

Alliance Agreement

Contract 8 in the Commonwealth
Model Contract Series



The Commonwealth

Model Contracts for Infrastructure, Extractives and Energy Industries in Commonwealth Countries

The Commonwealth Secretariat recognises the need for standardised contracts within the infrastructure, extractives and energy industries across its member countries.

The lack of uniformity in these contracts has led to inefficiencies, imbalances and loopholes that do not serve the best interests of the member countries. To address this issue, the Secretariat is developing model contracts that foster fairness, balance and sustainability in investment relationships, while protecting the interests of governments and citizens.

The core purpose of this standardisation is to consolidate a comprehensive array of infrastructure contracts, facilitating easy access for relevant stakeholders. By providing a singular point of access, it eliminates redundancy and ambiguity, allowing government officials and authorised parties to efficiently source and acquire requisite contracts. This strategic initiative is poised to revolutionise and improve the procurement process within Commonwealth member countries.

This series of model contracts will serve as valuable resources for government lawyers, aiding them in drafting and reviewing foreign investment projects and related contracts. By promoting fairness, balance and sustainability, these model contracts will contribute to the overall development and economic wellbeing of Commonwealth member countries.

Moreover, the establishment of this central repository underlines the commitment of Commonwealth member countries to fostering a conducive environment for sustainable investments.

To deliver this suite of model contracts, the Commonwealth Secretariat has constituted a working group comprising of officials nominated by 19 member countries who are leveraging their expertise, and working with a designated expert, to conclude the project.

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This work is adapted from the 'National Alliance Contracting Guidelines' published by the Australian Government's Department of Infrastructure and Regional Development.

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Alliance Agreement

This Project Alliance Agreement has been prepared on the basis that the Project Owner will first enter into an Alliance Development Agreement with one or more Proponents selected under the Request for Proposals for the development of a Project Proposal (which will include the TOC or part of the TOC for the Project).

The Alliance Development Agreement will be attached to the Request for Proposals. This Project Alliance Agreement will itself be attached to the Alliance Development Agreement and will form the basis for the development of the final Project Alliance Agreement which will be entered into between the Project Owner and the Proponent whose Project Proposal is accepted under the Alliance Development Agreement.

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The Agreement

Date:

Between the parties	
Project Owner	<p>[## Insert Project Owner]</p> <p>[## Insert Position]</p> <p>of [## <i>insert address (not a P.O. Box)</i>]</p> <p>[## <i>insert email</i>]</p> <p>[## <i>insert telephone</i>]</p>
Non-Owner Participant 1	<p>[## Insert Non-Owner Participant]</p> <p>[## Insert Position]</p> <p>of [## <i>insert address (not a P.O. Box)</i>]</p> <p>[## <i>insert email</i>]</p> <p>[## <i>insert telephone</i>]</p>
Non-Owner Participant 2	<p>[## Insert Non-Owner Participant]</p> <p>[## Insert Position]</p> <p>of [## <i>insert address (not a P.O. Box)</i>]</p> <p>[## <i>insert email</i>]</p> <p>[## <i>insert telephone</i>]</p>
Background	<p>The Project Owner intends to [## <i>insert description of Project</i>] (Project).</p> <p>The Project Owner developed the Project Owner's Value for Money (VFM) Statement in respect of the Project.</p> <p>The Project Owner selected the NOPs based on the Proposal and the selection process in the Request for Proposals to participate in the AD Phase, and, for that purpose, the Project Owner and the NOPs entered into the Alliance Development Agreement.</p> <p>As part of the AD Phase, the NOPs developed the Project Proposal to achieve the Project Owner's VFM Statement in respect of the Project.</p> <p>The Project Owner has accepted the Project Proposal under the Alliance Development Agreement, and the Project Owner and the NOPs have agreed to enter into this Agreement for the carrying out of the Project and</p>

	<p>performance of the Works in return for the payments set out in this Agreement.</p> <p>The Participants have undertaken to enter into an alliance and perform their respective roles in relation to the Project in a spirit of cooperation and openness with the objective of performing the Works using an alliance relationship.</p> <p>The Participants are committed to achieving the Project Owner's requirements in the carrying out of the Project and the performance of the Works, and in particular:</p> <ul style="list-style-type: none"> • achieving the Project Owner's VFM Statement; and • meeting the Alliance Objectives.
This Agreement witnesses	that in consideration of, among other things, the mutual promises contained in this Agreement, the Participants agree as set out in the Operative part of this Agreement.

Operative Part

1. Definitions and interpretation

1.1. Definitions

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

Term	Meaning
Act of Parliament	all Acts of the Parliament of the [Commonwealth Member Country] and includes any ordinance, rule, regulation, by-law, local law, order, code of practice, guideline, instruction and proclamation made or issued under any such Act now in existence or which comes into existence during the Term.
Actual Outturn Costs or AOC	<p>the total verified sum of:</p> <ul style="list-style-type: none">all Reimbursable Costs reasonably and actually incurred by the NOPs in performing the Works;all Reimbursable Costs reasonably and actually incurred by the Project Owner (whether as the client or the Owner Participant) in performing the Works or in connection with this Agreement (including any costs incurred by the Project Owner which are expressly stated by this Agreement to be Reimbursable Costs for the purposes of calculating the AOC); andall Corporate Overhead and Profit paid by the Project Owner to the NOPs under this Agreement, <p>until the Final Completion Date, but not including amounts specifically excluded under this Agreement.</p>
Adjudicator	the independent person appointed under clause 2 of Schedule 12.
Adjustment Event	<p>any of the following acts, events or circumstances:</p> <ol style="list-style-type: none">1. a Scope Variation;2. a change to a Statutory Requirement after the date of this Agreement which substantially and materially affects the Works;3. any suspension by the Project Owner of all or part of the Works under clause 22 (other than as a result of a breach of this Agreement by a NOP, where the suspension is necessary to ensure that the Works comply with the requirements of this Agreement or in the circumstances set out in clause 22.5); and4. any event or circumstance identified in the Adjustment Event Guidelines as an Adjustment Event.

Adjustment Event Guidelines	the adjustment event guidelines developed by the Participants and approved by the Project Owner under the Alliance Development Agreement as set out in the Project Proposal.
Agreement	this Agreement including all its schedules and attachments hereto as originally executed or as it may from time to time be supplemented, varied, or amended in writing subsequent hereto.
Alliance Charter	the alliance charter (including the Alliance Principles, Alliance Purpose and Alliance Objectives) developed by the Participants for the performance of the Works as set out in Schedule 2 which, together with the other terms of this Agreement, governs the relationship between the Participants under this Agreement.
Alliance Development Agreement	the alliance development agreement for the Project entered into between the Project Owner and the NOPs under which the Project Proposal was developed for the approval (or otherwise) of the Project Owner.
Alliance Development Phase (AD Phase)	the phase of the procurement process for the Project as described in the Request for Proposals under which the NOPs develop the Project Proposal for the approval (or otherwise) of the Project Owner in accordance with the terms of the Alliance Development Agreement.
Alliance Leadership Team or ALT	the alliance leadership team established under clause 6.1.
Alliance Management Team or AMT	the alliance management team to be established under clause 7.2.
Alliance Manager	the person specified in clause 7.1 or any other person appointed by the ALT as the alliance manager for the purposes of this Agreement from time to time.
Alliance Objectives	are set out in Schedule 2.
Alliance Principles	are set out in Schedule 2.
Alliance Project Team or APT	the alliance project team to be established under clause 7.4.
Alliance Purpose	is set out in Schedule 2.

Alliance Risk and Opportunity Report	the alliance risk and opportunity report developed by the Participants as set out in the Project Proposal and approved by the Project Owner under the Alliance Development Agreement.
Authorisation	any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Government Agency or a Third Party.
Best For Project	an approach, determination, decision, method, solution, interpretation, outcome or resolution that is consistent with the Project Owner's VFM Statement and the Alliance Charter.
Business Day	a day on which banks are open for business in [## <i>insert relevant capital city, State</i>], excluding a Saturday, Sunday or public holiday as declared by the government in [## <i>insert relevant capital city, State</i>].
Certificate of Practical Completion	is defined in clause 10.2(c).
Change in Control	<p>if, in relation to any person (the first mentioned person):</p> <ol style="list-style-type: none"> 1 there is a change in the person that controls the first mentioned person (other than if the Ultimate Holding Company of the first mentioned person remains the same following the change); 2 a person that controls the first mentioned person ceases to control that person (other than if the Ultimate Holding Company of the first mentioned person remains the same following the change); or 3 if the first mentioned person is not controlled, another person acquires control of the first mentioned person. <p>For the purposes of this definition, the term 'control' (including the term 'controlled') has the same meaning as in [relevant statute]</p>
[Relevant] Code	the National Code of Practice for the Construction Industry [refer to relevant Code within Commonwealth Member Country]
Consequential Loss	loss of production, loss of revenue, loss of profit or anticipated profit or loss of business reputation, but does not include any entitlement of a NOP under this Agreement to Corporate Overhead and Profit or any loss expressly stated under clause 10.6(b).
Construction Plant	apparatus, facilities, plant, equipment, materials, products, processes, temporary works, machinery and other things used in performing the Works but not forming part of the completed Works.

Contracting Strategy	the contracting strategy developed by the Participants as set out in the Project Management System in the Project Proposal and approved by the Project Owner under the Alliance Development Agreement.
Corporate Overhead and Profit	the NOPs' corporate overhead and profit calculated in accordance with Schedule 6.
Corporations Act	[Refer to specific Act within Commonwealth Member Country, as applicable]
Date for Practical Completion	is defined in Schedule 1.
Date of Practical Completion	the date of Practical Completion stated in the Certificate of Practical Completion.
Default	is defined in clause 24.1.
Defaulting Participant	is defined in clause 24.1.
Defect	any error, omission, defect, non-conformity, deficiency or discrepancy in any part of the Works or any other matter that is not in accordance with this Agreement.
Defects Liability Period	is defined in Schedule 1.
Design Development Report	the design development report for the Works developed by the Participants, set out in the Project Proposal and approved by the Project Owner under the Alliance Development Agreement.
Diligence	the exercise of the degree of skill, care, expertise, diligence and foresight which would from time to time be expected of skilled and experienced professional persons engaged in undertakings of a similar type as the Works.
Documentation	is defined in clause 9.2.
Enhancements	is defined in clause 27.2(a).
Environment	has the same meaning as in relevant Commonwealth Member Country [name environmental statute]
Environmental Credits	includes the legal, commercial, marketing or other benefit (whether present or future) of any: 1 reduction or offset of greenhouse gas emissions (whether by total greenhouse gas emissions or

	<p>efficiencies or offset abatement projects);</p> <p>2 use of renewable energy or generation of energy; or</p> <p>3 reduction or offset of any Environmental impact including credits derived from native vegetation offsets.</p>
Excluded Amounts	<p>any:</p> <ol style="list-style-type: none"> 1 Reimbursable Costs reimbursable under clause 16.1; 2 Corporate Overhead and Profit payable under clause 16.1; 3 Gainshare Amount or Painshare Amount (if any and as the case may be) or Performance Reward Amount or Performance Liability Amount (if any and as the case may be) payable under clause 16.1 and Schedule 7; 4 amount required to be paid by the Project Owner to the NOPs or the NOPs to the Project Owner (as the case may be) under clauses 16.5 and 23.2 and Schedule 12; and 5 amount required to be paid by a NOP to the Project Owner under clause 19.10.
Final Certificate	is defined in clause 11.1.
Final Completion Date	the final completion date of the Works specified in the Final Certificate.
Gainshare Amount	the payment (if any) to be made by the Project Owner to the NOPs which will be calculated as at the Final Completion Date in accordance with the Risk or Reward Regime and paid in accordance with clause 3(e) of Schedule 8.
Gainshare Retention Amount	the amount of any Interim Gainshare Amount retained by the Project Owner in accordance with clause 3(c) of Schedule 8.
Good Faith	<p>in the context of this Agreement means:</p> <ol style="list-style-type: none"> 1 acting in accordance with the Alliance Principles, Alliance Purpose and Alliance Objectives both in a literal sense and with their intent; 2 undertaking, adopting and implementing all things reasonably necessary to ensure a Best For Project outcome; and 3 being fair, honest and reasonable and acting with integrity at all times.
Governance Plan	the governance plan for the Project developed by the Participants and approved by the Project Owner under the Alliance Development Agreement, as set out in the Project Proposal.
Government Agency	any government, parliament or governmental, semi-governmental, administrative, monetary, fiscal or judicial

	body, department, commission, authority, tribunal, government minister, agency or entity with adequate territorial and sector-specific jurisdiction over the project.
[GST/VAT/Applicable Tax] Exclusive Consideration	is defined in clause 16.9
Guidelines	Member State Guideline [Provide Link for ease of reference].
Industrial Relations Principles	Member State Industrial Relations Principles [Provide Link for ease of reference].
Insolvency Event	<p>where a Participant:</p> <ul style="list-style-type: none"> 1 informs another Participant or creditors generally that it is insolvent; 2 has a meeting of its creditors called with a view to entering a scheme of arrangement or composition with creditors; 3 enters a scheme of arrangement or composition with creditors; 4 has a controller (as that term is defined in the [Relevant] Act) of its property or part of its property appointed; 5 is the subject of an application to a court for its winding up, which application is not stayed within 10 Business Days; 6 has a winding up order made in respect of it; 7 has an administrator appointed under [relevant section(s), relevant act(s)]; 8 enters into voluntary liquidation; 9 fails to comply with a statutory demand issued under [relevant section(s), relevant act(s)], unless the demand is set aside by a court within [XX] Business Days; or 10 has execution levied against it by creditors, debenture holders or trustees or under a floating charge.
Intellectual Property	all intellectual property rights existing worldwide and the subject matter of those rights including any patent, design (whether registered or not), copyright, trade mark, protected circuit layout (or similar right), trade secret or other right whether existing under a Statutory Requirement, at common law or in equity.
Interim Gainshare Amount	the interim Gainshare Amount which will be calculated as at the Date of Practical Completion in accordance with the Risk or

	Reward Regime and paid by the Project Owner to the NOPs in accordance with clause 3(c) of Schedule 8..
Interim Painshare	the interim Painshare Amount which will be calculated as at the Date of Practical Completion in accordance with the Risk or Reward Regime and paid
Amount	by the NOPs to the Project Owner in accordance with clause 3(c) of Schedule 8.
Intellectual Property Assets	are defined in clause 27.3(a).
IP Documents	are defined in clause 27.3(a).
Key Result Areas or KRAs	are defined in Schedule 7.
Latent Conditions	the physical conditions on a Site including the soil and rock conditions, surface water, groundwater, geotechnical conditions, contamination, Pollution and artificial things.
Materials	materials, plant, machinery, equipment and products for incorporation into the Works.
MCOS Performance	the minimum conditions of satisfaction or benchmark level of performance for each KRA, as set out in the Project Proposal.
Month	calendar month.
Native Title Laws	[Include reference to relevant statute where applicable, or cut references throughout].
Nominated Subcontractor	in respect of a NOP, any person: <ul style="list-style-type: none"> 1 nominated as part of the Proposal as a person the NOP intended to engage as a Subcontractor for the performance of the Works under this Agreement; and 2 engaged by the NOP as a Subcontractor under this Agreement.
NOPs or NOPs	Non-Owner Participant 1 and Non-Owner Participant 2.
Non-Owner Participant or NOP	Non-Owner Participant 1 or Non-Owner Participant 2, as the context requires.
Notice	is defined in clause 28.

Officer	has the meaning given to that term in the [relevant section(s), relevant act(s)]
Owner Participant	the Project Owner, in its capacity as a Participant in the alliance for the performance of the Works.
Painshare Amount	the payment (if any) to be made by the NOPs to the Project Owner which will be calculated as at the Final Completion Date in accordance with the Risk or Reward Regime and paid in accordance with clause 3(d) of Schedule 8 .
Participant	either the Owner Participant, Non-Owner Participant 1 or Non-Owner Participant 2, as the context requires.
Participants	the Owner Participant and the NOPs.
Performance Liability Amount	the payment (if any) to be made by the NOPs to the Project Owner for Poor Performance in the KRAs which will be calculated in accordance with the Risk or Reward Regime.
Performance Modifiers	the performance modifiers for the Project set out in the Risk or Reward Regime.
Performance Reward Amount	the payment (if any) to be made to the NOPs by the Project Owner for Stretch Performance in the KRAs which will be calculated in accordance with the Risk or Reward Regime.
Pollution	<p>a solid, liquid, gas, odour, heat, sound, vibration, radiation or substance of any kind which makes or may make any segment of the Environment:</p> <p>1 unsafe, unfit or harmful for habitation, use or occupation by any person or animal;</p> <p>2 degraded in any way; or</p> <p>3 not comply with any Statutory Requirements.</p>
Poor Performance	the level of poor performance for each KRA, being worse than MCOS Performance, as set out in the Project Proposal.
Practical Completion	<p>the stage in the performance of the Works when:</p> <p>1. the Works are complete except for minor Defects:</p> <ul style="list-style-type: none"> • which do not prevent the Works from being reasonably capable of being used for their intended purpose as set out, identified, or referred to in, or as may reasonably be inferred from, the Project Proposal; • which the Participants have reasonable grounds for not promptly rectifying; and • rectification of which will not prejudice the immediate and convenient use of the Works for their intended purpose as set out, identified or referred to in, or as may reasonably be inferred from, the Project Proposal;

	<ol style="list-style-type: none"> 2. the requirements of all relevant certifying authorities and insurance surveyors have been met; and 3. the Project Owner has received all documents and information about the design and construction of the Works including all design documentation, surveys and as constructed information and drawings and any other documentation reasonably required by the Project Owner with respect to the Works.
Pre-existing Intellectual Property Materials	is defined in clause 27.1.
Project	is defined in paragraph 1 of the Background of this Agreement.
Project Management System	<p>the project management system for the Project developed by the Participants and approved by the Project Owner under the Alliance Development Agreement, which incorporates the following systems and plans:</p> <ol style="list-style-type: none"> 1. an environmental management system and plan; 2. a Third Party certified occupational safety & health management system, including an occupational safety & health quality plan; 3. the Contracting Strategy; 4. a community and stakeholder management plan; 5. an industrial relations management plan; 6. an emergency response plan; 7. a sustainability plan; 8. a training and skills development plan; 9. an industry participation plan; 10. an Aboriginal Heritage management plan, as set out in the Project Proposal; and 11. Works Program
Project Office	the office provided by the Participants for the purpose of performing the Works in accordance with clause 7.6.
Project Owner	is defined in Schedule 1.
Project Owner's Reserved Powers	the Project Owner's reserved powers under this Agreement as set out in clause 6.10(a).
Project Owner's VFM Statement	the Project Owner's value for money proposition for the Project set out in Schedule 4.
Project Proposal	the proposal for the Project developed by the Participants and approved by the Project Owner under the Alliance

	<p>Development Agreement as set out in Schedule 10, which comprises:</p> <ol style="list-style-type: none"> 1. the Design Development Report; 2. the Scope of Works; 3. the TOC Validation Report (which will include the TOC); 4. all details and matters relevant to the Risk or Reward Regime; 5. the Scope Variation Benchmarking Guidelines; 6. the Alliance Risk and Opportunity Report; 7. the Adjustment Event Guidelines; 8. the Governance Plan; and 9. the Project Management System.
Proposal	the written response submitted by the NOPs in respect of the Project in response to the Request for Proposals.
Reimbursable Costs	is defined in Schedule 5.
Related Body Corporate	has the meaning given to that term in the [relevant section(s), relevant act(s)]
Relevant Period	<p>the period commencing on the date of this Agreement and ending on:</p> <ol style="list-style-type: none"> 1. a date agreed by the ALT; or 2. failing agreement, the date necessary to ensure that all Participants comply with any Statutory Requirement relating to record keeping.
Request for Proposals	is defined in Schedule 1.
Responsibilities Matrix	the responsibilities matrix designating roles and responsibilities under this Agreement to the ALT, the AMT and the APT, as set out in Schedule 3.
Risk or Reward Regime	<p>the risk or reward regime for the Project under which:</p> <ol style="list-style-type: none"> 1. a Gainshare Amount may be payable by the Project Owner to the NOPs or a Painshare Amount may be payable by the NOPs to the Project Owner (if any and as the case may be); and 2. a Performance Reward Amount may be payable by the Project Owner to the NOPs or a Performance Liability Amount may be payable by the NOPs to the Project Owner (if any and as the case may be), each as set out in Schedule 7 and further detailed in the Project Proposal.
Risk & Contingency Provisions	the provision for all possible Reimbursable Costs associated with risks and contingencies that may arise in performing the Works

	that have been set out in the Alliance Risk and Opportunity Report and included in estimating the TOC, but excluding any Adjustment Events.
Scope of Works	the scope of works for the Project developed by the Participants and approved by the Project Owner under the Alliance Development Agreement, as set out in the Project Proposal.
Scope Variation	is defined in clause 13.2(a).
Scope Variation Benchmarking Guidelines	the Scope Variation benchmarking guidelines developed by the Participants and approved by the Project Owner under the Alliance Development Agreement which set out indicative examples of when a direction by the Project Owner in accordance with clause 13.1 is also a Scope Variation, as set out in the Project Proposal.
Scope Variation Report	is defined in clause 13.2(d).
Sensitive Information	is defined in clause 15.12(c).
Separable Portion	is defined in clause 6.9.
Site	any land, or any part of land, where the Works are to be performed.
[Relevant] Act	the [relevant section(s), relevant act(s)]
Statutory Requirements	<ol style="list-style-type: none"> 1 Acts of Parliament; 2 Authorisations; 3 directions given under a statute that affect the performance of the Works; and 4 all other laws, regulations, conventions, orders, directions, guidelines and policies given by or on behalf of any Government Agency which may apply to the Works including the Code and Guidelines, the Relevant Code and the Industrial Relations Principles.
Stipulation	is defined in clause 24.2(a).
Stretch Performance	the level of stretch performance for each KRA, being better than MCOS Performance, as set out in the Project Proposal.
Subcontract	any contract or purchase order, or arrangement made in respect of the Works between a Participant and a Subcontractor.

Subcontractor	any person engaged by a Participant to perform any part of the Works and includes, where it is not inconsistent with the context, that person's employees, agents and consultants.
Supplier	is defined in clause 16.9(d).
Target Outturn Cost or TOC	the specific sum identified as the TOC in the Project Proposal, being the estimate of all Reimbursable Costs, Corporate Overhead and Profit and Risk & Contingency Provisions required to achieve MCOS Performance, perform the Works and bring the Works to a stage where the Final Certificate can be issued in accordance with this Agreement.
Term	is described in clause 8.
Third Party	a person who is not a Participant or a director, officer or employee of a Participant or a Related Body Corporate of a Participant.
TOC Validation Report	the TOC validation report (which will include the TOC) developed by the Participants and approved by the Project Owner under the Alliance Development Agreement, as set out in the Project Proposal.
[Relevant] Code	[Name] Practice for the Building and Construction Industry [Provide Link for ease of reference:]
Wilful Default	<ol style="list-style-type: none"> 1. a deliberate and purposeful act or omission carried out, or real and substantial evidence of a deliberate and purposeful act or omission carried out, with a reckless disregard or calculated regard for the consequences of the act or omission by a Participant, its Officers, or any representative of the Participant on the ALT or AMT or, in the case of a NOP only, any Nominated Subcontractor of the NOP which is a breach of a duty, obligation or stipulation arising out of this Agreement, or which is a breach of a duty or obligation owed to another Participant however arising (which includes a breach of the Alliance Charter); 2. a fraudulent act or omission by a Participant, any director, officer, employee or agent of the Participant, any representative of the Participant on the ALT or AMT or, in the case of a NOP only, any Nominated Subcontractor of the NOP; 3. a repudiation of this Agreement by a Participant; or 4. any act or omission by an officer, representative or employee of a Participant that: <ul style="list-style-type: none"> • would, if done by an Officer, constitute a Wilful Default;

	<ul style="list-style-type: none"> • has come to the attention of an Officer of that Participant, or any representative of that Participant appointed to the ALT or AMT; and • the relevant Officer or representative appointed to the ALT or AMT has not taken reasonable action to address. <p>but does not include</p> <p>5. any error of judgment, mistake, act or omission, whether negligent or not, which is made in Good Faith by that Participant or by any director, officer, employee or agent of that Participant, any representative of the Participant on the ALT, AMT or APT or, in the case of a NOP only, any Nominated Subcontractor of the NOP.</p>
Works	<p>the whole of the works and services to be performed by the Participants from time to time under this Agreement and includes:</p> <ol style="list-style-type: none"> 1 any direction by the Project Owner in accordance with clause 13.1 or Scope Variations; 2 the Construction Plant; and 3 rectification work necessary to make good any Defects arising before and during the Defects Liability Period, but excluding any works or services performed by the Participants which are not directly referable to the Owner's VFM Statement, the Scope of Works and the assumptions adopted by the Participants in developing the TOC.

1.2. Interpretation

In this Agreement:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (e) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual;
- (f) a reference to a clause, party, schedule, attachment, annexure or exhibit is a reference to a clause of, and a party, schedule, attachment, annexure or exhibit to, this Agreement and a reference to this Agreement includes any clause, schedule, attachment, annexure and exhibit;

- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments;
- (h) a reference to a document (including this Agreement) is that document as varied, amended, novated, ratified or replaced from time to time;
- (i) a covenant or agreement on the part of the NOPs (or any one or more of them) made to the Project Owner binds all of the NOPs jointly and severally to the Project Owner;
- (j) all money referred to under this Agreement is in [a of Choice]
- (k) a reference to a body (including an institute, association or authority), other than a party to this Agreement, whether statutory or not which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions; and
- (l) specifying anything in this Agreement after the words “include” or “for example” or similar expressions does not limit what else is included.

1.3. References to the Project Owner and Owner Participant

- (a) Whilst the Project Owner and the Owner Participant are the same entity, throughout this Agreement references are made to “Project Owner” and “Owner Participant” respectively to indicate the distinction between when that entity is acting as the client for the performance of the Works and when it is acting as one of the Participants in the alliance for the performance of the Works.
- (b) The Project Owner must perform its obligations under this Agreement through a representative appointed in writing by the Project Owner from time to time. In addition, the Project Owner’s representative will also perform the roles and functions and have the powers and rights allocated to him or her as set out in Schedule 13. The Participants will provide all assistance necessary to ensure the Project Owner’s representative can fulfil the responsibilities, perform those roles and functions and exercise those rights. The Project Owner has initially selected the person named in Schedule 1 as its representative for the purposes of this Agreement. The Project Owner may, from time to time, change its representative by giving notice in writing to the NOPs.
- (c) Notwithstanding the alliance relationship established under this Agreement, the NOPs acknowledge that, where the Project Owner is exercising its rights (including the Project Owner’s Reserved Powers under clause 6.10) and performing its obligations under this Agreement in its role as client for the performance of the Works (rather than as a Participant in the alliance), the Project Owner will not be subject to the commitments made under clauses 3 and 4.

1.4. Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

1.5. Ambiguity, discrepancy and inconsistency

- (a) The Participants acknowledge and agree that, if there is any ambiguity, discrepancy or inconsistency in this Agreement, and the documents comprising this Agreement, the ALT will make a recommendation to the Project Owner as to how to resolve the ambiguity, discrepancy or inconsistency, in a manner consistent with the commitments given by the Participants under clause 4.
- (b) Following consideration of a recommendation by the ALT as to how to resolve an ambiguity, discrepancy or inconsistency under clause 1.5(a), the Project Owner will direct the Participants as to how to resolve the ambiguity, discrepancy or inconsistency and the provisions of clause 13 will apply.

1.6. Provision of information and documentation by the Participants

The Participants have, prior to the date of this Agreement, exchanged information and advice about the Works and the performance of the Works. The Participants acknowledge that they will continue to do this during the Relevant Period. To avoid the possibility of issues between the Participants arising and the need for any subsequent alterations to the TOC, each Participant must undertake its own enquiries to satisfy itself as far as reasonably practicable of the accuracy, completeness and relevance of that information or advice.

1.7. Interpretation for Separable Portions

If the Project Owner makes a determination under clause 6.9 for any part of the Works to be divided into Separable Portions, the interpretation of:

- (a) “Certificate of Practical Completion”;
- (b) “Date for Practical Completion”;
- (c) “Date of Practical Completion”; and
- (d) “Practical Completion”,

will apply separately to each Separable Portion and, where appropriate, references to the “Works” will mean so much of the Works as is comprised in the relevant Separable Portion.

1.8. Future tendering and contracting opportunities

Each NOP acknowledges and agrees that the NOP’s performance under this Agreement (including the NOP’s performance as part of the alliance with the Owner Participant in carrying out the Project and performing the Works) may be taken into account by the Project Owner and any other Government Agency when considering the NOP for future tendering and contracting opportunities.

2. Value for money outcome for Project

The Participants acknowledge and agree that:

- (a) the key purpose of this Agreement is, and they commit themselves to achieving, a value for money outcome in respect of the Project and the Works (which, for this Agreement, means achieving the Project Owner's VFM Statement); and
- (b) the Alliance Charter (including the Alliance Objectives) has been developed by the Participants with the aim of carrying out the Project and performing the Works so as to achieve the Project Owner's VFM Statement.

3. Alliance Charter

- (a) The Participants will perform the Works in accordance with the Alliance Charter. The Alliance Charter, together with the other terms of this Agreement, will govern the relationship between the Participants at all levels of the alliance.
- (b) The Participants acknowledge and agree that the Project Owner's VFM Statement and the Alliance Charter are the key drivers of the Participants in carrying out the Project and performing the Works. The ALT may, where it considers it appropriate, review and amend any part of the Alliance Charter, but not the Project Owner's VFM Statement.

4. Commitments

4.1. Good Faith

In exercising their rights and performing their obligations under this Agreement, the Participants agree at all times to act in Good Faith.

4.2. Achievement of objectives

The Participants commit to working together to:

- (a) achieve the Project Owner's VFM Statement; and
 - (b) meet the Alliance Objectives,
- both in carrying out the Project and performing the Works.

4.3. Best For Project

The Participants acknowledge and agree that the Project Owner's VFM Statement is one of the key drivers for the carrying out of the Project and the performance of the Works.

Consistent with that, the Participants commit to establishing an alliance culture based on the Alliance Charter and to act at all times in a manner that is consistent with a Best For Project approach.

4.4. Open book commitment

(a) Each Participant commits to:

- (1) maintain, for at least the Relevant Period, all of their records and other documentation referred to in this Agreement that relate to the Works in accordance with, where applicable, recognized accounting practices, standards and procedures;
- (2) fully disclose any corporate or other objectives or affiliations that could reasonably be considered to have an adverse impact on the achievement of either or both of the Project Owner's VFM Statement or the Alliance Objectives;
- (3) make their records and other documentation referred to in this Agreement that relate to the Works available to each other (or each other's nominated auditor) on request; and
- (4) make available to each other (or each other's nominated auditor) any existing documentation or information in whatever form relating to the Works.

(b) The obligation to make records and documentation available does not apply to records or documentation that may be the subject of legal professional privilege or are confidential lawyer/client communications.

(c) For the purposes of this clause 4.4, all of the references to the nominated auditor of the Owner Participant will include the [Auditor-General or other relevant official] of the [relevant state, district, etc.]

4.5. Commitment to "no-blame" culture

The Participants acknowledge and agree that a key purpose of this Agreement is, and they will commit themselves to:

- (a) the promotion and maintenance of a "no-blame" culture between the Participants in relation to disputes, errors, mistakes, Defects, poor performance and other issues which may arise; and
- (b) the prompt and mutual resolution of all disputes, differences and other issues by all Participants within the framework created by this Agreement.

5. Avoidance of issues between the Participants

5.1. No litigation or arbitration

- (a) Consistent with the commitment made by the Participants under clause 4.5 and subject to clause 5.3, the Participants agree that there will be no litigation or arbitration between them arising out of or in connection with this Agreement. The Participants must use their best endeavours to avoid issues arising as between each other and, to the extent an issue arises, must resolve the issue internally and otherwise comply with the procedure for the resolution of issues set out in Schedule 14.
- (b) The Participants agree that, subject to the exceptions listed in clause 5.3, a failure by a Participant, or its Subcontractor to perform any obligation or to discharge any duty under, or arising out of or in connection with this Agreement, or which is otherwise an

obligation to or duty owed to another Participant however arising, does not give rise to any enforceable right or obligation at law or in equity and, to the extent that it does, the other Participants release and hold harmless that Participant from any consequences at law or in equity for that failure.

5.2. Immediate notification of possible issue

Each Participant agrees to immediately notify the other of any matter which may amount to or result in an issue between the Participants in relation to this Agreement or the Project.

5.3. Saving of certain legal and equitable rights

Clause 5.1 has no force or effect:

- (a) in respect of a Wilful Default by a Participant;
- (b) in respect of a Participant's construction and equipment insurer, motor vehicle insurer or workers' compensation insurer exercising a right of subrogation, to the extent it is permitted to do so, against another Participant;
- (c) where a Participant has a right to bring a claim or action under a Statutory Requirement which cannot be excluded by the Participants as a matter of law;
- (d) in respect of any claim for breach of any Statutory Requirement (including any prosecution brought against a Participant by a Government Agency) in connection with the Works, except where the Project Owner determines otherwise by notice in writing to the Participants, having regard to the nature of the breach and the effect of the breach on the Project, the Works and the Project Owner;
- (e) in respect of a failure by a Participant to make payment under an indemnity under this Agreement; and
- (f) where this Agreement expressly states that clause 5.1 does not apply.

6. ALT

6.1. Establishment and composition

- (a) The Participants have established the ALT. The ALT comprises [## insert] representatives, each to be a senior member of the relevant Participant's organisation, of which:
 - (1) [## insert] will be appointed by the Owner Participant;
 - (2) [## insert] will be appointed by Non-Owner Participant 1; and
 - (3) [## insert] will be appointed by Non-Owner Participant 2.
- (b) The first representatives appointed by each Participant are set out in Schedule 1.
- (c) Each of the Participants must use its reasonable endeavours to ensure that, where appropriate, its representatives appointed to the ALT remain as representatives on the

ALT for the duration of the Works. Any removal and replacement by a Participant of any of its representatives appointed to the ALT must be to a replacement representative agreed by the ALT and with the level of experience and capability in project alliancing considered appropriate by the ALT.

- (d) Each Participant must at all times be represented on the ALT.

6.2. Chairperson

The Owner Participant must appoint a chairperson. The chairperson must be a representative of the Owner Participant and a member (and not an alternative member) of the ALT.

6.3. Functions and responsibilities

- (a) The primary functions of the ALT are to:

- (1) establish and ensure the implementation of the strategic leadership and direction of the Participants;
- (2) establish and implement transparent governance and accountability structures for the Participants; and
- (3) assume responsibility for the performance of the Participants under this Agreement.

The roles and responsibilities of the ALT are more fully described in the Governance Plan and the Responsibilities Matrix. Each Participant must ensure that its representative or representatives on the ALT comply with the Governance Plan and the Responsibilities Matrix.

- (b) The Participants acknowledge and agree that the ALT will be responsible for ensuring that all of the members of the AMT and APT understand the Alliance Charter and perform the Works in accordance with the Alliance Charter.

6.4. Representatives authorised to bind Participant

A Participant's representative is authorised to represent and bind their appointor on any matter relating to this Agreement. The Owner Participant's representatives may only represent and bind their appointor in its capacity as the Owner Participant under this Agreement, and not in its capacity as the Project Owner.

6.5. Meetings

- (a) The ALT must hold a meeting at intervals of no greater than [## *insert*] Months and otherwise when reasonably required by any Participant. Meetings of the ALT must be conducted in accordance with the Governance Plan.
- (b) The Participants acknowledge that the continuous involvement in and attendance at the ALT meetings of the nominated ALT representatives is critical to the success of the alliance. However, the Participants also acknowledge that there may be limited

circumstances when an ALT representative cannot attend an ALT meeting through reasons beyond its reasonable control. To address this situation, each of the Participants has appointed an alternative representative or representatives who may attend an ALT meeting in substitution for a nominated ALT representative in these limited circumstances. These alternative representatives are set out in Schedule 1 and a Participant may only change one of its alternative representatives to a replacement alternative representative agreed by the ALT and with the level of experience and capability in project alliancing considered appropriate by the ALT.

6.6. Decisions

No decision can be made by the ALT unless:

- (a) one representative of the Owner Participant and one representative of each of the NOPs are present at the meeting;
- (b) the decision is unanimous; and
- (c) it is within the matters contemplated by this Agreement and is made in accordance with this Agreement.

6.7. Compliance with decisions

- (a) Subject to clause 6.7(b), a Participant must comply with an ALT decision.
- (b) If a Participant thinks that compliance with an ALT decision would cause the Participant or a Participant's officer, director, agent, or employee to do or omit to do anything that contravenes any law or Statutory Requirement, or the Participant's constituent statute, constitution, memorandum or articles of association, the Participant need not comply, but must immediately give notice in writing to the remaining Participants providing the details of the law or Statutory Requirement, or the Participant's constituent statute, constitution, memorandum or articles of association, as the case may be, that will be so contravened and, where appropriate, the ALT will then make a further decision in respect of the relevant matter.

6.8. Disclosure of conflict of interest

- (a) A Participant's representative on the ALT, the AMT or the APT (as the case may be) must fully disclose to an ALT meeting, an AMT meeting or an APT meeting (as the case may be), any conflicting interest or duty, or potential conflict of interest or duty, the representative may have (whether personally or as a representative) before participating in a discussion on any relevant issue or making a decision about that issue. A representative who has made full disclosure may fully participate in any discussion and decision, even though the representative has or may have a conflicting interest or duty.
- (b) For the purposes of clause 6.8(a), a conflict of interest will include any corporate or other objective or affiliations of a Participant that could reasonably be considered to have an adverse impact on the achievement of either or both of the Project Owner's

VFM Statement or the Alliance Objectives. A conflict of interest is not created merely by the fact that a representative is an appointee and/or an employee of a Participant.

6.9. Determination of Separable Portions

- (a) In order to accommodate a progressive handover of the Works, the Project Owner, following a recommendation from the ALT or otherwise, may determine by notice in writing to the Participants that the Works be divided into smaller packages of works (each a **Separable Portion**), each with its own Date for Practical Completion. If the Project Owner makes a determination under this clause 6.9, the interpretation provisions of clause 1.7 will apply.
- (b) Where the Project Owner elects to divide the Works into Separable Portions, except where this Agreement is terminated by the Project Owner in accordance with clause 23 or where otherwise determined by the Project Owner, and subject to any adjustments to the Gainshare Amount or Painshare Amount (as the case may be) under the Risk or Reward Regime following the Date of Practical Completion, the calculation of any Gainshare Amount or Painshare Amount (if any and as the case may be) under the Risk or Reward Regime must not occur until all Separable Portions have reached the stage of Practical Completion.

6.10. Project Owner's Reserved Powers

- (a) Notwithstanding the alliance relationship established under this Agreement, the NOPs acknowledge that the final decision on the following matters (**Project Owner's Reserved Powers**) are reserved for unilateral determination by the Project Owner:
 - (1) the decision to suspend all or part of the Works under clause 22;
 - (2) any decisions, directions or actions the Project Owner determines are necessary following any event which significantly impacts on the whole or any part of the Works or the achievement of the Project Owner's VFM Statement;
 - (3) any decisions or matters regarding any actual or threatened legal action, litigation or third party claims arising out of or in connection to this Agreement;
 - (4) any decision, direction or approval to enter into any Subcontract which is a sub-alliance or is otherwise not subject to a fixed price, in accordance with the Contracting Strategy;
 - (5) any other decision, direction, matter, approval or thing expressed under this Agreement as being at the discretion, or the like, of the Project Owner; and
 - (6) unless otherwise specified, the decision to terminate this Agreement where the Project Owner has such a right under this Agreement.
- (b) The Participants agree to abide by and implement a decision by the Project Owner in respect of the Project Owner's Reserved Powers as though it was a decision of the ALT.
- (c) The impact, if any, that the exercise of a Project Owner's Reserved Power has on any or all of:
 - (1) the TOC;

(2) the KRAs; and

(3) the Date for Practical Completion,

under this Agreement will be calculated in the manner prescribed by this Agreement, and if no manner is prescribed, as determined by the Project Owner following a recommendation from the ALT. If this Agreement does not specify the manner of calculation of the impact, if any, that the exercise of a Project Owner's Reserved Power has on the matters set out in this clause 6.10(c) and the ALT fails to reach agreement on the recommendation to be made to the Project Owner under this clause 6.10(c), then the Participants must comply with the procedure set out in Schedule 14 to resolve the issue.

7. Alliance Manager, AMT and APT

7.1 Alliance Manager - appointment and functions

The ALT has selected and appointed the person named in Schedule 1 as the Alliance Manager. The functions and responsibilities of the Alliance Manager are described in the Governance Plan and the Responsibilities Matrix.

7.2. AMT - selection, endorsement and functions

- (a) Subject to the requirements of this clause 7.2, the AMT will be selected by the Alliance Manager and endorsed by the ALT.
- (b) The AMT will comprise the Alliance Manager and individuals drawn from the Participants reporting directly to the Alliance Manager, provided that at all times there will be at least one representative from each Participant on the AMT.
- (c) The Owner Participant may nominate personnel for inclusion in the AMT and those persons nominated must form part of the AMT.
- (d) The AMT must perform the functions described in the Governance Plan and the Responsibilities Matrix and otherwise determined by the ALT from time to time during the Term. The Participants must ensure that their employees who are members of the AMT comply with the Governance Plan and the Responsibilities Matrix and otherwise perform the functions determined by the ALT from time to time during the Term.
- (e) The Participants must ensure that their employees who are members of the AMT exercise proper Diligence in the performance of all aspects of the Works.

7.3. Change in membership of AMT

- (a) The membership of the AMT may only be amended with the approval of the ALT.
- (b) The Participants must (subject to satisfactory performance by the relevant personnel) use their reasonable endeavours to ensure that, where appropriate, each person that has been assigned to the AMT remain as members of the AMT for the duration of the Works or otherwise until the ALT decides that he or she is no longer required.

- (c) If a member of the AMT ceases to be a member without the approval of the ALT, then the Project Owner may determine that any costs incurred by the Participants in replacing that member of the AMT (including any costs incurred in familiarising the replacement member with the Project) will not be Reimbursable Costs under this Agreement.

7.4. APT - selection and functions

- (a) Subject to the requirements of this clause 7.4, an APT will be selected by the Alliance Manager. The APT must include personnel from each of the Participants.
- (b) The APT must, under the guidance of the ALT and the AMT, perform the functions determined by the ALT and AMT as soon as practicable after the date of this Agreement and from time to time during the Term. Without limiting the foregoing sentence, the APT will perform the roles and responsibilities designated to the APT in the Governance Plan and the Responsibilities Matrix. The Participants must ensure that their employees who are members of the APT comply with the Governance Plan and the Responsibilities Matrix and otherwise perform the functions determined by the ALT and AMT from time to time during the Term.
- (c) The Owner Participant may nominate personnel for inclusion in the APT (including nominating some personnel for the purpose of gaining training and experience in alliancing). The Participants acknowledge and agree that the Alliance Manager must include in the APT those persons nominated by the Owner Participant.
- (d) The Participants must ensure that their employees who are members of the APT exercise proper Diligence in the performance of all aspects of the Works.

7.5. Change in membership of APT

- (a) The membership of the APT may only be amended with the approval of the ALT or the AMT (as appropriate).
- (b) The Participants must (subject to satisfactory performance by the relevant personnel) use their reasonable endeavours to ensure that, where appropriate, each person that has been assigned to the APT remain as members of the APT for the Term or otherwise until the ALT or the AMT (as appropriate) decides that he or she is no longer required.
- (c) If a member of the APT ceases to be a member without the approval of the ALT or the AMT, then the Project Owner may determine that any costs incurred by the Participants in replacing that member of the APT (including any costs incurred in familiarising the replacement member with the Project) will not be Reimbursable Costs under this Agreement.

7.6. Project Office

The Participants must provide the Project Office from the date of this Agreement until the Date of Practical Completion or such other period as specified by the ALT.

8. Term

Subject to clause 29.17, this Agreement commences on the date of this Agreement and continues until:

- (a) payment is made in accordance with clause 11.3 by the Project Owner or the NOPs, as the case may be, on the Final Certificate; or
- (b) it is terminated under clause 23 or 24 or otherwise under this Agreement.

9. Design and construction of the Works

9.1. Design development

In designing the Works under this Agreement, the Participants must ensure that the design for the Works:

- (a) is consistent with the Project Proposal (including the Design Development Report);
- (b) is such that, when constructed, the Works will be fit for the purpose and of the quality and standard of work that is stated in the Scope of Works;
- (c) is constructible having regard to usual industry practices;
- (d) makes the optimum use of the time available contemplated by this Agreement to complete the Works;
- (e) can be constructed within the TOC and in accordance with the Project Owner's VFM Statement and the Alliance Objectives; and
- (f) produces a minimum whole of life cost for the Works having regard to the requirements of the Project Owner's VFM Statement and the various design lives of each component of the Works and the requirements of the Scope of Works.

9.2. Supply of design documents by the Project Owner

- (a) The Project Owner may, from time to time, acting with diligence and in a timely manner, provide the NOPs with documentation, which is consistent with the Scope of Works, which describes the Project Owner's requirements for the design, documentation and construction of the Works (**Documentation**).
- (b) The Participants must comply with the Documentation in designing the Works.
- (c) The NOPs must not use, copy or reproduce the Documentation provided by the Project Owner for any purpose other than for the Works.
- (d) The Documentation (and any copies of it) supplied by the Project Owner remains the property of the Project Owner and must be immediately returned by the NOPs to the Project Owner upon request or at the end of the Relevant period, or destroyed upon written request by the Project Owner.

9.3. Supply of design documents by the Participants

The Participants must provide the Project Owner with any documentation relating to the Works that the Project Owner reasonably requires from time to time.

9.4. Standard of work

The Participants must:

- (a) commence performance of the Works on the date of this Agreement in accordance with the Project Proposal and this Agreement;
- (b) perform all of the Works with Diligence and in line with industry and environmental standards;
- (c) construct the Works to meet the requirements set out in the Project Proposal (including the Scope of Works);
- (d) construct the Works to:
 - (1) achieve the Project Owner's VFM Statement; and
 - (2) ensure a minimum whole of life cost for the Works having regard to the requirements of the Project Owner's VFM Statement;
- (e) perform the Works such that rectification work necessary to make good any Defects in the Works arising before and during the Defects Liability Period are promptly rectified to the satisfaction of the Project Owner before the end of the Defects Liability Period; and
- (f) exercise diligence in the management and execution of all design work, design development, design review, documentation, superintendence, administration, manufacture, fabrication, supply, installation, erection, construction and testing of the Works so as to ensure that the Works will be fit for the purpose and of the quality and standard of work that is stated in the Scope of Works.

9.5. Care of the Works and Defects Liability Period

- (a) From the date of this Agreement and until the Date of Practical Completion, the Participants are responsible for the care of the Works.
- (b) After the Date of Practical Completion, the Participants remain responsible for the completion and care of outstanding works and services in respect of the Works including reinstatement works and the rectification of any Defects existing at the Date of Practical Completion or arising during the Defects Liability Period.
- (c) Defects existing at the Date of Practical Completion or arising during the Defects Liability Period must be promptly rectified to the reasonable satisfaction of the Project Owner before the end of the Defects Liability Period.

10. Practical Completion

10.1. Achievement of Practical Completion

The Participants must use their best endeavours to perform the Works to the stage of Practical Completion by the Date for Practical Completion.

10.2. Issue of Certificate of Practical Completion

- (a) The ALT shall notify the Project Owner of the date when Practical Completion is anticipated to be reached, no later than 20 Business Days from such date.
- (b) As soon as the ALT decides that Practical Completion has been reached, it must notify the Project Owner of the date when Practical Completion was reached.
- (c) The Project Owner must, if it agrees that Practical Completion has been reached, within 20 Business Days after receiving the notification of Practical Completion from the ALT, issue a certificate of Practical Completion (**Certificate of Practical Completion**) to the Participants, stating the Date of Practical Completion notified by the ALT.

10.3. Disagreement whether Practical Completion reached

- (a) If the Project Owner does not agree that Practical Completion has been reached, it must, within 20 Business Days after receiving the notification from the ALT, provide written notice to the ALT that it disagrees and the reasons why it believes that Practical Completion has not been reached.
- (b) The ALT must then ensure that the Participants promptly address the matters specified by the Project Owner, and when those matters have been addressed, re-notify the Project Owner that the ALT has decided that Practical Completion has been reached.
- (c) The Project Owner must then re-consider whether it agrees that Practical Completion has been reached. If the Project Owner agrees that Practical Completion has been reached, clause 10.2(c) will apply. If the Project Owner does not agree that Practical Completion has been reached, clause 10.3(a) will apply.

10.4. Calculation of Interim Gainshare Amount or Interim Painshare Amount

As soon as practicable after the Date of Practical Completion, the ALT will calculate:

- (a) the Interim Gainshare Amount or Interim Painshare Amount (if any and as the case may be); and
- (b) the Performance Reward Amount or Performance Liability Amount (if any and as the case may be) for the period from the date of this Agreement until the Date of Practical Completion, in accordance with the Risk or Reward Regime.

10.5. Certificate does not constitute approval

The issue of a Certificate of Practical Completion does not constitute approval of the Works.

10.6. Delay in reaching Practical Completion

- (a) If Practical Completion has not been reached by the Date for Practical Completion, then any and all losses, damages, costs and expenses suffered by the Project Owner arising out of the delay in reaching Practical Completion will be treated as Reimbursable Costs for the purposes of calculating the AOC under this Agreement. The NOPs will not be entitled to be reimbursed any Reimbursable Costs, nor paid any Corporate Overhead and Profit, under this clause 10.6 in respect of those losses, damages, costs and expenses.
- (b) Losses under clause 10.6(a) expressly include:
[## to be inserted.]

11. Final reconciliation and Final Certificate

11.1. Issue of Final Certificate

If the Participants have complied with all of their obligations relating to the Works including all obligations arising during the Defects Liability Period, the ALT must issue to the Project Owner a final payment claim endorsed 'final certificate' (**Final Certificate**).

11.2. Contents of Final Certificate

In the Final Certificate, the ALT must certify:

- (a) that all of the Participants' obligations relating to the Works have been properly completed in accordance with this Agreement;
- (b) the Final Completion Date;
- (c) the calculation of any Gainshare Amount or Painshare Amount (if any and as the case may be) payable under the Risk or Reward Regime;
- (d) the calculation of any Performance Reward Amount or Performance Liability Amount (if any and as the case may be) payable under the Risk or Reward Regime; and
- (e) the amount which, in the opinion of the ALT, is finally due and payable to the NOPs by the Project Owner or from the NOPs to the Project Owner (as the case may be). In determining the amount which is finally due and payable to the NOPs by the Project Owner or from the NOPs to the Project Owner (as the case may be), the ALT must have regard to any Reimbursable Costs which may be incurred by the Project Owner following the issue of the Final Certificate.

11.3. Payments under Final Certificate

If the Project Owner and the NOPs agree with the contents of the Final Certificate, the Project Owner or NOPs (as the case may be) must make the payments contemplated by the Final Certificate within 20 Business Days of the date that the Final Certificate is received by the Project Owner.

11.4. Disagreement over contents of Final Certificate

- (a) If the Project Owner does not agree with the contents of the Final Certificate, it must, within 20 Business Days after receiving the Final Certificate, provide written notice to the ALT on which part(s) of the contents of the Final Certificate it does not agree with and the reasons it does not agree.
- (b) The ALT must then ensure that the Participants promptly address the matters specified by the Project Owner and when those matters have been addressed, re-submit the Final Certificate to the Project Owner.
- (c) The Project Owner must then re-consider whether it agrees with the contents of the Final Certificate. If the Project Owner agrees with the contents of the Final Certificate then clause 11.3 will apply. If the Project Owner does not agree with the contents of the Final Certificate clause 11.4(a) will apply.

11.5. Final Certificate evidence of completion

Subject to clause 16.5, once payment has been made on the Final Certificate, the Final Certificate is evidence that the Works have been completed in accordance with the terms of this Agreement on the Final Completion Date and that all payments required to be made by the Project Owner or by the NOPs (as the case may be) in respect of the Works have been made in full.

12. Adjustment Events

- (a) The TOC which has been developed by the Participants and approved by the Project Owner in accordance with the Alliance Development Agreement:
 - (1) is fixed and not subject to alteration or escalation under this Agreement except in accordance with this clause 12; and
 - (2) is inclusive of all Reimbursable Costs, Corporate Overhead and Profit and Risk & Contingency Provisions.
- (b) If the ALT, having regard to the Adjustment Event Guidelines, determines that an Adjustment Event has occurred (including in accordance with clause 13.2(f)):
 - (1) the Participants must take every reasonable measure available to them to:
 - (A) mitigate any adverse or prejudicial effects; and/or
 - (B) optimise any improvement or positive effects, of the acts, events or circumstances giving rise to or contributing to the Adjustment Event; and

- (2) the ALT may determine any reasonable adjustment to any or all of the TOC, the KRAs and the Date for Practical Completion which needs to be made and make a recommendation to the Project Owner for its approval (or otherwise) (which recommendation must include all supporting information relating to the recommendation). The Project Owner must make its determination in respect of any recommendation from the ALT under this clause 12(b) within a reasonable time.
- (c) The ALT, in determining any reasonable adjustment to any or all of the TOC, the KRAs and the Date for Practical Completion under clause 12(b), must have regard to:
 - (1) the assumptions adopted by the Participants in developing the Project Proposal (including the TOC and the Adjustment Event Guidelines) and approved by the Project Owner so as to ensure that any adjustment to the TOC, the KRAs or the Date for Practical Completion is Best For Project;
 - (2) the Project Owner's timing requirements and the Date for Practical Completion being of fundamental importance in respect of the carrying out of the Project; and
 - (3) any other matters considered relevant by the ALT in making a Best For Project determination.
- (d) If the Project Owner, in its absolute discretion, approves the ALT's recommendation under clause 12(b), then the Project Owner will issue a notice to the ALT approving the effect of the Adjustment Event on the TOC, the KRAs and the Date for Practical Completion (as the case may be) and the TOC, the KRAs and the Date for Practical Completion (as the case may be) will be adjusted as recommended by the ALT.
- (e) If the Project Owner, in its absolute discretion, does not approve the ALT's recommendation under clause 12(b), the Project Owner will issue a notice to the ALT not approving the effect of the Adjustment Event on the TOC, the KRAs and the Date for Practical Completion (as the case may be) and providing its reasons for not approving the recommendation. The ALT must consider the reasons provided and resubmit its recommendation to the Project Owner for approval (or otherwise).
- (f) The NOPs acknowledge and agree that the Project Owner may engage an independent adviser to review and advise on any recommendation made by the ALT to the Project Owner under this clause 12.

13. Directions and Scope Variations

13.1. Directions

- (a) The Project Owner may direct the Participants in writing to:
 - (1) change the Works;
 - (2) increase, decrease or omit any part of the Works;
 - (3) change the character or quality of any material or work that will form part of the Works;
 - (4) change the levels, lines, positions or dimensions of any part of the Works;

- (5) execute additional work, such additional work to be within the general scope of this Agreement;
 - (6) demolish or remove material or work forming part of the Works no longer required by the Project Owner; or
 - (7) change, alter or amend the Scope of Works, and the Participants must, subject to obtaining any necessary Authorisation or amendment to an existing Authorisation and, in the case of a Scope Variation, the Project Owner's endorsement of the Scope Variation, within a reasonable time, implement that direction.
- (b) No direction by the Project Owner will invalidate this Agreement and, unless the direction is a Scope Variation, will not result in a change to the TOC, the KRAs or the Date for Practical Completion.
 - (c) The Participants acknowledge and agree that an amount for directions by the Project Owner of the kind contemplated by this clause 13.1, other than directions determined to be Scope Variations, is included in the Risk & Contingency Provisions component of the TOC.

13.2. Scope Variation

- (a) A scope change (**Scope Variation**) is a direction by the Project Owner under clause 13.1 which amounts to either:
 - (1) a significant change, amendment or alteration to the Scope of Works; or
 - (2) a significant change to the fundamental requirements of the Works.
- (b) Examples of when a direction by the Project Owner in accordance with clause 13.1 is also a Scope Variation are set out in the Scope Variation Benchmarking Guidelines.
- (c) The Participants acknowledge and agree that it is their expectation that Scope Variations are unlikely to occur during the Term.
- (d) Where the AMT considers that a direction by the Project Owner under clause 13.1 is a Scope Variation, the AMT must, prior to implementation by the Participants of the direction, submit a scope change report (**Scope Variation Report**) to the ALT:
 - (1) identifying the basis on which it considers the direction to be a Scope Variation;
 - (2) providing submissions or recommendations that it believes are appropriate to reduce and/or optimise the impact of the direction on the AOC, the Participants' performance against the KRAs and the achievement of Practical Completion by the Date for Practical Completion and compliance by the Participants with the Project Owner's VFM Statement and the Alliance Charter; and
 - (3) providing submissions or recommendations on any alteration to the TOC, the KRAs and the Date for Practical Completion (as the case may be) which are required as a result of the direction.
- (e) The ALT will consider any Scope Variation Report submitted to it under clause 13.2(d) and determine whether the direction the subject of the Scope Variation Report is a Scope Variation having regard to:

- (1) the Works and the assumptions adopted by the Participants in developing the Project Proposal; and
 - (2) the Scope Variation Benchmarking Guidelines.
- (f) If the ALT determines that the direction that constitutes the subject of the Scope Variation Report is a Scope Variation, the ALT must submit the Scope Variation Report to the Project Owner and ensure that the Scope Variation is not performed until the Project Owner has determined whether an Adjustment Event has occurred in accordance with clause 12.
 - (g) A direction by the Project Owner under clause 13.1 implemented by the Participants prior to the Project Owner determining whether an Adjustment Event has occurred in accordance with clause 12 does not at any time entitle the Participants to an alteration of the TOC, the KRAs or the Date for Practical Completion and will preclude the Participants from making any claim under this Agreement for an alteration of the TOC, the KRAs or the Date for Practical Completion, except in circumstances where the Project Owner agrees to consider the claim or agrees to alter any or all of the TOC, the KRAs or the Date for Practical Completion.

14. Site

14.1. Possession of each Site

- (a) If it has not already done so, the Project Owner will as soon as possible after the date the relevant Authorisations for the Works are obtained, give the Participants possession of each Site or sufficient possession of each Site to enable the Participants to perform the Works.
- (b) Subject to the Participants complying with their insurance obligations, the Participants must commence work on each Site within a reasonable time after receiving the relevant Authorisations necessary for construction.
- (c) The Participants must take all reasonable precautions to ensure that the Works will cause as little disturbance as possible (having regard to the nature of the Works) to the general public, the Project Owner, the Project Owner's employees and other contractors and service providers engaged by the Project Owner.

14.2. Access for the Project Owner and others

- (a) The Project Owner, the Project Owner's employees and agents and any other person nominated by the Project Owner may at any time have access to any part of any Site for any purpose.
- (b) Access is available after prior notification by the Project Owner to the Participants of the areas to be visited. The Project Owner must, and must ensure that its employees, agents and invitees, comply with the relevant Site procedures, security requirements and health, safety and Environmental conditions.
- (c) At all reasonable times, the Participants will give the Project Owner and any other person authorised in writing by the Project Owner access to the Works at any place

where that work is being carried out or Materials or Construction Plant are being prepared or stored.

14.3. Cleaning

- (a) The Participants must keep each Site and the Works clean and tidy and must regularly remove rubbish and surplus material.
- (b) The Participants must remove the Construction Plant from each Site within a reasonable time.

14.4. Other contractors

- (a) The Participants acknowledge that the Project Owner may arrange for other contractors to execute works or services on a Site concurrently with the performance of the Works.
- (b) Without limiting any other obligation of the Participants under this Agreement, the Participants must:
 - (1) at all reasonable times allow access to any Site to the other contractors;
 - (2) cooperate with the other contractors to ensure the coordination of the works or services of the other contractors with the performance of the Works by the Participants and compliance with the Participants' obligations under this Agreement; and
 - (3) facilitate the works or services of the other contractors.

15. Performance of the Works

15.1. Subcontracts

Subcontracts may only be entered into by any or all of the Participants on a Best For Project basis and otherwise in accordance with the Contracting Strategy.

15.2. Subcontracts with associated person needs ALT approval

- (a) The Participants recognise that difficulties may arise in the proper calculation of Reimbursable Costs if one or more of the Participants enters into a contract, arrangement or understanding related to this Agreement with a person that is in any way related to or associated with the Participant concerned.
- (b) The Participants agree that before any of them enters into any contract, arrangement or understanding:
 - (1) with any person which is in any way related to or associated with the Participant and the Works, they must first seek the approval of the ALT to that contract, arrangement or understanding; or

- (2) which is in the form of a sub-alliance, or is otherwise not subject to a fixed price, the Participants must obtain the approval of the Project Owner to that contract, arrangement or understanding in accordance with clause 6.10(a) and the Contracting Strategy.

15.3. Compliance with Statutory Requirements

- (a) The Participants must comply with all Statutory Requirements that affect or relate to the performance of the Works, including obtaining and complying with all Authorisations necessary to perform each particular portion of the Works, prior to undertaking that particular portion of the Works.
- (b) Notwithstanding clause 5.1 but subject to any determination to the contrary made by the Project Owner under clause 5.3(d), a failure by a Participant to comply with the requirements of clause 15.3(a) confers on the other Participants an enforceable right at law or in equity to seek any one of or a combination of specific performance, injunction or damages and, to the extent that any right under an Act of Parliament otherwise may be excluded by this Agreement, under that Act of Parliament.

15.4. Compliance with the Code, the Guidelines, the [Relevant] Code and the Industrial Relations Principles

- (a) The principles established in the Code are consistent with those in the [## relevant] Code and both codes should be read conjointly. The provisions of the [## relevant] Code prevail to the extent of any inconsistency.
- (b) Each of the Participants must, and must ensure that all of its Subcontractors and, in the case of each of the NOPs only, its Related Bodies Corporate, comply with the Code, the Guidelines, the [relevant] Code and the Industrial Relations Principles.
- (c) The Participants acknowledge and agree that compliance with the Code, the Guidelines, the [relevant] Code and the Industrial Relations Principles does not relieve the Participants from responsibility to perform their obligations under this Agreement or from any liability for any Defect in the Works arising from compliance by the Participants with the Code, the Guidelines, the [relevant] Code and the Industrial Relations Principles.
- (d) Where any amendment to this Agreement under clause 29.5 is proposed by the Participants or the ALT, and that amendment would affect compliance with the Code, the Guidelines, the [relevant] Code and the Industrial Relations Principles by the Participants in accordance with this clause 15.4, the ALT must submit a report to the:
- (1) Government of the [relevant authority] specifying the extent to which the Participants' compliance with the [relevant] Code and the Industrial Relations Principles; and
 - (2) Government of the [relevant authority] specifying the extent to which the Participants' compliance with the Code and the Guidelines, will be affected.
- (e) Each of the Participants must maintain adequate records of compliance with the Code, the Guidelines, the [relevant] Code and the Industrial Relations Principles by:

- (1) that Participant;
 - (2) that Participant's Subcontractors; and
 - (3) in the case of each of the NOPs only, its Related Bodies Corporate.
- (f) If any of the NOPs are sanctioned for breach of the requirements of the Code, the Guidelines, the [relevant] Code or the Industrial Relations Principles in the performance of this Agreement, without prejudice to any rights that would otherwise accrue, a record of that non-compliance may be kept and taken, or required to be taken, into account in the evaluation of any future tenders that may be lodged by the NOPs or a Related Body Corporate of the NOPs in respect of work funded by the [Government Entity].
- (g) 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 that have demonstrated commitment to:
- (1) adding and/or retaining trainees and apprentices;
 - (2) increasing the participation of women in all aspects of the industry; or
 - (3) promoting employment and training opportunities for local/indigenous peoples in regions where significant indigenous populations exist.
- (h) A Subcontractor in relation to the Project must not be engaged where:
- (1) the appointment would breach a sanction imposed as consequence of breach of the requirements of the Code, the Guidelines, the [Relevant] Code or the Industrial Relations Principles; or
 - (2) the Subcontractor has had a judicial decision against them relating to employee entitlements (not including decisions under appeal) and has not paid the claim.
- (i) Each of the Participants must and must ensure that its Subcontractors and, in the case of each of the NOPs only, its Related Bodies Corporate, provide any person or entity authorised under or in connection with the Code, the Guidelines, the [Relevant] Code or the Industrial Relations Principles, with access to:
- (1) inspect the Works and the Construction Plant;
 - (2) inspect and copy any record relevant to the Project and Works the subject of this Agreement; and
 - (3) interview any person, as is necessary to demonstrate their compliance with the Code, the Guidelines, the [Relevant] Code and the Industrial Relations Principles.
- (j) Each of the Participants and, in respect of each of the NOPs only, its Related Bodies Corporate, must comply with a request from any person or entity authorised under or in connection with the Code, the Guidelines, the [Relevant] Code or the Industrial Relations Principles, to produce a specified document within a specified period, in person, by fax or by post.
- (k) For the avoidance of doubt, clause 15.4(i) applies in relation to the NOPs' new privately funded construction projects (as defined by section 3.4.1 of the Guidelines).

- (l) The Participants must ensure that all Subcontracts impose obligations on the Subcontractors equivalent to the obligations set out under clauses 15.4(a) to 15.4(k) (inclusive).

15.5. Safety and Security of People and Property

- (a) Without limiting any other obligation of the Participants under this Agreement, the Participants are committed to ensuring the safety and security of both people and property when performing the Works, and must take all action to ensure this commitment is met including:
 - (1) implementing and complying with the occupational safety & health quality plan included as part of the Project Management System;
 - (2) providing all Construction Plant and Materials, procedures and training and taking all measures necessary to protect people and property;
 - (3) avoiding unnecessary interference with the passage of people and vehicles;
 - (4) avoiding damage, obstruction or other interference with any utility service or other similar services to a Site;
 - (5) minimising the effect of the Works on the aesthetic qualities of the Environment and social activities of local community members;
 - (6) eliminating nuisance including implementing appropriate dust control measures and avoiding unnecessary noise and disturbance; and
 - (7) preventing unlawful Environmental damage or Pollution.
- (b) The Participants' responsibilities include the provision of barricades, guards, fencing, temporary roads, warning signs, lighting, traffic flagging, safety helmets, training of personnel and clothing, removal of obstructions and protection of services of the kind referred to in clause 15.5(a).

15.6. Purchase of Materials and Construction Plant

- (a) Any Materials and Construction Plant necessary for the Works must be purchased on a Best For Project basis.
- (b) If a NOP acquires Materials, it must ensure that:
 - (1) the benefit of any express warranty attaching to the Materials is assigned to the Project Owner;
 - (2) the Project Owner obtains unencumbered title to those Materials upon payment for those Materials by the Project Owner through the Reimbursable Cost reimbursement principle set out in clause 16.1; and
 - (3) it maintains an up to date register of all assets including a register of all express and implied warranties pertaining to those Materials as provided by the relevant supplier or prescribed by a Statutory Requirement.
- (c) Any surplus Materials and all Construction Plant that have been paid for by the Project Owner as a Reimbursable Cost must be disposed of at the direction of the Project

Owner and the Project Owner is entitled to the proceeds of that disposal and the AOC must be reduced by the sum of the proceeds from that disposal.

15.7. Project Management System

The Participants must implement and comply with the Project Management System in performing the Works.

15.8. Protection of Aboriginal Heritage and Aboriginal rights

- (a) It is of critical importance to the Participants that the Participants have a very good working relationship with Aboriginal people and the organisations which represent them. Accordingly, consistent with the Aboriginal Heritage management plan included in the Project Management System, it is an objective of the Project Owner to ensure that nothing that any of the Participants may do or omit to do in performing the Works harms that relationship.
- (b) The Participants too are committed to the protection of Aboriginal Heritage and Aboriginal rights and must ensure that they, their employees, agents, Subcontractors, consultants and suppliers comply with:
 - (1) all applicable Statutory Requirements relating to Aboriginal Heritage and Native Title Laws;
 - (2) any agreements or arrangements between the Project Owner and Aboriginal people in relation to Aboriginal Heritage;
 - (3) the Project Owner's instructions reasonably required to enable the Project Owner to comply with any Statutory Requirements, agreements, arrangements or requirements of any other Authorisation relating to Aboriginal Heritage and Native Title Laws; and
 - (4) the Aboriginal Heritage management plan included as part of the Project Management System.

15.9. Industrial relations

- (a) The Participants acknowledge and agree that an industrial relations management plan in relation to the Works and the Project has been included in the Project Management System that is in compliance with relevant Statutory Requirements, codes of practice and guidelines (including the Code and the Guidelines, the [Relevant] Code and the Industrial Relations Principles). The Participants must implement and comply with the industrial relations management plan included as part of the Project Management System in performing the Works.
- (b) The NOPs acknowledge and agree that they must ensure that any Subcontractors engaged in respect of the performance of the Works under this Agreement will be accredited under the [Relevant Statute(s) and/or Regulation(s)].

15.10. Principal contractor

- (a) [**Non-Owner Participant 1/Non-Owner Participant 2**] (the **Principal Contractor**) will be:
 - (1) appointed as the principal contractor in respect of the Site for the purposes of the *[Applicable Health and Safety Regulation(s) and/or Statute]*; and
 - (2) given all necessary authority to allow it to discharge the responsibilities imposed on a principal contractor by the *[## Applicable Regulations]*.
- (b) The Principal Contractor will complete all forms and take any other action required to accept its appointment.
- (c) The Principal Contractor must discharge and perform its responsibilities and functions as a principal contractor in respect of the performance of the Works under the *[Applicable Health and Safety Regulation(s) and/or Statute]*.
- (d) Each Participant will, when accessing the Site:
 - (1) comply with directions given by the Principal Contractor in its capacity as principal contractor under the *[Applicable Health and Safety Regulation(s) and/or Statute]* and
 - (2) ensure its Related Bodies Corporate do likewise.

15.11. [Relevant Environmental Legislation]

The Participants acknowledge and agree that:

each Participant will, to the extent required by law, comply with reporting responsibilities under the *[Relevant Environmental Legislation]*.

15.12. Benchmark performance of the Participants

- (a) The Participants acknowledge and agree that it is the fundamental obligation of the Participants to demonstrate, ensure and deliver value for money in carrying out the Project and performing the Works.
- (b) The Participants, to effectively demonstrate that value for money outcomes are and will be achieved under this Agreement, have agreed that the Project Owner may benchmark the performance of the Participants against the performance of other alliances delivering other works or projects similar to the Works and the Project or against the performance of similar projects.
- (c) The Participants agree that, for the purposes of benchmarking the performance of the Participants, they will, in a manner consistent with the Alliance Charter, fully disclose all information relating to the actual outturn performance of all aspects of this Agreement, other than that which the ALT determines, in consultation with the Project Owner, is genuinely commercial in confidence or financially sensitive (**Sensitive Information**). Where the ALT determines, in consultation with the Project Owner, that information is Sensitive Information, the ALT will determine an acceptable and appropriate manner to mask and/or protect the commercial in confidence or financially

sensitive nature of the Sensitive Information but will still be obliged to share the Sensitive Information for the purposes of benchmarking the actual outturn performance of all aspects of this Agreement.

- (d) Nothing in clauses 15.12(a), 15.12(b) and 15.12(c) will oblige a Participant to make a disclosure of information where the ALT determines that to do so would, or could potentially, involve a breach of a Statutory Requirement, a breach of recognised best practice corporate governance guidelines or a Participant's existing confidentiality obligations.
- (e) In the event that an ALT representative seeks to invoke and rely upon the exemption from disclosure set out in clause 15.12(d), the ALT representative must notify the other representatives of the ALT of:
 - (1) the nature of the information which the ALT representative intends not to disclose; and
 - (2) the genuine reasons for non-disclosure, and the ALT will determine whether the exemption from disclosure set out in clause 15.12(d) will apply to the information.

16. Payments

16.1. General

Unless otherwise expressly provided in this Agreement, no matter what events, circumstances, contingencies, conditions (Latent Conditions or otherwise), or degree of difficulty is encountered by the Participants in performing the Works, the NOPs' entitlement, and only entitlement, to payment by the Project Owner for the Works is for:

- (a) reimbursement of Reimbursable Costs reasonably and actually incurred by the NOPs; plus
- (b) Corporate Overhead and Profit; plus or minus (as the case may be)
- (c) the Gainshare Amount (if any) if, under the Risk or Reward Regime, a Gainshare Amount is payable; plus or minus (as the case may be)
- (d) the Performance Reward Amount (if any) if, under the Risk or Reward Regime, a Performance Reward Amount is payable.

16.2. Acknowledgement

The NOPs acknowledge that the Project Owner has entered into this Agreement in reliance on representations by the NOPs that, other than as expressly provided for in Schedule 5, the Reimbursable Costs do not include any element of profit, mark up or overhead component to the NOPs or any Related Body Corporate of the NOPs.

16.3. Procedure for payment

The procedure for payment which will govern:

- (a) reimbursement of Reimbursable Costs reasonably and actually incurred by the NOPs;
- (b) subject to clause 16.6, payment by the Project Owner of the Corporate Overhead and Profit;
- (c) payment by the Project Owner of the Gainshare Amount or payment by the NOPs of the Painshare Amount (if any and as the case may be); and
- (d) payment by the Project Owner of the Performance Reward Amount or payment by the NOPs of the Performance Liability Amount (if any and as the case may be), is set out in Schedule 8.

16.4. Payment not evidence

Payment of moneys is not evidence of the value of the Works, or that the Works have been executed satisfactorily, or an admission of liability, but is payment on account only.

16.5. Overpayments and underpayments

- (a) If, on completion of any inspection and audit it is discovered that the total payments made to the NOPs are greater than the NOPs' entitlement to payment under this Agreement, the Project Owner may either:
 - (1) deduct an amount equal to the excess from moneys due or becoming due to the NOPs whether under this Agreement or otherwise; or
 - (2) require the NOPs to reimburse the excess to the Project Owner.
- (b) If, on completion of any inspection and audit it is discovered that the total payments made to the NOPs are less than the NOPs' entitlement to payment under this Agreement, the NOPs may require the Project Owner to pay any shortfall to the NOPs.
- (c) This clause 16.5 applies:
 - (1) even if the Final Certificate has been issued under clause 11 or this Agreement has terminated; and
 - (2) whether the inspection and audit was carried out under clause 17.4, or otherwise.
- (d) If the Project Owner or the NOPs are required to make a payment under this clause 16.5, they must make that payment within 20 Business Days of a request for payment being made.
- (e) Notwithstanding clause 5.1, the Project Owner or the NOPs (as the case may be) may commence proceedings to recover any amount payable to them under this clause 16.5 not paid on time.

16.6. Suspension of payment of Corporate Overhead and Profit

- (a) If, following receipt of a Monthly earned value report under clause 17.1(c), a recommendation from the ALT or otherwise, it is evident to the Project Owner that the AOC of performing the Works under this Agreement has exceeded or will exceed the TOC, then the Project Owner may immediately, by notice in writing to the NOPs,

suspend the payment of (but not the entitlement to) Corporate Overhead and Profit to the NOPs to the extent necessary to cover the NOPs' potential liability to pay any Painshare Amount under Schedule 7.

- (b) The suspension of payment of Corporate Overhead and Profit to the NOPs under clause 16.6(a) will be effective for the period commencing on the date specified by the Project Owner, and ending on the Final Completion Date.
- (c) If the Project Owner suspends the payment of Corporate Overhead and Profit to the NOPs under clause 16.6(a), then the amount of any Corporate Overhead and Profit to which the NOPs is entitled for the period:
 - (1) from the date of suspension of payment by the Project Owner until the Date of Practical Completion will be considered to have been paid to the NOPs for the purposes of calculating any Interim Gainshare Amount or Interim Painshare Amount (if any and as the case may be) under the Risk or Reward Regime as at the Date of Practical Completion; and
 - (2) from the date of suspension of payment by the Project Owner until the Final Completion Date will:
 - (A) be considered to have been paid to the NOPs for the purposes of calculating any Gainshare Amount or Painshare Amount (if any and as the case may be) under the Risk or Reward Regime as at the Final Completion Date; and
 - (B) be included by the Participants in the Final Certificate as an amount payable by the Project Owner to the NOPs.

16.7. Payment of Subcontractors

- (a) If a NOP informs the Project Owner, or the Project Owner becomes aware that a NOP has failed to pay an amount that is due and payable to a Subcontractor, the Project Owner may pay the Subcontractor directly and the amount paid will be a Reimbursable Cost for the purposes of calculating the AOC under this Agreement. The NOPs will not be entitled to be reimbursed any Reimbursable Costs, nor paid any Corporate Overhead and Profit, under this clause 16.7(a) in respect of that amount.
- (b) If the Project Owner pays a Subcontractor directly, it is not liable to pay the NOP for the work performed by the Subcontractor the subject of the payment.

16.8. Unfixed Materials

The Project Owner will not pay for any Materials off-Site unless:

- (a) the Project Owner is satisfied that the unencumbered title to those Materials will pass to the Project Owner on payment and the Project Owner is satisfied that the Materials are protected and insured to the Project Owner's satisfaction; or
- (b) the Materials are delivered to a Site and the terms of the supply of the Materials are that unencumbered title to those Materials passes to the Project Owner or the NOPs on delivery.

16.9. [Goods and Services Tax/Value Added Tax/Applicable Tax] ([GST/VAT/Applicable Tax] Exclusive Prices)

- (a) Any reference in this clause to a term defined or used in the *[Relevant Statute]* unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply made under or in connection with this Agreement does not include an amount on account of [GST/VAT/Applicable Tax] in respect of the supply ([GST/VAT/Applicable Tax] **Exclusive Consideration**) except as provided under this clause.
- (c) Any amount referred to in this Agreement (other than an amount referred to in clause 16.9(h)) which is relevant in determining a payment to be made by one of the Participants to another is, unless indicated otherwise, a reference to that amount expressed on a [GST/VAT/Applicable Tax] exclusive basis.
- (d) To the extent that [GST/VAT/Applicable Tax] is payable in respect of any supply made by a Participant (**Supplier**) under or in connection with this Agreement, the consideration to be provided under this Agreement for that supply (unless it is expressly stated to include [GST/VAT/Applicable Tax]) is increased by an amount equal to the [GST/VAT/Applicable Tax] Exclusive Consideration (or its [GST/VAT/Applicable Tax] exclusive market value if applicable) multiplied by the rate at which [GST/VAT/Applicable Tax] is imposed in respect of the supply.
- (e) The recipient must pay the additional amount payable under clause 16.9(d) to the Supplier at the same time as the [GST/VAT/Applicable Tax] Exclusive Consideration is otherwise required to be provided.
- (f) The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of [GST/VAT/Applicable Tax] under clause 16.9(d) or at such other time as the parties agree.
- (g) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this Agreement the Supplier must determine the net [GST/VAT/Applicable Tax] in relation to the supply (taking into account any adjustment) and if the net [GST/VAT/Applicable Tax] differs from the amount previously paid under clause 16.9(e), the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (h) If a Participant is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Agreement, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the Participant being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and, then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of [GST/VAT/Applicable Tax] under clause 16.9(d).
- (i) The Participants, through the AMT must, as soon as practicable after the date of this Agreement, develop and implement a system to manage the [GST/VAT/Applicable Tax] implications of the Works.

17. Reports, records, access and audit

17.1. Reports

The Participants must ensure that the Alliance Manager (using the AMT) prepares, as a minimum, the following:

- (a) work status reports [Stipulate Frequency];
- (b) KRA performance reports;
- (c) Monthly earned value reports which include:
 - (1) a reconciliation, as at the date of the report, of the AOC of performing the Works against the TOC;
 - (2) any innovations or breakthroughs which have been made or opportunities which have been realised by the Participants in performing the Works and any innovations or breakthroughs or opportunities which are forecast to be made or realised by the Participants (including as set out in the Alliance Risk and Opportunity Report);
 - (3) the Participants' risk management performance in performing the Works as against the Risk & Contingency Provisions; and
 - (4) any material errors or mistakes which have been made in the development of the TOC and identified by the Participants; and
- (d) Monthly cash flow statements covering a [## insert] Month rolling period, relating to the Works, in a format and at times which are acceptable to the Project Owner.

17.2. Records

The Participants must maintain for the Relevant Period, a complete set of:

- (a) all records which show how the TOC was calculated and how any Adjustment Events were valued for the purposes of clause 12;
- (b) all purchase orders, invoices, accounts, records and bank statements (to the extent they relate to the Works) under good and accepted accounting principles showing all of the Reimbursable Costs reasonably and actually incurred in the performance of the Works; and
- (c) all correspondence, tenders, Subcontracts, minutes of meetings, notes, reports, drawings, as-constructed information and all other documentation associated with the Works.

17.3. Access

The Participant who holds the original of any of the records referred to in clause 17.2 must:

- (a) keep them for the Relevant Period; and

- (b) on request, make them available to any other Participant and that Participant's nominated auditor.

17.4. Audit

- (a) Subject to clause 17.4(b) and clause 29.15, any Participant or its nominated auditor may inspect and audit documentation referred to in clause 17.2:
 - (1) at the times identified in the audit plan to be developed by the Participants promptly after the date of this Agreement and approved by the ALT; or
 - (2) at any other time as agreed by the ALT.
- (b) The Project Owner or its nominated auditor may inspect and audit any records or documentation:
 - (1) referred to in clause 17.2; and
 - (2) otherwise required to be made available to the Project Owner under clause 4.4, at any time determined by the Project Owner.
- (c) A Participant must provide each other Participant with proper access to their personnel and facilities to enable any Participant or its nominated auditor to undertake any inspection and audit of the kind set out in this clause 17.4.
- (d) Subject to clause 17.4(e), all inspection and audit costs must be paid by the Participant undertaking the inspection and audit and are not Reimbursable Costs.
- (e) If an inspection and audit under this clause reveals that the other Participant is in Default (as that term is defined in clause 24.1), then without limiting any other rights and obligations of a Participant, the Participant in Default is responsible for all costs incurred by the Participant undertaking the inspection and audit and those costs are not Reimbursable Costs.

18. Insurances

18.1. Insurances to be maintained by the Owner Participant

- (a) The Owner Participant must effect and maintain the insurance policies set out in clause 1 of Schedule 9.
- (b) The NOPs acknowledge and agree that when the Owner Participant has taken out the insurance policies set out in clauses 1.1, 1.2 and 1.3 of Schedule 9, the NOPs will accept those insurance policies in full satisfaction of the Owner Participant's obligations to insure as imposed by clause 18.1(a) (as it relates to the insurance policies set out in clauses 1.1, 1.2 and 1.3 of Schedule 9).

18.2. Acknowledgement and other insurances

It is acknowledged that the purpose of the insurances referred to in clauses 1.1, 1.2 and 1.3 of Schedule 9 is to reduce the overall cost relating to insurance associated with the Project. The NOPs are free to maintain any other insurances they consider necessary in

respect of the Project and the Works. The costs of those additional insurances (with the exception of the insurances referred to in clause 18.3) will not be treated as a Reimbursable Cost reimbursable by the Project Owner under this Agreement.

18.3. Insurances to be maintained by the NOPs

The NOPs must effect and maintain the insurance policies set out in clause 2 of Schedule 9.

18.4. Commencement and duration of insurance

Unless expressly provided for elsewhere in this Agreement, on or prior to the date of this Agreement, each Participant must take out and maintain, or cause to be effected and maintained, for the period for which a claim could be made, the insurances allocated to it in this clause 18.

19. Insurance - general

19.1. Claims procedures

- (a) The NOPs must immediately notify the Owner Participant in writing of any occurrence or incident that may, however remotely, give rise to a claim under an insurance policy taken out by the Owner Participant or of any other matter or thing for which those policies require notice to be given. A notice must include reasonable particulars of the occurrence, incident, matter or thing.
- (b) Claims made against insurance policies taken out by the Owner Participant must be submitted to the Owner Participant for lodgement by the Owner Participant with its insurer.
- (c) The Owner Participant may engage any legal advisor, insurance broker or loss adjuster it considers appropriate to assist the Owner Participant in relation to a claim under an insurance policy taken out by the Owner Participant under this Agreement. Subject to clause 19.1(d), the NOPs acknowledge and agree that the Owner Participant may, in its absolute discretion, settle, address, compromise, resolve or deal with any claim made against an insurance policy taken out by the Owner Participant in any manner it considers appropriate.
- (d) The Owner Participant may consult with the NOPs in respect of, and keep the NOPs informed of the progress of, any claim under an insurance policy taken out by the Owner Participant under this Agreement (including consulting with the NOPs prior to settling, addressing, compromising, resolving or otherwise dealing with any claim under clause 19.1(c)).
- (e) The NOPs must give all assistance and provide all information to the Owner Participant and the Owner Participant's insurer, legal advisor, insurance broker and loss adjuster as may be reasonably practicable in the circumstances.
- (f) If an event occurs which in the opinion of a reasonable person in the position of a NOP might give rise to a claim involving the Owner Participant under any policy of insurance required to be taken out by the NOPs in accordance with clause 18.3, that NOP must

notify the Owner Participant in writing and must ensure that the Owner Participant is kept fully informed of subsequent action or developments concerning the claim.

19.2. Participants' responsibilities

At all times the Participants (to the extent applicable) are responsible for complying with the terms and conditions of the policies taken out under this Agreement and must ensure that their employees, Subcontractors and Subcontractors' employees are made aware of, and comply with, those terms and conditions.

19.3. Obligation to notify and assist

- (a) Each Participant must immediately notify in writing the other Participants of any relevant changes to the terms and conditions of the insurance policies it is required to maintain under this Agreement including changes to the available coverage or limits, but only to the extent that the relevant Participant's insurance policy does not comply with the insurance requirements specified in this Agreement.
- (b) The NOPs must provide the Owner Participant with all reasonable assistance and all information reasonably required by the Owner Participant within the timeframes and in the format specified by the Owner Participant to enable the Owner Participant to obtain, effect and maintain the policies referred to in clause 18.1.

19.4. Payment of excesses

- (a) The NOPs are responsible for the payment of the excesses applicable to those policies effected by the NOPs under clause 18.3 and which will be treated as a Reimbursable Cost. The payment of any excess in accordance with this clause will not alter or lead to a change to the TOC.
- (b) The Owner Participant is responsible for the payment of the excesses applicable to those policies effected by the Owner Participant under clause 18.1 and which will be treated as a Reimbursable Cost for the purposes of calculating the AOC under this Agreement. The payment of any excess in accordance with this clause 19.4(b) will not alter or lead to a change to the TOC. The NOPs will not be entitled to be reimbursed any Reimbursable Costs, nor paid any Corporate Overhead and Profit, under this clause 19.4(b).

19.5. Proof of insurance and inspection of insurance policy certificates

- (a) Each Participant must make available for inspection by the other Participants certificates of currency for insurance required by this Agreement to be taken out by that Participant and any Subcontractors engaged by that Participant.
- (b) Whenever requested by a Participant, the other Participants must produce certificates of currency to the satisfaction of the requesting Participant of the insurance taken out under this Agreement.

- (c) To comply with this clause 19.5, a Participant is not required to do any act or thing which may constitute a breach of the insurance policy.

19.6. Project Owner to be informed of notices

Each NOP must ensure that every insurance policy taken out by it under this Agreement includes a provision that requires the NOP, whenever the insurer gives to or serves upon the NOP or Subcontractor a notice of cancellation or any other notice under or in relation to the policy of insurance, as soon as possible, to inform the Project Owner in writing that the notice has been given to or served upon that NOP or Subcontractor.

19.7. Notice is notice by all insureds

Each NOP must ensure that every insurance policy taken out by it under this Agreement contains a provision that provides that a notice of the occurrence of an event out of which the particular insured giving the notice alleges it has suffered, or could suffer, loss or damage or incur a liability must be accepted by the insurer as a notice of the occurrence given by all the insureds.

19.8. Obligations to remain unchanged

Taking out and keeping in force insurance required by this Agreement does not in any way limit the liabilities, responsibilities and obligations of the Participants under other provisions of this Agreement.

19.9. Non-compliance

Notwithstanding clause 5.1, if any Participant does not follow a written request from another Participant to fulfil and comply with its obligations under clauses 18 and 19, the Participant making the request may [Prescribe Action(s)] to ensure that the non-compliant Participant complies.

19.10. Pass through of insurance payouts

- (a) Subject to clause 19.10(b), to the extent that a NOP receives payment under an insurance policy that reimburses any amounts that were reimbursed or are reimbursable under this Agreement, then the NOP must, within 20 Business Days of receipt of that payment, pass on full payment to the Owner Participant and the AOC will be reduced by the amount of any payment made by a NOP to the Owner Participant under this clause 19.10(a). If a Gainshare Amount has been paid to the NOPs or a Painshare Amount has been paid by the NOPs, then clause 16.5 applies in respect of any underpayment or overpayment determined to have been made after recalculation of the Gainshare Amount or Painshare Amount (if any and as the case may be) on the basis of the adjusted AOC.
- (b) Notwithstanding that a NOP may have lodged a claim under an insurance policy required to be effected and maintained by the Owner Participant, the Owner

Participant may require its insurer to make payment directly to the Owner Participant in respect of any claim for loss or damage to the Works.

- (c) Notwithstanding clause 5.1, the Owner Participant may commence proceedings to recover any amounts payable to it under clause 19.10(a) if that amount is not paid by the NOPs within the time period referred to in clause 19.10(a).
- (d) To the extent that the Owner Participant receives payment under an insurance policy that reimburses any amounts that were or are treated as Reimbursable Costs for the purposes of calculating the AOC under this Agreement, then the AOC will be reduced by those amounts. If a Gainshare Amount has been paid to the NOPs or a Painshare Amount has been paid by the NOPs, then clause 16.5 applies in respect of any underpayment or overpayment determined to have been made after recalculation of the Gainshare Amount or Painshare Amount (if any and as the case may be) on the basis of the adjusted AOC.

20. Indemnities

20.1. Non compliance with insurance requirements

- (a) Each of the NOPs indemnify and must keep indemnified the Owner Participant and the other NOPs and the directors, officers, employees and agents of the Owner Participant and the other NOPs against losses, damages or claims suffered by the Owner Participant and the other NOPs and the directors, officers, employees and agents of the Owner Participant and the other NOPs as a consequence of non compliance by a NOP with:
 - (1) the terms and conditions of clauses 18 and 19 (including any failure of a NOP to take out and maintain any of the insurances required to be taken out and maintained by the NOP under this Agreement); or
 - (2) the terms and conditions of the insurance policies required to be taken out and maintained by the Participants under this Agreement (including any act or omission of a NOP which causes an insurance policy required to be taken out and maintained by the Participants under this Agreement to not respond to any claim in respect of this Agreement).
- (b) The Owner Participant indemnifies and must keep indemnified the NOPs and the directors, officers, employees and agents of the NOPs against losses, damages or claims suffered by the NOPs and the directors, officers, employees and agents of the NOPs as a consequence of non compliance by the Owner Participant with:
 - (1) the terms and conditions of clauses 18 and 19 (including any failure of the Owner Participant to take out and maintain any of the insurances required to be taken out and maintained by the Owner Participant under this Agreement); or
 - (2) the terms and conditions of the insurance policies required to be taken out and maintained by the Participants under this Agreement (including any act or omission of the Owner Participant which causes an insurance policy required to be taken out and maintained by the Participants under this Agreement to not respond to any claim in respect of this Agreement).

20.2. Wilful Default

- (a) Each of the NOPs indemnify and must keep indemnified the Owner Participant and the other NOPs and the directors, officers, employees and agents of the Owner Participant and the other NOPs against losses, damages or claims suffered by the Owner Participant and the other NOPs and the directors, officers, employees and agents of the Owner Participant and the other NOPs as a consequence of or arising from any Wilful Default by the NOP.
- (b) The Owner Participant indemnifies and must keep indemnified the NOPs and the directors, officers, employees and agents of the NOPs against losses, damages or claims suffered by the NOPs and the directors, officers, employees and agents of the NOPs as a consequence of or arising from any Wilful Default by the Owner Participant.

20.3. Proportionate liability

- (a) The liability of the NOPs under the indemnities contained in clauses 20.1(a) and 20.2(a) is reduced proportionately to the extent that an act or omission of the Owner Participant, its directors, officers, employees, agents, contractors or Subcontractors (other than the NOPs and their subcontractors and agents) has contributed to the loss, damage or claim.
- (b) The liability of the Owner Participant under the indemnities contained in clauses 20.1(b) and 20.2(b) is reduced proportionately to the extent that an act or omission of a NOP, its directors, officers, employees, agents, contractors or Subcontractors has contributed to the loss, damage or claim.

20.4. Insurance obligations are primary

- (a) The insurances required to be taken out and maintained by the Participants under this Agreement are primary and not secondary to the indemnities referred to in this clause 20. However, a Participant is not obliged to make a claim or institute proceedings against any insurer under those insurances before enforcing any of its rights or remedies under the indemnities referred to in this Agreement, or generally. In addition, the Participants acknowledge that if a claim is made under any of those insurances by a Participant, it is their intention that the insurer cannot require the Participant to exhaust any indemnities referred to in this Agreement before the insurer considers or meets the relevant claim.
- (b) The Participants acknowledge that regardless of whether the insurances required to be taken out and maintained by the Participants under this Agreement respond or not, and regardless of the reason why those insurances respond or fail to respond, the Participants are not released (in whole or in part), from any of their obligations under the indemnities referred to in this Agreement, or generally.

21. Consequential Loss

- (a) Subject to clause 21(b), no Participant will be liable to another Participant for any Consequential Loss sustained by a Participant, whether caused by that Participant's breach of this Agreement, negligence or otherwise.

- (b) A Participant will be liable for Consequential Loss to the extent that such Consequential Loss is covered and is recoverable under a policy of insurance taken out under this Agreement.

22. Suspension

22.1. Suspension by the Participants

The Participants may only suspend the whole or any part of the Works with prior written agreement from the Project Owner unless there is a real risk of injury to persons, or damage to the Environment in breach of any law or Statutory Requirement.

22.2. Suspension by the Project Owner

Without limiting clause 22.5, if the Project Owner thinks that suspension of the whole or part of the Works is necessary or appropriate for any reason, the Project Owner may direct the Participants in writing to immediately suspend the progress of the whole or part of the Works for the period specified by the Project Owner in writing, and the Participants must promptly suspend the Works.

22.3. Suspension Costs

- (a) If the Project Owner directs suspension (other than as a result of a breach of this Agreement by a NOP, where the suspension is necessary to ensure that the Works comply with the requirements of this Agreement or in the circumstances set out in clause 22.5), or where the Participants suspend the whole or any part of the Works where there is a real risk of injury to persons or damage to the Environment, the Project Owner must continue to pay any Reimbursable Costs reasonably and actually incurred during the period of suspension and the Corporate Overhead and Profit in respect of those costs. Any Reimbursable Costs paid by the Project Owner in respect of the period of suspension will be known as “Suspension Costs”.
- (b) If the Project Owner directs suspension (other than as a result of a breach of this Agreement by a NOP, where the suspension is necessary to ensure that the Works comply with the requirements of this Agreement or in the circumstances set out in clause 22.5), then the suspension will be an Adjustment Event for the purposes of clause 12 and clause 12 will apply in respect of the treatment of any Suspension Costs arising from that suspension.

22.4. Recommencement

When the Project Owner becomes aware that the reason for suspension no longer exists, the Project Owner must direct the Participants to recommence the whole or the relevant part of the Works and the Participants must recommence the Works at the time directed by the Project Owner or, if no time is stated, within a reasonable time after the direction.

22.5. Suspension by the Project Owner by reason of cost overrun or delay in completion

- (a) If, following receipt of a Monthly report under clause 17 or otherwise, the Project Owner determines that:
- (1) the AOC of performing the Works under this Agreement will or is likely to exceed the TOC by an amount in excess of [##]% of the TOC; or
 - (2) the Date of Practical Completion will or is likely to be delayed by more than [##] Business Days after the Date for Practical Completion, then the Project Owner may direct the Participants in writing to immediately suspend the progress of the whole or part of the Works for the period specified by the Project Owner in writing and the Participants must promptly suspend the Works.
- (b) If the Project Owner suspends the whole or any part of the Works under clause 22.5(a), then:
- (1) the Project Owner will be free to continue with the Works on any basis that the Project Owner may decide;
 - (2) the NOPs must do all things necessary to ensure that the Project Owner is free to continue with the Works within the time period prescribed by the Project Owner;
 - (3) subject to clauses 22.5(b)(4) and 22.5(c), any costs incurred by the NOPs during the period of suspension will not be Reimbursable Costs and the NOPs will not be entitled to any Corporate Overhead and Profit;
 - (4) the NOPs will be entitled to any Reimbursable Costs that the NOPs have already committed to incur, in the reasonable expectation of completing the Works, prior to the Project Owner's direction under clause 22.5(a); and
 - (5) any Painshare Amount or Gainshare Amount (if any and as the case may be) will be calculated under the Risk or Reward Regime as if:
 - (A) any costs incurred by the Project Owner in continuing with the Works under this clause 22.5 were Reimbursable Costs incurred by the NOPs; and
 - (B) the NOPs were paid Corporate Overhead and Profit in respect of those costs, for the purposes of the calculation of the AOC and the NOPs will be responsible for the payment of any Painshare Amount which is calculated under the Risk or Reward Regime, notwithstanding any suspension under this clause 22.5.
- (c) If, in the exercise of its rights under this clause 22.5(b), the Project Owner requires the NOPs to demobilise from the Site, the NOPs will be entitled to any Reimbursable Costs incurred in respect of such demobilisation.

23. No fault termination

23.1. No fault termination

The Project Owner may terminate this Agreement at any time by serving a notice in writing on the NOPs.

23.2. Termination payment

- (a) If the Project Owner elects to terminate this Agreement under clause 23.1, subject to the Project Owner's rights under or in connection with this Agreement, the Project Owner must pay the NOPs, or the NOPs must pay the Project Owner (as the case may be), an amount calculated or decided under Schedule 12. The Participants must take all reasonable steps to minimise and mitigate any costs incurred by them arising from termination of this Agreement under clause 23.1.
- (b) Upon payment of any termination payment by the Project Owner to the NOPs or the NOPs to the Project Owner (as the case may be) under this clause 23.2, the Project Owner and the NOPs must enter into a deed of release under which, subject to clause 29.17 which survives termination of this Agreement, each of the Project Owner and the NOPs:
 - (1) agree that all payments required to be made by the Project Owner or by the NOPs (as the case may be) in respect of this Agreement have been made in full; and
 - (2) release each other from any claims arising out or on in connection with this Agreement.

24. Termination for Default and repudiation

24.1. Events of Default

Subject to clause 24.3, if any of the Participants or, where appropriate, the Project Owner (**Defaulting Participant**):

- (a) commits a Wilful Default;
- (b) commits any material breach of clauses 17.3, 17.4, 20, 26.1, 26.5, 29.8, 29.9, 29.10 and 29.11 of this Agreement, whether or not amounting to a Wilful Default; or
- (c) is the subject of an Insolvency Event, (each a **Default**), then:
- (d) where the Project Owner (either in its capacity as the client or as the Owner Participant) is not the Defaulting Participant, the Project Owner may give notice to the Defaulting Participant of:
 - (1) the Default and of its intention to exercise its rights under clause 24.3 on the expiration of 15 Business Days if the Default is capable of being rectified but is not rectified within the 15 Business Days period; or
 - (2) its intention to exercise its rights under clause 24.3 immediately if the Default is not capable of being rectified, or in the case of an Insolvency Event; and
- (e) where the Project Owner (either in its capacity as the client or as the Owner Participant) is the Defaulting Participant, the NOPs may give notice to the Defaulting Participant of:
 - (1) the Default and of their intention to exercise their rights under clause 24.3 on the expiration of 15 Business Days if the Default is capable of being rectified but is not rectified within the 15 Business Days period; or

- (2) their intention to exercise their rights under clause 24.3 immediately if the Default is not capable of being rectified.

A notice given under this clause must specify that it is a Default notice under this clause.

24.2. Defaulting Participant

For the purposes of clause 24.1(b), a Participant will be deemed to be a Defaulting Participant for the purposes of this clause 24 where:

- (a) the relevant material breach or failure to perform, as the case may be, relates to a particular duty, obligation, term or condition arising out of, or connected with, this Agreement (**Stipulation**); and
- (b) the Participant in question has committed a material breach in respect of all or part of that Stipulation, unless, prior to the issue of a Default Notice in respect of the Stipulation, the ALT has, in writing and with express reference to this clause 24.2, determined that the Participant in question will not be allocated responsibility and performance of the Stipulation under this Agreement.

24.3. Failure to remedy

(a) If:

- (1) the Defaulting Participant fails within 15 Business Days after receipt of a notice given under clause 24.1(d)(1) or clause 24.1(e)(1) (as the case may be) to either remedy a Default or in writing show (to the reasonable satisfaction of the Project Owner or the NOPs (as the case may be)) that reasonable progress has been made in rectifying the Default; or
- (2) if the Project Owner or the NOPs (as the case may be) give notice under clause 24.1(d)(2) or clause 24.1(e)(2) (as the case may be),

then:

- (3) subject to clause 24.3(b), where the Project Owner is not the Defaulting Participant, the Project Owner may, without prejudice to its rights under this Agreement or otherwise:
 - (A) at any time thereafter wholly or partly suspend the Defaulting Participant's portion of any payment due to the NOPs under this Agreement until the Default has been remedied to the reasonable satisfaction of the Project Owner; or
 - (B) terminate this Agreement by notice in writing to the Defaulting Participant and the non-defaulting NOP; or
- (4) where the Project Owner is the Defaulting Participant, the NOPs may, without prejudice to their rights under this Agreement or otherwise, terminate this Agreement by notice in writing to the Defaulting Participant.

(b) Where:

- (1) the Project Owner is not the Defaulting Participant; and

- (2) the Project Owner is entitled to exercise its rights under clause 24.3(a)(3) but has not exercised those rights, the Project Owner may, without prejudice to its rights under this Agreement or otherwise, by notice to the Defaulting Participant and the non-defaulting NOP exclude the Defaulting Participant from further participation in the performance of any of the Works, in which case the provisions of clause 24.4 will apply.
- (c) Upon exclusion of the Defaulting Participant from further participation in the performance of any of the Works and this Agreement by notice under this clause 24.3:
 - (1) the Defaulting Participant will continue to be and will remain liable in respect of any act or omission of the NOPs or obligation which has accrued prior to the notice under this clause 24.3;
 - (2) subject to clause 24.3(c)(3), the Defaulting Participant will no longer be subject to any obligation under this Agreement the time for performance of which has not accrued prior to the notice under this clause 24.3;
 - (3) the Defaulting Participant will continue to be subject to the requirements of clauses 4.1, 16, 17, 19.1, 19.10, 20, 21, 23, 24.4, 24.5, 24.6, 25, 27, 28 and 29, Schedule 8 to the extent that Schedule 8 applies to Reimbursable Costs already incurred, and Schedule 12; and
 - (4) except as set out in clause 24.3(c)(2), the obligations of a NOP under this Agreement are not affected or discharged by the exclusion of the Defaulting Participant under this clause 24.3 and the non-defaulting Participants acknowledge and agree that they remain liable under this Agreement notwithstanding the discharge of the Defaulting Participant under clause 24.3(c)(2).
- (d) The Project Owner acknowledges and agrees that, prior to exercising any of its rights under this clause 24.3, it must first consult with the non-defaulting NOP.

24.4. Exclusion from further participation in this Agreement

If the Project Owner excludes the Defaulting Participant from further participation in the performance of any of the Works and this Agreement by notice under clause 24.3:

- (a) clause 25 applies in respect of the Defaulting Participant, as if this Agreement had been terminated;
- (b) the non-defaulting Participants may employ and pay other persons to replace the Defaulting Participant in the performance of the Works and may use all Construction Plant provided by the Defaulting Participant as necessary to perform the Works;
- (c) the Defaulting Participant will, if required by the non-defaulting Participants, promptly assign or novate to the non-defaulting Participants, without payment, the benefit of any agreements for the performance of any part of the Works;
- (d) as and when required by the non-defaulting Participants (and not before), the Defaulting Participant will remove from each Site any Construction Plant and other property provided by the Defaulting Participant. If the Defaulting Participant fails to do so not less than 15 Business Days after written notice to it of the non-defaulting Participants' intention to do so (but without being responsible for any loss or damage),

the non-defaulting Participants may remove and/or sell any such Construction Plant or other property;

- (e) the non-defaulting Participants may execute all deeds and documents and will do all such things on behalf of the Defaulting Participant, including making decisions on behalf of the Defaulting Participant's representatives at the ALT, as are necessary to give effect to this clause 24.4; and
- (f) to enable the execution of deeds and documents under 24.4(e), the Defaulting Participant by this Agreement irrevocably authorises any directors, managers or officers of the non- defaulting Participants to act as its attorneys for the purpose of executing deeds and documents and doing all things of that kind. The non-defaulting Participants must act reasonably in the performance of any right permitted under this clause 24.4(f).

24.5. Loss and damage

If:

- (a) the Project Owner elects to terminate this Agreement under clause 24.3(a)(3)(B);
 - (b) the NOPs elect to terminate this Agreement under clause 24.3(a)(4); or
 - (c) the Project Owner elects to exclude the Defaulting Participant under clause 24.3(b),
- then, notwithstanding clause 5.1, the non-defaulting Participants may recover from the Defaulting Participant any and all losses, damages, costs and expenses suffered by the non-defaulting Participants arising out of any, all or any combination of:
- (d) the Default or non performance;
 - (e) any exclusion under this clause 24; or
 - (f) termination under this clause 24.

24.6. Repudiation

If one of the Participants repudiates this Agreement, then notwithstanding clause 5.1 , nothing in this Agreement prejudices the other Participants' rights to recover damages or to exercise any other right in connection with that repudiation.

25. Consequences of termination

25.1. Work to cease

If this Agreement is terminated for any reason whatsoever, the Participants must immediately cease the Works.

25.2. Consequences of notice of termination

- (a) Upon termination of this Agreement for any reason whatsoever, the Participants must immediately, to the extent each of the following is applicable, comply with any directions by the Project Owner including and to the extent directed, to:
 - (1) protect property in the possession of the NOPs in which the Project Owner has or may acquire an interest;
 - (2) demobilise from each Site persons, Construction Plant, vehicles, equipment and other things;
 - (3) assign or novate to the Project Owner all rights and benefits under contracts with Third Parties; and
 - (4) provide the Project Owner with IP Documents and Documentation.
- (b) Without limiting any other obligation of the Participants, where this Agreement is terminated for Default by a NOP, the Participants must provide the Project Owner with possession of all Materials, Construction Plant, vehicles, equipment and other things on each Site or off-Site, which are required by the Project Owner for the purpose of, and for such time as necessary, to make the Works safe.

25.3. Works continuation

Without limiting any other rights of the Participants under this Agreement, if this Agreement is terminated for any reason whatsoever, the NOPs acknowledge and agree that the Project Owner is free to continue with the Works either:

- (a) with entirely new contractors and consultants; or
- (b) on an alliance, conventional contractual or any other basis that the Project Owner may decide,

and the NOPs must do all things and execute all further documents necessary to ensure that the Project Owner is free to continue with the Works in the manner set out in this clause 25.3 within the time period prescribed by the Project Owner.

26. Security

26.1. Security

- (a) On the date of this Agreement, the NOPs must provide an irrevocable and unconditional bank guarantee in favour of the Project Owner in the amount of [##], on terms and conditions and from a financial institution acceptable to the Project Owner, as security for performance by the NOPs of their respective terms, covenants and responsibilities under this Agreement. This unconditional bank guarantee, the amount and terms of operation, applies irrespective of clause 21.
- (b) The NOPs acknowledge and agree that all security required to be provided by them under this Agreement will at all times be provided by each NOP in the following proportions:
 - (1) Non-Owner Participant 1 - [##]%; and

(2) Non-Owner Participant 2 - [##] %.

26.2. Project Owner can make demand

The Project Owner may immediately make a demand under the unconditional bank guarantee referred to in this clause for any amounts owed to it if, in the reasonable opinion of the Project Owner, an amount is owed by the NOPs to the Project Owner under this Agreement.

26.3. Return of security

If the NOPs have performed all of their obligations under this Agreement as at the date the Final Certificate is issued under clause 11, then the Project Owner must return the unconditional bank guarantee to the NOPs within 1 Month of the issue of the Final Certificate under clause 11.

26.4. Costs of security

All costs of establishing the unconditional bank guarantee referred to above and maintaining it (including the amount of any call made on the NOPs by the bank which issues the unconditional bank guarantee in respect of a payment made to the Project Owner under the unconditional bank guarantee and the cost of such calls) will be the responsibility of and must be paid by the NOPs and will not be Reimbursable Costs.

26.5. Parent company guarantee

- (a) The NOPs must ensure that parent company guarantees in the form, or substantially the same form acceptable to the Project Owner, set out in Schedule 15 are provided to the Project Owner by no later than 10 Business Days after the date of this Agreement.
- (b) The Project Owner may have recourse to the parent company guarantees in the circumstances contemplated by the parent company guarantees.
- (c) The NOPs must ensure that, from the date of this Agreement until the end of the Term, each parent company guarantee is maintained in the terms specified in Schedule 15 and is otherwise kept in full force and effect.
- (d) Any agreement between the provider of the parent company guarantees and the Project Owner with respect to any demands made and amounts paid by the provider to the Project Owner under the parent company guarantees is without prejudice to the Project Owner's right to make continuing claims against the NOPs in relation to matters for which the parent company guarantees are provided.
- (e) All costs of establishing and maintaining the parent company guarantees (including any costs incurred if the Project Owner seeks recourse to the parent company guarantees) will be the responsibility of and must be paid by the NOPs and will not be Reimbursable Costs.

27. Intellectual Property

27.1. Ownership of Pre-existing Intellectual Property

- (a) Ownership of Intellectual Property in any drawings, documents, any other information, samples, models, patterns, ideas, policies, procedures, methods, processes, materials or any other tangible or intangible thing required by this Agreement existing prior to the date of this Agreement relating to or connected with the Works (**Pre-existing Intellectual Property Materials**) remains with the Participant who created the Pre-existing Intellectual Property Materials.
- (b) The NOPs grant to the Project Owner an irrevocable, non-exclusive, world-wide, perpetual, transferable, sub-licensable, royalty free licence to use the Intellectual Property in the NOPs' Pre-existing Intellectual Property Materials for:
 - (1) the Works and for any operation, maintenance, upgrade, augmentation, selling or decommissioning of the Project; and
 - (2) otherwise, only to the extent necessary to use the Intellectual Property Assets (as that term is defined in clause 27.3(a)).
- (c) The Project Owner grants to the NOPs an irrevocable, non-exclusive, world-wide, perpetual, transferable, sub-licensable, royalty free licence to use the Project Owner's Pre-existing Intellectual Property Materials for the Works and for any operation, maintenance, upgrade, augmentation, selling or decommissioning of the Project.
- (d) The Participants must do everything necessary to effect the grant of the licences set out in clauses 27.1(b) and 27.1(c) and the ALT must decide the manner in which any costs associated with that vesting will be borne by the Participants.

27.2. Enhancements

- (a) Any enhancement, adaptation, change, modification or development of the Intellectual Property in the Pre-existing Intellectual Property (**Enhancements**) will be the property of the Participant that owns the Pre-existing Intellectual Property Materials. Ownership will vest immediately upon the creation of the Enhancement.
- (b) The NOPs grant to the Project Owner an irrevocable, non-exclusive, world-wide, perpetual, transferable, sub-licensable, royalty free licence to use its Enhancements for:
 - (1) the Works and for any operation, maintenance, upgrade, augmentation, selling or decommissioning of the Project; and
 - (2) otherwise, only to the extent necessary to use the Intellectual Property Assets (as that term is defined in clause 27.3(a)).
- (c) The Project Owner grants to the NOPs an irrevocable, non-exclusive, world-wide, perpetual, transferable, sub-licensable, royalty free licence to use its Enhancements for the Works and for any operation, maintenance, upgrade, augmentation, selling or decommissioning of the Project.
- (d) The Participants must do everything necessary to effect the grant of the licences set out in clauses 27.2(b) and 27.2(c) and the ALT must decide the manner in which any costs associated with that vesting will be borne by the Participants.

27.3. Ownership of other Intellectual Property

(a) Intellectual Property in any:

- (1) drawings, documents, the Project Proposal, design, any other information, samples, models, patterns and the like required by this Agreement (including those prepared or created by the NOPs) (**IP Documents**); and
 - (2) idea, policy, procedure, method, process, materials or any other tangible or intangible thing first discovered or developed during the course of performing the Works, created on or after the date of this Agreement, by any of the Participants and relating to or connected with the Works (together, the **Intellectual Property Assets**) vests in the Project Owner, and the Project Owner grants to the NOPs an irrevocable, non-exclusive, world-wide, perpetual, transferable, sub-licensable, royalty free licence to use the Intellectual Property Assets for the Works.
- (b) Each of the Participants must do everything necessary to perfect the vesting set out in clause 27.3(a) and the ALT must decide the manner in which any costs associated with that vesting will be borne between the Participants.
- (c) Enhancements are not, and will not be deemed to be, Intellectual Property Assets.

27.4. Grant of sub-licence

- (a) Where a NOP is the licensee of any Intellectual Property necessary for the purposes of the use of the Intellectual Property in the Pre-existing Intellectual Property Materials or the Intellectual Property Assets, that NOP must use its best endeavours to obtain for the Project Owner a sub-licence of that Intellectual Property on terms and conditions reasonably acceptable to the Project Owner.
- (b) A request by a NOP to obtain an intellectual property sub-licence for a NOP under clause 27.4(a) must be expressed in writing.
- (c) The ALT must decide the manner in which any costs associated with the sub-licence will be borne by the Participants.

27.5. Warranty by Participants

- (a) The Participants warrant to each other that they own, or have a licence to use and a right to licence as required by this Agreement, the Intellectual Property in those of the Pre-existing Intellectual Property Materials and Intellectual Property Assets (and anything contributed by them in the preparation of the Pre-existing Intellectual Property Materials and IP Documents), provided by the Participants.
- (b) The Participants warrant to each other that the Pre-existing Intellectual Property Materials and IP Documents and the Works do not infringe any other person's Intellectual Property.
- (c) These warranties survive the termination of this Agreement.

27.6. Protection of Participants' Intellectual Property

A Participant must:

- (a) notify the other Participants immediately if it becomes aware of any infringement or potential infringement by a Third Party of any Participant's Intellectual Property; and
- (b) take all timely steps necessary to ensure that its agents, employees and Subcontractors who have access to the Participant's Intellectual Property or any part of it do not use the Participant's Intellectual Property, except under this clause.

27.7. Moral rights

If the Participants, in the course of the Works, make use of any work or other subject matter in which copyright subsists, the Participants must procure from every person (whether an employee of a Participant or any Subcontractor or consultant) involved in the creation of that work or subject matter an agreement from that person for the benefit of each Participant and each Government Agency under which that person irrevocably and unconditionally consents to each Participant:

- (a) using, disclosing, reproducing or publishing that work or subject matter anywhere in the world in whatever form each Participant thinks fit as so used, disclosed, reproduced or published; and
- (b) using, disclosing, reproducing or publishing that work or subject matter or any adaptation anywhere in the world without making any identification of that person in relation to the work or subject matter.

27.8. Saving

Notwithstanding clause 5.1, a failure by:

- (a) the NOPS to comply with the requirements of this clause confers on the Project Owner; or
- (b) the Project Owner to comply with the requirements of this clause confers on the NOPS, an enforceable right at law or in equity to seek any one of or a combination of specific performance, injunction or damages and, to the extent that any right under a Statutory Requirement might otherwise be excluded this Agreement, any right under that Statutory Requirement.

28. Notices

28.1. How and where Notices may be sent

A notice or other communication under this Agreement (**Notice**) must be in writing and delivered by hand or sent by pre-paid post or fax to a Participant at the address or the fax number for that Participant set out in Schedule 11 or as otherwise specified by a Participant by Notice.

28.2. Notices sent by company

A Notice sent by a company must be signed by a duly authorised officer of the sender.

28.3. Email not to be used [This clause can be omitted if Email is acceptable or Preferred]

Email or similar electronic means of communication must not be used to give Notices under this Agreement.

28.4. When Notices are taken to have been given and received

- (a) A Notice sent by post is regarded as given and received on the second Business Day following the date of postage.
- (b) A fax is regarded as given and received on production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the recipient's fax number, unless the recipient informs the sender that the Notice is illegible or incomplete within 4 hours of it being transmitted.
- (c) A Notice delivered or received other than on a Business Day or after 4.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day and a Notice delivered or received before 9.00am (recipient's time) is regarded as received at 9.00am.

29. General

29.1. Joint and several liability

Each of the NOPs acknowledges and agrees that it is jointly and severally liable to the Project Owner for the obligations and liabilities of the NOPs (or any one or more of them) under this Agreement.

29.2. Governing law and jurisdiction

- (a) This Agreement is governed by the law in force in [details]/
- (b) Each Participant irrevocably submits to the [**exclusive/non-exclusive**] jurisdiction of courts exercising jurisdiction in [details] and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement. Each Participant irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

29.3. Invalidity and enforceability

If any term or part of this Agreement is or becomes for any reason invalid or unenforceable at law, then in that event, that term or part of this Agreement will be

and be hereby deemed to be severed from this Agreement without thereby affecting the remainder of this Agreement and the remainder of this Agreement will continue to be valid and enforceable in all things.

29.4. Waiver

No Participant to this Agreement may rely on the words or conduct of any other Participant as a waiver of any right unless the waiver is in writing and signed by the Participant granting the waiver.

In this clause 29.4:

- (a) **conduct** includes delay in the exercise of a right;
- (b) **right** means any right arising under or in connection with this Agreement and includes the right to rely on this clause; and
- (c) **waiver** includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

29.5. Amendments

Amendment of this Agreement must be in writing and signed by the Participants.

29.6. Entire agreement

This Agreement states all the express terms of the agreement between the Participants in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

29.7. Counterparts

This Agreement may be executed in any number of counterparts.

29.8. Assignment

A NOP must not, without the Project Owner's prior written approval (which must not be unreasonably withheld), assign, mortgage, novate, charge or encumber this Agreement or any part of it or any right, benefit, money or interest under this Agreement.

29.9. Change in the NOPs

A NOP must not, without the Project Owner's prior written approval (which must not be unreasonably withheld), change its percentage participation interest in the Project (which, as at the date of this Agreement, is set out in the Proposal) at any time during the Term.

29.10. Change in Control

- (a) Each NOP must ensure that there is no Change in Control in respect of it or any of the providers of the parent company guarantees to be provided under clause 26.5 without the Project Owner's prior written approval (which must not be unreasonably withheld).
- (b) Without limiting clause 29.10(a), in the event of a proposed Change in Control occurring, the relevant NOP must:
 - (1) provide the Project Owner with any documentation or information requested by the Project Owner in respect of the proposed Change in Control (including information in respect of the financial and technical capability of the third party acquiring or exercising control over the relevant NOP); and
 - (2) attend any meetings requested by the Project Owner including arranging for attendance at those meetings by the third party acquiring or exercising control over the relevant NOP.

29.11. Confidentiality

- (a) The Participants agree that this Agreement, and any information relating to or arising from the Agreement, is confidential, and that they will not disclose the Agreement, or any information relating to or arising from the Agreement, to any person, unless that disclosure or that information:
 - (1) is at the material time in the public domain;
 - (2) is required by any Statutory Requirement to be communicated to a person who is authorised by any Statutory Requirement to receive it;
 - (3) is necessarily made to a court, or to an arbitrator or administrative tribunal or to legal counsel in the course of proceedings provided that, in the case of any arbitration proceedings, the Participant concerned first obtains from each other party to those proceedings an undertaking, enforceable by any Participant, that each party must similarly not divulge or communicate, without the Project Owner's written consent, any information referred to in this clause;
 - (4) is required to be disclosed to any Government Minister, Parliament or Government Agency whether in connection with the granting of any licence or otherwise;
 - (5) is to a servant, employee, agent or contractor of the Participants, when that disclosure is reasonably necessary for the conduct of this Agreement;
 - (6) is to a Related Body Corporate of the Participants;
 - (7) was consented to in writing by each of the other Participants; or
 - (8) is required to be disclosed to the relevant Stock Exchange.
- (b) Notwithstanding clause 5.1, a failure by a Participant to comply with the requirements of this clause confers on the other Participants an enforceable right at law or in equity to seek any one of or a combination of specific performance, injunction or damages and, to the extent that any right under a Statutory Requirement may be excluded by this Agreement, under that Statutory Requirement.

29.12. Relationship of the Participants

- (a) Subject to clause 29.1, nothing in this Agreement gives a Participant authority to bind any other Participant in any way.
- (b) The NOPs are independent contractors of the Project Owner. The employees, agents and Subcontractors of the NOPs will not be deemed to be employees, agents or Subcontractors of the Project Owner and each Participant must pay all costs associated with its employees.
- (c) This Agreement, or the alliance relationship created by it, is not intended to create, nor will it be construed as creating, any partnership, joint venture or fiduciary obligation with regard to, or as between, the Participants.

29.13. Corporate power and authority

Each Participant represents and warrants to the others that it has full power to enter into and perform its obligations under this Agreement and that when executed it will constitute legal, valid and binding obligations under its terms.

29.14. Financial difficulties

A Participant must immediately notify the other Participants in writing if it forms the opinion that it will be unable to, or be unlikely to be able to, satisfy any of its financial obligations in relation to this Agreement from the financial resources available, or likely to be available to it, at the time the financial obligation is due.

29.15. Project Owner's statutory functions

Nothing contained in or implied by this Agreement or any document contemplated by this Agreement has the effect of constraining:

- (a) the Project Owner's, or placing any fetter on the Project Owner's, statutory rights, duties, powers and functions, including those contained or referred to in any Statutory Requirement; and
- (b) the [government entity] placing any fetter on its statutory rights, duties, powers and functions.

29.16. Unincorporated joint venture

The NOPs confirm that they have formed an unincorporated joint venture (**Joint Venture**) pursuant to a joint venture agreement entered into by the NOPs (**Joint Venture Agreement**) in the form set out in Schedule 16 to undertake their obligations under this Agreement. The NOPs acknowledge and agree that:

- (a) any duty or obligation, if any, created by the Joint Venture Agreement or the Joint Venture as joint venturers will be subordinate to their obligations under this Agreement;
- (b) the NOPs will not amend the Joint Venture Agreement or any aspect of their Joint Venture relationship without the Project Owner's consent (which will not be unreasonably withheld, and may be reasonably withheld where the proposed amendment will have any effect on this Agreement, the performance of the Works or the compensation payable to any of the NOPs under this Agreement); and
- (c) any costs or expenses incurred by any of the NOPs in the administration, operation or conduct of the Joint Venture, 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.

29.17. Survival

Clauses 4.1, 16, 17, 19.1, 19.10, 20, 21, 23, 24.4, 24.5, 24.6, 25, 27, 28 and 29, Schedule 8 to the extent that Schedule 8 applies to Reimbursable Costs already incurred, and Schedule 12, survive the termination of this Agreement.

29.18. Costs

Each Participant must pay its own costs and disbursements in connection with the negotiations, preparation and execution of this Agreement, which costs will not be Reimbursable Costs.

29.19. Stamp duty

- (a) The NOPs must pay any stamp duty in respect of the execution, delivery and performance of this Agreement.
- (b) Stamp duty referred to in clause 29.19(a) is not a Reimbursable Cost.

Schedules

Schedule 1 - Agreement Particulars

No.	Reference	Description	Particular
1	Clause 1.1	Date for Practical Completion	[##].
2	Clause 1.1	Defects Liability Period	a period of [<i>insert</i>] years commencing ## the Date of Practical Completion.
3	Clause 1.1	Project Owner	the Project Owner, in its capacity as [<i>## insert specific role e.g. the Commissioner of Main Roads</i>], being the client for the performance of the Works
4	Clause 1.1	Request for Proposals	the request for proposals to form an alliance to carry out the Project and perform the Works, issued by the Project Owner on [<i>## insert date</i>].
5	Clause 1.3(b)	The Project Owner's representative under this Agreement as at the date of this Agreement	[##].
6	Clause 6.1(b)	The representatives on the ALT as at the date of this Agreement	Owner Participant [##]. Non-Owner Participant 1 [##]. Non-Owner Participant 2 [##].

7	Clause 6.5(b)	The alternative representatives on the ALT as at the date of this Agreement	Owner Participant [##]. Non-Owner Participant 1 [##].
			Non-Owner Participant 2 [##].
8	Clause 7.1	he Alliance Manager as at the date of this Agreement	[##].

Schedule 2 - Alliance Charter

1. Alliance Principles

The Alliance Principles are:

- (a) all Participants win, or all Participants lose, based on achieved project outcomes. Win-lose outcomes are not acceptable;
- (b) Participants have a peer relationship where each Participant has an equal say in decisions for the Project (except in respect of the Project Owner's Reserved Powers);
- (c) subject to the terms of this Agreement, risks and responsibilities are shared and managed collectively by the Participants, rather than allocated to individual Participants;
- (d) disputes are avoided by adopting a no blame culture;
- (e) risks and rewards are shared equitably among Participants;
- (f) Participants provide 'best-in-class' resources;
- (g) Participants act consistently according to espoused values;
- (h) Participants are committed to developing a culture that promotes and drives collaboration, innovation and outstanding performance;
- (i) the Participants empowering the ALT and the AMT to make decisions and take actions under this Agreement;
- (j) all transactions are fully open book;
- (k) Participants are committed to developing a 'communication culture' and being transparent in all of their dealings with each other;
- (l) Participants share all information and do not hold back ideas;

- (m) communication between all Participants is open, straight and honest so as to enable informed decision making;

2. Alliance Charter

- (a) each Participant is committed to ensuring that each other Participant understands any documentation prepared in respect of the Project and any information, analysis or methodology contained in that documentation;
- (b) ethical and responsible behaviour at all times;
- (c) learnings of the Participants are identified and shared and capability is developed; and
- (d) important decisions are made, and processes and systems are adopted, on a Best For Project basis, or as otherwise agreed by the ALT from time to time.

3. Alliance Purpose

The primary purpose of the Project is to *[## insert from the Project Owner's VFM Statement]*.

4. Alliance Objectives

The Alliance Objectives are: *[## insert from the Project Owner's VFM Statement]*.

Schedule 3 - Responsibilities Matrix

Description of role or responsibility		Responsibility			
		ALT	Alliance Manager	AMT	APT
1	<i>[## insert role/responsibility]</i>	[X]	[X]	[X]	[X]

Schedule 4 - Project Owner's VFM Statement

[## to be inserted]

Schedule 5 - Reimbursable Costs

Subject to specific exclusions contained in this Agreement for the Works, all costs which are reasonably and actually incurred by the Participants in connection with the Works (excluding any corporate overhead component not specific to the Works and any profit or mark up of any kind) will be reimbursable costs under this Agreement (**Reimbursable Costs**).

It is a fundamental underlying principle of this Agreement that, except for the Corporate Overhead and Profit, no Participant will derive any mark up, overhead, profit or unreasonable advantage from the utilisation of their resources for the Works.

Reimbursable Costs include the following costs which are reasonably and actually incurred:

1. Labour, staff and supervision

Labour costs will mean the actual cost of labour employed by a Participant and assigned to the AMT and APT for the performance of the Works as determined in accordance with the following:

(a) Non-Owner Participant 1

Item	Cost	Description
1	Salary	[##]
2	Sick and personal leave	[##]
3	Long service leave	[##]
4	Overtime	[##]
5	Redundancy	[##]
6	Medical conditions and expenses	[##]
7	Salary increases	[##]

8	Bonuses	[##]
9	Recruitment and relocation costs	[##]
10	Project allowances	[##]
11	Intrastate, interstate and overseas staff	[##]
12	Project-specific training	[##]
13	Kilometre reimbursement	[##]
14	Design	[##]

(b) Non-Owner Participant 2

Item	Cost	Description
1	Salary	[##]
2	Sick and personal leave	[##]
3	Long service leave	[##]
4	Overtime	[##]
5	Redundancy	[##]

6	Medical conditions and expenses	[##]
7	Salary increases	[##]
8	Bonuses	[##]
9	Recruitment and relocation costs	[##]
10	Project allowances	[##]
11	Intrastate, interstate and overseas staff	[##]
12	Project-specific training	[##]
13	Kilometre reimbursement	[##]
14	Design	[##]

(c) Owner Participant

The actual direct salary costs of labour employed by the Owner Participant and assigned to the AMT and APT for the performance of the Works, calculated on the basis of the relevant individual's base salary as established by payroll records, excluding all costs other than base salary which is directly applicable to remuneration (e.g. accrual costs or statutory on-costs), multiplied by a factor of [##].

2. Taxes, fees and charges

All fees, charges, duties, royalties, licences, Fringe Benefit Tax and statutory charges of any kind or nature assessed, imposed or levied with respect to the performance of the Works.

3. Legal expenses

Any reasonable legal costs necessary or expedient for the Works as determined and approved by the ALT.

4. Subcontractors and consultancies

Cost of Subcontract works and services (including consultancy services) and the provision of equipment and utilities in connection with Works from sources other than the Participants.

5. Materials

- (a) Cost of Materials purchased by any of the Participants for the Works, including Materials purchased for research and development directly related to the Works.
- (b) Cost of the disposal of Materials not required for the purposes of performing the Works.

6. Participant facilities

Cost of the use of on-Site and off-Site Construction Plant provided for the Works. These costs will be allocated on a basis determined by the ALT if the Construction Plant in question is also used for purposes other than the Works.

7. Site establishment costs

Costs associated with the establishment of each Site, including:

- (a) mobilisation and demobilisation;
- (b) connection and disconnection of temporary services;
- (c) the costs associated with negotiating, investigating, surveying and designing land acquisitions and arranging Site access, possession and laydown areas;
- (d) Site fencing, remedial fencing, access gates and hoardings;
- (e) protection of existing facilities;
- (f) Project signboard; and
- (g) inductions (to the extent not covered under clause 1 of this Schedule).

8. Site running costs

Costs associated with running each Site, including:

- (a) accommodation;

- (b) storage facilities (whether on-Site or off-Site). These costs will be allocated on a basis determined by the ALT if a Site's accommodation and storage facilities are also used for purposes other than for the Works;
- (c) ablutions;
- (d) compliance with quality assurance, occupational health and safety and Environmental requirements;
- (e) compliance with public relations and Aboriginal Heritage issues;
- (f) traffic management;
- (g) power and water consumption;
- (h) rubbish removal;
- (i) site security; and
- (j) consumables (petty cash, first aid, tea and coffee).

9. Participants' Construction Plant

- (a) The cost of Construction Plant which is required across the whole spectrum of the Works, including:
 - (1) cramage;
 - (2) scaffolding and access;
 - (3) Site vehicles;
 - (4) concrete placing plant;
 - (5) general small tools; and
 - (6) the supply, installation and miscellaneous (eg. freight) costs of mechanical equipment; any additional equipment for testing.
- (b) The hire rate to the Project for all Participant owned Construction Plant will be the lesser of:
 - (7) the published internal rate currently being utilised by the Participant; or
 - (8) the best external hire rate for a similar piece of equipment for a similar period of hire.

Participants must provide evidence of the published internal hire rate referred to in subclause (b)(1).

10. Photocopying and Printing

All costs associated with producing, copying and binding:

- (a) all drawings;
- (b) maintenance and operation manuals;

- (c) test reports; and
- (d) other documents produced as part of the Works.

11. Insurance

- (a) The cost of providing the insurances referred to in this Agreement.
- (b) Any deductible or excess payable in relation to the insurances referred to in this Agreement or unrecovered amounts and the cost of preparing any claims.
- (c) If any of the insurances referred to in this Agreement are not specific to this Agreement, the ALT must determine the extent that the cost of that insurance should be apportioned for the purpose of being a Reimbursable Cost.

12. Project Office

Leasing, support and equipment (including communications and signage) costs of the Project Office.

13. Specialist groups

The costs charged by any specialist group within any of the Participants when their services are used by the AMT for the purposes of the Works.

14. Rectification costs

All costs incurred in making good any Defects to the extent such costs are not recovered under any Project insurance policy.

15. IT Costs

The cost of:

- (a) cabling;
- (b) switching infrastructure;
- (c) telephone system;
- (d) implementation and installation;
- (e) servers;
- (f) network costs;
- (g) data link costs;
- (h) PCs (including design software and other software purchased specifically for the Works but excluding design software and software used by the Participants in their day to day operations);

- (i) amortisations and licences;
- (j) printers, plotters, MFM, scanners;
- (k) cameras and videos to the extent they are purchased or used solely for the Works;
- (l) MIS services and support charges; and
- (m) IT support, located at the Project Office.

16. Other

Subject to clause 17 of this Schedule, any other cost that, in the view of the ALT, should be a Reimbursable Cost.

The following costs incurred by the Participants will not be Reimbursable Costs (and to the extent that they have previously been recognised as Reimbursable Costs, will be credited against Reimbursable Costs):

- (a) any costs incurred by a Participant in performing any works or services which are not directly referable to the Owner's VFM Statement, the Scope of Works and the assumptions adopted by the Participants in developing the TOC or which do not otherwise form part of the Works under this Agreement;
- (b) any legal costs incurred by a Participant in defending any prosecution or claim brought against a Participant by a Governmental Agency by reason of an alleged breach of any Statutory Requirement, except where the Project Owner determines otherwise by notice in writing to the Participants, having regard to the nature of the breach and the effect of the breach on the Project, the Works and the Project Owner, in which case the legal costs must be approved in writing by the Project Owner;
- (c) any costs associated with Participants' representatives attending an ALT meeting;
- (d) any costs, liabilities or payments incurred or made by a Participant in indemnifying another Participant in accordance with this Agreement;
- (e) any costs, liabilities or payments incurred or made by a Participant in defending or prosecuting any actual or threatened lawsuits or claims (including payment of judgments, awards, orders, damages, restitution, compensation or interest) arising out of or in connection with this Agreement, unless otherwise approved in writing by the Project Owner;
- (f) any costs, payment of judgments, awards, orders, damages, restitution, compensation or interest incurred or suffered in relation to issues between the Participants as contemplated in clause 5.3 of this Agreement, unless otherwise approved in writing by the Project Owner;
- (g) any costs incurred by a Participant in providing any difference in cover insurance to supplement the insurances referred to in this Agreement;
- (h) any and all costs, losses, damages and expenses suffered or incurred by the Defaulting Participant arising out of or in connection with a Default (as that term is defined in clause 24.1) and/or exclusion and/or termination under clauses 24 and 25;
- (i) any corporate or personal income tax or capital gains tax imposed on a Participant;

- (j) [GST/VAT/Applicable Tax];
- (k) any penalties or fines in respect of the matters referred to in clause 2 of this Schedule;
- (l) any costs incurred by a NOP, or to be incurred by a NOP, which were excluded from the Reimbursable Costs under this Agreement as part of the NOPs' Proposal;
- (m) any Alliance or corporate entertainment, unless otherwise approved by the Project Owner in writing; and
- (n) any costs incurred by a Participant, or to be incurred by a Participant, specifically excluded under this Agreement as being a Reimbursable Cost.

Schedule 6 - Corporate Overhead and Profit

[Alternative 1 - Corporate Overhead and Profit]

The total Corporate Overhead and Profit payable by the Project Owner to the NOPs under this Agreement is [##]% of the NOPs' Reimbursable Costs component of the AOC. Corporate Overhead and Profit is a mark-up on this amount.

The percentage figure specified above will apply for the duration of the Project and will not be adjusted, split, modified or altered in any way for any reason or purpose including for the purpose of recognising that each NOP may have a different internal percentage figure that is normally applied in other contracting arrangements.

The procedure for payment must be established by the ALT in accordance with clause 16.3.

The Participants agree that the corporate overhead component of Corporate Overhead and Profit is, unless the Agreement otherwise provides, inclusive of all overhead costs.

[Alternative 1 - End]

[Alternative 2 - Corporate Overhead and Profit]

The total Corporate Overhead and Profit payable by the Project Owner to the NOPs under this Agreement is [##]% of the NOPs' Reimbursable Costs component of the TOC. Corporate Overhead and Profit is a mark-up on this amount.

The percentage figure specified above will apply for the duration of the Project and will not be adjusted, split, modified or altered in any way for any reason or purpose including

Schedule 6 - Corporate Overhead and Profit

for the purpose of recognising that each NOP may have a different internal percentage figure that is normally applied in other contracting arrangements.

The procedure for payment must be established by the ALT in accordance with clause 16.3.

The Participants agree that the corporate overhead component of Corporate Overhead and Profit is, unless the Agreement otherwise provides, inclusive of all overhead costs.

[Alternative 2 - End]

[Alternative 3 - Corporate Overhead and Profit]

The total Corporate Overhead and Profit payable by the Project Owner to the NOPs under this Agreement is [##].

The amount specified above will apply for the duration of the Project and will not be adjusted, split, modified or altered in any way for any reason or purpose.

The procedure for payment must be established by the ALT in accordance with clause 16.3.

The Participants agree that the corporate overhead component of Corporate Overhead and Profit is, unless the Agreement otherwise provides, inclusive of all overhead costs.

[Alternative 3 - End]

Schedule 7 - Risk or Reward Regime

Guidance Note - As noted above, this Agreement has been prepared on the basis that the Project Owner will first enter into an Alliance Development Agreement with one or more Proponents selected under the Request for Proposals for the development of a Project Proposal. The Alliance Development Agreement will be attached to the Request for Proposals. This Agreement will itself be attached to the Alliance Development Agreement and will form the basis for the development of the final Project Alliance Agreement which will be entered into between the Project Owner and the Proponent whose Project Proposal is accepted under the Alliance Development Agreement.

As part of the development of the Project Proposal under the Alliance Development Agreement, the detailed Risk or Reward Regime will be developed. Please note that this Schedule only sets out the general principles of the Risk or Reward Regime (and is intended to set out the Project Owner's requirements for the Risk or Reward Regime). All further details and matters in respect of the Risk or Reward Regime will be set out in the Project Proposal. The detailed Risk or Reward Regime which is developed as part of the Project Proposal must be consistent with the general principles (and Project Owner's requirements) set out in this Schedule.

Therefore, once the final Project Alliance Agreement is entered into for the Project, the general principles of the Risk or Reward Regime will be set out in this Schedule and the detailed Risk or Reward Regime will be set out in Schedule 10 (as part of the approved Project Proposal).

This Schedule sets out two alternative frameworks for the Risk or Reward Regime under the Agreement. Please note that there may be other alternatives which the Project Owner consider more appropriate in the context of the Project and the Owner's VFM Statement for the Project. It is important to understand that the two alternatives below are provided as suggested frameworks only, and the Risk or Reward Regime will need to be considered and developed by the Project Owner to reflect the unique circumstances of the Project.

The Project Owner should refer to 'The Practitioner's Guide to Alliance Contracting' for further information related to the development and tailoring of Risk or Reward Regimes.

Alternative 1 - The Risk or Reward Regime is separated into two components, being a cost component (resulting in payment of a Gainshare Amount to the NOPs or payment of a Painshare Amount by the NOPs (if any) for performance against the TOC) and a non-cost component (resulting in a separate payment of a Performance Reward Amount to the NOPs for Stretch Performance (i.e. performance which is better than MCOS Performance) or payment of a Performance Liability Amount by the NOPs for Poor Performance (i.e. performance which is worse than MCOS Performance) against the KRAs, as modified for performance against the Performance Modifiers (if any)).

Alternative 2 - The Risk or Reward Regime does not contain separate components, but rather the calculation of a Gainshare Amount or Painshare Amount (if any) for performance against the TOC will be modified by performance against the KRAs and Performance Modifiers to arrive at a final calculation of the Gainshare Amount or Painshare Amount (if any) (i.e. if there is Stretch Performance against the KRAs, the Gainshare Amount will be increased or the Painshare Amount will be decreased and, if there is Poor Performance, the Gainshare Amount will be decreased or the Painshare

[Alternative 1 - Risk or Reward Regime]

1 General

(a) The Risk or Reward Regime is separated into two components, namely:

- (1) the cost component - AOC underrun or overrun (which may result in a Gainshare Amount or Painshare Amount); and
- (2) the non-cost component - KRA and Performance Modifier performance (which may result in a Performance Reward Amount or Performance Liability Amount).

(b) This Schedule sets out the general principles as to the manner in which the above components of the Risk or Reward Regime are to operate. Further details and matters in respect of the Risk or Reward Regime are set out in the Project Proposal.

(c) The NOPs acknowledge and agree that:

- (1) there will be no payment of any Gainshare Amount under this Agreement at any time unless the NOPs can demonstrate to the Project Owner that the AOC underrun has been achieved by performing the Works in accordance with the Alliance Charter and otherwise in accordance with this Agreement and not as a result of an over-estimation of the cost of performing the Works when setting the TOC. In demonstrating the matters set out in this clause 1(c)(1) of this Schedule, the NOPs must submit a report to the Project Owner at each time that any Gainshare Amount is calculated to be payable under this Agreement which:

(A) details each of the cost savings which have achieved by the NOPs against the AOC;

(B) provides reasoning as to how the cost savings have been achieved by the NOPs and could not have otherwise been identified as part of the development of the TOC;

(C) provides evidence that the NOPs, in achieving the cost savings, performed the Works in accordance with the Alliance Charter and otherwise in accordance with this Agreement; and

(D) otherwise meets the requirements of the guidelines set out in the Project Proposal for demonstrating the matters set out in this clause 1(c)(1) of this Schedule; and

- (2) there will be no payment of any Performance Reward Amount to the NOPs under this Agreement at any time unless the NOPs can demonstrate to the Project Owner that the Performance Reward Amount has been calculated to reflect Stretch Performance against the KRAs under this Agreement, and not simply MCOS Performance against the KRAs. In demonstrating the matters set out in this clause 1(c)(2) of this Schedule, the NOPs must submit a report to the Project Owner at each time that any Performance Reward Amount is calculated to be payable to the NOPs under this Agreement which meets the requirements of the guidelines set out in the Project Proposal for demonstrating the matters set out in this clause 1(c)(2) of this Schedule; and
- (3) if the NOPs are unable to demonstrate the matters set out in clauses 1(c)(1) and 1(c)(2) of this Schedule, then the Project Owner will be entitled to adjust the payment of any Gainshare Amount or Performance Reward Amount under this Agreement to reflect the principles set out in those clauses.

2 Cost component - AOC underrun or overrun

2.1 Principles

The cost component of the Risk or Reward Regime for the Project will be applied such that:

- (a) [##]/[##] (Project Owner/NOPs) upside reward/underrun sharing[, capped for NOPs at [##]]; and
- (b) [##]/[##] (Project Owner/NOPs) downside risk/overrun sharing[, capped for NOPs at [##]].

A diagram illustrating the mechanism for calculating the Gainshare Amount or Painshare Amount (as the case may be) based on AOC is shown below.

[##].

2.2 Calculation and payment of Gainshare Amount or Painshare Amount

- (a) As soon as practicable after the Date of Practical Completion;
- (1) the ALT will calculate the Interim Gainshare Amount or Interim Painshare Amount (if any and as the case may be) following determination of:
- (A) the sum of the AOC in performing the Works to reach Practical Completion; and
- (B) the ALT's expectation of the AOC to the Final Completion Date; and
- (2) subject to clauses 1(c)(1) of this Schedule, the Project Owner will make a payment (if any) to the NOPs or the NOPs will make a payment (if any) to the Project Owner (as the case may be) in accordance with clause 3(c) of Schedule 8.

(b) As soon as practicable after the Final Completion Date:

- (1) the ALT will calculate the Gainshare Amount or Painshare Amount (if any and as the case may be) following determination of the sum of the AOC in performing the Works to the Final Completion Date; and
- (2) subject to clause 1(c)(1) of this Schedule, the Project Owner will make a payment (if any) to the NOPs or the NOPs will make a payment (if any) to the Project Owner (as the case may be) in accordance with clause 3(d) of Schedule 8.

3 Non-cost component - KRA and Performance Modifier performance

3.1 Principles

The non-cost component of the Risk or Reward Regime for the Project will be applied such that:

- (a) Stretch Performance against the KRAs (i.e. performance which is better than MCOS Performance against the KRAs) will result in a Performance Reward Amount being payable by the Project Owner to the NOPs; and
- (b) Poor Performance against the KRAs (i.e. performance which is worse than MCOS Performance against the KRAs) will result in a Performance Liability Amount being payable by the NOPs to the Project Owner,

as modified for performance against the Performance Modifiers.

3.2 KRAs

The KRAs for the Project are:

- (a)[##].

3.3 Performance against KRAs

The Project Proposal sets out, for each of the KRAs:

- (a) the key performance indicators;
- (b) the weightings;
- (c) what constitutes MCOS Performance, Stretch Performance and Poor Performance;
- (d) methodologies for measuring performance and calculating a performance score; and
- (e) the relationship between the performance score and calculation of the Performance Reward Amount or Performance Liability Amount (if any and as the case may be).

3.4 Performance Modifiers

The Performance Modifiers for the Project are:

- (a)[##].

3.5 Performance against Performance Modifiers

The Project Proposal sets out, for each Performance Modifier:

- (a) what constitutes a recordable event;
- (b) methodologies for recording these events; and
- (c) the relationship between the occurrence of these events and calculation of the Performance Reward Amount or Performance Liability Amount (if any and as the case may be).

3.6 Calculation and payment of Performance Reward Amount or Performance Liability Amount

- (a) The value of the available performance pool for the Project will be [##]. Any Performance Reward Amount or Performance Liability Amount payable under this Schedule is capped at the amount of the performance pool for the Project.
- (b) As soon as practicable after the Date of Practical Completion:
 - (1) the ALT will calculate the Performance Reward Amount or Performance Liability Amount (if any and as the case may be) payable in accordance with this Schedule for the period from the date of this Agreement until the Date of Practical Completion; and
 - (2) subject to clause 1(c)(2) of this Schedule, the Project Owner will make a payment (if any) to the NOPs or the NOPs will make a payment (if any) to the Project Owner (as the case may be) in accordance with clause 4(c) of Schedule 8.
- (c) As soon as practicable after the Final Completion Date:
 - (1) the ALT will calculate the Performance Reward Amount or Performance Liability Amount (if any and as the case may be) for the period from the date of this Agreement until the Final Completion Date; and
 - (2) subject to clause 1(c)(2) of this Schedule, the Project Owner will make a payment (if any) to the NOPs or the NOPs will make a payment (if any) to the Project Owner (as the case may be) in accordance with clause 4(d) of Schedule 8.

[Alternative 1 - End]

[Alternative 2 - Risk or Reward Regime]

4 General

- (a) The Risk or Reward Regime measures performance in the following areas:
 - (1) AOC underrun or overrun; and
 - (2) performance against the KRAs and Performance Modifiers,

and may result in a Gainshare Amount payable by the Project Owner to the NOPs or a Painshare Amount payable by the NOPs to the Project Owner (if any and as the case may be) in accordance with this Schedule.

(b) This Schedule sets out the general principles as to the manner in which the Risk or Reward Regime is to operate. Further details and matters in respect of the Risk or Reward Regime are set out in the Project Proposal.

(c) The NOPs acknowledge and agree that:

(1) there will be no payment of any Gainshare Amount under this Agreement at any time unless the NOPs can demonstrate to the Project Owner (as appropriate) that any AOC underrun has been achieved by the NOPs by performing the Works in accordance with the Alliance Charter and otherwise in accordance with this Agreement and not as a result of an over-estimation of the cost of performing the Works when setting the TOC. In demonstrating the matters set out in this clause 4(c)(1) of this Schedule, the NOPs must submit a report to the Project Owner at each time that any Gainshare Amount is calculated to be payable under this Agreement which (as appropriate):

(A) details each of the cost savings which have achieved by the NOPs against the AOC;

(B) provides reasoning as to how the cost savings have been achieved by the NOPs and could not have otherwise been identified as part of the development of the TOC;

(C) provides evidence that the NOPs, in achieving the cost savings, performed the Works in accordance with the Alliance Charter and otherwise in accordance with this Agreement; and

(D) otherwise meets the requirements of the guidelines set out in the Project Proposal for demonstrating the matters set out in this clause 4(c)(1) of this Schedule; and

(2) any Gainshare Amount calculated under the AOC underrun or overrun component of the Risk or Reward Regime at any time will not be increased or any Painshare Amount will not be decreased (as the case may be) unless the Non-Participants can demonstrate to the Project Owner (as appropriate) that there has been Stretch Performance against the KRAs under this Agreement, and not simply MCOS Performance against the KRAs. In demonstrating the matters set out in this clause 4(c)(2) of this Schedule, the NOPs must submit a report to the Project Owner at each time that any Gainshare Amount or Painshare Amount is calculated to be payable under this Agreement which meets the requirements of the guidelines set out in the Project Proposal for demonstrating the matters set out in this clause 4(c)(2) of this Schedule;

(3) if the Participants are unable to demonstrate the matters set out in clause 4(c)(1) of this Schedule, then the Project Owner will be entitled to adjust the payment of any Gainshare Amount under this Agreement to reflect the principles set out in that clause; and

(4) if the Participants are unable to demonstrate the matters set out in clause 4(c)(2) of this Schedule, then the Project Owner will be entitled to adjust the payment of any Gainshare Amount or Painshare Amount (as the case may be) under this Agreement to reflect the principles set out in that clause.

5 AOC underrun or overrun

The AOC underrun or overrun component of the Risk or Reward Regime for the Project will be applied such that:

- (a) [##]/[##] (Project Owner/NOPs) upside reward/underrun sharing[, capped for NOPs at [##]]; and
- (b) [##]/[##] (Project Owner/NOPs) downside risk/overrun sharing[, capped for NOPs at [##]].

A diagram illustrating the mechanism for calculating the Gainshare Amount or Painshare Amount (as the case may be) based on AOC is shown below.

[##].

6 KRA and Performance Modifier performance

The Gainshare Amount or Painshare Amount (as the case may be) based on AOC will be modified to reflect performance against the KRAs and Performance Modifiers such that:

- (a) Stretch Performance against the KRAs (i.e. performance which is better than MCOS Performance against the KRAs) will result in the Gainshare Amount being increased or the Painshare Amount being decreased (as the case may be); and
- (b) Poor Performance against the KRAs (i.e. performance which is worse than MCOS Performance against the KRAs) will result in the Gainshare Amount being decreased or the Painshare Amount being increased (as the case may be),

as further modified for performance against the Performance Modifiers.

6.2 KRAs

The KRAs for the Project are:

- (a)[##].

6.3 Performance against KRAs

The Project Proposal sets out, for each of the KRAs:

- (a) the key performance indicators;
- (b) the weightings;
- (c) what constitutes MCOS Performance, Stretch Performance and Poor Performance;
- (d) methodologies for measuring performance and calculating a performance score; and
- (e) the relationship between the performance score and the calculation of any modification to the Gainshare Amount or Painshare Amount (as the case may be).

6.4 Performance Modifiers

The Performance Modifiers for the Project are:

(a)[*insert*].

6.5 Performance against Performance Modifiers

The Project Proposal sets out, for each Performance Modifier:

- (a) what constitutes a recordable event;
- (b) methodologies for recording these events; and
- (c) the relationship between the occurrence of these events and the calculation of any modification to the Gainshare Amount or Painshare Amount (as the case may be).

6.6 Calculation and payment of Gainshare Amount or Painshare Amount

(a) As soon as practicable after the Date of Practical Completion:

- (1) the ALT will calculate the Interim Gainshare Amount or Interim Painshare Amount (if any and as the case may be) following determination of:

- (A) the sum of the AOC in performing the Works to reach Practical Completion;
- (B) the ALT's expectation of the AOC to the Final Completion Date; and
- (C) the performance of the Participants against the KRAs and the Performance Modifiers for the period from date of this Agreement until the Date of Practical Completion; and

- (2) subject to clauses 4(c)(1) and 4(c)(2) of this Schedule, the Project Owner will make a payment (if any) to the NOPs or the NOPs will make a payment (if any) to the Project Owner (as the case may be) in accordance with clause 3(c) of Schedule 8.

(b) As soon as practicable after the Final Completion Date:

- (1) the ALT will calculate the Gainshare Amount or Painshare Amount (if any and as the case may be) following determination of:

- (A) the sum of the AOC in performing the Works to the Final Completion Date; and
- (B) the performance of the Participants against the KRAs and the Performance Modifiers for the period from the date of this Agreement until the Final Completion Date; and

- (2) subject to clauses 4(c)(1) and 4(c)(2) of this Schedule, the Project Owner will make a payment (if any) to the NOPs or the NOPs will make a payment (if any) to the Project Owner (as the case may be) in accordance with clause 3(d) of Schedule 8.

[Alternative 2 - End]

Schedule 8 - Payment procedures

1 Introduction

The Project Owner and the NOPs acknowledge and agree that:

- (a) the Project Owner will reimburse the NOPs for Reimbursable Costs (as defined in Schedule 5) incurred by them;
- (b) subject to clause 16.6, the Project Owner will pay the NOPs the Corporate Overhead and Profit;
- (c) if applicable, the Project Owner will pay the NOPs a Gainshare Amount or the NOPs will pay the Project Owner a Painshare Amount (as the case may be); and
- (d) if applicable, the Project Owner will pay the NOPs a Performance Reward Amount or the NOPs will pay the Project Owner a Performance Liability Amount (as the case may be).

This Schedule sets out the procedure which will govern the payments referred to above.

2 Payment of Reimbursable Costs and Corporate Overhead and Profit

- (a) As soon as practicable after the end of each Month during the Term, the AMT must prepare and deliver a notice in a format approved by the ALT to the Participants detailing for that Month of the Term:
 - (1) the Reimbursable Costs reasonably and actually incurred by the NOPs; and
 - (2) the entitlement of the NOPs to Corporate Overhead and Profit calculated in accordance with this Agreement, (**Monthly Payment Amount**).
- (b) The NOPs acknowledge and agree that the Project Owner may engage an independent adviser to review and validate the amounts contained in any notice prepared under clause 2(a) of this Schedule and all supporting documentation relating to the amounts contained in that notice will be available for inspection and audit by the Project Owner (or the Project Owner's independent advisor).
- (c) The Project Owner must make payment of the Monthly Payment Amount to the NOPs within 5 Business Days of receipt of the notice under clause 2(a) of this Schedule.
- (d) If the Project Owner is not satisfied for any reason with any of the amounts set out in a notice given by the NOPs under clause 2(a) of this Schedule, the Project Owner must, within 5 Business Days of receipt of the notice under clause 2(a) of this Schedule, give notice to the AMT that the Project Owner is not satisfied with the amounts set out in the notice under clause 2(a) of this Schedule and full details of why it is not satisfied. The AMT must then promptly satisfy the Project Owner's concerns and the provisions of clause 16.5 of this Agreement will apply to any overpayment by the Project Owner of the Monthly Payment Amount.
- (e) This clause 2 of this Schedule does not limit the Project Owner's right to withhold or deduct payments in accordance with this Agreement.

3 Payment of Gainshare Amount or Painshare Amount

- (a) As soon as practicable after the Date of Practical Completion, the ALT must:
- (1) calculate, for the period from the date of this Agreement until the Date of Practical Completion, the Interim Gainshare Amount or Interim Painshare Amount (if any and as the case may be) payable in accordance with the Risk or Reward Regime; and
 - (2) prepare and deliver and notice to the NOPs and the Project Owner which details the Interim Gainshare Amount or Interim Painshare Amount (if any and as the case may be) calculated to be payable.
- (b) All supporting documentation relating to the amount set out in any notice prepared under clause 3(a) of this Schedule must be available for inspection and audit.
- (c) Subject to clause 3(h) of this Schedule, if:
- (1) an Interim Gainshare Amount is calculated to be payable under the Risk or Reward Regime, then, within 20 Business Days of receipt of the notice under clause 3(a) of this Schedule, the Project Owner must pay the NOPs the Interim Gainshare Amount less [##]% (**Gainshare Retention Amount**); or
 - (2) an Interim Painshare Amount is calculated to be payable under the Risk or Reward Regime, then, within 20 Business Days of receipt of the notice under clause 3(a) of this Schedule, the NOPs must pay the Project Owner the Interim Painshare Amount.
- (d) The Participants acknowledge and agree that:
- (1) the payment of any Interim Gainshare Amount or Interim Painshare Amount under clause 3(c) of this Schedule is payment on account only;
 - (2) the Interim Gainshare Amount paid to the NOPs or Interim Painshare Amount paid by the NOPs (if any and as the case may be) is subject to adjustment at Final Completion to reflect the outcome of the calculation of the Gainshare Amount or Painshare Amount under clause 3(d) of this Schedule; and
 - (3) where any Participant is required to refund any part (or all) of the Interim Gainshare Amount to the Project Owner under clause 3(g) of this Schedule, that part of the Interim Gainshare Amount will be deemed to be held on trust for the benefit of the Project Owner.
- (e) As soon as practicable after the Final Completion Date, the ALT must :
- (1) calculate, for the period from the date of this Agreement until the Final Completion Date, the Gainshare Amount or Painshare Amount (if any and as the case may be) payable in accordance with the Risk or Reward Regime;
 - (2) calculate any Gainshare Amount entitlement of the NOPs or any Painshare Amount entitlement of the Project Owner (if any and as the case may be), taking into account:
 - (A) the difference (if any) between the Interim Gainshare Amount or Interim Painshare Amount (if any and as the case may be) paid under clause 3(c) of this Schedule, and the Gainshare Amount or Painshare Amount (if any and as the case may be) calculated to be payable under clause 3(e)(1); and
 - (B) any Gainshare Retention Amount to which the NOPs are entitled; and

- (3) prepare and deliver a notice to the NOPs and the Project Owner detailing the amounts calculated under this clause 3(e).
- (f) All supporting documentation relating to the amount set out in any notice prepared under clause 3(e) of this Schedule must be available for inspection and audit.
- (g) Subject to clause 3(h) of this Schedule, within 20 Business Days of receipt of the notice under clause 3(e) of this Schedule, the Project Owner must pay the NOPs the amount owing to the NOPs or the NOPs must pay the Project Owner the amount owing to the Project Owner (as the case may be) as a result of the calculation as set out in the notice prepared under clause 3(e) of this Schedule.
- (h) If the Project Owner or the NOPs are not satisfied for any reason with the amount set out in a notice under clause 3(a) or clause 3(e) of this Schedule, the Project Owner or the NOPs (as the case may be) must, on or before the date that the payment is due to be made under clause 3(a) or clause 3(e) of this Schedule, give notice to the ALT that it is or they are (as the case may be) not satisfied with the amount set out in the notice under clause 3(a) or clause 3(e) of this Schedule and full details of why it is or they are (as the case may be) not satisfied. If the Project Owner gives or the NOPs give a notice to the ALT under this clause 3(h) of this Schedule, then:
 - (1) the Project Owner or the NOPs (as the case may be) will not be obliged to pay the amount until the concerns of the Project Owner or the NOPs (as the case may be) have been satisfied, or the issue has been resolved, in accordance with this clause 3(h) of this Schedule;
 - (2) the ALT must promptly satisfy those concerns and reissue the notice with an adjusted amount (if necessary) under clause 3(a) or clause 3(e) of this Schedule;
 - (3) if the ALT fails to reach agreement on the manner in which those concerns are to be satisfied, then the Participants must comply with the procedure set out in Schedule 14 to resolve the issue; and
 - (4) following payment of the amount set out in the reissued notice under clause 3(a) or clause 3(e) of this Schedule, the provisions of clause 16.5 of this Agreement will apply to any overpayment of the amount.

4 Payment of Performance Reward Amount or Performance Liability Amount

- (a) As soon as practicable after the Date of Practical Completion, the ALT must prepare and deliver a notice to the Project Owner and the NOPs detailing for the period from the date of this Agreement until the Date of Practical Completion the Performance Reward Amount or the Performance Liability Amount (if any and as the case may be) calculated to be payable under the Risk or Reward Regime.
- (b) All supporting documentation relating to the amount set out in any notice prepared under clause 4(a) of this Schedule must be available for inspection and audit.
- (c) Subject to clause 4(e) of this Schedule, within 20 Business Days of receipt of the notice under clause 4(a) of this Schedule, the Project Owner must pay the NOPs any Performance Reward Amount or the NOPs must pay the Project Owner any Performance Liability Amount (as the case may be) set out in the notice issued under clause 4(a) of this Schedule.

- (d) As soon as practicable after the Final Completion Date, the ALT must prepare and deliver a notice to the Project Owner and the NOPs detailing for the period from the date of this Agreement until the Final Completion Date the Performance Reward Amount or the Performance Liability Amount (if any and as the case may be) calculated to be payable under the Risk or Reward Regime adjusted by the amount of the payment made under clause 4(c) of this Schedule. Clause 4(c) of this Schedule applies to the payment of the amount calculated under this clause 4(d) of this Schedule.
- (e) If the Project Owner or the NOPs are not satisfied for any reason with the amount set out in a notice under clause 4(a) or clause 4(d) of this Schedule, the Project Owner or the NOPs (as the case may be) must, on or before the date that the payment is due to be made under clause 4(c) of this Schedule, give notice to the ALT that it is or they are (as the case may be) not satisfied with the amount set out in the notice under clause 4(a) or clause 4(d) of this Schedule and full details of why it is or they are (as the case may be) not satisfied. If the Project Owner gives or the NOPs give a notice to the ALT under this clause 4(e) of this Schedule, then:
 - (1) the Project Owner or the NOPs (as the case may be) will not be obliged to pay the amount until the concerns of the Project Owner or the NOPs (as the case may be) have been satisfied, or the issue has been resolved, in accordance with this clause 4(e) of this Schedule;
 - (2) the ALT must then promptly satisfy those concerns and reissue the notice with an adjusted amount (if necessary) under clause 4(a) or clause 4(d) of this Schedule;
 - (3) if the ALT fails to reach agreement on the manner in which those concerns are to be satisfied, then the Participants must comply with the procedure set out in Schedule 14 to resolve the issue; and
 - (4) following payment of the amount set out in the reissued notice under clause 4(a) or clause 4(d) of this Schedule, the provisions of clause 16.5 of this Agreement will apply to any overpayment of the amount.

5 Procedures

Within 20 Business Days of the date of this Agreement, the ALT must develop such further procedures as are necessary to define in detail the processes for payment. Those procedures must be based on the principles set out in this Schedule and are subject to the approval (or otherwise) of the ALT.

Schedule 9 - Insurance policies

1 Insurance policies to be effected and maintained by the Owner Participant

1.1 Insurance of the Works

- (a) The Owner Participant must effect contract works insurance insuring the Works (which includes the transit of Materials ex-works to Site) in the joint names of the Owner Participant, the NOPs and Subcontractors.
- (b) This insurance must be for the full replacement cost and cover the costs of demolition and removal of debris.

- (c) This policy must cover the Project Owner, the NOPs and Subcontractors and it must come into effect on the date of the commencement of the Works and continue until two years from the Date of Practical Completion of all of the Works.

1.2 Combined general liability insurance policy

- (a) The Owner Participant must effect a combined general liability insurance policy in the names of the Owner Participant, the NOPs and Subcontractors, whether nominated or otherwise for their respective rights and interests and liabilities, for an amount not less than [##] arising from any one occurrence in respect of:
 - (1) death of or personal injury (including illness) to any person not being a person who at the time of the occurrence is engaged in or upon the service of the insured under a contract of service or apprenticeship; and
 - (2) damage to property not belonging to nor in the care, custody or control of the insured, caused by an event occurring during the period of insurance arising out of or in the course of or by reason of the performance or purported performance of the Works.
- (b) The insurance referred to in this clause 1.2 of this Schedule must commence on the date of commencement of the Works and continue until the expiration of the Term.

1.3 Professional indemnity insurance

- (a) The Owner Participant must effect a professional indemnity insurance policy in the names of the Owner Participant, the NOPs and any Subcontractors providing professional services.
- (b) This insurance must include a limit of liability of no less than [##] for any one claim and [##] in the aggregate in relation to claims by Third Parties, and be in the name of the NOPs and the Subcontractors providing professional services and endorsed to indemnify the Project Owner as a co-insured.
- (c) This insurance must be arranged so that it comes into effect on [##date] and be effected and maintained for a period of 6 years from the date of inception of the insurance policy.
- (d) Prior to the issue of the Final Certificate under 11.1, the ALT must meet and determine what, if any, insurance arrangements are to be put in place to address the risks of claims arising following the expiration of the 6 year period. As part of this process, the ALT will consider whether any amendments are required to this Agreement to give effect to those agreed insurance arrangements. If the ALT determines that additional insurance is required or the current policy should be renewed or extended, any costs associated with effecting and maintaining that additional insurance or extension or renewal of the current policy will be Reimbursable Costs and the amount of the costs must be added to the TOC so that the TOC is increased for the purposes of the calculation of any Gainshare Amount or Painshare Amount (if any and as the case may be) under the Risk or Reward Regime.

1.4 Workers' compensation

- (a) The Owner Participant must insure its liability (including its common law liability), as required under any Statutory Requirement, to its employees engaged in doing anything for the purpose of exercising or performing the Owner Participant's rights or obligations under this Agreement. The common law cover required by this clause 1.4 of this Schedule must be for an amount of not less than [##] in respect of any one accident other than as required by a Statutory Requirement.
- (b) The Owner Participant must obtain endorsement of the workers' compensation and employers' indemnity policy referred to this clause 1.4 of this Schedule to provide cover in respect of liability incurred by the Owner Participant to the NOPs' employees, arising by virtue of a Statutory Requirement and at common law.

1.5 Motor vehicle insurance

The Owner Participant must effect motor vehicle third party liability insurance against property damage and injury to and death of persons, arising from the use of motor vehicles belonging to or in the care, custody or control of the Project Owner and used in connection with the Works, for an amount of not less than [##] arising from any one event in addition to any obligation under a Statutory Requirement for insurance relating to motor vehicles.

2 Insurance policies to be effected and maintained by the NOPs

2.1 Construction and equipment insurance

Each of the NOPs must insure Construction Plant, equipment, tools, facilities, hutments, services, construction aids and the like, belonging to it or under its physical or legal care, custody or control and including its employees' effects whilst on a Site or being mobilised to the Site or being demobilised from a Site, supplied, leased or hired by the NOP for use in connection with the performance of the Works. The insurance effected and maintained pursuant to this clause 2.1 of this Schedule must be:

- (a) unless otherwise agreed by the Owner Participant, for the insured property's market value;
- (b) extended to include the interest, if any, of the Owner Participant;
- (c) against all risks and physical loss or damage arising from any cause which:
 - (1) occurs during the period commencing on the date of commencement of the Works and ending on the date the NOPs have completed demobilisation from every Site; or
 - (2) becomes apparent after the Date of Practical Completion (as specified in the Certificate of Practical Completion) and before the date of issue of the Final Certificate provided that the cause has occurred prior to or on the Date of Practical Completion,

and in either case arises out of or in the course of or by reason of the performance or purported performance of the Works.

2.2 Workers' compensation

- (a) The NOPs must insure their liability (including their common law liability), as required under any Statutory Requirement, to their employees engaged in doing anything for the purpose of exercising or performing the relevant NOPs' rights or obligations under this Agreement. The common law cover required by this clause must be for an amount of not less than [##] in respect of any one accident other than as required by a Statutory Requirement.
- (b) Each NOP must also ensure that each of its Subcontractors insures its liability (including its common law liability) as required under any Statutory Requirement to their employees engaged in doing anything for the purpose of executing the relevant NOP's rights or obligations under this Agreement. The common law cover required by this clause 2.2 of this Schedule must be for an amount of not less than [##] or such other amount as agreed by the ALT in respect of any one accident other than as required by a Statutory Requirement.
- (c) The workers' compensation policy or policies required by this clause 2.2 of this Schedule must be endorsed to:
 - (1) indemnify the Owner Participant against any liability which it may incur to such employees, arising by virtue of a Statutory Requirement and at common law; and
 - (2) provide cover in respect of each and every claim for an amount not less than the minimum as specified in any Statutory Requirement.

2.3 Motor vehicle insurance

The NOPs must effect motor vehicle third party liability insurance against property damage and injury to and death of persons, arising from the use of motor vehicles belonging to or in the care, custody or control of a NOP and used in connection with the Works, for an amount of not less than [##] arising from any one event in addition to any obligation under a Statutory Requirement for insurance relating to motor vehicles.

Schedule 10 - Project Proposal

[##details]

Schedule 11 - Project Owner and Participants' contact details

1 Project Owner

Address: [##insert name] [##insert address]

Fax: [##insert facsimile number]

Attention: [##insert name]

2 Owner Participant

Address: *##insert name* *##insert address*

Fax: *##insert facsimile number*

Attention: *##insert name*

3 Non-Owner Participant 1

Address: *##insert name* *##insert address*

Fax: *##insert facsimile number*

Attention: *##insert name*

4 Non-Owner Participant 2

Address: *##insert name* *##insert address*

Fax: *insert facsimile number*

Attention: *##insert name*

Schedule 12 - Termination payment

1 Termination payments - termination of Agreement for convenience

- (a) Subject to the Project Owner's rights under or in connection with this Agreement, if this Agreement is terminated in accordance with clause 23.1, the Project Owner must pay the NOPs, or the NOPs must pay the Project Owner (as the case may be), an amount which is to be agreed between the Participants or, failing agreement, an amount determined by an Adjudicator in accordance with the provisions of this Schedule.
- (b) In agreeing the amount payable under this clause, the Participants must have regard to the following:
 - (1) the Reimbursable Costs, Corporate Overhead and Profit, Gainshare Amount or Painshare Amount (if any and as the case may be) and Performance Reward Amount or Performance Liability Amount (if any and as the case may be) payable in accordance with clause 16.1 for the Works performed prior to the date of termination. In considering any Gainshare Amount or Painshare Amount (as the case may be) or Performance Reward Amount or Performance Liability Amount (if any and as the case may be) that may be payable, the Participants must, in Good Faith, estimate the Gainshare Amount or Painshare Amount (if any and as the case may be) or Performance Reward Amount or Performance Liability Amount (if any and as the case may be) which would have been payable during the course of this Agreement, if this Agreement had not been terminated under clause 23.1;
 - (2) the cost of Materials reasonably ordered by the NOPs for the Works, which the NOPs are legally liable to accept, but only if the Materials become the property of the Project Owner upon payment;

- (3) costs reasonably and actually incurred by the NOPs in the expectation of completing the whole of the Works including costs or damages incurred by reason of the NOPs having to terminate contractual arrangements with other parties that were entered into for the purposes of the Works, those costs and damages not having been accounted for in any payment by the Project Owner (including any payment to be made by the Project Owner under a new agreement as referred to in clause 1(b)(7) of this Schedule);
 - (4) reasonable costs of demobilisation;
 - (5) the reasonable costs of complying with any directions given by the Project Owner upon, or subsequent to, termination;
 - (6) any amounts which the Project Owner has previously paid to the NOPs; and
 - (7) if any of the NOPs agree to continue with the Works as contemplated by clause 25.3, the extent to which Materials, orders made and other matters the subject of the costs outlined in this clause 1(b) of this Schedule can be used in any new agreement entered into between those NOPs for the continuation of the Works.
- (c) Payments made under this Schedule are the only liability of the Project Owner in relation to or in connection with a termination under clause 23.1 and the Project Owner is not otherwise liable to the NOPs for any cost, loss (including Consequential Loss), expense or damage incurred by the NOPs as a consequence of, or in connection with, this Agreement, the Works, or the termination.
- (d) Any issue between the Participants regarding the amount payable under clause 1(a) of this Schedule must be referred to the Adjudicator for determination.
- (e) Notwithstanding the undertaking to avoid issues arising between the Participants and litigation or arbitration set out in clause 5.1 of this Agreement, the Project Owner and the NOPs are entitled to recover the amount as determined in accordance with this clause if that amount is not paid within 20 Business Days of the date of agreement between the Participants or the date of determination by an Adjudicator, as the case may be.

2 Independent Adjudicator

2.1 Referral of certain issues to an Adjudicator

If an issue arises between the Participants in respect of the amount payable under clause 1 of this Schedule, then a Participant may by notice in writing to the others, specify the nature of the issue and call for submission of the issue to an Adjudicator to determine it. In the event of a submission of the issue to the Adjudicator, the Adjudicator must determine the amount payable by the Project Owner to the NOPs or the NOPs to the Project Owner (as the case may be) by determining the net sum of the amounts set out in clauses 1(b)(1) to (7) of this Schedule (**Determination**).

2.2 Nomination of Adjudicator

The procedure for appointing the Adjudicator is as follows:

- (a) Written notice must be given by the Participant calling for the appointment of the Adjudicator, including details of the matter to be resolved by the Adjudicator, to the other Participants.
- (b) If the matter is not resolved within 5 Business Days from the date of the notice, the Participants must agree on a single Adjudicator to determine the issue.
- (c) If, within 5 Business Days of the notice, the Participants fail to agree on a single Adjudicator, then the Participants must, as soon as practicable, request the [relevant authorities] to appoint the Adjudicator.
- (d) Upon agreement of the Participants, or appointment of an Adjudicator under clause 2.2(c) of this Schedule, the Participants and the Adjudicator must enter into an agreement which will govern the determination of the issue. That agreement must be consistent with the provisions of this Schedule.

2.3 Adjudicator to have appropriate experience

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

2.4 Confidentiality

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

2.5 Powers of Adjudicator

The Adjudicator will have the following powers:

- (a) to determine an issue regarding the amount payable under clause 1(a) of this Schedule;
- (b) to inform itself independently as to facts to which the issue relates;
- (c) to obtain evidence from any person in relation to any aspect of the issue;
- (d) to receive written submissions and sworn and unsworn written statements and to photocopy documents and to act upon the same;
- (e) to consult with such other professionally qualified persons as the Adjudicator in its absolute discretion thinks fit; and
- (f) to take such measures as the Adjudicator thinks fit to expedite the completion of the issue resolution, but the Adjudicator will only have the power to determine an issue

regarding the amount payable under clause 1(a) of this Schedule and no other issue (unless the Participants otherwise agree).

2.6 Timing of issue resolution

It will be a term of the Adjudicator's appointment that the Adjudicator must be required to make a determination of the issue within 20 Business Days of the Adjudicator's appointment or such further period as the Participants may agree. If any Participant considers that the issue is of an urgent nature and needs to be resolved within a shorter period, then that Participant may require the period of 20 Business Days to be reduced to such period as that Participant may reasonably require, being not less than 5 Business Days.

2.7 Written determination

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

2.8 Issue resolution to be held in [##insert place]

The issue resolution must be held in [##insert place] unless the Participants otherwise agree.

2.9 Adjudicator's Determination is final

The Adjudicator must act as an expert and not an arbitrator. The determination is final and binding on the Participants except in the case of manifest error or if the Adjudicator has acted in bad faith.

2.10 Costs of Adjudicator

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

2.11 Referral to Adjudicator does not affect the obligations of the Participants

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

Schedule 13 - Project Owner's representative

1 Role

The Project Owner's representative must perform all of the Project Owner's obligations in the Project Owner's capacity as client for the performance of the Works under this Agreement.

2 Responsibilities

2.1 General

The Project Owner's representative's responsibilities can be divided into 4 categories:

- (a) scope of Works;
- (b) financial accountability;
- (c) liaison and facilitation; and
- (d) ownership.

The responsibilities of the Project Owner in respect of the 4 categories identified above include the matters set out in clauses 2.2 to 2.5 of this Schedule.

2.2 Scope of Works

The Project Owner's representative:

- (a) must facilitate the Participants' access to documentation, which describes the Project Owner's requirements for the design, documentation and construction of the Works; and
- (b) may direct the Participants in writing to change the Works in accordance with clause 13.1.

2.3 Financial Accountability

The Project Owner's representative must:

- (a) specify the required format and intervals for reporting to the Project Owner on financial and other matters;
- (b) determine any adjustments to be made to any or all of the TOC, the KRAs and the Date for Practical Completion where an Adjustment Event occurs;
- (c) ensure all payments to the NOPs for the Reimbursable Costs that the NOPs incur are made in accordance with this Agreement;
- (d) ensure verification and payment of any Gainshare Amount or Painshare Amount (if any and as the case may be) and Performance Reward Amount or Performance Liability Amount (if any and as the case may be);
- (e) receive the security for performance required to be provided by the NOPs under this Agreement;
- (f) in accordance with the terms of this Agreement, make a demand on the security provided by the NOPs;

- (g) return the security provided by the NOPs to the NOPs within one Month of the date of the contents of the Final Certificate being agreed; and
- (h) ensure payment on the Final Certificate to the extent that the Project Owner is required to make payment to the NOPs under the Final Certificate.

2.4 Liaison and facilitation

The Project Owner's representative must:

- (a) communicate directly with the chairperson of the ALT, Alliance Manager and the AMT on operational issues;
- (b) attend ALT meetings as required, and other meetings by agreement with the Alliance Manager;
- (c) ensure that the Project Owner provides relevant information in a timely manner;
- (d) communicate to the Project Owner issues arising from the Participants;
- (e) facilitate access to relevant resources and expertise in the Project Owner for the benefit of the Participants; and
- (f) ensure relevant support staff within the Project Owner understand the nature of the alliance, and the obligations placed on the Participants.

2.5 Ownership

The Project Owner's representative must:

- (a) give the Participants possession of each Site or sufficient of each Site to enable the Participants to perform the Works;
- (b) issue a Certificate of Practical Completion for the Works to the Participants in accordance with this Agreement and be satisfied that defects or omissions are rectified before the end of the Defects Liability Period;
- (c) receive all documents and information in respect of the design and construction of the Works including all design documentation, surveys and as constructed information together with any other documentation, which ought to be held by the Project Owner with respect to the Works;
- (d) to the extent required, make payment to the NOPs on the Final Certificate in accordance with this Agreement; and
- (e) if necessary, suspend the progress of the whole or part of the Works in accordance with clause 22.2.

Schedule 14 - Issue resolution procedures

1 Issue resolution principles

The principles to underpin how issues will be handled by the alliance are agreed as follows.

- (a) Issues resolved in accordance with the Alliance Principles.
- (b) Issues resolved at lowest practical level within the alliance.
- (c) Issues resolved quickly.
- (d) Issues resolved via an agreed escalation procedure which covers people, authorities, issues and resolution time.
- (e) Final place for resolution of all issues is the ALT.
- (f) Issue resolution at the ALT is unanimous.

2 Issue resolution process

The issue resolution process is as follows.

- (a) The ALT must use its best endeavours to resolve the issue at no less than two separate ALT meetings.
- (b) If the issue cannot be resolved by the ALT, the Participants can refer the issue to a separate meeting of authorised officers of each Participant (who must meet within 2 Business Days of the issue being referred to them and attempt to resolve the issue within 5 Business Days).
- (c) If the authorised officers of each Participant cannot resolve the issue within 5 Business Days of the issue being referred to them, then, subject to the no litigation or arbitration principle set out in clause 5, the Project Owner must determine (taking into account the nature of the issue) the manner in which the issue is to be resolved by nominating, by notice in writing to the Participants, one of the following issue resolution mechanisms for resolution of the issue:
 - (1) except in circumstances where the no litigation or arbitration principle set out in clause 5 applies, referral of the issue to arbitration in accordance with clause 3 of this Schedule;
 - (2) determination of the issue by an expert (**Expert**) in accordance with clauses 4 of this Schedule; or
 - (3) except in circumstances where the no litigation or arbitration principle set out in clause 5 applies, commencement of legal proceedings to resolve the issue.

3 Referral to arbitration

- (a) If the Project Owner determines that the issue will be resolved by referral to arbitration, then any referral of the issue to arbitration must be in accordance with **[##insert relevant legislation]**.
- (b) The arbitration will be held in **[##insert place of arbitration]** or any other place as agreed by the ALT.

- (c) The arbitrator of the issue is to be selected by the ALT, which must in Good Faith confer to attempt to agree on an arbitrator within 5 Business Days of the Project Owner notifying the Participants that the issue be referred to arbitration in accordance with this clause 3 of this Schedule.
- (d) If the identity of the arbitrator cannot be agreed by the ALT within the 5 Business Day period referred to in clause 3(c) of this Schedule, the arbitrator will be nominated by **[##insert nominating body]**.
- (e) The determination of the arbitrator in respect of the issue made in accordance with this clause 3 of this Schedule will be final and binding on the Participants except where there is a manifest error or the arbitrator has acted in bad faith and a Participant challenges the determination within 5 Business Days of the determination being made by the arbitrator.

4 Determination by Expert

- (a) If the Project Owner determines that the issue will be determined by an Expert, then the Expert is to be selected by the ALT, which must in Good Faith confer to attempt to agree on an independent industry expert within 5 Business Days of the Project Owner notifying the Participants that the issue be determined by an Expert in accordance with this clause 4 of this Schedule.
- (b) If the identity of the Expert cannot be agreed by the ALT within the 5 Business Day period referred to in clause 4(a) of this Schedule, the Expert will be nominated by **[##insert nominating body]**.
- (c) The Participants must enter into an agreement with the nominated or agreed expert on such terms as the Expert may require which are consistent with clause 4(d) of this Schedule and which do not in anyway modify or vary the requirements of clause 4(d) of this Schedule.
- (d) The process required for determination of the issue by the Expert must be administered as follows:
 - (1) the Participants must:
 - (i) deliver to the Expert a notice setting out the parameters of the determination to be made by the Expert;
 - (ii) not communicate with the Expert without the prior written consent of the other Participants; and
 - (iii) provide the Expert with all of the information, documents and assistance necessary for the Expert to make a determination in respect of the issue and ensure that such information is made available to all of the other Participants;
 - (2) the Expert will:
 - (i) act as an expert and not as an arbitrator;
 - (ii) proceed in any manner he or she thinks appropriate, without being bound by the rules of evidence, but whilst observing the rules of natural justice;

- (iii) take into consideration all of the documents, information and other material which the Participants give the Expert including all of the documents, information and material relating to the facts in dispute and to arguments and submissions upon the matters in dispute;
 - (iv) not be expected or required to obtain or refer to any other documents, information or material, but may do so if he or she thinks appropriate;
 - (v) be permitted to conduct inspections upon the giving of reasonable notice to the Participants;
 - (vi) use his or her own knowledge and expertise in forming his or her conclusion;
 - (vii) make his or her determination concerning the issue within 30 Business Days from the acceptance by the Expert of the appointment, or such extended period as the Expert and the ALT may agree; and
 - (viii) not communicate with one Participant without the knowledge of the other Participants;
- (3) the Expert may, if he or she thinks appropriate, arrange to meet or otherwise have discussions with the Participants, together but not separately, and in connection with any such meetings or discussions:
- (i) a Participant may be accompanied by legal or other advisers; and
 - (ii) the Participants and the ALT agree to be bound by such procedural directions as may be given by the Expert, both in preparation for and during the course of the meeting or discussions;
- (4) the Participants and the ALT agree and undertake to produce such information and documents as the Expert may from time to time direct in such place and at such time as the Expert may direct;
- (5) the Expert may commission his or her own advisers or consultants, including lawyers, accountants, bankers, engineers, surveyors or other technical consultants, to provide information to assist the Expert in reaching his or her determination in respect of the issue;
- (6) the Participants must indemnify (in equal shares) the Expert for the reasonable cost of retaining those advisers or consultants;
- (7) the Expert will disclose to all of the Participants and the ALT any relationship or interest with the Participants or their respective officers, employees, contractors, consultants or agents who were involved in the reaching of the Expert's determination in respect of the issue and any interest the Expert has in the matters in dispute; and
- (8) if the Expert becomes aware of any circumstance which might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, the Expert will immediately inform the Participants.
- (e) The determination of the Expert in respect of the issue made in accordance with this clause 4 of this Schedule will be final and binding on the Participants except where there is a manifest error or the Expert has acted in bad faith and a Participant

challenges the determination within 5 Business Days of the determination being made by the Expert.

Schedule 15 - Parent company guarantee

This Deed of Guarantee and Indemnity

is made on by the following party:

[##insert name of Non-Owner Participant]

ABN [##insert ABN of NOP Guarantor] of [##insert address of NOP Guarantor]
(Guarantor)

Recitals

- A. On or about the date of this deed, [##Project Owner], of [##address] (Principal) entered into a Alliance Agreement (**Agreement**) with [##details] (Non-Owner Participant) and [##details].
- B. It is a requirement under clause 26.5 of the Agreement that the Guarantor enter into, execute and deliver this deed.

This deed witnesses

that in consideration of the Principal accepting this deed in satisfaction of Non-Owner Participant's obligations under clause 26.5 of the Agreement, the Guarantor agrees:

1 Definitions and interpretation

1.1 Definitions

In this deed, unless the context otherwise requires, a word or phrase defined in the Agreement has the same meaning as in the Agreement.

1.2 Interpretation

In this deed (including the Recitals), unless a contrary intention appears:

- (a) headings and under linings are for convenience only and do not affect the interpretation of this deed;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association or other body corporate;
- (e) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or

replacing it and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;

- (f) all prices and sums of money and all payments made under this deed are in [national] currency;
- (g) a reference to the word “including” means “including without limitation” and references to “includes” means “includes without limitation”; and
- (h) a reference to a document (including this deed) is that document as varied, amended, novated, ratified or replaced from time to time.

2 Guarantee

The Guarantor unconditionally and irrevocably guarantees to the Principal the due and punctual performance of the obligations of NOP under the Agreement including:

- (a) the discharge of the obligations and liabilities of NOP under the Agreement; and
- (b) the payment of all debts and monetary liabilities of NOP to the Principal under the Agreement.

3 Guarantor to perform

If, in the Principal’s opinion, NOP fails to perform any of Non-Owner Participant’s obligations or discharge any of Non-Owner Participant’s liabilities under the Agreement, the Guarantor must forthwith:

- (a) upon receipt of notice from the Principal requiring it to do so, perform those obligations or discharge those liabilities (as the case may be) and thereafter continue to perform those obligations and discharge those liabilities (as the case may be) until the termination of the Agreement by the effluxion of time or otherwise; and
- (b) upon demand, pay to the Principal all losses, damages, costs (including legal costs on a full indemnity basis) and expenses suffered or incurred by the Principal arising from or connected with Non-Owner Participant’s failure to perform any of Non-Owner

Participant’s obligations or to discharge any of Non-Owner Participant’s liabilities under the Agreement.

4 Indemnity

The Guarantor indemnifies the Principal against all claims, losses, actions, damages, costs (including legal costs on a full indemnity basis) and expenses that the Principal may suffer or incur arising from or in connection with the Agreement by reason of:

- (a) any default in or breach or failure to perform or observe any of the terms and conditions of the Agreement by Non-Owner Participant; or
- (b) the relevant NOP being wound up (except for the purpose of reconstruction or amalgamation the terms of which have previously been approved in writing by the

Principal) or becoming insolvent or bankrupt or entering into a composition with its creditors or having an administrator, a receiver, a receiver/manager, liquidator appointed or any other external controller (as that terms is defined in the Corporations Act) appointed.

5 Payments

All payments which the Guarantor is required to make under this deed must be made without any set-off, counterclaim, condition or deduction and must be made by the Guarantor on demand by the Principal.

6 Certificate

A certificate signed by an authorised representative of the Principal, or any person authorised in writing by an authorised representative of the Principal, stating the amount payable under this deed is prima facie evidence of that amount.

7 Representations and warranties

(a) The Guarantor represents and warrants that:

- (1) it has full power and authority to enter into and perform its obligations under this deed;
- (2) it has taken all necessary action to authorise the execution, delivery and performance of this deed;
- (3) this deed constitutes legal, valid and binding obligations;
- (4) each of its representations and warranties contained in this deed is true, correct and not misleading when made or repeated or regarded as made or repeated; and
- (5) all information provided to the Principal by or on behalf of the Guarantor is true and correct in all material respects and is not, whether by omission of information or otherwise, misleading.

(b) The representations and warranties in this clause 7 survive the execution of this deed.

8 Continuing obligation

The guarantee and indemnity contained in this deed are continuing obligations of the Guarantor, despite any settlement of account or the occurrence of any other thing and remains in full force and effect until all the obligations of NOP under the Agreement have been performed.

9 Independent obligation

The guarantee and indemnity contained in this deed are separate and independent obligations of the Guarantor and neither limits the generality of the other.

10 Nature of Guarantor's obligations

10.1 Principal obligations

The obligations of the Guarantor under this deed in respect of the Agreement are principal obligations and are not released, discharged or otherwise affected by anything which but for this provision might have that effect, including:

- (a) the grant to any person of any time, concession, waiver, covenant not to sue or other indulgence or release;
- (b) any arrangement made between the Principal and the relevant Non-Owner Participant;
- (c) any alteration, amendment or variation of the Agreement; or
- (d) any assignment, novation, assumption or transfer of, or other dealing with, any rights or obligations under the Agreement.

10.2 Application of Clause 10.1

Clause 10.1 applies irrespective of the consent or knowledge, or lack of consent or knowledge, of the Principal, the Guarantor or any other person of any event described in clause 10.1 or of any rule of law or equity to the contrary.

11 Costs and expenses

The Guarantor must pay all taxes, duties, fees, costs and expenses in relation to the negotiation, preparation, execution, delivery, stamping, registration and discharge of this deed and the enforcement or protection or attempted enforcement or protection of any rights or powers of the Principal under this deed, including any legal costs and expenses and any professional consultant's fees in respect of any of the above on a full indemnity basis.

12 Notices

12.1 How and where notices may be sent

A notice or other communication (**Notice**) under this deed must be in writing and delivered by hand or sent by pre-paid post or fax to a party to this deed at the address or the fax number for that party specified in clause 12.5 or as otherwise specified by a party by Notice.

12.2 Notices sent by company

A Notice sent by a company must be signed by a duly authorised officer or representative of the sender.

12.3 Email not to be used

Email or similar electronic means of communication must not be used to give Notices under this deed.

12.4 When Notices are taken to have been given and received

- (a) A Notice sent by post is regarded as given and received on the second Business Day following the date of postage.
- (b) A fax is regarded as given and received on production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the recipient's fax number, unless the recipient informs the sender that the Notice is illegible or incomplete within 4 hours of it being transmitted.
- (c) A Notice delivered or received other than on a Business Day or after 4.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day and a Notice delivered or received before 9.00am (recipient's time) is regarded as received at 9.00am.

12.5 Contact details

Any Notice must be addressed as below:

(a) Guarantor

Address: [##details]

Attention: [##details]

Facsimile: [##details]; and

(b) Principal

Address: [##details]

Attention: [##details]

Facsimile: [##details].

13 General

13.1 Governing law and jurisdiction

This deed is governed by the laws of [details] and the Guarantor irrevocably submits to the [exclusive/non-exclusive] jurisdiction of courts exercising jurisdiction in [details] and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

13.2 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this deed which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this deed which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

13.3 Waivers

Waiver of any right, power, authority, discretion or remedy arising upon default under this deed must be in writing and signed by the party granting the waiver.

13.4 Cumulative rights

The rights, powers and remedies provided in this deed are cumulative and are not exclusive of any rights, powers or remedies provided by law.

Executed as a deed

Guarantor

The common seal of

Guarantor

is fixed to this document in the presence of

Company Secretary/Director

Signature: _____

Print name: _____

Director

Signature: _____

Print name: _____

Schedule 16 - Form of Joint Venture Agreement

Guidance Note - This is an optional schedule which should only be included in the Agreement where the NOPs have formed an unincorporated joint venture for the purposes of the Project. If the NOPs have formed an unincorporated joint venture for the Project, then the form of joint venture agreement will need to be attached in this Schedule.

Signing page

Executed as a deed

[## Insert execution block for Project Owner]

Non-Owner Participant 1

Signed by

[## Insert Non-Owner Participant 1]

By

Company Secretary/Director

Signature: _____

Print name: _____

Director

Signature: _____

Print name: _____

Non-Owner Participant 2

Signed by

[## Insert Non-Owner Participant 2]

By

Company Secretary/Director

Signature: _____

Print name: _____

Director

Signature: _____

Print name: _____