DATED DAY OF 2017

**PROJECT ALLIANCE AGREEMENT**

**PUBLIC TRANSPORT PROJECTS**

**NO.17C470**

**BETWEEN**

**miNISTER FOR TRANSPORT, INFRASTRUCTURE AND LOCAL GOVERNMENT**

**(“****Minister”)**

**-AND-**

**(“****Constructor NOP”)**

**AND**

**(“Designer NOP”)**



**CROWN SOLICITOR**

**Level 9, 45 Pirie Street, Adelaide SA 5000**

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\*          Included on CD-ROM appended to this Agreement.

\*\*        The CD-ROM appended to this Agreement contains an index showing TeamBinder document numbers for Concept Design.

\*\*\*      Available on TeamBinder.

**THIS AGREEMENT** is made on day of 2017

PARTIES:

**miNISTER FOR TRANSPORT, INFRASTRUCTURE AND LOCAL GOVERNMENT** of Level 12, Roma Mitchell House, 136 North Terrace, Adelaide, South Australia, 5000, of the first part (“**Minister**”)

**AND**

(“**Constructor NOP**”)and(“**Designer NOP**”) and (“**Designer NOP**”)of ), together of the second part

**BACKGROUND:**

1. The Minister is responsible for the care, control and management of certain road and rail lines in the Adelaide Metropolitan area.
2. The Minister wishes to undertake the Public Transport Projects Alliance (the Project),which will include:
3. the grade separation of the Oaklands Rail Crossing on the Seaford mainline near the Oaklands Station, Oaklands Park;
4. the constructions of a new Port Dock Railway station and spur line off the Outer Harbor mainline; and
5. Upgrade existing Park’n’ride facilities at Klemzig and Tea Tree Gully.
6. The Minister, Designer NOP, and Constructor NOP have agreed to form a project alliance to deliver the Project.
7. The Participants have agreed to form the alliance in the manner and on the terms set out in this Agreement.

**IT IS AGREED**:

# definitions

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

## Act of Insolvency

Any of the following:

### an NOP or its parent or ultimate holding company informs the Minister’s Representative or any of its or the parent or ultimate holding company’s creditors that it is insolvent or unable to pay its debts as they fall due;

### an NOP or its parent or ultimate holding company enters into a composition or arrangement with its creditors or calls a meeting of creditors to enter into a composition or arrangement;

### a mortgagee seeks to exercise a right of possession or control over the whole or part of an NOP or its parent or ultimate holding company's property;

### an NOP or its parent or ultimate holding company takes or has instituted against it an action or proceedings whether voluntary or compulsory with the object of, or which may result in, the winding-up of the NOP or its parent or ultimate holding company;

### an NOP or its parent or ultimate holding company has a winding-up order made against it or passes a resolution for winding-up;

### an NOP or its parent or ultimate holding company goes into liquidation;

### any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of the NOP or its parent or ultimate holding company; or

### an act is done or an event occurs which, under the laws from time to time of a country having jurisdiction in relation to the NOP or its parent or ultimate holding company, has an analogous or similar effect to any of the events in clauses 1.1.1 to 1.1.7 of this definition.

## Actual Outturn Cost (AOC)

The aggregate of:

### all Reimbursable Costs incurred by the NOPs in performing Alliance Activities;

### all Reimbursable Costs incurred by the Minister, or paid by the Minister, in performing Alliance Activities not paid to the NOPs;

### any other costs, loss, expense or damage that are expressed as, or to be, a Reimbursable Cost under this Agreement; and

### all Fees paid or payable by the Minister to the NOPs.

## Actual Completion Date

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

## Adjustment Event

Is limited to the following:

### a Variation;

### a Change of Law;

### an act, event or circumstance identified as an Adjustment Event in this Agreement or the Adjustment Event Guidelines;

### a Wilful Default by the Minister; and

### an Excepted Risk.

## Adjustment Event Guidelines

The document in Attachment 8.

## Agreement

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

## AGM Accountabilities and Responsibilities Matrix

The AGM accountabilities and responsibilities matrix set out in Attachment 5.

## Alliance

The Project Alliance, which the Participants have created to undertake the Project.

## Alliance General Manager (AGM)

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

## Alliance Leadership Team (ALT)

The leadership team established under the Alliance Management Framework.

## Alliance Management Team (AMT)

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

## Alliance Principles

The principles set out in clause 4.

## Alliance Activities

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

## Associate

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

### in the case of the Minister includes:

#### any officer, employee, agent, contractor, consultant, nominee, secondee, licensee of the Minister; and

#### any person who directly or indirectly provides advice to the Minister in connection with this Agreement, the Alliance Activities, the Works or the Project and any Associate of that person;

### in the case of an NOP includes:

#### a Related Entity or any officer, employee, agent, contractor, consultant, nominee, secondee, licensee of the NOP or Related Entity and anyone who is an associate under sections 10 to 17 of the Corporations Act 2001; and

#### any person who directly or indirectly provides advice to the NOP or Related Entity in connection with this Agreement, the Alliance Activities, the Works or the Project and any Associate of that person.

## Authority

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

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

### a Participant;

### the Site; or

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

## Audit

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

## Best for Project

A Determination that:

### is consistent with the Alliance Principles;

### satisfies the requirements of the Value for Money Statement; and

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

## Business Day

A day that is not:

### a Saturday or Sunday;

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

### a statutory public holiday in South Australia.

## Casual Staff

An employee of a Participant who has no guaranteed hours of work and does not get paid sick leave or annual leave.

## Certificate of Completion

A certificate issued by the Minister confirming that Completion has been achieved.

## Certificate of Milestone Achievement

A certificate issued by the Minister confirming that Milestone Achievement has been achieved.

## Change in Control

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

## Change of Law

A change in a Regulatory Requirement which occurs in Australia and which:

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

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

### necessitates a substantial and material increase or decrease in a fee or charge or payment of a new fee or charge;

and which

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

### could not reasonably have been anticipated at that prior date,

### but not including:

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

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

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

## Chargeable Rate

Is the sum calculated in accordance with clause 2.3 of Attachment 4.

## Commencement Date

The date that the Agreement is executed by all parties.

## Commercial Framework

The commercial framework included in Attachment 4.

## Completion

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

This includes:

### the supply to the Minister of:

#### all Subcontractor and Sub-Alliance Participant’s warranties, operation and maintenance manuals, licences, access codes, as-built drawings or work-as-executed drawings required by the Agreement or required for the use and maintenance of the Works;

#### certificates, authorisations, approvals and consents from Authorities and service providers;

#### those certificates required for the occupation, use and maintenance of the Works; and

#### all other documents required to be provided under this Agreement;

### all testing required by the Agreement;

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

### all other requirements specified in the Agreement.

## Completion Report

The report outlined in Attachment 9 required as a condition precedent to Completion.

## Concept Design

The design prepared by the NOPs and included in Schedule 3.

## Confidential Information

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

## 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.

## Construction Plant

Those things (including appliances, plant, equipment and vehicles) used in performing the Alliance Activities but which do not form part of the Works.

## Contract Staff

A person engaged under a contract for services and not engaged under a contract of service or employment contract.

## Corporate Overhead

Is any indirect costs and expenses incurred by a Participant in relation to Alliance Activities or in relation to the Participant's business or operations including but not limited to administration and management costs.

## Cost Overrun

Has the meaning referred to in clause 5.5 of Attachment 4.

## Cost Underrun

Has the meaning referred to in clause 5.7 of Attachment 4.

## Date for Completion

The date stated in Attachment 1 “Project Particulars”.

## Deed of Guarantee

A guarantee to be executed in accordance with clause 9.

## Default

A Wilful Default or an Act of Insolvency.

## Default Notice

A notice issued under clause 32.1 or 32.5.

## Defect

Any Alliance Activities or Works which are defective, incomplete or omitted or non-complying with a requirement specified in this Agreement, but excluding defects:

### caused by fair wear and tear; or

### arising out of or in connection with a failure to perform operations and maintenance activities in accordance with operations and maintenance manuals properly prepared and accredited prior to Completion, provided that such operations and maintenance manuals are not defective, non-complying or incomplete or do not omit works or services required by the Agreement.

## Defects Liability Period

### In respect of the Works, the period which commences at 4:00 pm on the Actual Completion Date and expires on the later of:

#### the end of the period specified in Attachment 1 “Project Particulars”; and

#### the rectification / repair of all known Defects.

### In respect of a Milestone, the period which commences at 4:00 pm on the date of Milestone Achievement and expires on the later of:

#### the end of the period specified in Attachment 1 “Project Particulars”; and

#### the rectification / repair of all known Defects.

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

## Determination, Determine and Determined

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

## Direction, Direct and Directed

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

## Dispute

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

## Disruption to Rail Operations

Any disruption (planned and unplanned) to Rail Operations as a result of or in connection with Alliance Activities or the Works.

## Documentation or Document

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

### statutory records, registers, books of account, company annual returns and income tax, fringe benefits tax, sales tax and payroll tax returns and prescribed payments books, returns and records;

### all sales and purchasing records and invoices; and

### all trading and financial records,

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

## DPTI

The South Australian Government Department of Planning, Transport and Infrastructure.

## DPTI Master Specification

Comprises:

### those parts of Divisions G, CH, R, CC, S and L of the DPTI master specification for transport infrastructure applicable to the Works; and

### the PTS Infrastructure Track & Civil Code of Practice which are applicable to the Works (included in the Appendices).

The DPTI Master Specification is available from: <http://www.dpti.sa.gov.au/contractor_documents>

## Engaged Persons

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

## Enhancements

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

## Estimation Request

A request issued by Minister to estimate the time and cost impact of a Direction or proposed Direction under clause 16.1

## Excepted Risks

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

## Existing Intellectual Property Rights

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

## Fee

The amount comprising the NOP's entitlement to a contribution to their Corporate Overhead and Profit as calculated at clause 5 of the Commercial Framework.

## Final Certificate

The certificate issued by the Minister pursuant to clause 29.5.

## Full time Staff

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

## Future Claim

A claim for Loss exceeding $100,000 (ex GST) made by a third party against a Participant after the Minister issues the Final Certificate pursuant to clause 29.5 and arising out of or in connection with the Alliance Activities.

## Future Defect

A Defect which will cost in excess of $100,000 (ex GST) to repair or rectify and which was not known prior to the Minister issuing the Final Certificate pursuant to clause 29.5.

## Gainshare/Painshare Regime

The regime of adjustment to the payment due to the NOPs described in clause 5 of Attachment 4.

## Good Design and Construction Practices

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

### in a sound and workmanlike manner;

### with due skill, care and diligence;

### with due expedition and without unnecessary or unreasonable delay;

### in a manner which allows for the Agreement to be efficiently performed;

### using materials of new merchantable quality which are fit for the Stated Purpose;

### to the standard expected of a person experienced and competent in the performance of works or services similar to Alliance Activities;

### in accordance with all applicable Laws; and

### consistently with best practice for the engineering, design, procurement, supply, construction, testing and commissioning of works similar to the Works or Rail Infrastructure.

## Good Faith

Acting fairly, reasonably, honestly and doing all proper and reasonable things to enable each other Participant to perform the Alliance Activities.

## GST

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

## GST Act

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

## GST Amount

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

## Industrial Action

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

### a strike, lockout, demarcation or industrial dispute; and

### any claim relating to the employment agreements and other employment arrangements applicable to an NOP.

## Industrial Relations Law

All workplace, employment or industrial relations related Law.

## Information Management System (IMS)

The project and document collaboration and management software:

### Identified as "TeamBinder" and enabled on the website [www.teambinder.com](http://www.teambinder.com); or

### Otherwise as stated to be applicable by the Project Owner.

## Intellectual Property Rights

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

### patents, trademarks, service marks, rights in designs, trade names, copyrights, utility models, eligible layout rights and topography rights, inventions, discovery, trade secrets, know how, software and improvements;

### applications for, or rights to apply for registration of any of them;

### rights under licences and consents in relation to any of them; and

### other forms of protection of a similar nature or having equivalent or similar effect to any of them, in Australia and the world, whether registered or unregistered for the duration of the rights and interests.

## Joint Venture (or JV)

The joint venture between NOP#A and NOP#B referred to in clause 37 namely the [*insert name*] Joint Venture.

## Joint Venture Bank Account

Has the meaning referred to in Attachment 4.

## JVA

The joint venture agreement entered into by NOP#A and NOP#B.

## Key Performance Indicator (KPI)

Has the meaning in Attachment 6 “Performance Spectrum”.

## Key Performance Score (KPS)

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

## Key Result Area (KRA)

Has the meaning in Attachment 6 “Performance Spectrum”.

## Labour Conditions

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

## Law

Includes, from time to time, all applicable:

### legislation, ordinances, regulations, bylaws, local laws, orders or proclamations;

### Regulatory Requirements;

### principles of law or equity;

### all applicable standards, codes and guidelines, rail industry standards and other industry standards to the extent that such standards, codes and guidelines are relevant to the Alliance Activities or the Works;

### directions or notices issued by any Authority; and

### fees, rates, taxes, levies and charges payable in respect of the things referred to in clauses 1.73.1 to 1.73.5 of this definition, as amended from time to time, whether or not existing at the Commencement Date.

## Loss

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

## Management Plans

The plans and procedures described in Attachment 10.

## Milestone

Any portion or portions of the Works or stage of the Alliance Activities which is defined as a Milestone or the Minister Determines to be a Milestone in accordance with clause 13.

## Milestone Achievement

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

This includes:

### the supply to the Minister of:

#### all Subcontractor and Sub-Alliance Participant’s warranties, operation and maintenance manuals, licences, access codes, as-built drawings or work-as-executed drawings required by the Agreement or required for the use and maintenance of the relevant Works;

#### certificates, authorisations, approvals and consents from Authorities and service providers;

#### those certificates required for the occupation, use and maintenance of the relevant Works; and

#### all other documents;

### all testing required by the Agreement;

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

### all other requirements specified in the Agreement.

## Milestone Achievement Report

The report outlined in Attachment 9 required as a condition precedent to Milestone Achievement.

## Minimum Conditions of Satisfaction (MCOS)

The minimum level of performance for each KRA and KPI specified in Attachment 6 “Performance Spectrum”.

## Minister Emergency Event

An unanticipated event as a result of which a section of track which was otherwise the subject of an agreed Track Occupation is unavoidably required:

### to ensure the safety of Rail Operations or the Rail Infrastructure; or

### as a result of the redeployment of major rail resources to other sites to ensure the safety of Rail Operations or the Rail Infrastructure.

## Minister’s Existing Intellectual Property Rights

The Intellectual Property Rights owned or held by the Minister at the Commencement Date.

## Minister Force Majeure Event

An:

### act of God, lightning, storm, explosion, flood, landslide, bush fire or earthquake;

### strikes or other industrial action, other than strikes or other industrial action primarily involving some or all of the Minister’s employees, or the employees of South Australian Government primarily involving the rail industry;

### act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;

### any embargo, power shortage or water shortage,

the consequences of which:

### are beyond the control of the Minister;

### and could not have been prevented, overcome or remedied by the exercise by the Minister of a standard of care and diligence consistent with that of a prudent and competent person under the circumstances (including the expenditure of reasonable sums of money and the application of technology known to such prudent and competent person).

## Minister's Representative

The person identified as such in Attachment 1 “Project Particulars” or notified in writing by the Minister to the NOPs in accordance with clause 7.8.

## Moral Rights

Has the meaning in the *Copyright Act 1968* (Cth).

## No Dispute

The Participants commitments to, and agreement with, each other set out in clause 6.

## Non-Owner Participants (NOPs)

The Designer NOP and Constructor NOP collectively and individually.

## Non-Wages Personnel

Any Full time Staff, Part time Staff, Casual Staff, Contract Staff or Temporary Staff or any other person employed or engaged by a Participant, to perform an element of the Alliance Activities and other than Wages Personnel.

## Non-Wages Personnel Category

The categories of Non-Wages Personnel described in clauses 2.3.2 to 2.3.6 of the Commercial Framework.

## Non-Wages Personnel Hourly Rate

The actual TFR for Non-Wages Personnel (or an annualised equivalent where the person is part-time, casual or a contractor) divided by 2080 and where applicable, includes any allowances or overtime rate approved by the ALT.

## NOP#A

Pty Ltd A.C.N

## NOP#B

Pty Ltd A.C.N .

## NOP#C

Pty Ltd A.C.N.

## NOP Existing Intellectual Property Rights

The Intellectual Property Rights owned or held by the NOPs at the Commencement Date.

## NOP Key Personnel

The persons nominated in Schedule AC6.

## NOP Split.

Is the sum calculated in accordance with clause 4.3 of Attachment 4.

## Notice

Any requirement, claim, approval, agreement or other communication.

## Participants

The Minister and the NOPs.

## Performance Adjustment

Is the sum calculated in accordance with clause 5.2 of Attachment 4.

## Performance Score

The score for an individual KPI as set out in the Performance Spectrum.

## Procurement and Contracting Strategy

The document satisfying the requirements of Attachment 10.

## Profit

## Is any margin, financial gain or benefit charged by or obtained by a Participant which is not a, Reimbursable Cost, or is not otherwise payable to a Participant under the terms of this Agreement.

## Project

The Public Transport Alliance project.

## Project Control and Reporting Plan

The plan described in Attachment 10.

## Project Scope and Technical Requirements (PSTR)

The document included in Attachment 2 which defines the scope of Works and standard of Alliance Activities.

## Project Program

The program, included in Schedule 2, in the form of a critical path network, demonstrating the methodology to bring the Works to Completion by the Date for Completion, developed and updated in accordance with Attachment 2.

## Rail Access Management Plan (RAMP)

The plan referred to in Attachment 10 (as updated and revised from time to time) to be followed by:

### the Participants when requesting a Track Occupation; and

### the Minister in responding to a request and granting Track Occupations, for the purposes of performing Alliance Activities and which must satisfy the access, safety, occupation and interface management requirements Determined by the Minister, which includes, amongst other things the following documents:

#### a Track Occupations Request Protocol; and

#### the Track Occupations Program.

## Rail Infrastructure

Has the meaning defined in the Rail Safety Act.

## Rail Operations means the:

### provision, maintenance, movement, shunting, storage, fuelling, loading and

### unloading of Rolling Stock for rail services;

### provision of Rail Infrastructure to enable rail services;

### maintenance, storage, building, rebuilding, servicing, replacing and repairing of Rail Infrastructure and Rolling Stock; and

### conduct of the business of providing rail services

## Rail Safety Act

The *Rail Safety National Law (South Australia) Act 2012.*

## Records

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

## Regulatory Requirement

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

## Related Entity

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

## Required Rating

A Standard and Poors credit rating of at least A-.

## Reimbursable Costs

Subject to specific exclusions contained in this Agreement, the direct costs reasonably, properly and actually incurred by the Participants in performing the Alliance Activities that would not have been incurred, but for the Participants’ performance of the Alliance Activities, but excluding Corporate Overhead component not specific to the Alliance Activities and any Profit or mark-up of any kind, as described in the Commercial Framework.

## Reimbursable Cost Multiplier or RCM

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

## Rolling Stock

A vehicle or a part of a vehicle that operates on or uses a railway track, and includes a locomotive, carriage, rail car, rail motor, light rail vehicle, train, tram, light inspection vehicle, road/rail vehicle, trolley, wagon or monorail vehicle but does not include a vehicle or a part of a vehicle designed to operate both on and off a railway track when the vehicle is not operating on a railway track.

## Safety Management Plan

Has the meaning given in Attachment 10.

## Scope Change

A Direction issued by the Minister in accordance with clause 16 that is a material change to the Alliance Activities or Works.

## Site

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

## Specialist Non Wages Personnel

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

## Stated Purpose

The intended purpose of the Works described in the PSTR.

## Sub-Alliance

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

## Sub-Alliance Participants

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

## Subcontract

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

## Subcontractor

Any person engaged as a subcontractor to perform any part of the Alliance Activities or the Works pursuant to a Subcontract and includes an agent, consultant, manufacturer, operator, professional advisor and any other provider of goods, materials, services or work.

## Target Outturn Cost (TOC)

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

## Temporary Staff

Is any employee of a Participant who is employed for a specified amount of time.

## Temporary Works

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

## Term

Has the meaning in clause 3.4.

## Testing

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

## Total Fixed Remuneration (TFR)

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

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

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

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

### Temporary Staff is exclusive of any employment on cost, allowance or accrual, on the basis stated in the applicable letter of engagement, letter of employment, employment contract or contract for services.

## Track Occupation

The controlled use of Rail Infrastructure which would ordinarily cause a Disruption to Rail Operations.

## Union Official

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

## Unplanned Disruption to Rail Operations

A Disruption to Rail Operations which has not been planned, and includes Track Occupations which have either not been granted in accordance with the RAMP, or Track Occupations that were granted in accordance with the RAMP but which exceeded the approved duration, or otherwise contravened the terms of the RAMP.

## Utility Services

Any infrastructure directly associated with:

### transmitting electricity or telecommunications;

### transporting gases, liquids or solids (including  water, sewerage, fuel and wastes); or

### communications / signalling for railway transportation.

## Value for Money Report

A report to be developed for the Minister by a third party to report on matters including the extent to which the Participants, the performance of the Alliance Activities, and the Works have satisfied the requirements of the Value for Money Statement.

## Value for Money Statement

The statement of the Minister's value for money requirements for the Project and the Works included in Attachment 3.

## Variation

Any of the following:

### an increase, decrease or omission in relation to any part of the Alliance Activities or Works;

### a material change to the character or quality of any part of the Works; or

### a material change to the methodology associated with an Alliance Activity.

## Wages Personnel

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

## Wider Project Team (WPT)

The Project team referred to in the Alliance Management Framework.

## Wilful Default

Any of the following:

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

#### was wrongful;

#### would likely have harmful consequences; or

#### was in breach of an Alliance Principle;

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

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

#### is a breach of any Regulatory Requirements; or

#### prevents a non-defaulting Participant from performing a role, responsibility or function or discharging an obligation under any Regulatory Requirements;

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

### a repudiation of this Agreement by a Participant;

### a refusal of, or failure by, a Participant to comply with any of the following obligations under this Agreement:

#### to effect and maintain, or to comply with, a required insurance policy or an event described in clause 23.7;

#### a refusal of, or failure to comply with its audit obligations;

#### an intentional or reckless refusal of, or failure honour its confidentiality and conflict of interest obligations;

#### a failure by an NOP to comply with clause 38.12(No Assignment);

#### a failure by an NOP to comply with clause 38.17 (Change in NOP Participation);

#### a failure by an NOP to comply with clause 38.19(Change in Control);

#### an intentional or reckless refusal of, or failure to act in Good Faith.

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

## Workplace Relations Management Plan

The plan as set out in Attachment 10.

## Works

The asset or physical work described in Attachment 2 which the Participants must deliver to the Minister under this Agreement.

# INTERPRETATION

## In this Agreement, unless the context requires otherwise:

### a reference to any legislation includes:

#### all legislation, regulations, proclamations, ordinances, by-laws and instruments issued under that legislation; and

#### any modification, consolidation, amendment, re-enactment or substitution of that legislation;

#### any word importing:

#### the singular includes the plural;

#### the plural includes the singular; and

#### a gender includes every other gender;

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

#### a reference to a party includes that party’s administrators, successors and permitted assigns;

#### where the day on or by which something is to be done is not a Business Day, that thing may be done on or by the next Business Day;

#### where a word or phrase is given a defined meaning, then any other grammatical form of that word or phrase has the same meaning;

#### a reference to two or more persons means all of them together;

#### a reference to a clause, subclause, schedule, attachment or appendix is a reference to a clause, subclause, schedule, attachment or appendix of this Agreement;

#### a reference to a clause number includes its sub-clauses;

#### the word “or” is not exclusive;

#### clause headings are for reference only and do not form part of this Agreement;

#### the words “including” or “includes” shall not be interpreted as a word of limitation;

#### “dollars” or “$” is a reference to Australian currency;

#### Measurements of physical quantities must be in Australian legal units of measurement within the meaning of the National Measurement Act 1960, as amended from time to time;

#### a reference to time is a reference to the time applicable to South Australia, as defined at <http://www.australia.gov.au/about-australia/our-country/time>.;

#### a reference to any agreement or document is to that agreement or document as amended, notated, supplemented, varied or replaced from time to time.

## The ALT must promptly notify the Minister of any ambiguity, discrepancy or inconsistency in the documents comprising this Agreement, together with the ALT's recommendation to resolve the ambiguity, discrepancy or inconsistency. The Minister will Determine the resolution of any ambiguity, discrepancy or inconsistency in the documents comprising this Agreement.

## In the event of any inconsistency, ambiguity or discrepancy between any of the documents comprising this Agreement, the following shall apply:

### If the inconsistency, ambiguity or discrepancy is in respect of the level of service / performance to be provided by the Works or the standard of the Works, the requirement that delivers the greatest level of service / performance, or is of the highest standard, shall apply, unless specified in the PSTR that the PSTR will take precedence.

### If the inconsistency, ambiguity or discrepancy is in respect of another matter, the order of precedence shall be as follows:

#### these terms and conditions (excluding the Attachments and Schedules);

#### the Attachments;

#### the PSTR (excluding standards, guidelines or codes referenced therein);

#### standards, guidelines or codes referenced in the PSTR;

#### Appendices to the PSTR; and

#### any other document referenced in this Agreement, including the Schedules.

# THE AGREEMENT

**Entire Agreement**

## The agreement between the Participants is made up solely of the documents in this Agreement. This Agreement:

### supersedes all prior understandings, representations, communications, agreements, dealings, and negotiations made between the Participants in relation to the subject matter of the Agreement; and

### contains the entire agreement between the parties with respect to its subject matter.

## The Agreement must be read as a whole, and anything included in, or reasonably to be inferred from, one or more documents included in, or referenced by, the Agreement must be read as included in all other documents, unless the context requires otherwise.

**Modification of Agreement**

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

**Term**

## The Term of this Agreement commences on the Commencement Date and continues until the earlier of:

### the Minister issuing the Final Certificate and each and every obligation under this Agreement is complete, satisfied or discharged; or

### this Agreement is terminated in accordance with clause 31 or 32.

**Other Agreements**

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

**Acknowledgements**

## The Participants acknowledge that the Minister has entered into the Agreement relying on each NOP's representations:

### of their skill, judgment and expertise and commitment to exercise due skill, care and diligence in the performance of the Alliance Activities;

### of their ability to perform the Alliance Activities and to design, develop, complete and commission the Works having proper regard to the environment and the safety and health of all persons engaged in performing the Alliance Activities;

### of their Fee being valid, correct and accurate; and

### that the Reimbursable Costs invoiced will not include any element of Corporate Overhead costs or expense or any Profit.

# ALLIANCE CHARTER

**Alliance Purpose**

## The Participants have formed the Alliance for the purpose of successfully completing the Project and satisfying the requirements of the Value for Money Statement.

**Alliance Principles**

## The Participants agree that in performing the Alliance Activities:

### all Participants win, or all Participants lose, based on achieved Project outcomes, and “win-lose” outcomes are not acceptable;

### all Participants will achieve MCOS for each KRA and Alliance Objective;

### Participants have a peer relationship where each Participant has an equal say in decisions of the ALT;

### subject to the terms of this Agreement, risks and responsibilities are shared and managed collectively by the Participants, rather than allocated to individual Participants;

### disputes are avoided by adopting a no blame culture;

### risks and rewards are shared among Participants;

### Participants provide ‘best-in-class’ resources;

### Participants will act consistently according to these Alliance Principles.

### Participants are committed to developing a culture that promotes and drives collaboration, innovation and outstanding performance;

### Participants empower the ALT and the AMT to make decisions and take actions;

### all financial and commercial transactions are fully open book;

### Participants are committed to developing a ‘communication culture’ and being transparent in all of their dealings with each other;

### Participants share all information in accordance with this Agreement and do not hold back ideas;

### communication between all Participants is open, straight and honest so as to enable informed decision making;

### each Participant is committed to ensuring that each other Participant understands any documentation prepared in respect of the Project;

### the Participants will require ethical and responsible behaviour at all times;

### learnings of the Participants are identified and shared and capability is developed; and

### decisions are made, and processes and systems are adopted, on a Best for Project basis, subject to the Minister’s Determinations.

**Alliance Objectives**

## The Participants' objective is to meet or exceed MCOS for each KRA defined in Attachment 6: “Performance Spectrum”.

# COMMITMENTS AND OBLIGATIONS

**The Participants' Obligations**

## The Participants must design and construct the Works so that the Works at Completion are fit for the Stated Purpose.

## In performing the Alliance Activities, the Participants must:

### achieve the requirements of the Value for Money Statement;

### ensure that the Works at Completion satisfy the requirements of this Agreement;

### perform Alliance Activities in a manner consistent with this Agreement and at all times in accordance with the Alliance Principles;

### take collective responsibility for managing all of the risks in performing Alliance Activities and the Works;

### manage and mitigate all of the risks involved in bringing the Works to Completion;

### at all times exercise their skill, judgment and expertise and commitment in the performance of the Alliance Activities;

### establish an integrated collaborative team environment to encourage open, honest and efficient working;

### comply with the No Dispute commitments and obligations;

### encourage innovation and innovative thinking;

### develop and maintain a high standard of consultation and communication with Project stakeholders and immediate community groups;

### create positive peer relationships in an environment of mutual support, appreciation and encouragement;

### manage and minimise the impact upon Rail Operations, the road network, adjoining businesses and commuters;

### at all times be suitably qualified and experienced and exercise Good Design and Construction Practice in the performance of Alliance Activities;

### perform the Alliance Activities in accordance with the Project Program; and

### comply with all Laws.

## Each Participant acknowledges all requirements specified in this Agreement and agrees to comply with those requirements.

**Good Faith**

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

# NO DISPUTE

## The Participants will work co-operatively together to identify, resolve and avoid all Disputes.

## The Participants will immediately notify each other of any Dispute, or potential Dispute, arising out of or in connection with this Agreement.

## If the AMT is unable to resolve a Dispute acting in accordance with the Alliance Principles, it must be promptly elevated to the ALT for resolution.

## The ALT will deal proactively with any Dispute on a Best for Project basis and will Determine whatever action it believes is necessary to resolve the Dispute (which may include, after consultation with the Minister, the appointment of an independent expert, mediator or adjudicator to assist the ALT to unanimously resolve any Dispute).

## The rights, entitlements, obligations and liabilities set out in this Agreement (and which in some cases may be Determined by the ALT in the future) shall exclusively govern the Participants rights, entitlements, obligations and liabilities in relation to the Alliance Activities and the Works.

## Subject to clause 6.8, 6.9 and 6.10, and to the extent permitted by Law, only an act or omission of a Participant in performing, or failing to perform, the Alliance Activities which amounts to a Wilful Default or an Act of Insolvency will give rise to enforceable obligations, entitlements, rights or remedies under this Agreement or otherwise at law or in equity.

## Subject to clause 6.8, 6.9 and 6.10, and to the extent permitted by Law, the Participants release and discharge each other from any effects, claims, actions, proceedings, or Loss under this Agreement or otherwise at Law or in equity of any act or omission in performing, or failing to perform, the Alliance Activities which does not amount to a Wilful Default or an Act of Insolvency in respect of which the Participants may have otherwise had recourse at Law under this Agreement or otherwise at Law or in equity but for this release and discharge.

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

### loss of or damage to any property; or

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

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

## An Indemnifier's liability to indemnify an Indemnified Participant under clause 6.8:

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

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

### is limited to the amount which is recovered or would have been recovered but for an act or omission by the Indemnifier under any policy of insurance referred to in this clause 6 and required by this agreement under which the Indemnifier is insured, with respect to the Indemnifier's liability to the Indemnified Participant under clause 6.8;

## Clause 6.9.3 will not apply where:

### the Indemnifier is not indemnified under any applicable policy of insurance because of a Wilful Default; or

### the loss, damage, injury, disease, illness or death, arises as the result of a Wilful Default.

## Clauses 6.8, 6.9, and 6.10 survive termination of this Agreement.

## The Participants acknowledge and agree that clause 6.8 is intended to enable a Participant’s Construction Plant insurer (clause 23.5.1), motor vehicle insurer (clause 23.5.2), compulsory third party motor vehicle insurer (clause 23.5.3), or workers compensation insurer (clause 23.5.4) to exercise a right of subrogation or statutory right of recovery, to the extent it is permitted to do so, against a Participant or a Participant's insurer

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

### **Consequential Loss**

## Subject to clause 6.15, 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.

## A Participant will be liable for Consequential Loss to the extent that such Consequential Loss is:

### covered and is recovered or would have been recovered but for an act or omission under a policy of insurance taken out under this Agreement; or

### a liability to the Minister for Loss incurred by the Minister under the ARTC Licence.

**Survival of Clause**

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

# MINISTER - DETERMINATIONS, RESERVED POWERS AND DIRECTIONS

**Determinations**

## Notwithstanding clause 5.4, the Minister may, when making any Determination reserved to the Minister under the Agreement, act in its absolute and unfettered discretion.

## No:

### Determination by the ALT, or any of the Minister's ALT representatives; or

### Records contemplated by the Agreement, and nothing contained in or set out in or implied by any such Records;

can limit, restrict, modify, constrain or place any fetter on the exercise by the Minister of any:

### discretion, right, entitlement or power (express or reserve) under any Law; or

### Determination by the Minister under the Agreement.

**Reserved Powers**

## Determinations in respect of the following matters are reserved to the Minister:

### any Determination reserved to the Minister under the Agreement;

### any request granted by the Minister in accordance with clause 14.9.4;

### appointment of the Minister’s ALT, AMT and WPT representatives in accordance with Attachment 5;

### appointment of independent advisors under clause 10.1;

### certification of Completion in accordance with clause 28;

### issuing the Final Certificate in accordance with clause 29.5;

### a Variation in accordance with clause 16;

### an Adjustment Event in accordance with clause 15;

### publication or disclosure in accordance with clause 35.7;

### a suspension of the Alliance Activities or the Works under clause 30 except where such suspension relates to a breach or potential breach of the Rail Safety Act;

### termination of the Agreement in accordance with clause 31 or 32;

### urgent protection of the Works, other property, people or the environment; and

### any other matter which the Minister Determines, after consultation with the ALT, or the ALT unanimously agrees, should be reserved to the Minister.

**Directions**

## The Minister may (without limitation) Direct the Participants in writing to:

### change the design, specifications or requirements of the whole or any part of the Works;

### change the Rail Infrastructure or any part of the Rail Infrastructure works forming part of the Works;

### change the Works or any part of the Works;

### increase, decrease or omit any part of the Works;

### change the character or quality of any part of the Works;

### change the levels, lines, positions or dimensions of all or any part of the Works;

### change the timing of the performance of all or any part of Alliance Activities;

### change the means, methods or techniques of the performance of all or any part of Alliance Activities;

### execute additional Alliance Activities;

### demolish or remove material or work no longer required by the Minister; or

### decrease or omit any part of Alliance Activities or the Works for any purpose including engaging a third party to perform Alliance Activities or the Works independently of the Project.

## Any Direction given under clause 7.4 must clearly indicate that it is a Direction given by the Minister under clause 7.4 of the Agreement. A Direction under clause 7.4 is not required in the event that urgent works are required to be undertaken.

**Not Invalid**

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

**Minister's Representative**

## The Minister may perform its obligations under the Agreement through a representative appointed in writing by the Minister from time to time. The Minister's Representative, in addition to exercising the Determinations, rights and entitlement reserved to the Minister under the Agreement, has the role and responsibilities allocated to it as set out in Attachment 5. The NOPs will provide all assistance necessary to enable the Minister's Representative to efficiently and effectively exercise the Determinations, rights and entitlements and perform its role and responsibilities under the Agreement.

## The Minister has initially selected the person identified in Attachment 1 as the Minister's Representative for the purposes of the Agreement. The Minister may, from time to time, change its Representative by giving notice in writing to the NOPs.

## With regard to any matter that affects or has the potential to affect the safety of Adelaide Metropolitan Rail Network, the powers, duties, discretions and authorities vested in the Minister under this Agreementmay also be exercised by the Rail Commissioner established according to the *Rail Commissioner Act 2009* (SA).

# LEADERSHIP AND MANAGEMENT

**General**

## The Participants must comply with Attachment 5 “Alliance Management Framework”.

**Personnel**

## The Minister’s ALT members are those persons nominated in Attachment 1 “Project Particulars”.

## The NOP ALT members are those persons nominated in Schedule 1. The NOPs must provide the NOP Key Personnel to the Project.

## The NOPs will not (unless the person has died, become seriously ill, or has resigned from the employment of an NOP) remove any of their people appointed to the AMT or any of the NOP Key Personnel without the ALT’s consent or the approval of the Minister.

## Where an NOP removes or replaces any of their people appointed to the AMT or any of the NOP Key Personnel without either the ALT’s consent or the approval of the Minister, the Minister may Determine that the costs of removing or replacing such personnel (including any costs incurred in familiarising the personnel with the Project or the Works) will not be a Reimbursable Cost.

## The Participants must ensure that all persons employed in connection with the performance of Alliance Activities and the Works:

### are careful, skilled, qualified and experienced in their respective trades and professions and and exercise Good Design and Construction Practice;

### are registered and licensed as necessary under any Regulatory Requirements for the purposes of, or incidental to, the performance of the Alliance Activities;

### have been inducted by the Participants in accordance with the Participant's induction program; and

### comply with this Agreement.

## If the Minister, ALT or AGM is of the reasonable opinion that a person does not or has not met the requirements of clause 8.6, that person may be removed from the Site and that person must not have any further involvement in the performance of the Alliance Activities.

## If any of the NOP Key Personnel die, become seriously ill, resign from the employment of an NOP, or become the subject of a Determination under clause 8.5, subject to the ALT's determination on a Best for Project basis, the employer of the respective NOP Key Personnel must replace them with a person of at least equivalent experience, ability and expertise as approved by the ALT and AGM.

**Alliance Team Integration Plan**

## The Participants must develop and implement an Alliance team integration plan which describes the activities and processes that the Participants will use to ensure that their employees, agents and subcontractors act in accordance with the Alliance Principles.

**Performance Measurement**

## In consultation with the ALT, the Minister will develop assessment criteria and the Participant's performance against these criteria will be monitored and measured monthly.

## The Participants must provide reasonable assistance with the collection, collation and analysis of data to be compared to the assessment criteria.

# SECURITY

**Deed of Guarantee**

## The Constructor NOP must provide security in accordance with this clause 9. In order to remove doubt, this clause 9 applies only to the Constructor NOP and does not apply to the Designer NOP.

## Where an NOP has an ultimate holding company (as defined in Corporations Act 2001) that is not a party to this Agreement, the NOP must within 14 days of receipt of a written request from the Minister, procure its ultimate holding company to execute the Deed of Guarantee in the form shown in Attachment 13.

## If during the duration of the Agreement, the party who executes the Deed of Guarantee ceases to be the parent company of NOP#A, NOP#A must procure a substitute deed of guarantee in favour of the Minister by a party Determined as acceptable by the Minister or equivalent security in substitution as Determined by the Minister. Upon the provision of the substitute Deed of Guarantee or equivalent security as Determined by the Minister:

### the substituted guarantor will be released and discharged from any and all liabilities in respect of that deed of guarantee and the Minister acknowledges that it will not make and releases and discharges the substituted guarantor from any claim the Minister has or may have against the substituted guarantor; and

### the Minister will simultaneously return the substituted deed of guarantee to the substituted guarantor.

## Any agreement between the provider of the Deed of Guarantee and the Minister with respect to any amounts to be paid to the Minister under the Deed of Guarantee is without prejudice to the Minister's right to make continuing claims against the Constructor NOP in relation to any matters which are covered by the Deed of Guarantee.

**Unconditional Undertaking**

## Prior to the Commencement Date (and as a condition precedent to the commencement of work on the Site), the Constructor NOP must provide to the Minister the following irrevocable unconditional undertakings:

### a Completion unconditional undertaking(s) for the aggregate value of 2.5% of the TOC, which will be returned within 20 Business Days after the Actual Completion Date; and

### a post Completion unconditional undertaking(s) for the aggregate value of 2.5% of the TOC, which will be returned progressively as follows:

#### 1.5% will be returned 18 months after the Actual Completion Date; and

#### 1% will be returned on issuing of Final Certificate.

## The irrevocable unconditional undertakings must be in the form shown as “DPTI Example Unconditional Undertaking”, available from: <http://www.dpti.sa.gov.au/contractor_documents/guidelines_and_miscellaneous>, and must be from an Australian financial institution that is regulated by the Australian Prudential Regulation Authority with Required Rating and as approved by the Minister.

## If during the performance of the Alliance Activities the rating of an unconditional undertaking or the financial institution issuing the unconditional undertaking falls below the Required Rating, the Constructor NOP must immediately inform the Minister and comply with any Determination of the Minister to provide an appropriate replacement irrevocable unconditional undertaking from an Australian financial institution that is regulated by the Australian Prudential Regulation Authority with the Required Rating, or security in a form Determined by the Minister, within a period Determined by the Minister which may be not less than 5 Business days and not greater than 20 Business Days.

## The Minister may immediately make a demand under an unconditional undertaking provided by the Constructor NOP referred to in clause 9.6:

### for any amounts owed to it if, in the reasonable opinion of the Minister, an amount is owed by the Constructor NOP to the Minister under the Agreement; or

### for the full amount of the unconditional bank guarantee if a replacement irrevocable unconditional undertaking from an Australian financial institution that is regulated by the Australian Prudential Regulation Authority with the Required Rating or security in a form Determined by the Minister with the Required Rating is not provided to the Minister within the period Determined by the Minister in accordance with clause 9.7 and hold that amount as security in accordance with this Agreement.

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

**Survival of Clause**

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

# ASSURANCE

**Appointment of Advisors**

## The Minister may appoint advisors including:

### probity advisors;

### financial advisors, auditors or investigators;

### construction, engineering or technical reviewers / verifiers;

### estimators; and

### technical experts or advisors.

## Any advisor appointed by the Minister:

### is independent of the Alliance;

### is accountable to, and will report directly and solely to, the Minister;

### will be paid by the Minister and such cost or expenses will not:

#### be a Reimbursable Cost; or

#### be aggregated into the TOC or AOC; and

### to the extent permitted by Law does not, and will not, under any circumstances owe Participants any duty of care or any other legal duty, liability or obligation to an NOP.

**Probity**

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

**Audit**

## At any time the Minister, the South Australian Auditor General or any person authorised by Law may at any time Audit any Records held, prepared or maintained by the Participants, Subcontractors, Sub-Alliance Participants, any Alliance Activities or any matter in connection with the Alliance Activities or the Works for the purpose of:

### conducting efficient and effective financial and performance audits of the Participants' performance of the Alliance Activities and the Works; and

### validating the Participants' compliance with the Agreement.

## The Participants must provide reasonable cooperation and whatever access or facilities are necessary to conduct any Audit, as required by the Minister or the South Australian Auditor General.

## An NOP will not be entitled to any Reimbursable Costs associated with the conduct of an Audit where any such Audit identifies that the NOP has committed a Wilful Default.

## To the extent permitted by Law, any Records provided for an Audit will be treated as confidential information in accordance with clause 25.

## Nothing in this Agreement derogates from the powers of the Auditor-General under the Public Finance and Audit Act 1987 (SA).

## The audit powers described in clause 10.4 to 10.8 apply notwithstanding that Completion has been achieved, the Agreement has been terminated, or whether an Audit is carried out under this Agreement or otherwise.

**Benchmark Alliance Performance**

## A fundamental obligation of the Alliance is to satisfy the requirements of the Value for Money Statement to help demonstrate, ensure and deliver value for money.

## If requested by the Minister, the Participants must provide reasonable assistance to enable the Minister to benchmark the performance of this Alliance against the performance of other alliances or similar projects.

## The Participants, to effectively demonstrate that these value for money outcomes are and will be achieved, have agreed that the Minister may benchmark the performance of the Alliance against the performance of other alliances.

## The Participants agree that for the purposes of benchmarking the performance of the Alliance or the Participants they will, in a manner consistent with the Alliance Principles, fully, frankly and honestly disclose information relating to the actual outturn performance of the Alliance, the Alliance Activities or the Works other than that information which the ALT Determines, in consultation with the Minister, is Confidential Information.

## Where the ALT Determines, in consultation with the Minister, that information is Confidential Information the ALT shall Determine an acceptable and appropriate manner to mask and/or protect the confidential nature of the information but will still be obliged to share the information for the purposes of benchmarking the AOC performance of all aspects of the Alliance.

**Survival of Clause**

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

# ALLIANCE RECORDS AND REPORTING

**Records**

## The Participants must prepare and maintain all Records required under this Agreement.

## The Minister has obligations to maintain Records to substantiate the expenditure of public monies with respect to the performance of Alliance Activities and the Works.

## The Minister retains an irrevocable right of access to Records for the purposes of investigating, inspecting or auditing Records or to substantiate the expenditure of public monies with respect to the performance of Alliance Activities and the Works.

## The Participants must:

### ensure that the Records are properly and accurately created, managed and audited on an open book basis and;

### not destroy or discard Records except with the Minister’s prior written consent;

### ensure that the Records are available for investigation, inspection, audit and verification by the Minister upon reasonable notice being provided to validate the Participants' compliance with this Agreement;

### provide all other reasonable assistance requested by the Minister for the purposes of investigating, inspecting or auditing the Records with respect to the performance of Alliance Activities and the Works; and

### upon reasonable notice being given, provide the Minister with copies of all Records that the Minister Determines it requires for the purposes of investigating, inspecting or auditing Records in accordance or the expenditure of public monies with respect to the performance of Alliance Activities and the Works.

## The Minister does not assume or owe Participants any duty of care to the Alliance to review Records for errors, omissions or compliance with the requirements of this Agreement or by Law.

## An inspection of Records will not:

### limit or relieve the Participants of any obligation or liability under this Agreement;

### limit any right of the Minister under this Agreement;

### constitute acceptance by the Minister of the performance of the Alliance’s obligations under this Agreement; or

### be considered as a representation or acknowledgement by the Minister of that document’s compliance with this Agreement.

**Reporting**

## The AGM must, at periods required by the Minister, comply with the Project Control and Reporting Plan and provide the Minister with reports, approved by the ALT, that:

### include a work status report that identifies against relevant Milestones the progress of the key elements of the Alliance Activities and the Works;

### report on the Participants' compliance with or departures from the media and communications plan for the Alliance approved by the Minister;

### identify the status of the Participants' performance in each KRA and KPI against the Minister’s requirements for each KRAs and KPIs;

### identify key issues;

### recommend actions and provides the status of previous recommendations on key issues;

### track "actual and forecast against planned or budget" cost, time (including updates to the Project Program), KRA, payment due under the Commercial Framework, risk management, scope, scope changes, environment, community and 'team health' performance;

### include monthly earned value reports, which include:

#### a reconciliation, as at the date of the report, of the AOC of performing the Alliance Activities against the TOC;

#### any innovations or breakthroughs which have been made or opportunities which have been realised, or are forecast to be realised, by the Participants in performing the Alliance Activities;

#### the Participants’ risk management performance in performing the Alliance Activities as against the Commercial Framework; and

#### any material errors or mistakes which have been made in the development of the TOC and identified by the Participants;

### provide a monthly report of the Participants' performance in respect of all Health & Safety Laws in a format and with details required by the Minister;

### provide a monthly report on employment status which addresses numbers of direct and indirect employees, construction labour, apprentices and indigenous employees;

### provide a monthly cashflow statement covering a 12 month forward rolling period; and

### provide any other information required by the Minister necessary to validate compliance with this Agreement.

## The AGM must notify all incidents, near misses or hazards required by and in accordance with this Agreement and the Management Plans.

## The Participants will provide the Minister with an annual Project report and an annual Project plan at times, and incorporating requirements, advised by the Minister.

**Value for Money Report**

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

# TRANSMISSION OF DOCUMENTS

## For the purpose of this clause 12 only, “Document” means all documentation that is, or is required to be, transmitted between the Participants or to the Minister in connection with this Agreement, including notices, Determinations, Directions, requests, recommendations, agreements, Documentation, claims and general correspondence.

## The Minister has implemented an Information Management System (IMS) for the management of Documents and the facilitation of collaboration on the Project. All Participants must use the IMS to transmit any Document to any other Participant or to the Minister (including persons appointed by the Minister).

## The Participants must;

### have access to a computer with relevant hardware and software to access the IMS;

### be familiar with or have sufficient training to use the IMS;

### register itself with the IMS;

### upload, transmit and download all documents relevant to the Services into the IMS; and;

### provide hard copies of any documents if required by the Project Owner.

## The Participants agree to:

### use the full functionality of the IMS for the Services;

### pay all costs associated with the use of the IMS by its employees, agents or sub consultants; and

### accept responsibility for its use of the IMS, including any updates to IMS, any communications with the provider of the IMS and any technical or other issues which may affect its use of the IMS.

## If requested by the Minister or specified in the PSTR, a Participant must provide a paper copy of a Document via post or hand delivered to an address to be advised by the Minister, in addition to the electronic transmission of Documents by the IMS. The paper copies are for record keeping purposes only. A Participant is not obliged to act upon, or respond to, a paper copy of a Document.

## The control of Document revision status must be undertaken electronically using the IMS.

## The IMS is a secure web portal system and requires broadband access as a minimum to operate. Access to the IMS will be provided to those personnel nominated by the Participants. The Minister will (in the Minister's discretion) arrange for training to be provided to the Participants’ personnel in the use of the IMS.

## Each Participant must fully complete the fields within the IMS when uploading the individual Documents in accordance with instructions provided by Minister.

## If a Document is unable to be delivered in accordance with IMS, then it may be delivered in writing, signed by the sender and addressed to the receiving party and either:

### sent by registered post to or left at the address identified for the relevant NOP ALT member identified in Schedule 1; or

### handed to a NOP Alt member of the receiving Party;

### sent by email to the email address of the NOP ALT member of the receiving Party.

## A Notice under this clause 12 is deemed to have been received:

### If sent by IMS, at 4pm on the Business Day following its transmission or upload to the IMS.

### If sent by post is on the second Business Day following the date of postage.

### If sent by email, on dispatch of transmission unless the sender's server indicated a malfunction or error in transmission or the recipient immediately notifies the sender of an incomplete transmission.

# ALLIANCE ACTIVITIES AND THE WORKS

**Commencement**

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

**General**

## The Participants are responsible for the care and control of the Works and the Site from the date of the commencement of Alliance Activities on the Site until 4.00 pm on the Actual Completion Date.

## Except where this Agreement provides otherwise, the Participants must supply everything necessary for the proper performance of the Alliance Activities and the Works.

## If progress falls behind the Project Program or if progress is not being maintained to a level that would allow Completion to occur by the Date for Completion, the Participants must take all measures as may be necessary and practicable (including working overtime, shift work, using additional Construction Plant or labour or other measures) to minimise any delays and to ensure that the Participants achieve Completion by the Date for Completion.

**Subcontracts and Sub-Alliances**

## The ALT must develop a Procurement and Contracting Strategy which describes the process that the Participants must follow when entering into Subcontracts and Sub-Alliances to ensure value for money and compliance with South Australian Government procurement policies, procedures and probity principles.

## Any Participant entering into a Subcontract or Sub-Alliance for any part of the Alliance Activities must:

### do so in accordance with the Procurement and Contracting Strategy;

### obtain the ALT's prior written consent to entering a Subcontract or Sub-Alliance for any part of the Alliance Activities which exceeds or is outside any appropriate level of authorisation in the Procurement and Contracting Strategy;

### must do so in its own right as principal and as agent for and on behalf of the Participants, for the purposes of the Agreement;

### supervise and manage a Sub-Alliance Participant’s performance to ensure that the Subcontractor or Sub-Alliance Participant discharges its obligations to the Participants in accordance with the Subcontract or Sub-Alliance; and

### ensure that the Subcontract or Sub-Alliance contains provisions which are consistent with clause 22 of this Agreement.

## Any Participant entering into a Subcontract or Sub-Alliance is not solely responsible for the acts or omissions of the Subcontractor or Sub-Alliance Participant itself under the Subcontract or Sub-Alliance. Instead, the Participants remain collectively responsible for and collectively assume the risk of such acts or omissions.

## A Subcontract or Sub-Alliance will not relieve the Participants of their obligations under this Agreement.

## The Participants will obtain written warranties in favour of the Minister from Subcontractors and Sub-Alliance Participants, to the extent such warranties are relevant, that any:

### materials incorporated into the Works are correctly designed, fabricated and installed to the standards set out in this Agreement or, if not set out, then to good industry standards and codes of practice; and

### design and any materials incorporated into the Works are of the required quality and fit for the Stated Purpose.

**Milestones**

## A Milestone may be specified as such in this Agreement or the Minister may Determine that any portion of the Alliance Activities or the Works will be a Milestone.

## The interpretations of:

### Alliance Activities;

### Defects Liability Period; and

### the Works,

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

## The Participants must perform the Alliance Activities to achieve Milestone Achievement by the applicable Milestone date.

## When the AMT is satisfied that Milestone Achievement has been achieved in relation to a Milestone, the AMT must prepare and deliver a Milestone Achievement Report to the ALT and the Minister with a statement that:

### Milestone Achievement has been achieved for the Milestone; and

### the Milestone Achievement Report complies with the requirements of this Agreement.

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

### if the ALT considers that Milestone Achievement has been achieved, the ALT must recommend to the Minister that it issues the Certificate of Milestone Achievement; or

### if the ALT considers that Milestone Achievement has not been achieved, the ALT must notify the AMT of those matters or things which need to be addressed before Milestone Achievement can be achieved and the process in clauses 13.13 and 13.14 will be repeated until the ALT recommends that the Minister issues the Certificate of Milestone Achievement.

## As soon as is reasonably practicable after the receipt of the ALT's recommendation in regard to Milestone Achievement, the Minister must consider the ALT's recommendation, and:

### if the Minister Determines that Milestone Achievement has been achieved, the Minister must issue a Certificate of Milestone Achievement stating the date of Milestone Achievement; or

### if the Minister Determines that Milestone Achievement has not been achieved, the Minister must notify the ALT of those matters or things which need to be addressed before Milestone Achievement can be achieved and the ALT must address those matters or things and resubmit the recommendation in regard to Milestone Achievement to the Minister for further consideration.

## The Participants acknowledge and agree that the Minister cannot Determine Milestone Achievement prior to receipt of a recommendation from the ALT that Milestone Achievement has been achieved.

## As a precondition to Milestone Achievement, the NOPs must provide the Minister with all Records required under this Agreement.

**Standard of Alliance Activities and Works**

## The Participants must ensure that the Alliance Activities and the Works:

### at Completion are fit for the Stated Purpose;

### comply with the PSTR;

### are performed using design and construction practices which are not of a lesser standard than that used on comparable Australian projects;

### are performed with due skill, care and diligence;

### are performed with due expedition and without unnecessary or unreasonable delay;

### are performed to the standard expected of persons experienced and competent in the performance of works or services similar to Alliance Activities;

### are performed so as to avoid Defects;

### satisfy the requirements of the Value for Money Statement;

### are performed so as to satisfy the time, cost and quality parameters set out in the Agreement; and

### are designed and constructed having regard to Good Design and Construction Practice.

## Unless the Minister Determines otherwise, the Works must be substantially in accordance with the Concept Design.

**DPTI Master Specification**

## Where the DPTI Master Specification is applicable to any Alliance Activity or part of the Works, the Participants must satisfy the obligations of the Contractor specified in the DPTI Master Specification and the Minister may act as though it is the Superintendent.

## If the DPTI Master Specification is amended after the Commencement Date and the Participants reasonably incur additional costs as a consequence of the that amendment, the amendment will be an Adjustment Event.

## The Minister may waive the Participants’ obligation to comply with an amendment to the DPTI Master Specification.

**Management Plans**

## The Participants must prepare all maintenance and / or operating plans and manuals which are necessary for Minister to operate and maintain the Works and provide these plans and manuals to the Minister prior to Completion. These plans and manuals must be sufficiently detailed for the Minister to operate and maintain the Works without further clarification.

## The Management Plans must:

### incorporate the management plan requirements set out in Attachment 10; and

### be provided to the Minister within 20 days of the Commencement Date; and

### be approved by the Minister or the ALT, as the case may be, in accordance with Attachment 10.

## Alliance Activities must not commence on Site until all Management Plans are approved in accordance with this Agreement, or until the requirement for such approval is waived by the Minister. If the Minister does not approve a Management Plan the Minister must provide reasons for any Management Plan/s it does not approve.

## The Participants will amend the Management Plan/s to address the Minister or ALT's reasons and resubmit the Management Plan/s for approval.

## In performing Alliance Activities the Participants must strictly comply with, and not deviate from, the Management Plans approved in accordance with clause 13.24 unless such deviation is Determined as acceptable by the Minister or the ALT, as the case may be in accordance with Attachment 10, in advance of any such deviation.

## The Participants will update and revise the Management Plans when necessary to do so as a result of any change in equipment, systems or procedures in performing the Alliance Activities or when directed by the ALT. All updates and revisions to Management Plans must be prepared and approved in accordance with clauses 13.24.

# SITE

**Access**

## The Participants must not commence the Alliance Activities on the Site until the date of possession of Site, being the date specified in Attachment 1, or such other date as Determined by the Minister.

## The Participants must provide for access to or occupation of any part of the Site, or any other lands in the ordinary care, custody or control of a Participant as is necessary or appropriate for the performance of the Alliance Activities.

## To the extent that the Participants do not have rights of access to the Site or any other lands in the ordinary care, custody or control of a Participant, the Participants will:

### arrange such access as is necessary or appropriate for the performance of the Alliance Activities on a Best for Project basis; and

### do all things which may be necessary to obtain such access including entering into an agreement governing the basis upon which such access will be granted.

## The NOPs acknowledge and accept that the Minister may elect to arrange such access prior to the Commencement Date and the NOPs will accept and be jointly liable for such conditions of access arranged by the Minister as the case may be.

**Non-exclusive access**

## The Participants are not entitled to exclusive access to the Site while performing the Alliance Activities.

## The Minister may have work associated with the Project undertaken by utility service Authorities or other contractors on or adjacent to the Site.

## The Minister, any contractor engaged by the Minister either in connection with the Project or otherwise, any Authority and any person authorised in writing by the Minister (and any of their employees, agents, consultants and contractors) may at any reasonable time have access to any part of the Site or place where Alliance Activities, materials and equipment to be incorporated into the Works are being prepared or stored for any purpose.

## The Participants must:

### provide reasonable access to;

### take all reasonable steps to co-ordinate and liaise with; and

### not unreasonably obstruct the activities of those persons identified in clause 14.6 and 14.7 on or adjacent to the Site.

**Continuing Rail Operations**

## The Participants acknowledge and agree that:

### the Minister is committed to granting Track Occupations in accordance with the RAMP;

### the Minister may cancel an agreed Track Occupation if such cancellation arises as a result of a Minister Force Majeure Event, a Minister Emergency Event or a failure by the Participants (other than the Minister) to comply with the RAMP;

### if the Participants require a Track Occupation or access to, or occupation of, any part of the Site which is controlled by the Minister for the purposes of undertaking the Alliance Activities, the Participants will make a request to the Minister for the same in accordance with the RAMP;

### if the Minister grants any request under clause 14.9.3, the Track Occupation shall be conducted in accordance with the requirements of the RAMP as may be varied with the approval of the ALT (although the Participants acknowledge and agree that that part of the RAMP comprising the Minister Occupations Protocol may not be varied without the Minister's consent);

### the Minister will advise the Participants as soon as reasonably practicable, if it is unable to grant any request under clause 14.9.3, or if any Track Occupation is cancelled in accordance with clause 14.9.2 or modified for any reason. In these circumstances, the Participants will work together to identify and obtain such reasonable alternative Track Occupations as may be available; and

### any cancellation of an agreed Track Occupation in accordance with clause 14.9.2 will not be considered a Wilful Default or an Adjustment Event for the purposes of the Agreement.

## In performing the Alliance Activities the Participants will:

### to the extent practicable in the context of the performance of the Alliance Activities, minimise Disruptions to Rail Operations;

### work closely with the Minister to prevent if possible, or minimise if not possible, any Unplanned Disruption to Rail Operations;

### ensure that the Participants do not perform any action or allow any omission that in any way has the potential to prejudice or impact upon the Minister's or the Minister's compliance with any Regulatory Requirements relating to Rail Infrastructure or Rail Operations; and

### immediately inform the Minister of any Alliance Activities or Works that has the potential to create any Unplanned Disruption to Rail Operations.

**Continuing Road Operations**

## In performing the Alliance Activities the Participants will:

### work to prevent if possible, or minimise if not possible, any unplanned impact on the road network or road operations; and

### immediately inform the relevant road Authority or infrastructure manager of any Alliance Activities or Works that has the potential to create any unplanned impact upon a road network or road operations.

**Industrial Relations**

## The NOPs:

### before the Commencement Date, have informed themselves of all matters relevant to the engagement of labour in connection with the performance of the Alliance Activities, and at the Site;

### must ensure that all labour engaged by an NOP, Subcontractors or Sub-Alliance Participants in connection with the performance of the Alliance Activities are paid in accordance with rates of pay and conditions to attract and keep quality labour;

### must ensure that all labour engaged by an NOP, Subcontractors or Sub-Alliance Participants in connection with the performance of the Alliance Activities must be engaged in such a manner which allows the NOPs and the Minister to comply with its obligations under the Agreement.

## Each Participant acknowledges that it is:

### responsible for the management of employee and industrial relations matters in connection with the performance of the Alliance Activities including, but not limited to, the resolution of all Industrial Action and all employee and industrial relations matters pertaining to all personnel performing the Alliance Activities; and

### fully and solely responsible for ensuring the prompt payment of all salaries, wages, commissions, allowances and other remuneration to all labour and employees engaged in connection with the performance of the Alliance Activities and for the deduction and payment of the applicable taxes, levies and charges and for the remittance of such sum to tax or other Authorities.

## The Participants must:

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

### comply with and ensure that all Engaged Persons, Subcontractors or Sub-Alliance Participants engaged in the performance of the Alliance Activities comply with the Workplace Relations Management Plan and upon request, provide the Minister with evidence of such compliance;

### cooperate with and ensure that all Engaged Persons, Subcontractors or Sub-Alliance Participants cooperate with contractors carrying out any related works, stakeholders or other persons on the Site in order to maintain a stable industrial relations environment;

### upon request by the Minister, attend meetings convened by the Minister for the purpose of discussing employee and industrial relations matters;

### prepare and submit to the Minister a monthly IR performance report in accordance with the requirements of the Workplace Relations Management Plan;

### immediately advise the Minister in writing of any act, fact or circumstance associated with the activities of the Participant or any other person relevant to the ability of the Participant to perform the Alliance Activities in a manner consistent with this clause; and

### immediately notify the Minister of the particulars concerning any change to the Labour Conditions.

## The Participants must undertake such monitoring and auditing of the Alliance Activities as is necessary to ensure that at all times the Alliance Activities are being performed in compliance with all Industrial Relations Law, the requirements of the Agreement and the Workplace Relations Management Plan.

## The Participants must:

### take all reasonable measures to prevent the occurrence, and minimise the continuance, of Industrial Action;

### advise the Minister immediately of any actual or potential Industrial Action;

### immediately inform the Minister of any request or demand by any Union Official to enter the Site; and

### immediately provide the Minister with a copy of any right of entry notice received from any union in relation to the Site.

## The Participants must ensure that:

### any entry to the Site by a Union Official complies with Industrial Relations Law; and

### the Union Official complies with the Safety Management Plan when on Site.

## The NOPs acknowledge and accept that the audit, inspection and investigation rights, entitlements or powers in clauses 10.4 to 10.9 includes the right, entitlement or power to audit, inspect and investigate any industrial agreements to assure the Minister that the NOPs comply with clauses 14.12 to 14.17.

**Rail Safety**

## The Participants will strictly comply with the requirements of the Rail Safety Act and all other applicable rail safety Regulatory Requirements to ensure that the highest standards of rail safety are maintained at all times during the performance of the Alliance Activities and the Works.

## In addition to the obligations under clause 14.19, the Participants will proactively work to ensure that the safety of Rail Operations is protected at all times including by complying with the reasonable, proper and lawful instructions, Directions, requirements, policies, procedures and practices of the Minister relating to rail safety issued from time to time and the procedures and protocols set out in the RAMP.

# ADJUSTMENT EVENTS

**Determination of Adjustment Events**

## If the ALT Determines, having regard to the Adjustment Event Guidelines, that an Adjustment Event has occurred:

### the Participants will take every reasonable measure available to the Participants to mitigate any adverse or prejudicial effects or optimise any improvement or positive effect, of the acts, events or circumstances giving rise to the Adjustment Event; and

### the ALT may Determine any reasonable modifications which need to be made to the Commercial Framework and make a recommendation to the Minister for the Minister's Determination of the:

#### facts and circumstances supporting the ALT's Determination of the Adjustment Event;

#### impact of the facts and circumstances of the Adjustment Event on the requirements of the Value for Money Statement;

#### reasonable modification to the TOC; and

#### reasonable modifications to the Commercial Framework.

## The ALT in determining any reasonable modification in clause 15.1.2, must ensure that any reasonable modifications are Best for Project.

## If the Minister Determines to accept the ALT's recommendations of one or more of the:

### facts and circumstances supporting the ALT's Determination of that Adjustment Event;

### reasonable modification to the TOC; or

### reasonable modifications to the Commercial Framework,

the Minister will issue a notice accepting the ALT's recommendation and the ALT will ensure that the recommendation is immediately implemented. The NOPs acknowledge and accept that the Minister may in its discretion engage an advisor to assist the Minister in making its Determination.

## If the Minister Determines not to accept all of, or any part of the ALT's recommendations in regard to an Adjustment Event:

### the Minister will provide the Minister's reasons for not accepting the recommendation; and

### the ALT must consider the reasons provided and resubmit its recommendation to the Minister for its Determination,

## The process described in this clause will be repeated until:

### the Minister Determines to accept a recommendation from the ALT; or

### the ALT elects to withdraw the recommendation.

## The events, circumstances, risks and opportunities identified in the Adjustment Event Guidelines:

### are not exhaustive; and

### do not limit the Minister’s reserved power to make a Determination in respect of an Adjustment Event.

## The Minister’s Representative may at any time during the Term, by notice in writing, Determine that a Determination by the ALT pursuant to clause 15.1 or 15.2 in respect of an Adjustment Event valued less than $500,000.00 may be Determined by the ALT on a final basis without requiring acceptance by the Minister pursuant to clause 15.4.

# VARIATIONS

## The Minister may Direct the Participants to:

### change the design or specification of the whole or any part of the Works;

### change the Alliance Activities or any part of the Alliance Activities;

### change the conduct, order or program of the Works or Alliance Activities;

### increase, decrease or omit any part of the Works or Alliance Activities;

### change the character or quality of any part of the Works;

### change the levels, lines, positions or dimensions of all or any part of the Works;

### change the means, methods or techniques in relation to the performance of all or any part of the work under this Agreement;

### execute additional work or perform additional services under this Agreement; or

### demolish or remove material or infrastructure no longer required by the Minister,

### and the Participants must promptly comply with that Direction.

## No Direction will invalidate this Agreement.

## The Minister may, in respect of a Direction or proposed Direction, issue to the ALT an Estimation Request.

## If the Minister issues an Estimation Request or if the ALT Determines that the Minister has issued a Direction that may give rise to a Scope Change, but has not issued an Estimation Request, the ALT must promptly, and in all cases within 10 Business Days of receipt of the Estmation Request, Determine:

### whether the matters contained in the Estimation Request or the subject of the Direction would constitute a Scope Change;

### and if the matters contained in the Estimation Request or the subject of the Direction would constitute a Scope Change, the change in the terms of compensation set out in the Commercial Framework to the NOPs which will result from the conduct of those matters, and provide written notice as to its Determination to the Minister and the relevant NOPs.

## Following the Minister's receipt of a notice under clause 16.4.2 or upon the ALT Determining that, unless a Direction referred to in clause 16.1 is withdrawn a Scope Change will arise, the Minister must notify the ALT in writing whether it wishes to:

### not proceed with the Direction;

### revise the Estimation Request, in which case the provisions of clauses 16.1 to 16.7 will apply to the revised Estimation Request; or

### confirm the Direction or issue a Direction for the matters contained in the Estimation Request, in which case the compensation payable to the NOPs under this Agreement will be altered in the manner set out in the ALT's notice under clause 16.4.2.

## No Direction will result in a change in the compensation payable pursuant to this Agreement unless:

### the Direction is Determined by the ALT to give rise to a Scope Change;

### the ALT has issued a notice under clause 16.4;

### the Minister has Determined that the Direction gives rise to a Scope Change, and

### provided that all other requirements concerning compensation under this Agreement are satisfied.

## The Minister and the ALT must use their best endeavours to minimise any delays in the Alliance Activities arising from the processes contemplated in this clause 16.

## The ALT may, at any time during the period of the Alliance Activities, recommend to the Minister:

### a change to the design or specification of the whole or any part of the Works;

### a change in the Alliance Activities or any part of the Alliance Activities;

### a change in the conduct, rate of progress, order or program of the Works or Alliance Activities;

### an increase, decrease or omission of any part of the Works or Alliance Activities;

### a change in the character or quality of any part of the Works;

### a change in the levels, lines, positions or dimensions of all or any part of the Works;

### a change in the means, methods or techniques in relation to the performance of all or any part of the work under this Agreement;

### to execute additional work or perform additional services under this Agreement; or

### demolish or remove material or infrastructure no longer required by the Minister.

## Any recommendation given under clause 16.8 must:

### include details of the effect, if any, of the recommendation on the Commercial Framework;

### confirm that if the recommendation is implemented the Works will be fit for the Stated Purpose and will satisfy the performance requirements nominated by the Minister; and

### clearly state that it is a recommendation given by the ALT to the Minister under clause 16.8 of this Agreement.

## The NOPs acknowledge and accept that the Minister may consider the ALT's recommendation in its discretion.

## If the Minister accepts the ALT's recommendation, the Minister will issue a notice to proceed with the recommendation and the ALT will ensure that the notice is immediately complied with.

## The NOPs acknowledge and accept that the Minister may place conditions, in its discretion, on any acceptance of the ALT's recommendation.

## If the Minister does not accept the ALT's recommendation, that recommendation must be withdrawn by the ALT and the Alliance shall continue to perform the work under this Agreement as if the recommendation had not been made by the ALT.

# PAYMENT

## TOC is Fixed

## The TOC is fixed and not subject to alteration or escalation, except where the Minister makes a Determination that an Adjustment Event has occurred.

**Determination of Payment Due**

## Regardless of the event, circumstance or degree of difficulty encountered in performing the Alliance Activities, the NOPs’ only entitlement to payment from the Minister is limited to the sum of:

### Reimbursable Costs;

### Fee;

### the Performance Adjustment;

### any amount which the Minister is liable to pay an NOP under the Agreement; and

### GST in accordance with the GST Act.

## The payment due to the NOPs must be determined in accordance with Attachment 4 “Commercial Framework”.

## Should any monetary amount be recovered by a Participant from a third party as a result of a right of indemnity arising under any insurance policy or any other right in favour of that Participant in connection with the Alliance Activities or the Works, that amount will be credited against the AOC.

## The NOPs shall pay to the Minister any payments determined in accordance with Attachment 4 “Commercial Framework”.

## If an audit, inspection or investigation in accordance with clause 10.4 identifies:

### that any payments to a Participant are less than, or exceed, the Participant's entitlements:

#### the Minister will pay the Participant any shortfall;

#### the Participant will reimburse the Minister any excess; or

#### the NOPs will adjust or redistribute any payments amongst themselves as Determined by the NOPs in consultation with the ALT, as the case may be, plus any GST paid or payable in respect of the shortfall or excess in accordance with the Agreement;

#### or

### that the Minister’s Reimbursable Costs advised by the Minister to the AGM are less than or exceed the actual Reimbursable Costs incurred by the Minister that should be allocated against the TOC in accordance with the Agreement, the Minister will re-calculate and adjust the AOC and take into account the difference.

# PAYMENT CLAIM

## The AMT will, each month, on a date agreed by the ALT, prepare and submit a payment claim to the AGM, which sets out:

### the Reimbursable Costs incurred by each NOP in performing Alliance Activities and the Works; and

### each NOP's entitlement to Fee for the month of the payment claim;

### during the Month of the payment claim.

## The payment claim must include:

### all invoices, accounts, time sheets and other documentation (including any additional documentation requested by the ALT or AGM) in support of the payment claim; and

### a statutory declaration by a representative of each NOP in the form set out in Attachment 12.

## The AMT will not submit more than one payment claim for each month and will endeavour to submit payment claims within 5 Business Days after the end of the month to which that payment claim relates.

## Claims for payment not submitted by the AMT within 30 Business Days after the end of the month to which that payment claim relates can only be submitted as a payment claim after the Minister Determines that any such claim for payment can be submitted.

## The AGM will, within 2 Business Days of the submission of the payment claim, review the payment claim and:

### if the AGM determines that the payment claim is true, correct and fully substantiated, recommend the payment claim to the ALT; or

### if the AGM does not determine that the payment claim is true, correct and fully substantiated, the AGM must return the payment claim to the AMT and request a revised payment claim that is true, correct and fully substantiated.

**Payment Schedule**

## The ALT, or a representative nominated by the ALT, will within 5 Business Days after the AGM's recommendation, recommend to the Minister a payment schedule to be issued to each of the NOPs which:

### identifies the payment claim to which the payment schedule relates;

### certifies:

#### the ALT's recommendation of the sum of the Reimbursable Costs incurred by the NOPs, in performing the Alliance Activities; and

#### each NOP's entitlement to a Fee.

## Where the Minister Determines that the ALT's recommended payment schedule is a bona fide, fair and reasonable amount payable in accordance with this Agreement, the Minister will, within 10 Business Days, issue a payment schedule from the Minister to the Participants.

## Where the Minister does not Determine that the ALT's recommended payment schedule is a bona fide, fair and reasonable amount payable in accordance with this Agreement the Minister must, within 5 Business Days:

### return the recommended payment schedule to the ALT with reasons; and

### inform the ALT in writing of the amount the Minister does accept is a bona fide, fair and reasonable amount payable in accordance with this Agreement, and

the ALT must provide a replacement payment schedule for the amount informed in clause 18.8.2 and the times and process in clause 18.7 and 18.8 will recommence.

## At its sole and unfettered discretion, the Minister may issue a payment schedule at any time to correct an error or omission.

**Recipient Created Tax Invoices**

## For the purposes of this Clause only:

### "Recipient" means the Minister.

### "Suppliers" means the NOPs.

### "Supplies" means the Alliance Activities and the Works.

## The Recipient may issue tax invoices in respect of the specified Supplies;

## The Suppliers will not issue tax invoices in respect of the Supplies;

## The Suppliers acknowledge that they are registered for GST when they entered into the agreement and that they will notify the Recipient if they ceases to be registered;

## The Recipient acknowledges that it is registered for GST when it enters into this agreement and that it will notify the Suppliers if it ceases to be registered for GST or if it ceases to satisfy any of the requirements of the determination at Schedule 1 of *Goods & Service Tax Ruling GSTR 2000/10 – Recipient Created Tax Invoices.*

## The Recipient shall be responsible for issuing Recipient Created Tax Invoices, and Adjustment Notes in respect of adjustment events known to the Recipient.

## The Suppliers shall notify the Recipient of details of any adjustment event not otherwise known to the Recipient. Recipient Created Tax Invoices will accompany payment schedules.

## Where the NOPs are required to make a payment to the Minister pursuant to Attachment 4 “Commercial Framework”, the Minister shall issue a Tax Invoice to the NOPs.

**Payment by the Minister**

## The Minister will, within 10 Business Days after issuing a Recipient Created Tax Invoice in accordance with clause 18.11, pay to each of the NOPs the amount stated in the relevant Recipient Created Tax Invoice by electronic funds transfer to a bank account nominated by each of them.

## NOP#A and NOP#B confirm that payments by the Minister to the Joint Venture will satisfy any obligation by the Minister to make any payments under the Agreement to NOP#A and NOP#B.

## Payments by the Minister under this Agreement are:

### payment on account only;

### are not evidence that the whole or any part of the Alliance Activities or the Works have been performed in accordance with this Agreement; and

### subject to adjustment as a result of audit, the discovery of an error or the application of the Performance Adjustment regime.

**Minister's Reimbursable Costs**

## On a date agreed by the ALT, the Minister will prepare and submit to the AGM a payment statement incorporating an account of costs including all supporting documentation identifying the sum of the actual Reimbursable Costs incurred by the Minister in performing Alliance Activities during the period of the payment statement.

## The AGM will:

### review the actual Reimbursable Costs incurred by the Minister and if the AGM Determines they are true and correct recommend these amounts to the ALT;

### review the actual Reimbursable Costs incurred by the Minister and if the AGM Determines that additional supporting documentation is necessary request the ALT to request that the Minister provide such reasonable supporting documentation within a reasonable time; and

### ensure that the actual Reimbursable Costs incurred by the Minister are accounted for and form part of AOC.

## Any supporting documentation requested by the ALT must be provided by the Minister within a reasonable time having regard to the nature of the request and the circumstances of the review and the request.

# GST

## Terms defined in the GST Act have the same meaning when used in this clauses 19 or in the definition of GST Amount in clause 1.65, unless expressly stated otherwise.

## Unless expressly stated otherwise, any sum payable or amount used in the calculation of a sum payable under this Agreement has been determined without regard to GST and must be increased, on account of any GST payable under this clause.

## Each NOP and the Joint Venture must be and must remain registered for GST purposes.

## Each NOP indemnifies the Minister for any cost, Loss, expense, damage, interest or penalty the Minister suffers if the NOP or the Joint Venture is not registered for GST or fails to comply with the *A New Tax System (Goods and Services Tax) Act 1999*

## If any GST is payable on any Taxable Supply made under this Agreement to the recipient by the supplier, the recipient must pay the GST Amount to the supplier on the earlier of:

### the time of making payment of any monetary consideration on which the GST is calculated; and

### the issue of an invoice relating to the Taxable Supply.

## The recipient must pay the GST Amount in the same manner as making payment of any monetary consideration on which the GST is calculated. The supplier must provide as a precondition for payment by the recipient of the GST Amount, a Tax Invoice or a document that the Minister will treat as a Tax Invoice.

## If a Participant is required to pay, reimburse or indemnify the other for the whole or any part of any Loss or other amount that the other party has incurred or will incur in connection with this Agreement, the amount must be reduced by the amount for which the other party (or representative member if this is not the other Participant) can claim an Input Tax Credit, partial Input Tax Credit, or other like offset.

# SECURITY OF PAYMENT

## If a Participant or Subcontractor receives an application for adjudication or notice or judgement debt application under the *Building and Construction Industry Security of Payment Act 2009* (SA) from a Subcontractor, the Participants or Subcontractor (as applicable) must immediately provide the Minister and the AGM with a copy.

## If the Minister becomes aware that a Subcontractor is entitled to suspend any works or services which forms part of the Alliance Activities or the Works under the *Building and Construction Industry Security of Payment Act*, the Minister may Determine to pay the Subcontractor such money as is or may be owing to the Subcontractor in respect of works or services forming part of the Alliance Activities. Any amount paid by the Minister will be a Reimbursable Cost and the Participant will have no entitlement to payment for that work for services performed by the Subcontractor which is the subject of the payment.

# TITLE TO UNFIXED MATERIALS, PLANT AND EQUIPMENT

## Title in all unfixed materials and equipment that will form part of the Works supplied directly by a Participant, and not a Subcontractor or Sub-Alliance Participant, the value of which is included in a monthly payment claim, shall, upon payment, immediately pass to the Minister unencumbered and free of any security interests held or claimed by any third parties.

## Payment for any unfixed materials and equipment is subject to the ALT being satisfied that:

### the Participant has paid for the materials and equipment and that clear and unencumbered title will pass upon payment; and

### the unfixed materials and equipment are properly stored, labelled and identified as the property of the Minister and, to the extent practicable, that they are adequately insured noting the interests of all Participants.

## If a Participant wishes to be paid for materials or equipment not incorporated into the Works which are supplied by a Subcontractor or Sub-Alliance Participant the Participant must obtain from the Subcontractor or Sub-Alliance Participant security in the form of an unconditional bank undertaking in favour of the Minister or cash equal to the amount claimed for the materials. Security provided will be released upon delivery of the relevant materials to the Site and the Subcontractor or Sub-Alliance Participant providing evidence and documentation which establishes that unencumbered ownership has passed to the Minister.

## The NOPs must ensure that in respect of each Subcontract valued in excess of Five Million Dollars ($5,000,000.00) (ex GST), if an NOP:

### receives or retains from a Subcontractor or Sub-Alliance Participant security in cash, or converts security to cash; or

### receives payment under the Agreement for, or on account of, work done or materials, plant, equipment or other goods supplied by a Subcontractor or Sub-Alliance Participant and does not pay that Subcontractor or Sub-Alliance Participant the whole amount the NOP received or to which the Subcontractor or Sub-Alliance Participant is entitled,

### the NOP must hold the cash received in a joint account in the name of the NOP and the Minister in a bank Determined by the Minister.

**Survival of Clause**

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

# PERSONAL PROPERTY SECURITIES ACT

## In this clause 22, capitalised expressions have the meaning given to them in the *Personal Property Securities Act 2009* (Cth) (“PPSA”).

## Each NOP grants to the Minister a Security Interest in any item of unfixed plant and materials for which the NOP receives any payment from the Minister prior to their incorporation into the Works, or which are supplied or owned by the Minister.

## The NOPs consent to the Minister registering any one or more Financing Statements or Financing Change Statements in respect of any Security Interest created by or contemplated under this Contract, and undertakes to do all things reasonably required by the Minister to enable the Minister to do so.

## The NOPs must promptly do anything required by the Minister to ensure that any Security Interest granted to the Minister is a perfected Security Interest and must ensure that:

### all prior Security Interests in any such item of unfixed plant and materials are discharged promptly upon payment by the Minister of the amount claimed for them; and

### any further Security Interest will only arise in respect of the item if it is approved in writing by the Minister, is solely for the purpose of ongoing manufacture or improvement off-Site, and will be subordinated to the Security Interest of the Minister to the extent of all payments made by the Minister for the unfixed plant or materials.

## The NOPs agree not to cause (directly or indirectly) the registration of a Financing Change Statement, or the discharge of any registration of a Security Interest under this clause 22 in respect of any item of unfixed plant and materials or to make any Amendment Demand without the Minister’s prior written consent.

## To the extent permitted by law, the parties agree that the following provisions of the PPSA will not apply to this Contract:

### section 95 (notice of removal of accession);

### section 125 (obligation to dispose of or retain collateral);

### section 130 (notice of disposal); paragraph 132(3)(d) (contents of statement of account after disposal);

### subsection 132(4) (statement of account if no disposal);

### section 135 (notice of retention);

### section 142 (redemption of collateral); and

### section 143 (reinstatement of security agreement).

## For the purposes of section 157 of the PPSA, each NOP waives its right to receive notice of any verification statement in relation to the registration of a Financing Statement or a Financing Change Statement.

## For the purposes of s 275(6) of the PPSA, the Participants agree that no Participant will, or is entitled to, disclose information of the kind specified in s 275(1) of the PPSA.

## Each NOP indemnifies the Minister for and in respect of all Loss suffered or incurred by the Minister in respect of any Security Interest not being perfected or not having first priority or not being fully enforceable in accordance with the terms of this Agreement.

**Survival of Clause**

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

# INSURANCE

**Construction Risks**

## The NOPs will, on or about the Commencement Date, effect and maintain until the expiry of the Defects Liability Period, the following insurance policies for the performance of Alliance Activities:

### the Construction Risks - Material Damage Insurance Policy substantially in the form as the policy documents in Schedule AC 8 “Insurance Policies”, the policy number and date of which will be notified by the NOPs to the Minister; and

### the Construction Risk - Legal Liability Insurance Policy substantially in the form as the policy documents in Schedule AC 8 “Insurance Policies”, the policy number and date of which will be notified by the NOPs to the Minister.

## If:

### attached to this Agreement at Schedule AC 8 “Insurance Policies” are copies of policy wordings including policy schedules then the Participants shall be deemed to have reviewed and accepted the terms of these insurance policies for the purposes of the performance of the Alliance Activities in accordance with this Agreement.

### the Insurance Policy or Policies are not attached to this Agreement at Schedule AC 8 'Insurance Policies', the NOPs shall be obliged to effect the Insurance on terms and conditions approved by the Minister and with an insurance company which holds a credit rating approved by the Minister.

**Professional Indemnity**

## The NOBs will, on or about the Commencement Date, effect a project specific first party alliance professional indemnity insurance policy (PI Policy) for the performance of the Alliance Activities. It is intended that the PI policy will:

### provide cover for the professional services performed by the Participants under this Agreement, including during the Request for Proposal process for this project;

### identify all Participants as a named insured under the PI Policy;

### be maintained for 6 years after the Actual Completion Date; and

### include the particulars of cover set out in Schedule AC 8 “Insurance Policies”.

## If:

### attached to this Agreement at Schedule AC 8 “Insurance Policies” is a copy of the policy wording including the policy schedule then the Participants shall be deemed to have reviewed and accepted the terms of these insurance policies for the purposes of the performance of the Alliance Activities in accordance with this Agreement.

### the Insurance Policy or Policies are not attached to this Agreement at Schedule AC 8 'Insurance Policies', the NOPs shall be obliged to effect the Insurance on terms and conditions approved by the Minister and with an insurance company which holds a credit rating approved by the Minister.

**Other Insurances**

## Each Participant must effect and maintain from the Commencement Date until the expiry of the Term:

### insurance for Construction Plant to the extent supplied by the relevant Participant to be used by the Participants in performing Alliance Activities and the Works which:

### provides cover against Loss of or damage to Construction Plant to the replacement value of the Construction Plant; and

### notes the interest of each Participant in respect of the policy for their respective insurable interest (if any);

### comprehensive motor vehicle insurance for an occurrence in respect of any motor vehicles provided by a Participant and used by a Participant or an employee at any time in connection with the Alliance Activities for the market value of a motor vehicle and include for any third party property damage, or personal injury or death in accordance with all relevant law, to a limit of indemnity of not less than $20 million;

### compulsory third party motor vehicle insurance in respect of all registrable vehicles used in the performance of the Alliance Activities or the Works, where relevant;

### all other insurances as required by Law; and

### all other insurances as may be recommended by the ALT and Determined by the Minister.

### During the Term each NOP must continually assess the adequacy of the insurances effected pursuant to this clause 23 in terms of the completeness of their listing, the adequacy of the sum insured, limit of liability, scope of coverage, conditions or exclusions of those insurances in respect of how they may or may not respond to any loss, damage or liability, and take out any difference in condition, difference in cover or difference in limit insurance that is reasonably necessary, the cost of which shall be a Reimbursable Cost.

## In respect of the insurance policies to be effected by the Minister, the Minister will use its best endeavours to ensure that each insurance policy provides that:

### insofar as the policy may cover more than one insured, all insuring agreements and endorsements will operate in the same manner as if there the Participants are a separate policy of insurance covering each party comprising the insured and that a failure by one insured to disclose all material circumstances or to observe and fulfil the terms and conditions of a policy will not prejudice the rights of any other insured to indemnity under the policy;

### the relevant insurance policies indemnify the Participants against any recovery actions or proceedings, whether by way of subrogated actions or proceedings or statutory rights of recovery; and

### the insurer waives all rights, remedies or the relief arising out of or in connection with this Agreement or the policy to which it might otherwise become entitled by way of subrogation against any insured and that a failure by an insured to disclose all material circumstances or to observe and fulfil the terms and conditions of the policy will not prejudice the insurance in regards to any other insured.

**Wilful Default**

## In respect of any insurance policy to be effected by a Participant under clause 23.5, any act or omission by a Participant, or any of a Participant's officers, employees, agents or any other person for whom a Participant is solely responsible, including:

### any misrepresentation, non-disclosure of material circumstances or breach of the duty of utmost good faith; or

### a failure to observe and fulfil the terms and conditions of any such insurance policy,

### that causes, in whole or in part, that:

#### a Participant's rights or entitlements in respect of any such insurance policy to be adversely affected or prejudiced; or

#### the insurance policy to be cancelled or avoided, or the benefits under the insurance policy to be reduced,

#### will be a Wilful Default for the purposes of this Agreement.

**Survival of Clause**

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

# INSURANCE CLAIMS

**Claims Procedures**

## The NOPs must immediately notify the Minister in writing of any occurrence or incident that may, however remotely, give rise to a claim under an insurance policy taken out by the Minister as required by this Agreement or of any other matter or thing for which those policies require notice to be given. A notice must include reasonable particulars of the occurrence, incident, matter or thing.

## Claims made against insurance policies taken out by the Minister as required by this Agreement must be submitted to the Minister for lodgement by the Minister with the insurer. The NOPs must give all assistance and provide all information to the Minister and the insurer as may be reasonably practicable in all the circumstances.

## If an event occurs which in the opinion of a reasonable person in the position of an NOP may give rise to a claim involving the Minister under any policy of insurance required to be taken out by the NOPs in accordance with clause 23, that NOP must notify the Minister in writing and must ensure that the Minister is kept fully informed of subsequent action or developments concerning the claim.

**Claim Proceeds**

## In relation to any claim brought under an insurance policy effected by the Minister, all claims proceeds under such policies, except those paid directly by insurers to third parties, must be made payable, and paid, to the Minister. The Minister must apply the claim proceeds by:

### paying or reimbursing Reimbursable Costs to the NOPs in accordance with this Agreement;

### crediting against Reimbursable Costs; or

### paying into an account in the joint names of all Participants from which withdrawals will be made on the Determination of the ALT.

## If, after Completion, a Participant receives payment under an insurance policy effected in accordance with this clause that reimburses any Loss that was reimbursed or is reimbursable under this Agreement then that Participant must pass on that payment to the Minister and the Minister’s Representative must within a further 20 Business Days:

### arrange for an Audit under clause 10.4 to take into account the amount received under the policy; and

### procure that the Minister issue further payments to the NOPs, if required by an Audit in accordance with clause 10.4.

**Insurance Policies are Primary**

## The Participants intend that any insurance policy required under this clause is to be primary to, and not secondary or subordinate to, any other indemnity or payment required to be granted or made by the Minister under, or in connection with, this Agreement.

## The Participants acknowledge that if a claim is made under an insurance policy by the Minister, it is their intention that the insurer cannot require the Minister to exhaust any indemnities referred to in this Agreement before the insurer considers or meets the relevant claim.

**No Release**

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

**Survival of Clause**

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

# CONFIDENTIALITY AND CONFLICT OF INTEREST

**Confidentiality**

## Subject to this Agreement, the party (“receiving party”) to whom Confidential Information is disclosed by another party (“disclosing party”) must not disclose Confidential Information to any person without first obtaining the disclosing party’s written consent.

## There will be no breach of the obligations of the receiving party under this Agreement if the Confidential Information is legally required to be disclosed or the circumstances of its disclosure are permitted by this Agreement.

## The receiving party may disclose Confidential Information to its officers, employees, agents, Subcontractor, Sub-Alliance Participant or Associate (“Authorised Persons”) if:

### an Authorised Person needs to know the Confidential Information for the performance of his or her duties under this Agreement;the receiving party first notifies the proposed disclosure to the disclosing party; and

### the receiving party first makes the Authorised Person aware of the confidential nature of the Confidential Information and requires the employee to treat it confidentially.

## If requested by the Minister, the Authorised Person must execute confidentiality undertakings in favour of the Minister to comply with this clause.

## Despite anything else in this Agreement, it is a condition of any permitted disclosure that the receiving party must notify the disclosing party promptly if the receiving party becomes aware of any unauthorised disclosure by a third party.

## The receiving party must give the disclosing party all assistance reasonably required by that party in connection with any proceedings which it may institute against any persons for the disclosure.

## The receiving party indemnifies the disclosing party against any Loss or damage which the disclosing party may suffer or for which the disclosing party may become liable as a result of:

### any disclosure or use of Confidential Information in breach of this Agreement by the receiving party; or

### any unauthorised disclosure or use by an Authorised Person of Confidential Information.

## Notwithstanding anything else in this Agreement, the Participants may disclose Confidential Information:

### to Parliament, the Governor, Cabinet or a Parliamentary or Cabinet committee or subcommittee;

### where required by Law to do so;

### to any agency, Authority, instrumentality, Minister or Officer of the Crown in right of the State of South Australia to whom it is customary for the Participant to disclose information such as the Confidential Information (whether or not the Participant is legally obliged to do so); or

### to the Australian Competition and Consumer Commission (ACCC) if the Minister reasonably suspects, or is notified by the ACCC that it reasonably suspects, that there is Cartel Conduct or unlawful collusion in connection with the supply of Goods or Services under this Agreement; orfor the purposes of prosecuting or defending any legal proceedings.

**Corporate Conflict Of Interest**

## Each Participant must:

### disclose the full particulars of any actual, potential or possible conflict of interest which arises or may arise in connection with this Agreement, whether that conflict concerns the Participants or any person employed or retained by the Participants;

### not allow itself to be placed in a position of conflict of interest or duty in regard to any of its rights or obligations under this Agreement without the prior consent of the other Participants; and

### comply with all reasonable Directions of the Minister requiring it to resolve or otherwise deal with any conflict of interest.

**Personal Conflicts Of Interest**

## The Participants must ensure that each representative appointed to the AMT or the ALT fully discloses any personal conflict of interest in respect of any action, decision or determination to be taken or made by the ALT or AMT.

## A representative's employment by a Participant, or a directorship of or shareholding in a Participant, by itself, will not amount to a personal conflict of interest.

## The ALT, in the absence of a relevant representative, will determine, adopting best corporate governance practices, whether the representative has a personal conflict of interest and the Best for Project solution to resolve it.

## Where a representative, on the grounds of a personal conflict of interest, is excluded from any discussion or determination arising out of or in connection with the acts, events or circumstances creating a personal conflict of interest, then any such discussion or determination cannot proceed at the:

### AMT until the person who is excluded on the ground of a personal conflict of interest excuses him or herself and is replaced by an appropriate person on a Best for Project basis; and

### ALT until the quorum can be formed by representatives from each Participant not affected by the personal conflict of interest attending the ALT meeting.

## Each representative appointed to the AMT or the ALT must execute a conflict of interest declaration if requested by the Minister.

**Survival of Clause**

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

# MEDIA RELEASES AND ENQUIRIES

## An NOP must obtain the Minister’s prior written consent to:

### any press release or promotional advertisement that it, or its Subcontractor or Sub-Alliance Participants, wish to make or place concerning the Alliance Activities or the Works; and

### the release for publication in any media of any information concerning the Alliance Activities or the Works.

## An NOP must refer any media enquiries concerning the Alliance Activities or the Works to the Minister.

## An NOP must not respond to any media enquiry without the Minister’s prior written consent.

## An NOP must ensure that all Subcontractor and Sub-Alliance Participants comply with this clause and obtain the Minister’s Representative’s prior written consent (through the NOP) before doing anything which, if done by the NOP, would require the Minister’s Representative’s prior written consent.

## The Minister may give or refuse its consent, in its absolute discretion.

# INTELLECTUAL PROPERTY

**New Intellectual Property Rights**

## Subject to clause 27.3 all rights, title and interests in all new Intellectual Property Rights created for or in connection with the Participants ‘performance of the Alliance Activities or the Works will vest immediately in the Minister. Any Subcontract or Sub-Alliance which does not directly and immediately vest ownership of new Intellectual Property Rights upon creation in the Minister requires the prior consent of the ALT.

## The Minister grants to the NOPs a non-exclusive, personal, sub licensable, royalty free licence to use, the Intellectual Property Rights created under clause 27.1, for the purpose of performing the Alliance Activities.

**Existing Intellectual Property Rights and Enhancements**

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

**Licence of Intellectual Property Rights**

## The Minister grants to the NOPs for the Term of the Alliance a nonexclusive, personal, sub-licensable, royalty free licence to use the Minister's Existing Intellectual Property Rights and any Enhancements which are required by the Alliance for the performance of Alliance Activities.

## Each NOP grants to the Minister and each other NOP (as the case may be) a non-exclusive, irrevocable, perpetual, transferable (with the ability to grant sub licences), royalty free licence to use the NOP's Existing Intellectual Property Rights and any Enhancements which are required for:

### the performance of the Alliance Activities;

### the use, operation, support, maintenance and enjoyment of the Works; and

### the purposes of Project.

**Third Party Intellectual Property Rights**

## The Participants will, where necessary for the operation of the Works or in any agreement with a third party which relates to Intellectual Property Rights, acquire a perpetual, non-exclusive, royalty free, transferable licence in favour of the Minister to use a third party's Intellectual Property Rights which unless otherwise determined by the ALT, will be on the best commercial terms in favour of the Minister reasonably available, including a right to sublicense.

## The Participants acknowledge and accept that any Intellectual Property Rights created in any signalling infrastructure design or works are likely to be retained by the original manufacturer, designer or contractor. The Participants will use their best endeavours to secure a non-exclusive, irrevocable, perpetual, sub-licensable and royalty free licence to use any such Intellectual Property Rights in respect of the Participants, for the purposes of the performance of their obligations under the Agreement.

**Indemnity**

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

**Moral rights**

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

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

**Survival of Clause**

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

# COMPLETION

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

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

### the Works have achieved Completion; and

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

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

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

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

## As soon as is reasonably practicable after the receipt of the ALT's recommendation in regard to Completion, the Minister must consider the ALT's recommendation, and:

### if the Minister Determines that the Works have achieved Completion, the Minister must issue a Certificate of Completion stating the Date of Completion; or

### if the Minister Determines that the Works have not achieved Completion, the Minister must notify the ALT of those matters or things which need to be addressed before the Works can achieve Completion and the ALT must address those matters or things and resubmit the recommendation in regard to Completion to the Minister for further consideration.

## The Participants acknowledge and agree that the Minister cannot Determine Completion prior to receipt of a recommendation from the ALT that Completion has been achieved.

## As a precondition to Completion, the NOPs must provide the Minister with all Records required under this Agreement.

# DEFECT LIABILITY PERIOD

## During the applicable Defects Liability Period, the Participants:

### must, whenever reasonably requested by the Minister, jointly inspect the Site with the Minister and/or provide assistance to identify Defects;

### must promptly (and within any time reasonably specified by the Minister) repair or rectify any Defects which become evident;

### are responsible for the care of any Construction Plant or Temporary Works on the Site; and

### are responsible for any loss or damage to the Works and any property of the Minister, a Participant or any third party arising out of or in connection with the repair or rectification of any Defects.

## Notwithstanding clause 29.1, the Minister or the ALT after consultation with the Minister may at any time prior to issuing the Final Certificate, Direct the Participants to attend to the rectification of any Defect in the Works.

## The cost to rectify, repair, reinstate or make good any loss, damage or Defect or to take care under this clause 29 will be a Reimbursable Cost.

## Repair and rectification work performed under this clause 29 shall be subject to a separate Defects Liability Period commencing at 4:00 pm on the date of completion of the repair or rectification and expiring at the end of the period specified in Attachment 1 “Project Particulars”. The separate Defects Liability Period shall only apply to the defective work in question. This clause 29 shall apply in respect of the rectification work and the Defects Liability Period for that rectification work.

## At the expiry of the Defect Liability Period, including any separate Defects Liability Period applying under clause 29.4, the Minister must issue a Final Certificate stating that the Defect Liability Period has expired.

## The Participants acknowledge and agree that all title in the Works vests in the Minister.

# SUSPENSION OF THE WORKS

## Except to the extent necessary to avoid an event having an adverse, or being likely to have an adverse, impact on the environment, public health or safety or to avoid a breach of a Law, the Participants will not suspend the whole or any part of the work under this Agreement without a Direction from the Minister.

## If the Minister considers that suspension of the whole or part of the work under this Agreement is necessary or appropriate for any reason, the Minister may Direct that the Participants suspend the progress of the whole or part of the Alliance Activities for such time as the Minister decides and the Participants will promptly suspend that part of the Alliance Activities.

## The Minister may Direct that the Participants must recommence the whole or the relevant part of Alliance Activities at any time.

## If the Minister requires a suspension under this clause, the ALT must Determine whether the compensation set out in the Commercial Framework payable to the NOPs should be amended to take into account the effect of the suspension.

## The Participants must use all reasonable endeavours to mitigate Loss during the period of any suspension.

# TERMINATION FOR CONVENIENCE

**Notice of Termination**

## Despite any other provision of the Agreement, the Minister may Determine by notice in writing to the NOPs to terminate the Agreement for the Minister's convenience at any time without giving any reason or being required to justify such action and regardless of the conduct of the Participants.

## Termination of the Agreement will be effective immediately upon service of the notice in clause 31.1.

**Compliance with Notice of Termination**

## Upon receipt of a notice of termination under clause 31.1, the Participants must immediately:

### cease all Alliance Activities; and

### comply with any Determinations by the Minister to bring about an immediate winding down and cessation of the Alliance Activities, such winding down to include but not be limited to:

#### the protection and return of property in the possession or control of the Participants in which the Minister has, or may acquire, an interest;

#### termination, assignment, transfer or novation to the Minister (at the Minister's Determination) of all rights, benefits and obligations of any Subcontracts;

#### giving the Minister possession of all materials and other things on or about the Site which are owned or leased by the Participants and which are reasonably required by the Minister for Completion of the Works;

#### giving the Minister ownership and possession of all items reasonably required by the Minister for Completion of the Works which have formed, or will form, part of any payment made or to be made by the Minister;

#### vacating the Site of all Associates, Construction Plant and other belongings of the NOPs;

#### giving to the Minister any Records which the Participants or any of their Associates have prepared as at termination as required by the Agreement. The Participants agree that the Minister may use any such Records as it Determines; and

#### execution by a Participant of any Documents which the Minister Determines is required to close out the Alliance or with respect to other matters arising out of, or in connection with the termination of the Agreement.

**Termination Payments**

## Subject to any rights the Minister has arising out of or in connection with the Agreement, including but not limited to a right to withhold or set off payment and recover all amounts to which any of the NOPs may be liable under the Agreement if the Agreement is terminated under clause 31.1, the Minister will pay to the NOPs:

### payments due to them for work executed to the Minister’s satisfaction in accordance with this Agreement to the date of termination (including amounts payable on account of the Fee);

### the reasonable costs of demobilisation (including the removal of Temporary Works or Construction Plant);

### the reasonable costs unavoidably incurred by the NOP in the expectation of completing the Works including reasonable costs of terminating any Subcontractor or Sub-Alliance Participant in connection with the termination of any Subcontract (other than any damages or claims for loss of income or profit payable to any Subcontractor or Sub-Alliance Participant in connection with the termination of any Subcontract); and

### the reasonable costs of complying with any Directions given by the Minister upon, or subsequent to, termination.

## Other than payment entitlements under clause 31.4 (if any), the NOPs will not otherwise be entitled to, and release and discharge the Minister from any Loss arising out of or in connection with the Agreement, the Alliance Activities and the Works, the termination or purported termination by the Minister of the Agreement under this clause 31 (or the effects of the termination or purported termination), which the NOPs would have had but for its release in this clause 31.5 save and except for any entitlement to be indemnified by the Minister in accordance with clause 27.8.

## The Participants agree that the Participants must take all reasonable steps to mitigate the Loss referred to in clause 31.4.

**Completion of the Works**

## Without prejudice to any of the Minister's rights, entitlements or powers under the Agreement, the Minister may, upon termination of the Agreement under clause 31.1, itself or by third parties, continue to perform and complete any uncompleted Alliance Activities and the Works.

# WILFUL DEFAULT AND INSOLVENCY

**Wilful Default**

## If, prior to expiry of the Term, an NOP commits a Wilful Default (Defaulting NOP), the Minister, after consultation with the ALT, may Determine to issue a written notice to the Defaulting NOP (Default Notice):

### specifying details of the Wilful Default; and

### requiring the Defaulting NOP to rectify the Wilful Default within 20 days of receipt of the written notice by the Defaulting NOP.

**Failure to Remedy a Wilful Default**

## If the Defaulting NOP fails to remedy the Wilful Default identified in the Default Notice within 20 days of receipt of the written notice in clause 32.1, the Minister, after consultation with the ALT, may Determine at any time thereafter, by giving written notice to the Defaulting NOP, to exercise one or more of the following rights:

### partly or wholly suspend any payment, or any entitlement to payment, of any Reimbursable Cost, Fee or Performance Adjustment due to the Defaulting NOP under the Agreement until the Wilful Default has been remedied;

### terminate the Defaulting NOP's entitlement to payment of any Reimbursable Cost, Fee or Performance Adjustment which may otherwise accrue to the Defaulting NOP under the Agreement on and from the date of the notice;

### exclude the Defaulting NOP from further participation in the performance of the Agreement;

### if an NOP committed the Wilful Default, terminate this Agreement by notice in writing to the NOPs.

## Any notice issued to the Defaulting NOP under clause 32.2 will be effective immediately and is without prejudice to the Non-Defaulting Participants' rights under the Agreement or at Law.

## Notwithstanding any Wilful Default by the Defaulting NOP, the Non-Defaulting Participants will continue to perform the Alliance Activities and the Works.

**Act of Insolvency**

## If, prior to expiry of the Term an Act of Insolvency occurs in respect of an NOP or its parent or ultimate holding company (Defaulting NOP), the Minister, after consultation with the ALT may:

### Determine at any time thereafter by giving written notice to the Defaulting NOP (Default Notice), to exercise one or more of the following rights:

#### partly or wholly suspend any payment, or any entitlement to payment, of any Reimbursable Cost, Fee or Performance Adjustment due to the Defaulting NOP under the Agreement until Completion;

#### terminate the Defaulting NOP's entitlement to payment of any Reimbursable Cost, Fee or Performance Adjustment which may otherwise accrue to the Defaulting NOP under the Agreement on and from the date of the notice; or

#### exclude the Defaulting NOP from further participation in the performance of the Agreement;

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

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

**Exclusion**

## If the Minister Determines to exclude a Defaulting NOP from further participation in the Alliance:

### the Non-Defaulting Participants in their absolute and unfettered discretion may:

#### suspend until Completion any payment, or any entitlement to payment, of any Reimbursable Cost, Fee or Performance Adjustment to the Defaulting NOP whether or not the entitlement to payment arose on or before the date of the Default Notice;

#### terminate any future entitlement to payment of any Reimbursable Cost, Fee or any Performance Adjustment to the Defaulting NOP occurring, or that may otherwise occur but for this clause 32.7.1(b), after the date of the Default Notice;

#### determine how the remaining Alliance Activities will be performed (including employing and paying other persons to replace the Defaulting NOP in the performance of the Alliance Activities or electing to perform the remaining Alliance Activities themselves); and

#### at no cost to the Non-Defaulting Participants, use all Temporary Works, Construction Plant and materials provided by the Defaulting NOP to perform the remaining Alliance Activities; and

### the Defaulting NOP:

#### must promptly, as and when required by the ALT, assign, transfer or novate (as directed by the Non-Defaulting Participants) to the Non-Defaulting Participants without payment the benefit of any Subcontracts or Intellectual Property Rights owned or held by the Defaulting NOP under any Subcontracts required by the Non-Defaulting Participants for the performance of any part of Alliance Activities or the Works;

#### must promptly, as and when required by the ALT deliver to the Minister any Records or information prepared by, or on behalf of, the Participants under the Agreement prior to the Default;

#### must, as and when directed by the ALT (and not before) remove from the Site, at no cost to the Non-Defaulting Participants, any Temporary Works, Construction Plant and other property provided by the Defaulting NOP. If the Defaulting NOP fails to do so then, not less than 14 days after written notice to it of the intention to do so (but without being responsible for any Loss or damage) the Non-Defaulting Participants may remove and/or sell any such Temporary Works, Construction Plant or other property and the proceeds of such sale shall be available to be set-off in accordance with clause 38.3;

#### shall no longer be entitled to be represented on the ALT or the AMT or otherwise participate in the Alliance or the Project;

#### shall have no interest in the Alliance, the Agreement, Alliance Activities, the Works or the Project from the date of the Default Notice;

#### waives any objection to any determination under clause 32.7.1(c);

#### releases and discharges the Non-Defaulting Participants from any Loss arising out of or in connection with any such determination under clause 32.7.1(c) which it would have had but for this release and discharge;

#### will promptly do such acts and things and execute such documents as may be necessary for the continued performance of the Alliance Activities; and

#### notwithstanding clause 32.7.2(h), will execute such deeds and documents that the Minister Determines are necessary for the completion of the Alliance Activities or the Works by the Non-Defaulting Participants.

**Termination**

## Upon receipt of a notice of termination under clauses 32.2.4, or 32.5.2 the Participants must immediately:

### cease all Alliance Activities; and

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

#### the protection and return of property in the possession or control of the Participants in which the Minister has, or may acquire, an interest;

#### termination, assignment, transfer or novation to the Minister (at the Minister's Determination) of all rights, benefits and obligations of any Subcontracts;

#### giving the Minister possession of all materials and other things on or about the Site which are owned or leased by the Participants and which are reasonably required by the Minister for Completion of the Works;

#### giving the Minister ownership and possession of all items reasonably required by the Minister for Completion of the Works which have formed, or will form, part of any payment made or to be made by the Minister;

#### vacating the Site of all Associates, Construction Plant and other belongings of the NOPs;

#### giving to the Minister any Records which the Participants or any of their Associates have prepared prior to or as at termination as required by the Agreement. The Participants agree that the Minister may use any such Records in its discretion; and

#### execution by a Participant of any Documents which the Minister Determines is required to close out the Alliance or with respect to other matters arising out of, or in connection with the termination of the Agreement.

**Termination Payments**

## Subject to any rights the Minister has arising out of or in connection with the Agreement, including a right to withhold or set off payment and recover all amounts to which any of the NOPs may be liable under the Agreement, if the Agreement is terminated under clauses 32.2.4 or 32.5.2, the Minister will pay the Non-Defaulting NOPs but excluding the Defaulting NOP, or the Non-Defaulting NOPs must pay the Minister, as the case may be, an amount agreed, calculated or determined in accordance with Attachment 11.

## Other than payment entitlements under clause 32.9 (if any), the Non-Defaulting NOPs will not otherwise be entitled to, and release and discharge the Minister and the Crown in right of the State of South Australia from any Loss arising out of or in connection with the Agreement, the Alliance Activities and the Works, the termination or purported termination by the Minister of the Agreement under this clause 32 (or the effects of the termination or purported termination), which the Non- Defaulting NOPs would have had but for its release in this clause 32.10 save and except for any entitlement to be indemnified by the Minister in accordance with clause 27.8.

## The Participants agree that the Participants must take all reasonable steps to mitigate the costs referred to in clause 32.9.

**Completion of the Works**

## Without prejudice to any of the Minister's rights, entitlements or powers under the Agreement, the Minister may, upon terminating the Agreement under clauses 32.2.4 or 33.5.2, itself or by third parties, continue to perform and complete any uncompleted Alliance Activities and the Works.

**Indemnity and Release**

## Notwithstanding any other provision of the Agreement, the Defaulting NOP shall be liable for, and shall indemnify each Non-Defaulting Participant for:

### any Loss suffered or incurred by the relevant Non-Defaulting Participant arising out of or in connection with:

#### the relevant Wilful Default or Act of Insolvency by the Defaulting NOP;

#### the exclusion of the Defaulting NOP under this clause 32; or

#### the termination of this Agreement under this clause 32;

### the Defaulting NOP’s share of any Performance Adjustment for the period prior to the relevant Wilful Default or the Act of Insolvency which the ALT or the Minister Determines or may Determine, is payable by the Defaulting NOP to the Minister; and

### the Defaulting NOP’s share of any Performance Adjustment increased or foregone or reduced for the period after the relevant Wilful Default or the Act of Insolvency which the ALT or the Minister Determines, or may Determine, is payable by the relevant Defaulting NOP to the Minister as if:

#### the Defaulting NOP had not been excluded from further participation in the Alliance; and

#### the Commercial Framework in place at the time of the Wilful Default or the Act of Insolvency remained in place and continued to operate with respect to the Defaulting NOP until Completion.

## The Defaulting NOP releases and discharges each Non-Defaulting Participant from any Loss arising out of or in connection with:

### a Wilful Default notified under clause 32.1;

### an Act of Insolvency notified under clause 32.5;

### any exercise by the Minister of any of the rights in clauses 32.2 or 32.5; and

### the indemnity in clause 32.13, which the Defaulting NOP would have had but for its release in this clause 32.14.

## For the purpose of this clause 32 any reference to the ALT, the Alliance or each Non-Defaulting Participant excludes:

### the Defaulting NOP; and

### any representatives of the Defaulting NOP appointed to the ALT in accordance with Attachment 5.

**Wilful Default by the Minister**

## If one or more NOPs genuinely and honestly believe that the Minister has committed a Wilful Default, the NOPs may give a unanimous written notice to the Minister specifying details of the Wilful Default and requiring the Wilful Default to be remedied within 20 day’s of the date of the notice.

## Where the Minister commits a Wilful Default, the NOPs:

### shall be entitled to claim from the Minister the damages arising directly from the Wilful Default;

### shall not be entitled to make any other claim, including in respect of Performance Adjustments; and

### shall continue to perform the Alliance Activities in accordance with the Agreement.

# FUTURE DEFECTS AND CLAIMS

## If at any time between:

### the date on which the Minister issues the Final Certificate; and

### the date which is the fifteenth (15th) anniversary of the date of the expiry of the last Defects Liability Period,

## a Future Defect becomes evident, the Minister may Direct the Participants to attend to the repair or rectification of the Future Defect.

## If at any time between:

### the date on which the Minister issues the Final Certificate; and

### the date which is the fifteenth (15th) anniversary of the date of the expiry of the last Defects Liability Period,

a Future Claim is made, the Minister may Direct the Participants to resolve the claim in a manner consistent with this Agreement.

## The Participants must comply with any Direction given by the Minister pursuant to clauses 33.1 or 33.2 promptly and within any time reasonably specified in writing by the Minister.

## Within 40 Business Days after the repair or rectification of the Future Defect or the resolution of a Future Claim (as the case may be), the ALT must calculate each Participants’ entitlement (if any) to payment of:

### Reimbursable Costs;

### Fee;

### the Performance Adjustment; and

### GST in accordance with the GST Act.

in accordance with Attachment 4 “Commercial Framework”, and provide a recommendation to the Minister accordingly.

## The Minister must independently consider and apply the Commercial Framework to the ALT's calculation. If the Minister considers the calculation to be incorrect, it must advise the ALT accordingly and the ALT must provide a replacement recommendation which is correct.

## When the Minister Determines that the ALT’s recommendation is correct, it must issue a payment certificate.

**Survival**

## This clause 33 survives any expiry or termination of this Agreement.

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

# WORKFORCE PARTICIPATION AND SKILLS DEVELOPMENT

**General**

## An objective of this Agreement is to increase the employment and training of Apprentices and Trainees, Aboriginal people, displaced automotive industry workers and Local People with Barriers to Employment (the “Target Group”) and to Upskill people engaged directly in connection with the performance of the Agreement.

## The Participants formally declares its intent to work in conjunction with the South Australian Government to meet the South Australian Government’s policy targets by employing and training people from the Target Group, including through on-site work by subcontractors and Upskilling people engaged directly in connection with the performance of the Agreement.

## Without limiting other remedies available to the Minister, the Participants acknowledges that failure to comply in part or in whole with the requirements of this clause may be a factor that will be taken into account in the award of future contracts by the South Australian Government.

**Target**

## The Participants must, subject to this clause 34, ensure that:

### the number of On-site Hours performed by people in the Target Group (engaged by either the Participants or its subcontractors) (the “Target Group Component”) is no less than 11% of the Total Project Hours; and

### the sum of:

#### the Target Group Component; and

#### the number of hours of Upskilling provided to people engaged directly in connection with the performance of the Agreement (engaged by either the Participants or its subcontractors) (the “Upskilling Component”),

#### is no less than 20% of the Total Project Hours (the “Target Hours”); and

### the On-site Hours performed by Aboriginal people is equivalent to up to 2% of the Total Project Hours.

## In reporting performance against this clause, and in calculating whether the Participants have met the targets in clause 34.4, the following provisions apply:

### hours cannot be double counted;

### On-site Hours performed by Aboriginal people must be reported separately but also contribute to the Target Group Component;

### Upskilling provided up to 6 months prior to the Date of Acceptance of Tender and prior to the Date for Completion can be included in the Upskilling Component;

### on-Site Upskilling provided to people in the Target Group should be included in the Target Group Component, rather than in the Upskilling Component. On-Site Upskilling provided to all other categories of worker engaged directly in connection with the performance of the Agreement can be included in the Upskilling Component; and

### off-Site Upskilling hours provided to all categories of worker (other than Cadets) engaged directly in connection with the performance of the Agreement can be included in the Upskilling Component.

## The Participants will seek, but is not obliged, to achieve performance by Apprentices and Trainees of On-site Hours equivalent to 50% of the Target Hours or more.

**Reporting**

## The Participants must:

### submit to the Minister a Workforce and Skills Development Strategy no later than 15 Business Days after the Commencement Date and before it commences any on-Site work under the Agreement, each of which must contain the information required by and be in the form set out in the Workforce Participation in Government Construction Procurement Implementation Guidelines For Contractors and Contracting Agencies from time to time which can be accessed at <http://www.dpti.sa.gov.au/wpgcp> (the “Implementation Guidelines”) (unless the Minister has approved in writing another form);

### submit to the Minister:

#### a Workforce Participation and Skills Development Interim Report no later than 10 Business Days after the end of each quarter (with the first quarter commencing on the date the Participants commences on-Site work under the Agreement); and

#### a Workforce Participation and Skills Development Final Report no later than 20 Business Days after the Actual Completion Date, each of which must contain the information required by and be generated using the Workforce Participation Reporting System (unless the Minister has, in writing, either approved another form or agreed to generate the report itself);

### (and must ensure that its subcontractors) regularly update the WPRS with:

#### details of the On-site Hours worked by people in each category of the Target Group;

#### the total On-site Hours for all workers;

#### details of the Upskilling provided to people engaged directly in connection with the performance of the Agreement, including the hours undertaken, the name and date of the course and the name of the training organisation; and

#### any other information required by the WPRS for the reports,

and the Participants must ensure that for each reporting period, the WPRS is updated with all such information before the report for that period is generated (or where the Minister has agreed to generate the report, before the expiration of the period for lodgement of the relevant report;

#### report in accordance with the Implementation Guidelines; and

#### (and must ensure that its subcontractors) keep Documentation of compliance with this clause and provide the Superintendent with such assistance, including the provision of information, as it may reasonably require in connection with it carrying out an audit of the Participants’ compliance with this clause 34.

## The Participants must:

### appoint a person to be responsible for coordination of the Workforce and Skills Development Strategy; and

### seek to use Aboriginal owned and/or managed enterprises where possible.

## The Participants must not (and must ensure that its subcontractors do not) not contravene the *Privacy Act 1988* (Cth) or the State Government of South Australia Information Privacy Principles Instruction. This may require the Participants (or its subcontractor) to obtain a person’s consent prior to disclosing that person’s personal information in connection with this clause.

**Definitions**

For the purpose of this clause 34 only:

## “Aboriginal person” means a person who identifies as being Aboriginal and/or is considered by members of his or her community as being Aboriginal. This definition includes Torres Strait Islander people;

## “Apprentice/Trainee” means a person (who may be either an apprentice or a trainee) undertaking training in a trade or declared vocation under a training contract as provided for in the *Training and Skills Development Act 2008* (SA) whether on a full-time or part-time basis;

## “Building Contract” means a contract for construction of residential, commercial, industrial or institutional facilities;

## “Business Day” means any day other than a Saturday, Sunday or public holiday in South Australia;

## “Cadet” means a person undertaking a cadetship or scholarship incorporating formal tertiary professional or technical education that results in a nationally recognised building and construction qualification whether on a full-time or part-time basis;

## “Civil Construction Contract” means a contract for construction of earthworks, road works, rail works pilings, power stations, dams, drainage or other water resource management works;

## “Contract Duration” means the period commencing on the Date of Acceptance of Tender and ending on the Date for Completion;

## “Implementation Guidelines” has the meaning given to it in clause 34.7.1;

## “Local person with barriers to employment”includes any person residing in a South Australian Government region in which the Site is located (or any other South Australian Government region) and who is unemployed or experiencing difficulty in finding or maintaining suitable employment having regard to his or her skill level, level of experience, age, place of residence or family or caring responsibilities. A Local Person with Barriers to Employment includes a job seeker residing in South Australia who:

### has registered with Job Search, Centrelink or a Job Services Australia provider;

### has registered with the Disability Employment Network;

### is a holder of a Job Seeker ID; or

### is a skilled migrant job seeker holding a General Skilled Migrant Visa;

## “On-site Hour” means an hour of work performed by a person on the Site;

## “Target Group” has the meaning given to it in clause 34.1;

## “Target Group Component” has the meaning given to it in clause 33.4.1;

## “Target Hours” has the meaning given to it in clause 34.4.2;

## “Tier 1 Contract” means a contract with a Contract Sum (exclusive of GST) between $5,000,000 and $50,000,000 (both inclusive) and a Contact Duration of six months or more;

## “Tier 2 Contract” means a contract with a Contract Sum (exclusive of GST) greater than $50,000,000 and a Contact Duration of six months or more;

## “Total Project Hours” means:

### the number of hours approved in writing by the Minister as representing the estimated total On-site Hours required to execute the work under the Contract; or

### in the absence of an approval under the preceding clause, the estimated total On-site Hours required to execute the work under the Contract, determined using the following formula:

#### if the Contract is a Building Contract:

Total Project Hours = (Contract Sum x 0.3)/42; or

#### if the Contract is a Civil Construction Contract:

Total Project Hours = (Contract Sum x 0.15)/42;

## “Upskilling” means

### the training of workers where such training is a prerequisite to those workers obtaining a nationally recognised building and construction competency or qualification; or

### the upskilling of professional workers engaged in tertiary or technical qualifications,

provided the training/upskilling is provided by a training organisation registered by a State or Territory training authority and listed on the NTIS (as defined in the *Higher Education Support Act 2003* (Cth)) or an Australian university (as defined in the *Higher Education Support Act 2003* (Cth)).

Upskilling includes on-job structured training within which:

#### competencies are specified and lead to the attainment of a nationally recognised qualification;

#### learning is planned, organised and sequenced in order to develop the apprentice/trainee/cadet to achieve workplace competence;

#### methods of training delivery appropriate to the achievement of competence are chosen;

#### quality training resources are used to assist the apprentice/trainee/cadet to learn; and

#### assessment events are planned and undertaken at appropriate points throughout the traineeship.

Upskilling cannot be achieved through simple work experience other than for Cadets.

Notwithstanding this definition, Upskilling includes on-Site work performed by Cadets, but does not include any other training undertaken by Cadets;

## “Upskilling Component” has the meaning given to it in clause 34.4.2; and

## “Workforce Participation Reporting System” or “WPRS” means the reporting tool available at www.wprs.sa.gov.au or any other reporting tool nominated by the Minister from time to time.

# SOUTH AUSTRALIAN GOVERNMENT POLICIES

**Industry Participation Plan**

## The Participants must implement the Industry Participation Plan (“IPP”) at Schedule 4.

## The Participants must provide an Industry Participation Report (IPP Report) in respect of each Industry Participation Reporting Period within two weeks of the end of each period, in the format set out in the reporting template in Schedule 4 including all the information indicated in that schedule.

## The Industry Participation Reporting Period is:

### the period between the Commencement Date and the date six (6) months after the Commencement Date;

### each subsequent six (6) month period during the Term;

### if the Agreement ends on a date that is not an anniversary of the Commencement Date or an anniversary of the date in sub-clause 35.3.2, the period from the conclusion of the preceding Industry Participation Reporting Period until the date of termination or expiry of the Agreement; and

### where the Term is for a period less than six (6) months, the entire Term.

## The Participants must attend any meeting scheduled by the Industry Participation Advocate (“IPA”) during the Term to review how the IPP is being implemented and advanced, and for this purpose, the Participants must provide all information reasonably requested by the IPA. The IPA must give the Participants not less than ten (10) Business Days’ notice of any such meeting.

## The Participants failure to comply, in whole or in part, with the commitments contained within the IPP will be a factor taken into account in the award of future contracts for the Government of South Australia.

## In this clause, “Industry Participation Advocate” or “IPA” means the person who from time to time has been appointed to the position of Industry Participation Advocate within the Office of the Industry Advocate, situated within the Department of the Premier and Cabinet, or his/her successor.

**Disclosure**

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

**Respectful Behaviour**

## The Participants acknowledge the Minister’s zero tolerance towards men’s violence against women in the workplace and the broader community.

## The Participants agree that, in performing the Alliance Activities, all personnel will at all times:

### act in a manner that is non-threatening, courteous, and respectful; and

### comply with any instructions, policies, procedures or guidelines issued by the Minister regarding acceptable workplace behaviour.

## If the Minister believes that personnel are failing to comply with the behavioural standards specified in this clause, then the Minister may in its absolute discretion:

### prohibit access by the relevant personnel to the Minister’s premises and the Site; and

### direct the Participants to withdraw the relevant personnel from providing the Alliance Activities.

**Other Policies**

## The Participants must conduct themselves in a manner that does not invite, directly or indirectly, the Minister’s officers, employees or agents or any public sector employee (as defined in the Public Sector Act 2009 (SA)) to behave unethically, to prefer private interests over the Minister’s interests or to otherwise contravene the Code of Ethics for the South Australian Public Sector.

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

# LEGISLATIVE REQUIREMENTS - HEALTH & SAFETY

## The Participants will satisfy and comply with, and ensure that their Associates satisfy and comply with:

### all Laws relating to the Alliance Activities and the Works; and

### the health and safety requirements in the Project Alliance Agreement Attachment 2..

## The Minister:

### appoints NOP#A, and NOP#A accepts the appointment, as the Principal Contractor for the purposes of the performance of Alliance Activities;

### gives all necessary authority to NOP#A to enable it to manage or control any workplace to the extent necessary to discharge the duties imposed on a Principal Contractor for the purposes of performing the Alliance Activities; and

### subject to clause 36.3, NOP#A acknowledges and agrees that, for the purposes of performing the Alliance Activities, it will accept that appointment and be responsible for, and bear the responsibility of, all obligations as the Principal Contractor.

## NOP#A must with respect to the performance of Alliance Activities do the following:

### exercise and fulfil the functions and obligations of an employer, the Principal Contractor, and a person with management and control of the Site under the Health & Safety Laws; and

### provide the ALT and the AGM with a copy of any document, notice or report that NOP#A, as Principal Contractor, is required to author or receive.

## The Participants must:

### do, or refrain from doing, anything necessary to allow NOP#A to fulfil and exercise its obligations and functions as Principal Contractor in respect of the performance of Alliance Activities including complying with any reasonable direction of NOP#A which is made in its capacity as Principal Contractor and NOP#A will take into account the comments of the ALT when performing its role as the Principal Contractor;

### to the extent that any decision of the ALT is inconsistent with any applicable Health & Safety Laws, comply with any reasonable direction of NOP#A which is made in its capacity as Principal Contractor to the extent necessary to comply with any Laws; and the Participants will use best endeavours to ensure that all contractors on Site are obliged to comply with any reasonable directions of NOP#A which are made in its capacity as Principal Contractor.

## If NOP#A:

### for any reason, is no longer capable of discharging its obligations as 'Principal Contractor'; or

### is excluded from the Alliance in accordance with clause 32.7, the Minister will revoke the appointment of NOP#A and will appoint a replacement Principal Contractor.

## Without limiting this clause 36, if required to do so, NOP#A must:

### maintain accreditation under the Australian Government building and construction industry Work Health and Safety Accreditation Scheme (the Scheme), established by the Building and Construction Industry (Improving Productivity) Act 2016 (the BCIIP Act), whilst building work (as defined in the BCIIP Act) is carried out; and

### comply with all conditions of the Scheme accreditation and the National Construction Code performance requirements in relation to building materials.

# JOINT VENTURE

## [*this clause will be deleted if not relevant*]

## NOP#A and NOP#B have elected to form and create an unincorporated joint venture known as the "…….." (JV) and have agreed that:

### the sole purpose of the creation of the JV is to facilitate procurements by NOP#A and NOP#B for the performance of Alliance Activities for ease of administration of the calculation of Fee;

### NOP#A and NOP#B must execute the JVA on or about the Commencement Date;

### NOP#A and NOP#B will prior to the execution of the JVA provide the Minister with a final and complete copy of the JVA for the Minister's consideration and approval;

### NOP#A and NOP#B will not amend the JVA or any aspect of their JV relationship without the Minister's consent;

### any intentional or reckless attempt to amend or an amendment to the JVA, JV or any aspect of the joint venture relationship between the joint venturers without the Minister's consent will be a Wilful Default;

### any duty or obligation, if any, created by the JVA or the JV relationship as joint venturers will be subordinated to, and superseded by, their obligations under the Agreement;

### the JVA will expressly provide that any committee of management governing the management, actions, behaviour or performance of the JV can only meet in the presence of at least one of the Minister ALT representatives and must consult with the Minister’s ALT representatives prior to making any decision or determination and will perform such management or partnership committee functions and responsibilities as if they were ALT duties and Determinations under the Agreement; and

### any costs or expenses incurred by either of NOP#A and NOP#B in the administration, operation or conduct of the JV, other than procurement obligations or liabilities entered into by NOP#A and NOP#B or the JV on behalf of the Participants other than NOP#A and NOP#B, will be met by NOP#A and NOP#B and will not be a Reimbursable Cost.

## The Minister and NOP#C acknowledge and accept that whilst NOP#A and NOP#B, trading as the JV, are Participants to the Agreement:

### NOP#A and NOP#B will provide and make available to the JV plant, equipment, resources and personnel for the purposes of work under the Agreement;

### NOP#A and NOP#B may issue Tax Invoices to the JV; and

### the JV may provide monthly payment claim details to the AMT in accordance with clause 18.1.

# BUILDING CODE (2016)

## The following definitions apply to this clause 38:

### **"ABCC"** means the body referred to in subsection 29(2) of the Act;

### **"ABC Commissioner**" means the Australian Building and Construction Commissioner referred to in subsection 15(1) of the Act;

### "**Act**" means the *Building and Construction Industry (Improving Productivity)* Act 2016;

### "**Building Code**" means the Code for Tendering and Performance of Building Work 2016 which is available at <https://www.legislation.gov.au/Details/F2016L00125>;

### "**Building Contractor**" has the same meaning as in the Act;

### "**Building Industry Participant**" has the same meaning as in the Act;

### **"Building Work**" has the same meaning as in subsection 3(4) of the Building Code;

### "**Commonwealth Funded Work**" means Building Work in items 1 – 8 of Schedule 1 of the Building Code;

### "**Enterprise Agreement**" has the same meaning as in the *Fair Work Act 2009*;

### "**Exclusion Sanction**" has the same meaning as in subsection 3(3) of the Building Code;

### "**Related Entity**" has the same meaning as in subsection 3(2) of the Building Code;

### "**Subcontractor**" means a Building Contractor or Building Industry Participant who a NOP has entered, or proposes to enter, into a subcontract with to undertake any of the Works;

### "**Works**" means Commonwealth Funded Work that is the subject of this Contract.

## The NOPs:

### declare as at the date of commencement of this Contract in relation to the Works; and

### must ensure that during the term of this Contract in relation to the Works,

## that it and any Subcontractors:

### comply with the Building Code;

### are not subject to an Exclusion Sanction;

### have not had an adverse decision, direction or order made by a court or tribunal for a breach of the Act, a designated building law, work health and safety law or competition and consumer law which has not been stayed or revoked and for which the period for compliance has expired without the Contractor having complied with the decision, direction or order;

### will only use products in relation to the Works that comply with the relevant Australian standards published by, or on behalf of, Standards Australia;

### unless approved otherwise by the ABC Commissioner, are not excluded from performing Building Work funded by a state or territory government; and

### comply with the Workplace Relations Management Plan approved by the ABCC in accordance with Part 6 of the Building Code that applies to the Works.

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

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

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

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

### the subcontractor is not covered by, and does not have Related Entities covered by, an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code;

### the Subcontractor has submitted a declaration of compliance, including the further information outlined in Attachment A to the declaration of compliance, in substantively the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code; and

### the subcontract with the Subcontractor contains clauses in substantively the same form as the model contract clauses applicable to contractors and subcontractors in relation to the Building Code.

## The Contractor must provide the Minister and/or ABCC with any Subcontractor’s declaration of compliance referred to in clause 13.6.2 on request.

# COmplaince with SA GOvernment legislative requriements

## The Participants agree to disclosure of this Contract in accordance with Department of Premier and Cabinet Circular 27 (PCO27)."Disclosure of Government Contracts", available from: http://www.premcab.sa.gov.au/dpc/publications\_circulars.html. The NOPs attention is drawn to the Freedom of Information Act 1991 (SA). No exemption from the provisions of this Act applies to this Contract.

## Where required by the Building Work Contractors Act 1995 (SA), a NOP shall hold an appropriate Builders Licence. Evidence of compliance with this clause shall be submitted to the Minister on request.

## Attention is drawn to the Construction Industry Training Fund Act 1993 (SA), which imposes a levy of 0.25% of the value of building and construction works in South Australia. The Minister will pay the levy calculated on the basis of the actual outrun cost.

## The NOPs must conduct themselves in a manner that does not invite, directly or indirectly, any officers, employees or agents or any public sector employee (as defined in the Public Sector Act 2009) to behave unethically, to prefer private interests over the public sectors interests or to otherwise contravene the Code of Ethics for the South Australian Public Sector.

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

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

# MISCELLANEOUS

**Joint and Several Liability**

## If an NOP consists of more than one person, the obligations of that NOP under this Agreement are joint and several and each person constituting the NOP acknowledges and agrees that it will be causally responsible for the acts and omissions of the other as if those acts or omissions were its own.

**Costs**

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

**Set-off**

## The Minister may Determine to set-off from any money which is payable to an NOP under this Agreement any amount due from that NOP to the Minister under this Agreement.

## Each NOP (First Alliance Participant), subject to ALT approval, may set-off from any money which is payable to any other NOP under this Agreement any amount due from the other NOP to the First Alliance Participant under this Agreement.

**Governing Law and Jurisdiction of Courts**

## The Agreement is governed by and is to be construed in accordance with the laws in force in the State of South Australia.

## The Participants submit themselves to the exclusive jurisdiction of the Courts having jurisdiction in South Australia.

## Any proceedings brought in a Federal Court must be instituted in the Adelaide registry of that court, and the Participants undertake not to apply to transfer any proceedings to a registry of the Federal Court located in another State or Territory, or to the courts of another State or Territory.

**Severance**

## Each word, phrase, sentence, paragraph and clause of this Agreement is severable

## If a court determines that a part of this Agreement is unenforceable, invalid, illegal or void that court may sever that part.

## Severance of any part of this Agreement will not affect any other part of this Agreement.

**Indemnities**

## Each indemnity given by the Participants under this Agreement is a continuing obligation separate and independent from the Participants ‘other obligations under this Agreement and notwithstanding anything else in this Agreement is intended to be enforceable and to survive the termination of this Agreement or the expiry of the Term. An indemnified party must take all reasonable steps to mitigate any amounts payable pursuant to the indemnity. Despite any other provision in this Agreement, a party's liability under an indemnity will be reduced proportionally to the extent that the indemnified Party caused or contributed to the relevant Loss.

**No Assignment**

## Subject to clause 40.12A, an NOP must not assign, encumber or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Minister. The Minister may, without the consent of the NOPs, assign or transfer any of its rights or obligations under this Agreement to another Minister, agency or instrumentality of the Crown in right of the State of South Australia.

## 40.12A If so requested by a NOP, the Minister agrees to provide its consent to a NOP assigning, transferring, creating a security interest over or otherwise dealing with any part or all of its rights, title and interest under this Agreement provided that it solely relates to any payments or amounts payable to the NOPs under this Agreement.

**Relationship between the Participants**

## By entering into this Agreement and forming the Alliance, the Participants do not intend to create, nor is it to be construed as creating a partnership, joint venture or fiduciary relationship between the Participants.

## Each of the Participants is an independent entity and for the purposes of this Agreement, the employees or agents of one of the Participants will not be considered to be the employees or agents of another, unless deemed by Law, and the Participants shall each pay all costs associated with their respective employees.

## Except as may be set out in this Agreement or Determined by the ALT, the Participants do not confer a right in any of the Participants to enter into any commitment on behalf of another or to otherwise act as an agent.

**Waiver**

## A Participant’s:

### failure to exercise, or delay in exercising, a power or right does not operate as a waiver of that power or right;

### waiver or exercise of a power or right does not preclude its future exercise or the exercise of any other power or right; and

### waiver of any power or right will not be effective unless it is in writing and signed by the Representative of the Participant waiving its rights.

**Change in NOP Participation**

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

**Notices**

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

**Change in Control**

## Subject to clause 40.21 each NOP must obtain the Minister's prior written consent (which must not be unreasonably withheld) to any Change in Control in respect of it, or any of the providers of a Deed of Guarantee to be provided under clause 9.

## Subject to clause 40.21 each NOP will provide the Minister with reasonable prior notice of any Change in Control of that NOP.

## Where the Change in Control has occurred as a result of a Change in Control of a corporation listed on a stock exchange, and the NOP the subject of that Change of Control is unable, or it is not practicable for the NOP, to comply with clauses 40.19 and 40.20 the NOP must:

### provide the Minister with notice of the Change in Control of that NOP as soon as possible following the Change in Control; and

### obtain the Minister’s written consent (which must not be unreasonably withheld) to any Change in Control which has occurred in respect of it, or any of the providers of a Deed of Guarantee to be provided under clause 9.

## The NOP the subject of the Change in Control will provide the Minister with any Records requested by the Minister and attend any meetings (including, where reasonably requested by the Minister with any third party acquiring or exercising control over the NOP) arising out of or in connection with the Change in Control.

## The NOPs acknowledge and accept that if the Minister does not consent to a Change in Control of an NOP the Minister reserves the power to Determine to exclude the NOP from the Alliance.

## Each NOP agrees that it will use its best endeavours to procure any third party involved in the Change in Control to execute any Records Determined to be required by the Minister (which may include an appropriate parent company undertaking or guarantee) to enable the Minister to Determine whether the Change in Control will have any prejudicial effect on the Minister's interests, the Alliance or the Alliance Activities.

## In the event of any Change in Control of an NOP, the NOP the subject of the Change of Control agrees that it will use its best endeavours to make all necessary administrative arrangements (including closing any Joint Venture bank account and opening a new Joint Venture bank account, making suitable arrangements for GST and, where appropriate, terminating the joint venture agreement and executing a new joint venture agreement) so as to minimise any adverse impact on the Alliance or the Project.

## Any costs incurred by an NOP arising out of or in connection with a Change in Control and performing its obligations under clauses 40.19 to 40.26 will not be a Reimbursable Cost.

**Financial Difficulties**

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

**Change in NOP**

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

**Change in NOP Participation**

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

**EXECUTED AS AN AGREEMENT**

**THE COMMON SEAL** of the )

**miNISTER FOR TRANSPORT,**  )

**INFRASTRUCTURE AND LOCAL** )

**GOVERNMENT** was hereto affixed )

in the presence of: )

Witness

[Print Name: ]

**THE COMMON SEAL** of  )

**PTY LTD**  )

**A.C.N.**  )

was affixed in the presence of: )

Director

[Print Name: ]

Director/Secretary\*

[Print Name: ]

\*Delete the inapplicable

**THE COMMON SEAL** of )

**PTY LTD A.C.N** )

was affixed in the presence of: )

Director

[Print Name: ]

Director/Secretary\*

[Print Name: ]

\*Delete the inapplicable

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SCHEDULE

ANNEXURE