extent identified in the applicable tables. The Alliance is responsible for complying with all other provisions and any additional obligations of the Alliance referred to in the following tables.

(a) Interface Agreement between TfNSW and RailCorp

Clause	Extent of TfNSW's responsibility for clause specified and additional Alliance obligations
Purpose	
2	TfNSW is responsible for procuring the finalisation and entering into of the NSFC Program Commercial Agreement and the NSFC Management and Technical Agreements.
Term	
3.2	Only TfNSW (and not the Alliance), may terminate this Interface Agreement by giving the stipulated notice to RailCorp.
3.3	Only TfNSW (and not the Alliance), may negotiate with RailCorp to enter into a replacement Interface Agreement in accordance with this clause.
Rail Safety Accreditation	
14	TfNSW is responsible for advising RailCorp of any changes to TfNSW's Accreditation. However, the NOPs must immediately, in writing, advise TfNSW should any of their rail accreditations be altered in any manner.
Incident Investigation	
19	Only TfNSW (and not the Alliance) may investigate safety incidents in accordance with this clause.
Safety Inspections	
28	Safety inspections shall be undertaken in accordance with this clause by the parties including TfNSW.
Dispute Resolution	
30	<p>Any disputes requiring:</p> <ul style="list-style-type: none"> • escalation to the responsible officers of TfNSW and RailCorp (clause 30(a)); • escalation to the nominated executives of TfNSW and RailCorp (clause 30(b)); or • litigation, court proceedings or other proceedings, <p>shall, if TfNSW so determines (in its absolute discretion), be prosecuted or defended by TfNSW. However, in such event, the Alliance shall afford TfNSW all due support and assistance.</p>

[REDACTED]	
[REDACTED]	[REDACTED] <ul style="list-style-type: none">[REDACTED][REDACTED][REDACTED][REDACTED] [REDACTED]

[REDACTED]

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[REDACTED]	[REDACTED] <ul style="list-style-type: none">[REDACTED][REDACTED][REDACTED]
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Schedule 12 – Parent Company Guarantee

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Schedule 13 - Certificates of Design Compliance

1. Alliance Certificate of Design Compliance

ALLIANCE CERTIFICATE OF DESIGN COMPLIANCE	
Participants: Transport for NSW <i>[NOP1]</i> <i>[NOP2]</i>	
DESIGN PACKAGE (limit of 1 per certificate)	DESCRIPTION:
<p>We certify that the Design Documentation for the package or part thereof described above has been completed to the extent indicated above in accordance with the requirements of the Agreement between TfNSW and _____ (including as required by the TfNSW Standard Requirements where applicable), and complies with the requirements of the Agreement and the Planning Approval, subject to the register of outstanding minor design non-conformances and unresolved issues attached.</p> <p>We further certify that the attached compliance records as required by the Agreement reflect the true status of the design package.</p> <p>NAME: _____ SIGNATURE: _____ DATE: / / (Engineering Manager)</p> <p>NAME: _____ SIGNATURE: _____ DATE: / / (Alliance Manager)</p>	

2. Designer's Certificate of Design Compliance

DESIGNER'S CERTIFICATE OF DESIGN COMPLIANCE	
DESIGNER:	
DESIGN PACKAGE (limit of 1 per certificate)	DESCRIPTION:
<p>I certify that the [delete one] Design Documentation for the package / Design Documentation for the design discipline of [*] for the package] or part thereof described above has been completed to the extent indicated above in accordance with the requirements of the Agreement between TfNSW and _____ (including as required by the TfNSW Standard Requirements where applicable), and complies with the requirements of the Agreement and the Planning Approval, and deals adequately with safety (subject to the register of outstanding minor design non-conformances and unresolved issues attached).</p> <p>I further certify that the attached compliance records as required by the Agreement reflect the true status of the design package.</p> <p>NAME: _____ SIGNATURE: _____ DATE: / / (Design Team Member)</p>	

Schedule 14 - Certificates of Construction Compliance

1. Alliance Certificate of Construction Compliance

ALLIANCE CERTIFICATE OF CONSTRUCTION COMPLIANCE	
Participants:	Transport for NSW
	<i>[NOP1]</i>
	<i>[NOP2]</i>
PORTION:	
Alliance Activities	DESCRIPTION:
<p>We certify that the procurement and construction of the work package or part thereof described above have been completed to the extent indicated above in accordance with the requirements of the Agreement between TfNSW and _____, and comply with the requirements of the Agreement and the Planning Approval, subject to the register of outstanding minor construction non-conformance and unresolved issues attached.</p> <p>We further certify that the attached compliance records as required by the Agreement reflect the true status of the work package.</p> <p>NAME: _____ SIGNATURE: _____ DATE: / / (Construction Manager)</p> <p>NAME: _____ SIGNATURE: _____ DATE: / / (Alliance Manager)</p>	

2. Designer's Certificate of Construction Compliance

DESIGNER'S CERTIFICATE OF CONSTRUCTION COMPLIANCE
DESIGNER: PORTION: Alliance Activities DESCRIPTION:
<p>I certify that the procurement and construction of [(delete one) the work package / that part of the work package relevant to the design discipline of [*]] or part thereof described above have been completed to the extent indicated above in accordance with the requirements of the Agreement between TfNSW and _____, and comply with the requirements of the Agreement and the Planning Approval and deal adequately with safety (subject to the register of outstanding minor design non-conformances and unresolved issues attached).</p> <p>I further certify that the attached compliance records as required by the Agreement reflect the true status of the work package.</p> <p>NAME: _____ SIGNATURE: _____ DATE: / / (Design Team member)</p>

Schedule 15 – Certificate of Completion

Part 1 (by the Alliance Manager)

I believe that the Alliance Works for Portion [XXX] have no outstanding Defects (except for the Defects noted 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 12.3:

- 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 and list of minor Defects

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.

TfNSW
ALT Member #1

TfNSW
ALT Member #2

NOP1
ALT Member

NOP1
ALT Member

NOP2
ALT Member

NOP2
ALT Member

Part 3 (to be completed by Principal's Representative))

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.

Principal's
Representative

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 12.4:

- 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.

TfNSW
ALT Member #1

TfNSW
ALT Member #2

NOP1
ALT Member

NOP1
ALT Member

NOP2
ALT Member

NOP2
ALT Member

Part 3 (to be completed by Principal's Representative)

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.

Principal's
Representative

Schedule 17 – Payment Certificate

Part 1 – Context		For amounts payable under the PAA up to and including (date)	
<input type="checkbox"/>	Payment claim (prior to the Date of Completion, submitted to TfNSW at the end of each calendar month)		
<input type="checkbox"/>	Payment claim (after the Date of Completion, submitted to TfNSW at the end of each calendar month)		
<input type="checkbox"/>	Final Payment Claim (submitted to TfNSW within 28 days of Date of Final Completion)		
<input type="checkbox"/>	Other circumstance		
Part 2 – Summary of Claim to Date:		AMOUNT (\$)	
Total Reimbursable Costs			(a)
Total Fee			(b)
Gainshare			(c)
Gross entitlement to date			(d) = (a) + (b) + (c)
Less previous gross entitlement to date			(e)
Net entitlement (excluding GST)			(f) = (d) – (e)
GST applicable to net entitlement			(g) = (f) * 10%
Amount payable this Payment Claim			(h) = (f) + (g)
Part 3 – Alliance Manager’s statements			
The amounts included in this Payment Claim are in accordance with the terms of the PAA.			
I certify that the Payment Claim is in order for payment by TfNSW.			
Pursuant to clause 14.2(i) of the ETTT Project Alliance Agreement, TfNSW must pay the NOPs, or the NOPs must pay TfNSW as the case may be, the amounts shown above.			
<input type="checkbox"/>	I attach Statutory Declarations from each of the NOPs in accordance with clause 14.5 of the ETTT Project Alliance Agreement.		
<input type="checkbox"/>	I attach a Tax Invoice for each NOP’s share of the Payment Claim prepared in accordance with clause 14.9 of the ETTT Project Alliance Agreement.		
<input type="checkbox"/>	I attach a statement by the FA confirming that the amounts shown in this Final Payment Claim are in accordance with the terms of the PAA.		
Signed by the Alliance Manager		Date	
Part 4 – ALT resolution (for all Payment Claims)			Date
<input type="checkbox"/>	I attach the resolution of the ALT approving the amount of this Payment Claim.		

Schedule 18 - Form of Warranty

This Deed Poll is made the _____ day of 20

To: **Transport for NSW (ABN 18 804 239 602)** a NSW Government agency constituted by section 3C(1) of the *Transport Administration Act 1988* (NSW) of Level 6, 18 Lee St, Chippendale NSW 2008 (**TfNSW**); and

Rail Corporation New South Wales (ABN 59 325 778 353) a corporation constituted by section 4(1) of the *Transport Administration Act 1988* (NSW), of Level 6, 18 Lee Street, Chippendale NSW 2008 (**RailCorp**).

By: That person described in Item 1 of the Schedule (**Warrantor**) which expression will include its successors and assigns.

RECITALS

- A. The Warrantor has supplied the items described in Item 2 of the Schedule (**Equipment**) to the person described in Item 3 of the Schedule (**NOPs**) or the person described in Item 4 of the Schedule, a subcontractor of the NOPs (**Subcontractor**), for the works (**Works**) being carried out by the NOPs under the agreement described in Item 5 of the Schedule (**Agreement**) with TfNSW.
- B. It is a requirement of the Agreement that the NOPs procure the Warrantor to give the following warranties in favour of TfNSW and RailCorp with respect to the Equipment.

OPERATIVE

1. Quality

The Warrantor:

- (a) warrants to TfNSW and RailCorp that the Equipment will be to the quality and standard stipulated by the Agreement and will be of merchantable quality and fit for the purpose for which it is required; and
- (b) gives the warranty more particularly set out in Item 6 of the Schedule with respect to the Equipment.

The above warranties are in addition to and do not derogate from any warranty implied by law in respect of the Equipment.

2. Replacement

The Warrantor warrants to TfNSW and RailCorp that it will replace so much of the Equipment as:

- (a) is found to be of a lower quality or standard than that referred to in clause 1; or
- (b) shows deterioration of such extent that in the opinion of TfNSW or RailCorp the Equipment ought to be made good or replaced in order to achieve fitness for the purpose for which it is required, whether on account of utility, performance, appearance or otherwise, within the period described in Item 7 of the Schedule.

3. Warrantor to bear cost

The Warrantor covenants to TfNSW and RailCorp that it will bear the cost of any work necessary to any part of the Works to enable the requirements of clause 2 to be carried out or to make good the Works afterwards.

4. Principal not liable

The Warrantor acknowledges to TfNSW and RailCorp that nothing contained in this Deed Poll is intended to nor will render either TfNSW or RailCorp in any way liable to the Warrantor in relation to any matters arising out of the Agreement or otherwise.

5. This Deed Poll may not be revoked

This Deed Poll may not be revoked or otherwise modified without the prior written consent of TfNSW and RailCorp.

6. Governing Law and jurisdiction

- (a) This Deed Poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
- (b) The Warrantor hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.

7. Enforcement of this Deed Poll

For the avoidance of doubt this Deed Poll is enforceable by any of TfNSW or RailCorp.

Schedule

Item 1	Name and Address of Warrantor	[#]
Item 2	Equipment (Recital A)	[#]
Item 3	NOPs (Recital A)	[#]
Item 4	Subcontractor (Recital A)	[#]
Item 5	Agreement (Recital A)	[#]
Item 6	Detailed Warranty of Warrantor (Clause 1(b))	[#]
Item 7	Period of Years (Clause 2)	[#] years from [the expiry of the "Defects Notification Period" as defined in the Agreement.]

EXECUTED AS A DEED POLL

Executed by **[insert name of Warrantor]** (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 19 - TfNSW Supplied Items

Item
RailCorp services as defined in Appendix G (Interface Schedule) of Exhibit B (Works Brief)
Lifts (cars only)
Signalling Design services (Parsons Brinckerhoff)
Technical Advisor – operational noise and vibration
TfNSW personnel for roles in the Alliance
Alliance organisation coach for the first six months after Agreement execution
Long-lead items to be procured by TfNSW prior to or soon after the Date of Commencement. These items comprise signalling, HV, LV and communications equipment.
Professional Indemnity insurance for the Alliance.
Pre-novation component of the detailed design services (AECOM)
Project office lease, fitout and make-good: Level 12, 423 Pennant Hills Road Pennant Hills.
Remote site lease – disused Epping Bowling Club: 725 Blaxland Road, Epping.

Costs for the TfNSW Supplied Items will be TfNSW Alliance Costs.

Schedule 20 – [REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]
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[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Schedule 23 - Form of Subcontractor Deed

THIS DEED POLL is made on, 20 by
.....ACN..... of
..... (the **Subcontractor**).

RECITALS:

- A. Transport for NSW (ABN 18 804 239 602), a NSW Government agency constituted by section 3C(1) of the *Transport Administration Act 1988* (NSW) of Level 6, 18 Lee Street, Chippendale NSW 2008 (**TfNSW**) and **[insert]** (the **NOPs**) have entered into a Project Alliance Agreement dated **[insert]** pursuant to which the NOPs have agreed to carry out certain work under the Project Alliance Agreement (**Works**).
- B. The Subcontractor has an agreement (the **Subcontract**) with one of the NOPs (**Relevant NOP**) for the execution and completion and/or supply of the [] (the **Subcontract Works**) for the Works.
- C. It is a condition of the Subcontract that the Subcontractor executes this Deed Poll.

THIS DEED WITNESSES THAT THE SUBCONTRACTOR HEREBY COVENANTS, WARRANTS AND AGREES with and for the benefit of the persons named in the Schedule as follows:

- 1. It will comply with its obligations under the Subcontract and upon completion of the Works, the Subcontract Works will satisfy the requirements of the Subcontract.
- 2. The persons named in the Schedule may assign or charge the benefits and rights accrued under this Deed Poll.
- 3. The Subcontractor:
 - (a) must if required by a written notice by TfNSW sign a deed in the form of the attached Deed of Novation with such substitute contractor as TfNSW may nominate; and
 - (b) for this purpose irrevocably appoints TfNSW to be its attorney with full power and authority to complete the particulars in and sign the attached Deed of Novation.
- 4. This Deed Poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
- 5. The Subcontractor hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.
- 6. This Deed Poll may not be revoked or otherwise modified without the prior written consent of TfNSW .
- 7. The Subcontractor's liability in respect of a breach of a particular obligation under this Deed Poll will be reduced to the extent to which the Subcontractor has already paid money to or performed work for the Relevant NOP in respect of that breach.

PERSONS NAMED IN THE SCHEDULE TO THIS DEED POLL

Transport for NSW (ABN 18 804 239 602)

Rail Corporation New South Wales (ABN 59 325 778 353)

EXECUTED AS A DEED POLL.

Executed by *[insert 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

(Attached Deed of Novation)

THIS DEED OF NOVATION is made on [] 20 between the following parties:

- (1) [] ACN [] of [] ("**NOP**")
- (2) [] ACN [] of [] ("**New NOP**"); and
- (3) [] ACN [] of [] ("**Subcontractor**").

Recitals

- A. By agreement dated [] (**the Agreement**), the NOP engaged the Subcontractor to, and the Subcontractor agreed to, carry out certain works for the NOP.
- B. Under clause 3 of the Deed Poll executed on [], which forms part of the Agreement, the Subcontractor must enter into this deed when TfNSW under the Deed Poll requires it to do so.
- C. Subject to this deed, the Subcontractor agrees to accept the New NOP in place of the NOP for the performance of all the obligations of the NOP and to release completely and discharge the NOP from all of its obligations under the Agreement and from all claims and demands in respect of it.

THIS DEED WITNESSES that in consideration, among other things, of the mutual promises contained in this deed, the parties agree:

- 1. The Subcontractor must perform its obligations under, and be bound by, the Agreement as if the New NOP was originally named in the Agreement as the NOP.
- 2. The Subcontractor:
 - (a) releases and forever discharges the NOP from its obligations under the Agreement and from all claims and demands in respect of the Agreement; and
 - (b) accepts the liability of the New NOP in place of the liability of the NOP in respect of the Agreement.
- 3. The New NOP must perform all the obligations of the NOP under, and be bound by, the Agreement as if the New NOP were originally named in the Agreement as the NOP.
- 4. Upon the execution and exchange of this deed:
 - (a) the NOP must release any securities given to it by the Subcontractor in accordance with the Agreement;
 - (b) the Subcontractor must give the New NOP security in the same form and for the same amounts as any security required by the Agreement; and the Subcontractor must ensure that the New NOP is appropriately noted on all relevant insurance policies as required by the Agreement.
- 5. The New NOP must pay all stamp duty and any penalties in respect of this deed.
- 6. This deed is governed by the laws of New South Wales and the parties agree to submit to the non exclusive jurisdiction of the courts of that state.

EXECUTED by the parties as a deed:

Executed by [] in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

Executed by [] in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

Executed by [] in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

Schedule 25 – 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 a Related Entity of that party.

"Effective Date" means the date identified as the Effective Date in the Schedule.

"GST" means the Goods and Services Tax as defined in the *A New Tax System (Goods and Services) Act 1999* (Cth).

"Liability" means all liabilities, losses, Claims, damages, outgoings, costs and expenses of whatever description.

"Related Entity" has the meaning ascribed to that term in section 9 of the *Corporations Act 2001* (Cth).

"Retiring Party" means the party identified as the Retiring Party in the Schedule.

"Substitute Party" means the party identified as the Substitute Party in the Schedule.

1.2 Interpretation

In this deed:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

(b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

(c) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

(e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;

(f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

(g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

(h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;

(i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(j) **"includes"** in any form is not a word of limitation; and

(k) a reference to **"\$"** or **"dollar"** is to Australian currency.

2. Condition Precedent to Novation

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

3. Novation

3.1 Novation

(a) The parties novate the Contract so that, on and from the Effective Date, the Substitute Party and the Continuing Party are parties to a new agreement on the same terms as the Contract.

- (b) Any reference in the Contract to the Retiring Party shall, on and from the Effective Date, be read as a reference to the Substitute Party.

3.2 Assumptions of rights and obligations

- (a) On and from the Effective Date, the Substitute Party:
 - (i) will be bound by and shall comply with the terms of the Contract as amended by this deed, and shall enjoy the rights and benefits conferred on the Retiring Party under the terms of the Contract; and
 - (ii) will assume the obligations and Liability of the Retiring Party under the terms of the Contract,which arise on or after the Effective Date.
- (b) The Continuing Party will comply with the terms of the Contract on the basis that on and from the Effective Date the Substitute Party has replaced the Retiring Party under the Contract in accordance with this deed.
- (c) Nothing in this deed affects the rights and obligations of the Continuing Party and Retiring Party which have accrued before the Effective Date.

3.3 Release by Continuing Party

- (a) The Continuing Party releases the Retiring Party from:
 - (i) any obligation or Liability under or in respect of the Contract; and
 - (ii) any action, claim and demand it has against the Retiring Party under or in respect of the Contract,which arise on or after the Effective Date.
- (b) This release does not affect any rights the Continuing Party may have against the Substitute Party as a result of the assumption by the Substitute Party under the terms of this deed of the obligations and Liability of the Retiring Party under the terms of the Contract on and from the Effective Date.

3.4 Release by Retiring Party

The Retiring Party releases the Continuing Party from:

- (a) any obligation or Liability under or in respect of the Contract; and
- (b) any action, Claim and demand it has, or but for this clause would have had against the Continuing Party under or in respect of the Contract,

which arise on or after the Effective Date, except that nothing in this clause affects the obligations of the Continuing Party to the Substitute Party under the Contract which arise on or after the Effective Date.

3.5 Key Personnel

For the purposes of the terms of the Contract, the Continuing Party:

- (a) consents to key personnel under the Contract being replaced with personnel having similar experience as those key personnel (the "**Replacement**"); and

- (b) acknowledges and agrees that the Replacement will be in compliance with the terms of the Contract as amended by this deed.

3.6 Insurance

- (a) As from the Effective Date:
- (b) the Substitute Party must replace any insurances effected and maintained by the Retiring Party under the terms of the Contract; and
- (c) the Continuing Party must take the necessary steps to ensure that, for all insurances required to be effected by the Continuing Party under the terms of the Contract, the Substitute Party is named in place of the Retiring Party as required by the Contract.

3.7 Subcontracts

For the purposes of the terms of the Contract, the Continuing Party:

- (a) consents to the novation to the Substitute Party of any and all agreements with subcontractors (including consultants and suppliers) engaged by the Retiring Party in connection with the Contract ("**Subcontracts**");
- (b) to the extent that any one or more of the Subcontracts are not able to be novated to the Substitute Party, consents to the Retiring Party and the Substitute Party entering into contractual or other arrangements (including assignments) to ensure that the Retiring Party's rights under, benefits of and interests in such Subcontracts are passed to or enjoyed by the Substitute Party; and
- (c) acknowledges and agrees that novations referred to in paragraph (a) above and the contractual or other arrangements referred to in paragraph (b) above have been made in accordance with the terms of the Contract.

3.8 Replacement of Guarantees

The Continuing Party and the Substitute Party must replace or procure the replacement of the Contract Guarantees with guarantees on similar terms in favour of:

- (a) in the case of the Continuing Party, the Substitute Party; and
- (b) in the case of the Substitute Party, the Continuing Party.

4. Overriding effect

The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Contract relating to any requirement for consent to assignment of the Contract so far as any such provisions would apply with respect to the novation of the Contract from the Retiring Party to the Substitute Party.

5. Representations and warranties

5.1 Authority

Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this deed.

5.2 Authorisations

Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms.

5.3 Binding obligations

Each party represents and warrants to each other party that this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

6. Duties, Costs and Expenses

6.1 Stamp Duty

The Substitute Party must pay all stamp duty, duties or other taxes of a similar nature (including but not limited to any fines, penalties and interest) in connection with this deed or any transaction contemplated by this deed (except to the extent the terms of the Contract provide otherwise).

6.2 Costs

The Retiring Party and the Substitute Party must pay the reasonable costs and expenses of the Continuing Party in negotiating, preparing and executing this deed.

6.3 GST

The parties agree that:

- (a) with any payment of amounts payable under or in connection with this deed including without limitation, by way of indemnity, reimbursement or otherwise, the party paying the amount must also pay any GST in respect of the taxable supply to which the amount relates;
- (b) the party receiving the payment will provide a tax invoice; and
- (c) the payment of any amount referred to in paragraph (a) which is a reimbursement or indemnification of a cost, expense, loss or liability will exclude any part of the amount for which the other party can claim an input tax credit.

7. General

7.1 Governing Law

This deed is governed by and must be construed according to the laws of the applicable State or Territory set out in the Schedule.

7.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the applicable State or Territory set out in the Schedule, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and

- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 7.2(a).

7.3 Amendments

This deed may only be varied by a document signed by or on behalf of each party.

7.4 Waiver

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

7.5 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

7.6 Severance

If at any time a provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

7.7 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

7.8 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party.

Schedule

Item Description	Particulars
Retiring Party (clause 1.1)
Continuing Party (clause 1.1)
Substitute Party (clause 1.1)
Effective Date (clause 1.1)
Contract (clause 1.1)
State or Territory (clauses 8.1 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:

Signature of Director

Name of Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

Schedule 26 - Form of Confidentiality Undertaking

To: []

We [] the engaged Consultant / Supplier / Contractor / Subcontractor body, undertake to treat as confidential all information received/generated from Transport for NSW (TfNSW) in respect of work performed by TfNSW and all information generated by the Consultant / Supplier / Contractor / Subcontractor body in the course of performing the Alliance Activities.

The Consultant / Supplier / Contractor / Subcontractor hereby undertakes:

- (a) to disclose that information to its employees only on a need-to-know basis;
- (b) not to disclose that information to any other person without first obtaining the written consent of TfNSW;
- (c) not to use that information except as necessary in connection with the Consultant / Supplier / Contractor / Subcontractor body's engagement to perform the Alliance Activities; and
- (d) to ensure that its employees to whom that information is disclosed will comply with paragraphs (a), (b) and (c) above.

This undertaking will not apply to information about TfNSW which is in the public domain (except where the availability of the information in the public domain is due to any unauthorised disclosure by the Consultant / Supplier / Contractor / Subcontractor, its employees or agents) or which was already known to the Consultant / Supplier / Contractor / Subcontractor.

Any breach of this undertaking by the Consultant / Supplier / Contractor / Subcontractor's employee or agent will constitute a breach of this undertaking by the Consultant / Supplier / Contractor / Subcontractor and at the direction of TfNSW the Consultant / Supplier / Contractor / Subcontractor must institute proceedings or do whatever TfNSW regards as reasonable to prevent or contain the breach.

The Consultant / Supplier / Contractor / Subcontractor undertakes that on request from TfNSW it will forthwith return to TfNSW all originals and copies of the confidential information, however embodied, supplied by TfNSW and destroy all documents containing or prepared using any confidential information however embodied.

The Consultant / Supplier / Contractor / Subcontractor also undertakes to declare to TfNSW any conflict of interests that exists or arises during the course of its engagement which may impinge on the objectivity or probity of the work performed. Such declarations are to be made as soon as the conflict of interests issues arises.

This undertaking will remain in force until each part of the confidential information is released by TfNSW into the public domain.

Dated:

SIGNED for and on behalf of:

.....

(Print Company Name)

By:

(Print Name)

.....

(Signature)

in the presence of:

.....

(Print Name)

.....

(Signature)

Schedule 27 - Serious Incident Protocol

1. Application

The purpose of this Protocol is to describe steps which will be taken by Participants in circumstances where:

- (a) a workplace incident occurs in connection with works carried out pursuant to this Agreement (**PAA**) and as a result:
 - (i) the incident is notified to WorkCover Authority of NSW, the National Rail Safety Regulator or another similar Authority; and
 - (ii) either:
 - A. the Authority commences or indicates it proposes to commence an investigation into the workplace accident; or
 - B. the Alliance Leadership Team (**ALT**) decide that this Protocol will apply; or
- (b) an environmental incident occurs in connection with works carried out pursuant to the PAA and as a result:
 - (i) the incident is notified to the Office of Environment and Heritage, the Environment Protection Authority or another similar Authority; and
 - (ii) either:
 - A. the Authority commences or indicates that it proposes to commence an investigation into the environmental incident; or
 - B. the ALT decides that this Protocol will apply; or
- (c) another incident or situation arises in connection with works carried out pursuant to the PAA and as a result:
 - (i) there is a possibility of legal proceedings against or involving one or more of the Participants; or
 - (ii) the ALT decides that this Protocol will apply,

(Serious Incident).

2. Purpose

The Participants agree that all work being carried out pursuant to the PAA involves the joint undertaking of the Participants and in the event of a Serious Incident occurring, the Participants will have a joint and common interest in the subject matter of the Serious Incident and agree that the response to the Serious Incident will be governed by the terms of this Protocol.

The purpose of this Protocol is to ensure that the Alliance is able to respond to a Serious Incident in a way which:

- (a) is consistent with the PAA;

- (b) protects each Participant's interests;
- (c) preserves legal professional privilege over any investigatory report, statements of witnesses, communications and/or documents commissioned by lawyers engaged by the Alliance or any advice provided by those lawyers with respect to the Serious Incident; and
- (d) enables the Participants to comply with their obligations under work health and safety, environmental and other laws.

Through this Protocol, it is expected that there will be transparent communication of information regarding the Serious Incident in the mutual interests of all Participants.

This Protocol provides for an administrative process only, and it does not and is not intended to affect the operation of the PAA including the appointment of, or rights and obligations of, a principal contractor appointed under the PAA for the purposes of the *Work Health and Safety Act 2011* and the *Work Health and Safety Regulation 2011*.

The word 'cooperate' is used in this Protocol to mean cooperate to the extent that the position of a Participant and its executive officers and employees is not likely to be compromised as between the Participants and as between a Participant and a regulator or other law enforcement body.

This Protocol forms part of the PAA and the parties agree that clause 15 of the PAA continues to apply to any act or omission of a Participant arising out of or in connection with this Protocol.

3. Immediate communication

Immediately after a Serious Incident occurs which has or might lead to an external investigation or legal proceedings of the type referred to in this Protocol, each Participant must ensure that each other Participant is aware of the Serious Incident, including the time, location, nature of the Serious Incident and details (if known) of persons injured, or exposed to the risk of injury. If the Serious Incident is likely to give rise to a claim under the project insurance policies then notice must also be given to the Alliance Manager as required in Schedule 28 of the PAA (ETTT Insurance Claims Protocol).

4. Meetings of ALT

The ALT will meet as soon as practicable after the Serious Incident to consider the application of this Protocol.

Thereafter, the ALT will meet regularly to discuss the Serious Incident, any investigation and other related matters. Each Participant will provide full briefings on actions taken and proposed to be taken by their respective organisations. The ALT will discuss and decide any necessary or desirable steps for the Alliance to take and how this Protocol will interact with Schedule 28 of the PAA (ETTT Insurance Claims Protocol).

5. Joint investigation

5.1 Engagement of lawyer

The ALT has identified a panel of lawyers who may be engaged to jointly represent the Participants in the event of a Serious Incident. In this Protocol, each of these lawyers, when so engaged, is called an Alliance lawyer.

The panel is set out in the Schedule to this Protocol.

Unless the ALT decides otherwise, the ALT will select and jointly instruct an Alliance lawyer from the panel to:

- (a) provide advice to the Participants in relation to the legal implications for the Participants arising out of the Serious Incident; and
- (b) coordinate the cooperation of the Participants with any inspectorate which may be conducting an investigation of the Serious Incident.

If the Alliance Manager is concerned that there will be an unacceptable delay if the appointment is to be made by the ALT, the Alliance Manager may, with the endorsement the ALT member nominated in the third column of the Schedule to this Protocol for the type of Serious Incident listed in the second column of the Schedule to this Protocol, appoint and instruct an Alliance lawyer from the panel.

5.2 Investigation

If it is required, for the legal advice to be provided pursuant to clause 5.1(a), that a factual or technical investigation be carried out, then the Alliance lawyer will be instructed to commission that report from an appropriately qualified expert or investigator.

5.3 Separate advice and investigations

Clauses 5.1 and 5.2 are not intended to prevent a Participant from carrying out its own internal investigation into the Serious Incident. However, where possible, concurrent legal, factual and/or technical investigations which undermine the purpose of this Protocol or result in unnecessary duplication of effort are to be avoided.

Each Participant retains the right to separately or independently engage a lawyer and/or investigator at its own expense. If a Participant instigates its own investigation (other than the Alliance lawyer), prior agreement must be obtained from other Participant(s) before the other Participant's employees are contacted or interviewed by the investigator.

Each Participant will not compel any other Participant to disclose any confidential legal advice, report or document that such other Participant has independently obtained or commissioned.

6. Receipt and communication of the advice

- (a) The legal advice of the Alliance lawyer, including any investigation report and other background materials which attract legal professional privilege, will be made available to each Participant. A Participant may provide a copy of any report or privileged information to an independently appointed lawyer or appropriate members of senior management if the independently appointed lawyer or appropriate members of senior management have signed a copy of this Protocol indicating their consent to be bound by the terms of this Protocol.
- (b) Each Participant must not waive legal professional privilege with respect to the legal advice of or the report commissioned by the Alliance lawyer without the unanimous written consent of all of the Participants.

7. Cooperation within external investigation

Each Participant will cooperate as required by law with any external investigation into the Serious Incident. So far as each Participant is able and to the extent permissible by law, it will consult with the other Participants prior to responding to requests by Authorities in relation to a Serious Incident.

8. Legal proceedings

If a Participant, or any of a Participant's officers or employees, is prosecuted under the *Work Health and Safety Act 2011*, the *Rail Safety National Law (NSW)*, the *Protection of Environment Operations Act 1997* or another statute as a result of a Serious Incident, then:

- (a) respondents to any prosecution will be free to defend their position in the best way available to them, including (subject to clause 5.3) claiming any available privilege;
- (b) any respondent may use any factual investigation report gained pursuant to this Protocol in support of the defence to those proceedings;
- (c) in the event that a Participant's officer or employee is individually prosecuted, this Protocol and the information shared within this Protocol will only be made available to that individual if he/she agrees to be bound by the terms of the Protocol.

9. Insurance claims

If, arising out of the Serious Incident, there is a need to make a disclosure to either an individual Participant's insurer or an Alliance insurer, these disclosures will be made in a way which, as far as possible, is consistent with this Protocol and which does not lead to the loss of jointly-held legal professional privilege in any advice or investigation report or compromise or waive privilege. Nothing in this Protocol requires any Participant to take or refrain from taking any action which might prejudice its ability to secure indemnity under an insurance policy.

10. Resolution of indemnity issues

The resolution of indemnity issues arising out of the circumstances of a Serious Incident will be dealt with under the provisions of the PAA.

11. Reimbursable Costs

As guidance for the ALT:

- (a) the costs of engaging an Alliance lawyer are Reimbursable Costs;
- (b) the costs of legal representation incurred by a Participant to defend prosecution or legal proceedings as a result of a Serious Incident are Reimbursable Costs;
- (c) otherwise, the costs of complying with this Protocol (including those incurred in carrying out a separate investigation or separately engaging lawyers as contemplated in clause 5.3) are not Reimbursable Costs; and
- (d) unless the Target Adjustment Guidelines provide otherwise, the Serious Incident will not be regarded as a Target Adjustment Event.

SIGNED by all members of the Alliance Leadership Team:

Date:

..... For and on behalf of Transport for NSW For and on behalf of
..... For and on behalf of For and on behalf of
..... For and on behalf of For and on behalf of

Schedule – Panel of lawyers

Column 1	Column 2	Column 3
Law firm(s)	Type of Serious Incident	ALT Member (refer clause 5.1)
	Rail Safety	
	Work Health & Safety	
	Environmental Law	
	Other law	

Schedule 28 - ETTT Insurance Claims Protocol

INSURANCE CLAIMS PROTOCOL

FOR

EPPING TO THORNLEIGH THIRD TRACK

1. INTRODUCTION

- 1.1 The purpose of this claims protocol is to facilitate prompt and proper communication between the Participants to ensure efficient claims management. This will assist in providing an immediate response to reported incidents and the prompt resolution of valid claims.

All Participants and any other interested parties should be provided with a copy of this claims 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 Epping to Thornleigh Third Track insurance then contact RailCorp (see the Directory at section 5 of this claims protocol).

2. CLAIMS NOTIFICATION

2.1 Important Notice

It is a requirement of the Epping to Thornleigh Third Track insurance policies that insurers are to be advised immediately of any incident that is likely to give rise to a claim under the insurance policies required by clauses 16.1, 16.2 or 16.3 of this Agreement. Failure to do so may invalidate cover otherwise provided by the relevant policy.

2.2 Reporting

- 2.2.1 In the event of an incident that may give rise to a claim under the insurance policies, the Participants are to immediately notify the Principal's Representative and the ALT.

- 2.2.2 Following receipt of this advice the Principal's Representative 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 any claim expected to exceed the deductible, RailCorp will refer the claim to the loss adjuster appointed for the purposes of this claims protocol (the **Loss Adjuster**) (see the Directory at section 5 of this claims protocol) 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 Principal's Representative and the Participants 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

The Participants 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 insurance policies and a breach of this condition could prejudice the outcome of the claim.

If a Participant 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.

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 Principal's Representative and the Participants will prepare estimates of quantum and costs. All records and supporting documentation must be maintained.

4. LOSS ADJUSTER'S REPORTING PROCEDURES

4.1 Upon being advised of an incident that may give rise to a claim under the insurance policies, RailCorp will give notice on behalf of all insureds to the Loss Adjuster in relation to the incident and request that the Loss Adjuster 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 the Participants and any other relevant parties.

4.4 For all major incidents the Loss Adjuster is 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.

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5. DIRECTORY

The Insured

Principal: Rail Corporation New South Wales and Transport for NSW and any subsidiary or affiliated companies constituted at the inception of the Epping to Thornleigh Third Track insurance or subsequently.

Participants and all other contractors, subcontractors and 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 Site.

Other parties (as required and agreed under contract).

Each for their respective rights and interests.

CONTACTS

RAILCORP

Contact: Biljana Hranisavljevic (Risk and Insurance Officer)

Telephone: +61 2 8922 4004

Fax: +61 2 8922 4008

E-mail: biljana.hranisavljevic@railcorp.nsw.gov.au

TfNSW

Contact: Bevan Brown (Technical Director Commercial - Transport Projects)

Telephone: +61 2 9200 0956

Fax: +61 2 9200 0290

Mobile: +61 419 232 566

E-mail: bevan.brown@projects.transport.nsw.gov.au

LOSS ADJUSTER

Technical Assessing

Contact: Richard Kranz (Technical Assessing)

Telephone: +61 2 9889 2800

Fax: +61 2 9889 2400

Mobile: +61 419 604 222

E-mail: richard.kranz@technical.net.au

Schedule 29 - Deadlock Resolution Agreement

Deadlock Resolution Agreement Epping to Thornleigh Third Track Alliance

Transport for NSW
ABN 18 804 239 602

[Insert names and ABNs of NOPS]

[Expert's name]
[Expert's ABN]

Deadlock Resolution Agreement made at _____ on _____

Parties **Transport for NSW ABN 18 804 239 602** a NSW Government agency constituted by section 3C(1) of the *Transport Administration Act 1988* (NSW) of Level 6, 18 Lee St, Chippendale NSW 2008 ("**TfNSW**")

[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 18.2 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 18.2 of the Alliance Agreement (the "**Deadlock**").
- C. Under clause 18.2 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

TfNSW 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 this clause;
- (c) the additional amount or amounts will be payable at the same time or times as the price is required to be provided to Supplier under the other provisions of this agreement; and
- (d) the Supplier is only entitled to the additional amount payable under clause 9.1(a) where the Supplier has issued a tax invoice to the Recipient in respect of the relevant supply.

9.2 Necessary adjustments

If the additional amount on account of GST recovered by the Supplier from the Recipient on any supply made under this agreement differs for any reason from the amount of GST paid or payable by the Supplier to the Commissioner of Taxation, including by reason of:

- (a) an amendment to the GST law;
- (b) the issue of or an alteration in a ruling or advice of the Commissioner of Taxation;
- (c) a decision of any tribunal or court; and
- (d) any adjustment to the consideration under this agreement,

then the difference between the two said amounts will be payable by the Supplier or the Recipient as appropriate. Where an adjustment event (as defined in the GST law) has occurred in relation to any supply under this agreement, the Supplier will provide an adjustment note to the Recipient within 14 days of the date of the adjustment event.

9.3 Reimbursements and similar payments

Any payment or reimbursement required to be made under this agreement for a cost, expense or other amount paid or incurred will be limited to the total cost, expense or amount less the

amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

9.4 Definitions

"GST", "GST law" and other terms used in this clause 9 have the meanings used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), except that "GST law" includes any applicable rulings issued by the Commissioner of Taxation.

10. General

10.1 Notices

- (a) Any notice or other written communication given by one Participant to another Participant or to the Expert, unless the contrary intention appears, will only be effective if it is in writing and signed on behalf of the Participant giving the notice.
- (b) To be valid, a written notice or other written communication under this agreement must be delivered by hand, registered mail or facsimile, and addressed:
- (i) in the case of a notice or other written communication to a Participant, in accordance with the contact details for the receiving Participant stated in the Agreement Particulars; and
 - (ii) in the case of a notice or other written communication to the Expert, as follows:

Name:	<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 20.1(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 days after 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 the 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).

In making his or her determination the Expert will do so on a de novo basis and will not be constrained by any agreement or decision by the ALT or any rejection, refusal or failure to agree by the Principal's Representative, on the relevant Deadlock.
- 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:
 - (a) the ALT in respect of the relevant Material ALT Issue to which the Deadlock relates; or
 - (b) the ALT and the Principal's Representative in respect of a disagreement under clause 11.3(b), 12.3(e), 12.4(e) or 13.4(d) of the Alliance Agreement.
- 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]

Professional Services and the warranties given by the Consultant in this deed poll; and

- (iii) must act in good faith and in the best interests of the TfNSW and RailCorp and promptly advise the TfNSW and RailCorp about any matter in which the Consultant has been instructed by the NOPs to provide the Professional Services in a manner which is, or may result in an outcome which is, not in accordance with the requirements of the Agreement, including without limitation:
 - A. where the NOPs' instructions in relation to design are not consistent with the Agreement or may result in the Works not being fit for their intended purpose; or
 - B. where the NOPs' instructions require the Consultant to issue a certificate where the conditions for the issue of that certificate under the Agreement have not been satisfied.

(b) The Consultant must:

- (i) fully cooperate with each other consultant and contractor engaged by TfNSW or the NOPs (**Other Contractor**);
- (ii) carefully coordinate and integrate the Professional Services with the services and work carried out by each Other Contractor;
- (iii) carry out the Professional Services so as to minimise any interfering with, disrupting or delaying, the services and work carried out by each Other Contractor;
- (iv) without limitation, provide whatever advice, support and cooperation is reasonable to facilitate the due carrying out of the services and work being provided by each Other Contractor;
- (v) ensure title to and Intellectual Property (including any patent, registered design, trademark or name, copyright or other protected right) in or in relation to the Professional Services will vest upon its creation for the purposes of the Agreement in the TfNSW;
- (vi) obtain an assignment to the TfNSW from any third party who owns any Intellectual Property in the Professional Services;
- (vii) if any Intellectual Property in or in relation to documents, designs and computer programs created for the purposes of the Agreement is not capable of being vested in the TfNSW because the Consultant itself does not own, and is unable at a reasonable cost to obtain ownership of, those rights, provide to the TfNSW an irrevocable licence to use that Intellectual Property, by sublicense from the Consultant or direct licence from a third party; and
- (viii) ensure that the Intellectual Property created for the purposes of the Agreement is not used, adapted or reproduced other than for the purposes of the Agreement without the prior written approval of the TfNSW (which will not be unreasonably withheld, but may be given subject to terms and conditions).

(c) The Consultant must indemnify the TfNSW and RailCorp from and against:

- (i) any liability to or claim by any other person; and
- (ii) all claims against, and costs, expenses, losses and damages,
- (iii) suffered or incurred by the TfNSW and RailCorp arising out of, or in any way in connection with:
 - A. the Consultant's breach of a term of, or warranty under, this deed poll; or
 - B. any actual or alleged infringement of any patent, registered design, trademark or name, copyright or other protected right.

2. Notices

- (a) Any notices contemplated by, or arising out of or in any way in connection with, this deed poll must be in writing and delivered to the relevant address or sent to the facsimile number shown below (or to a party's new address or facsimile number which that party notifies to the others):
 - (i) to TfNSW:
 - Level 5, Tower A
 - Zenith Centre
 - 821 Pacific Highway
 - CHATSWOOD NSW 2067
 - Fax: (02) 9200 0290
 - (ii) to RailCorp:
 - Level 20, 477 Pitt Street
 - SYDNEY NSW 2008
 - Fax: (02) 8922 0901
 - (iii) to the Consultant: [to be completed]
- (b) A notice sent by post will be taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.
- (c) A notice sent by facsimile will be taken to have been received on the next day after the day shown on the transmission slip showing the facsimile number of the party to whom it is addressed in accordance with clause 2(a), which is not a Business Day.
- (d) If the Consultant is a foreign company (as defined in the *Corporations Act 2001* (Cth)), the Consultant must within 14 days of the date of this deed poll:
 - (i) appoint a local process agent acceptable to the TfNSW as its agent to accept service of process under or in any way in connection with this deed poll; and
 - (ii) obtain the process agent's consent to the appointment.

The appointment must be in a form acceptable to the TfNSW and may not be revoked without the TfNSW's consent.

3. Miscellaneous

- (a) This deed poll shall be governed by and construed in accordance with the laws of the State of New South Wales.

- (b) The Consultant hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this deed poll, and waives any right it might have to claim that those courts are an inconvenient forum.
- (c) This deed poll may not be revoked or otherwise modified without the prior written consent of the TfNSW and RailCorp.
- (d) Terms used in this deed poll which are otherwise not defined will have the meaning given to them in the Agreement.

Schedule

[INSERT DESCRIPTION OF PROFESSIONAL SERVICES] as more particularly described in the Subcontract.

Executed as a deed poll.

Signed sealed and delivered by the
Consultant [] by or in the presence
of:

Signature of witness

Signature

Full name of witness

Schedule 31 - Track Possessions

The following Track Possessions with power isolations will be made available by TfNSW for the NOPs in accordance with clause 8.16 for the Participants to carry out the Alliance Activities.

Start and finish times for a typical 2-day Track Configuration 9 possession are 02:00 Saturday to 02:00 Monday.

Additional detail will be provided in planning meetings with RailCorp in the lead up to each possession.

In the case of the Track Possessions set out in the table below, periods of approximately five hours at the beginning, and at the end, of each Track Possession are to be provided for by the Alliance for the arrangement and coordination of safe working procedures and power isolations of overhead or transmission lines.

Year	Weekend (WE) Number	Date	Type and Extent*	Approved/Not Approved
2012/2013	WE35	2-3 March 2013	Track Configuration 9	Approved
	WE49	8-10 June 2013	Track Configuration 9	Approved
2013/2014	WE11	14-15 September 2013	Track Configuration 9	Approved
	WE23	7-8 December 2013	Track Configuration 9	Approved
	(Various)	7/8 December 2013 to 13 June 2016	Overhead wiring isolation only, for Down Refuge only, between 50 turnout and 52 turnout.	Approved (Minimum 26 weeks notification period required prior to removal. Alliance to confirm with RailCorp.)
	WE39	29-30 March 2014	Track Configuration 9	Approved
	WE46	17-18 May 2014	Track Configuration 9	Approved
2014/2015	WE10	6-7 September 2014	Track Configuration 9	Approved
	WE19	8-9 November 2014	Track Configuration 9	Approved

Year	Weekend (WE) Number	Date	Type and Extent*	Approved/Not Approved
	Includes WE26	26-30 December 2014	<p>Non-standard possession between north of Epping and south of Hornsby. The possession extent will not include Epping Station.</p> <p>The overhead wiring will be isolated Power Out for All Tracks (POAT*).</p> <p>The Alliance to co-ordinate with RailCorp to allow diesel trains to pass through the worksite on one track (currently planned for Up Main using single-line working). Diesel trains include passenger and freight services. These trains will require a pilot onboard to assist the driver through the worksite (PSW*).</p> <p>The Alliance will have the ability to nominate the preferred track for the single-line working during the 5 days. Note, the preferred track could alternate if required, however sufficient notice (min. 12 months) is to be provided to RailCorp for any changes proposed by the Alliance to this configuration.</p>	Approved
	WE35	28 February 2015 - 1 March 2015	Track Configuration 9	Approved
	WE49	6-8 June 2015	Track Configuration 9	Approved
2015/2016	WE10	5-6 September 2015	Track Configuration 9	Approved
	WE19	7-8 November 2015	Track Configuration 9	Approved
	WE34	20-21 February 2016	Track Configuration 9	Approved
	Includes WE49	4-13 June 2016	Non-standard possession of Down Refuge track only, between 50 turnout and 52 turnout.	Approved

Year	Weekend (WE) Number	Date	Type and Extent*	Approved/Not Approved
	WE50	11-13 June 2016	Track Configuration 9	Approved
2016/2017	WE10	3-4 September 2016	Track Configuration 9	Approved
	WE19	5-6 November 2016	Track Configuration 9	Approved

* POAT = power out all tracks, PSW = pilot staff working

More particular details of track possession configurations are included in the following documents:

- Major Closedowns and Weekend Possessions Programme 2012/2013 - V15
- Major Closedowns and Weekend Possessions Programme 2013/2014 Draft - V13
- Major Closedowns and Weekend Possessions Programme 2014/2015 Draft – V5
- Major Closedowns and Weekend Possessions Programme 2015/2016 Draft – V4
- Major Closedowns and Weekend Possessions Programme 2016/2017 Draft –V3.

Schedule 32 - Options

None.

Schedule 33 - Form of Other Contractor Deed Poll

This Deed Poll made the day of 20

In favour of: **[insert details] (ABN [insert details])** of **[insert details]**

(Principal Contractor)

Transport for NSW (ABN 18 804 239 602) of Level 6, 18 Lee Street,
Chippendale NSW 2008

(TfNSW)

Given by: **[insert details] (ABN [insert details])** of **[insert details]**

(Other Contractor)

Recitals

- A. By a contract dated **[insert date] (Contract)** between TfNSW, the Principal Contractor and other contractors, the Principal Contractor and the other contractors agreed to design and construct certain works (**Works**), on the land more particularly described in the Contract (the **Site**).
- B. The Other Contractor has been appointed under a Contract (**Other Contract**) to undertake certain works on the Site (**Other Contractor Works**).
- C. For the purposes of the *Work Health and Safety Act 2011 (NSW)* and the *Work Health and Safety Regulation 2011 (NSW)* (together, the **WHS Legislation**), the Works and the Other Contractor Works are a 'construction project' within the meaning of the WHS Legislation.
- D. Under the Contract, TfNSW engaged the Principal Contractor as principal contractor and authorised the Principal Contractor to have management and control of the workplace for the purpose of discharging the duties imposed on a principal contractor for the construction project.
- E. Under the provisions of the Contract, TfNSW is required to procure the provision of this Deed Poll from each Other Contractor (as that term is defined in the Contract) that undertakes Other Contractor Works (as that term is defined in the Contract).

This Deed Poll Provides

- 1. In consideration of the Principal Contractor accepting this Deed Poll, the Other Contractor agrees that:
 - (a) the Other Contractor, its subcontractors and their respective personnel while they are on the Site, will comply with Site safety regulations, any Site rules or regulations and with all directions of the Principal Contractor with respect to work health and safety;
 - (b) the Other Contractor, its subcontractors and their respective personnel will comply in a timely manner with directions of the Principal Contractor so that the Principal Contractor discharges its obligations as principal contractor;
 - (c) the Other Contractor, its subcontractors and their respective personnel will consult, cooperate and coordinate activities with the Principal Contractor, TfNSW and all other persons who have a work health and safety duty in relation to the same matter;

- (d) the Other Contractor, its subcontractors and their respective personnel will comply with the work health and safety plan(s) prepared by the Principal Contractor while on Site;
- (e) the Principal Contractor may exclude the Other Contractor, any of its subcontractors and their respective personnel from the Site for work health and safety reasons;
- (f) the Principal Contractor may direct the Other Contractor, any of its subcontractors and their respective personnel to perform or not perform certain acts for work health and safety reasons;
- (g) where high risk construction work is to be carried out in the performance of the Other Contractor Works, the Other Contractor must:
 - (i) prepare a safe work method statement that complies with all requirements of the WHS Legislation;
 - (ii) provide a copy of the safe work method statement to TfNSW and the Principal Contractor prior to the commencement of high risk construction work;
 - (iii) review and revise the safe work method statement in accordance with the WHS Legislation;
 - (iv) ensure that the high risk construction work is carried out in compliance with the safe work method statement; and
 - (v) where so directed by the Principal Contractor, suspend the performance of any high risk construction work;
- (h) the Other Contractor shall in carrying out the work under the Other Contract, comply with, and ensure that all subcontractors and personnel comply with the WHS Legislation; and
- (i) in its contracts with subcontractors, the Other Contractor will ensure that the subcontractor is obliged to give the same obligations and rights as required of the Other Contractor under this Deed Poll.

2. The Other Contractor indemnifies the Principal Contractor against any delay, damage, expense, loss, penalty or liability suffered or incurred by the Principal Contractor as a result of:

- (a) any failure by the Other Contractor to comply with any direction given by the Principal Contractor in accordance with this Deed Poll; or
- (b) any breach by the Other Contractor, any of its subcontractors or their respective personnel of:
 - (i) their respective contractual or legislative work health and safety obligations; or
 - (ii) the provisions of this Deed Poll.

3. This Deed Poll will be governed by and construed in accordance with the law for the time being of New South Wales.

Executed as a deed poll

Executed by **[Other Contractor]** by or in the presence:

Signature of director

Full name of director

Signature of secretary/other director

Full name of secretary/other director

- 3. This Deed Poll may not be revoked or otherwise modified without the prior written consent of RailCorp and TfNSW.
- 4. Where terms used in this Deed Poll are defined in the PAA or the Interface Agreement, those terms have the meaning given to them in the PAA or Interface Agreement.

Executed as a deed poll.

Executed by Leighton Contractors Pty Limited (ABN 98 000 893 667) in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Executed by Abigroup Contractors Pty Limited (ABN 40 000 201 516) in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

Signature of company secretary/director

Full name of company secretary/director