



Government of Western Australia
Public Transport Authority

CONTRACT NO. 20100018

Perth City Link Rail Project

Project Alliance Agreement

29th April 2010

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Term	Meaning
Best for Project	a determination, decision, outcome, solution or resolution taken by the Alliance that is consistent with both our Alliance Principles and the Alliance Participants' undertaking and commitment to work together to meet the Project Objectives while conforming with the MCOS.
Business Day	a day on which banks are open for general banking in Perth, Western Australia excluding a Saturday, Sunday or public holiday.
Certificate of Practical Completion	the certificate issued by the PTA in <u>clause 11.2</u> .
Certificate of Final Completion	the certificate issued by the PTA in <u>clause 11.3</u> .
Change in Control	a change in the person or persons who directly or indirectly ultimately Control a NOP.
Client	the PTA, which has commissioned the Project and for whose benefit the Project is being undertaken.
Client Reserved Powers	those matters in relation to which the PTA has a sole and unfettered discretion and in relation to which the PTA may make the final determination as set out in this Agreement, including <u>clause 9.4</u> .
Commercial Framework	the combination of, and the combined effect of, the TOC, Direct Costs, Margin, Risk/Reward Regime and KRA Regime and a reference to a change to the Commercial Framework includes a change to any of the components of the Commercial Framework.
Construction Plant	equipment and appliances used in the performance of the work under our Agreement which do not form part of the Works.
Contingencies	an amount or amounts (including the Total Defects Cost Estimate) to cover all reasonably foreseeable contingencies including latent conditions, variations (excluding Scope Variations), foreign exchange fluctuations, cost of living increases including labour, material or fuel price increases and any other factor which could have an impact to increase the cost, of the work under our Agreement or, the Works.
Control	means in respect of a NOP: 1. control or influence of, or having the capacity to control or influence the composition of the board, or decision making,

Term	Meaning
	<ol style="list-style-type: none"> 1. do not comply with the detailed design documentation and any associated specifications for the Works; 2. are not performed to the level of care and skill required under our Agreement; 3. prevent the Works from being used for the purpose of the Works as ascertained from this Agreement; or 4. affect the safe convenient and efficient use of the Works, other than any defective, non-complying or incomplete or omitted works or services caused by fair wear and tear.
Defects Correction Period	the period identified in <u>Schedule 7</u> commencing on the Date of Practical Completion.
Direct Cost/s	the costs actually and reasonably incurred by the NOPs during the Term in performing the work under this Agreement as identified in <u>Schedule 4</u> .
Dispute	any real or perceived conflict, difference of opinion, or unresolved issue.
DS Act	the Disability Services Act 1993 (WA).
Enhancement	as defined in <u>clause 13.5(a)</u> .
Environment	as defined in the EP Act.
EP Act	the Environmental Protection Act 1986 (WA).
EPRA	The East Perth Redevelopment Authority, a statutory authority constituted under the East Perth Redevelopment Act 1991 (WA), and that is the planning authority for the land area bounded by Roe Street in the north, Citron Street (adjacent to the Mitchell Freeway interchange) in the west, Wellington Street in the south and William Street (Horseshoe bridge) in the east.
Final Completion	the stage in the performance of the work under our Agreement when the Defects Correction Period has expired and the AMT, ALT and PTA are satisfied that all Defects in the Works notified to the NOPs during the Defects Correction Period have been rectified.
Final Proposal	the proposal prepared by the NOPs under the ADA and submitted to the PTA, and any amendments thereto agreed between the NOPs and the PTA.

Term	Meaning
	4. licences or similar user rights in respect of any such rights and interests.
KRA	a key result area as described in <u>Schedule 6</u> .
KRA Regime	the regime for rewarding NOPs for achieving key result areas, as set out in, <u>Schedule 6</u> .
KRA Payment	a payment due to the NOPs for achieving key result areas, as set out in <u>Schedule 6</u> .
Margin	the payments to the NOPs for corporate overhead and profit, calculated in accordance with <u>Schedule 5</u> .
Material	as defined in clause <u>13.10 (a)</u> .
Minimum Conditions of Satisfaction (MCOS)	the minimum levels of performance for each of the Alliance Participants in relation to the Project as set out in the BDC, scope of work, specification or Final Proposal in relation to any of the works to be performed by the Alliance Participants either individually or collectively.
New IPR	as defined in <u>clause 13.6(a)</u> .
No Dispute	our commitment to, and agreement with, each other set out in <u>clause 5</u> to resolve all Disputes, disagreements or differences of opinion unanimously and if the AMT cannot resolve a Dispute referred to it, to elevate the Dispute to the ALT for resolution in accordance with our Agreement.
NOP	each of the Non-Owner Participants, namely each of ###.
NOPs	all of the Non-Owner Participants, namely ###.
NOP's Existing IPR	as defined in <u>clause 13.2(b)</u> .
Open Book	is a reference to the commitment of the NOPs to share on a transparent and full disclosure basis with the PTA all information and documentation in respect of performing the work under our Agreement to ensure, amongst other things, that the highest standards of probity and fairness are achieved so that only the true and bona fide costs actually and reasonably incurred in performing the work under the Agreement are sought to be, and are in fact,

Term	Meaning
Procurement Plan	the plan for procurement submitted as part of the Final Proposal.
Project	the Perth City Link Railway project being the works identified in Part 1 of the HUB Master Plan - Lowering of the Fremantle Railway in Perth and associated works as further described in summary in section 3.1 of the Request for Proposals and as more fully described in the Basis of Design and Construction.
Project Bank Account	an Australian Dollar bank account and in other currencies if required, in the name of the NOPs through which payments to the NOPs for their Direct Costs, Margin, Reward amount and KRA Payment (if applicable) will be processed.
Project Objectives	the project objectives set out in <u>clause 2.3</u> .
PTA's Existing IPR	as defined in <u>clause 13.2(a)</u> .
PTA's Representative	the PTA's Chief Executive Officer or a representative nominated by the Chief Executive Officer, from time to time, in writing to the NOPs.
Punchlist	a list of incomplete, defective or deficient items in the work under our Agreement and annexed to the Certificate of Practical Completion by the ALT in accordance with <u>clause 11.2(b)</u> and which must be corrected by the NOPs during the Defects Correction Period.
Railway	The new sunken Fremantle Railway Line and various associated works, as more fully described in the Basis of Design and Construction, to be constructed as part of the Project.
Records	the records related to this Agreement which include both electronic or physical versions of records, accounts, ledgers, payroll, quality records, correspondence, instructions, plans, drawings, measurements, calculations, procurement contracts, purchase orders, invoices, dockets, receipts, vouchers and computer printouts.
Related Body Corporate	has the same meaning as in the Corporations Act.
Request for Proposals (RFP)	the Request for Proposals for the Project, issued by the PTA on 29 April 2010.

Term	Meaning
Subcontractor	
Target Outturn Cost (TOC)	####, being the out-turn estimate submitted by the NOPs in their Final Proposal to achieve the MCOS including all Direct Costs and Margin and Contingencies required to perform the work under this Agreement in accordance with this Agreement, which has been approved by the PTA.
Tax Invoice	as defined in the GST Act.
Taxable Supply	as defined in the GST Act.
Temporary Works	work performed under our Agreement but not forming part of the Works.
Term	the term of our Agreement as described in <u>clause 21</u> .
Third Party IPR	as defined in <u>clause 13.4</u> .
Third Party Works	as defined in <u>clause 10.15</u> .
Total Defects Cost Estimate	####, being the amount included in the TOC for the rectification of Defects throughout the Term.
Transition Manager	the person appointed by the PTA or the ALT as applicable under <u>clause 18</u> .
Unconditional Undertaking	as defined in <u>clause 20.19(a)</u> .
Use	as defined in <u>clause 13.3(a)</u> .
Whole of Life Cost	is the Present Value of the costs of design, construction, commissioning, operation and maintenance of the Railway over its projected design life as set out in the BDC.
Wilful Default	any one of the following: 1. an intentional, or reckless act or omission by an Alliance Participant's officers or representatives appointed to the ALT or AMT which the Alliance Participant's officers or representatives appointed to the ALT or AMT, knew or ought reasonably to have known:

Term	Meaning
	<p>13. an intentional failure of, or refusal by, a NOP to provide a deed of guarantee in accordance with <u>clause 20.16</u> or the Unconditional Undertakings in accordance with <u>clause 20.19(a)</u> or to replace or supplement the Unconditional Undertakings in accordance with <u>clause 20.19(d)</u>,</p> <p>but does not mean any innocent or negligent act, omission or mistake by an Alliance Participant or any of its officers, employees or agents acting in good faith.</p>
work under our (or this) Agreement	the works and services which we are, or may be, required to perform either individually or collectively, including the performance of all of our obligations under our Agreement, prior to the Date of Final Completion.
Works	the works which, as a result of our performance of the work under our Agreement, are to be delivered to the PTA at Final Completion.

1.2 Interpretation

- (a) We agree that when interpreting our Agreement interpretations which are Best for Project and consistent with our commitments in clause 3, our Alliance Principles, the Project Objectives and achieving the MCOS are to be adopted.
- (b) In this document, unless the context otherwise requires:
 - (1) if a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way;
 - (2) if a clause or part of a clause can be read in a way that creates any ambiguity or inconsistency, we agree it must be read in such a way as to make it consistent with, and ensure the integrity of, our commitments in clause 3, our Alliance Principles, the Project Objectives and the MCOS.
 - (3) a reference to a clause or a Schedule is, unless otherwise stated, a reference to a clause or Schedule of or to this document;
 - (4) an expression importing a natural person includes any company, trust, partnership, joint venture, association, corporation, body corporate or Government Agency;
 - (5) if the day on which any act, matter or thing is to be done under this document is not a Business Day, that act, matter or thing may be done on the next Business Day;
 - (6) a reference to 'we', 'us' or 'our' is a collective reference to the Alliance Participants;
 - (7) 'including' and similar expressions are not words of limitation;
 - (8) a reference to a statute, regulation, proclamation, ordinance, instrument, standard, guideline or bylaw includes all statutes, regulations, proclamations, ordinances, instruments, standards, guidelines or bylaws amending, consolidating or replacing it and a reference to a statute

2 Principles and Objectives

2.1 Alliance Vision

The Alliance vision is [to be developed with the NOPs].

2.2 Alliance Principles

In performing the work under our Agreement we will build a project alliance culture that embraces the following Alliance Principles:

- (a) all decisions, behaviours and communications being based on preserving honesty, and trust, with a full commitment to open communication and sharing of information;
- (b) all decisions being on a Best for Project basis, with the exception of the exercise of Client Reserved Powers;
- (c) the NOPs committing to operating a transparent open book financial approach to all their dealings;
- (d) the ALT accepting accountability for all Project outcomes and actively encouraging the PTA, the NOPs (both individually and collectively) and all individuals engaged in undertaking work in relation to the Project to accept accountability for things they are responsible for under the BDC, MCOS and elsewhere in our Agreement;
- (e) Reward payments being commensurate with performance and the degree to which targets are exceeded;
- (f) Risk payments being commensurate with the degree to which targets are not met; and
- (g) every decision (other than the exercise of a Client Reserved Power) being as far as is possible to be seen to be fair and equitable to all parties.

2.3 Project Objectives

The Project Objectives to be observed by the Alliance Participants in delivering the Project are to:

- (a) ensure no interruption in passenger flow from rail to rail services or from bus to rail services within the Perth Railway Station and between the Perth Railway Station and the Wellington Street Bus Station;
- (b) limit passenger and pedestrian and vehicle traffic flow interruptions during construction in or near the work site;
- (c) maintain bus and rail service changes to a schedule that takes priority over optimising the construction work schedule;
- (d) provide a seamless transfer environment for passengers and pedestrians between rail and bus services on or near the work site;
- (e) not limit future growth in public transport capacity;
- (f) manage the Works to comply with the Basis of Design and Construction to fit the budget and funding timelines;
- (g) enable the PTA to provide passengers with safe and secure services and facilities in compliance with universal access requirements;

3 Commitments

3.1 Alliance

We have formed our Alliance to complete the Project for the benefit of the PTA as Client, to which end each of the Alliance Participants has agreed to perform the work under our Agreement in accordance with our Alliance Principles to achieve the MCOS.

3.2 Behavioural Commitments

We recognise that the way that people relate to and treat each other will significantly contribute to our success. Therefore, in performing the work under our Agreement and achieving our Project Objectives, the MCOS and the completion of the Project, we, and every one of our people who participate in our Alliance, are committed to:

- (a) ensuring a safe working environment is our highest priority;
- (b) being open, honest and respectful in all discussions;
- (c) Best for Project decisions, with the exception of Client Reserved Powers;
- (d) using our previous experiences to continually improve our performance;
- (e) embrace and respect our diversity;
- (f) challenge business as usual;
- (g) an appropriate work/life balance;
- (h) an enjoyable and respectful work culture;
- (i) individually and collectively being responsible to customers and stakeholders; and
- (j) live the Alliance Vision.

3.3 Our Commitments

- (a) In performing the work under our Agreement we commit to:
 - (1) establishing an integrated collaborative team environment to encourage open, honest and efficient sharing of information;
 - (2) establishing a culture of No Dispute in order to avoid litigation;
 - (3) encouraging innovation and innovative thinking to achieve the MCOS and achieve Best for Project outcomes;
 - (4) creating positive peer relationships in an environment of mutual support, appreciation and encouragement;
 - (5) equitably sharing the benefits of the rewards and the burdens of the risks that we will encounter in performing the work under our Agreement, through the mechanism of the Commercial Framework;
 - (6) exercising due skill, care and diligence in the performance of the work under our Agreement to ensure that each Alliance Participant achieves the MCOS relevant to work undertaken by it;
 - (7) only using new, good quality and suitable materials and exercising and completing the work under our Agreement so that, when completed, the Works will be fit for their intended purpose and comply with all of the requirements of our Agreement and all Statutory Requirements; and

4 Alliance Delivery Strategy

4.1 Introduction

The purpose of this part is to outline the execution strategy for the Alliance through a snapshot of the key stages in the delivery of the Project.

4.2 Alliance Development Stage

The first stage in the Project was for the NOPs to execute the ADA. This stage of the Project allowed the NOPs to develop and submit the Final Proposal and agree the fundamental principles, objectives and obligations of the Alliance and to record them in our Agreement.

4.3 PTA Approval

The second stage in the Project was the PTA's assessment of the Final Proposal which culminated in the selection of the NOPs and the approval of the TOC by the PTA. This stage has now been completed by the execution of our Agreement.

4.4 Delivery and Practical Completion

The next stage in the Project commences with the final execution of our Agreement and ends upon the commissioning and Practical Completion of the Works and the issue of the Certificate of Practical Completion.

4.5 Defects Correction Stage

The Defects Correction Period commences with the issue of the Certificate of Practical Completion and ends on the issue of the Certificate of Final Completion.

- (5) where an Alliance Participant has a right to bring a claim or action under a Statutory Requirement which cannot be excluded as a matter of law by the Alliance Participants;
- (6) any claims for breach of any Statutory Requirement (including any prosecution brought against an Alliance Participant by a Government Agency) in connection with the Works;
- (7) any claim by the PTA for breach of professional duty, which is covered by a professional indemnity policy held by the relevant NOP, or any project specific insurance obtained by the PTA pursuant to clause 14.1;
- (8) a breach of an indemnity under this Agreement; and
- (9) the PTA's ability to enforce an NOP's obligation to pass-through payments received under an insurance policy, in the circumstances set out in clause 14.2 of this Agreement,

then the affected Alliance Participant may take such legal action or dispute resolution proceedings to enforce its common law or equitable rights and seek any remedies available to it under our Agreement, at common law or in equity.

- (c) Every determination, decision, outcome, solution or resolution of the ALT will be made unanimously on a Best for Project basis.
- (d) Each of us acknowledges that the continuous representation on, involvement in and attendance at the ALT meetings of our nominated ALT representatives is critical to our success. We each commit to a principle of not allowing substitutes, other than in the event of a personal conflict of interest (as that term is defined in clause 6.5(a)) or in exceptional circumstances, to attend ALT meetings in lieu of our nominated ALT representatives. Each ALT representative has a positive obligation to ensure that any representative from his/her respective Alliance Participant that may attend an ALT meeting as an alternate ALT representative is fully briefed on the status of the Works and the Alliance and the business conducted at previous ALT meetings such that they can fully participate in, understand and support each determination of the ALT at any future ALT meeting and comply with the requirements of clause 6.2(b).

6.5 Personal conflicts of interest

- (a) Each Alliance Participant will ensure that its representative appointed to the ALT or the AMT must disclose any actual or potential personal conflict of interest he or she may have in respect of any action, decision or determination to be taken or made by the ALT or AMT (**personal conflict of interest**) before the ALT or AMT considers any action or makes a decision or determination on that matter. We agree that a representative's employment by one of us or directorship of or shareholding in one of us by itself, will not amount to a personal conflict of interest.
- (b) The ALT, in the absence of the 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.
- (c) 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 the personal conflict of interest, then any such discussion or determination cannot proceed:
 - (1) at the AMT meeting 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
 - (2) at the ALT meeting until at least two (2) representatives from the PTA and one (1) representative from each NOP not affected by the personal conflict of interest attend the ALT meeting.
- (d) The NOPs acknowledge that the PTA will not have an actual or potential conflict of interest in respect of any action, decision or determination merely because it is the Client for whose benefit the Project is being undertaken.

6.6 Corporate conflict of interest

- (a) Each ALT representative must fully disclose any actual or potential conflict of interest of which that ALT representative is aware that the Alliance Participant it represents may have in respect of any action, decision or determination to be taken or made by the ALT before the ALT considers any action or makes a decision or determination on that matter.
- (b) The ALT must consider the disclosure of the corporate conflict of interest and determine, adopting best corporate governance practices, on a Best for Project basis, the resolution of the conflict of interest.

8 Payment

8.1 Sole Entitlement

- (a) The sole entitlement of the NOPs to payment from the PTA for performing the work under our Agreement, no matter what act, event, circumstance or degree of difficulty is encountered in performing that work, is limited to:
 - (1) Direct Costs incurred by the NOPs;
 - (2) Margin;
 - (3) amounts determined by the ALT under the Risk/Reward Regime;
 - (4) GST in accordance with clauses 8.16(a) to 8.16(h) inclusive;
 - (5) KRA Payments if applicable; and
 - (6) any amount which the PTA is liable to indemnify a NOP for under our Agreement.

8.2 Project Bank Account

- (a) The NOPs shall, within 14 Days of the Date of our Agreement, establish the Project Bank Account and provide details of the Project Bank Account to the PTA.
- (b) The Alliance Participants shall assign at least two signatories to the Project Bank Account, one of which shall be the Alliance finance manager.
- (c) The Alliance finance manager will, if requested by the PTA, provide the PTA with copies of bank statements, for the Project Bank Account.
- (d) All interest earned from the Project Bank Account will belong to the PTA. Details of the actual amount of interest earned from the Project Bank Account must be provided by the Alliance finance manager to the PTA, as and when required by the PTA.

8.3 Forecasting

- (a) The NOPs shall, within 14 Days of the Date of our Agreement, provide the PTA with a cash flow forecast and a project cost forecast for the PTA's approval.
- (b) The cash flow forecast shall detail the:
 - (1) Direct Costs to complete the Works in Australian dollars;
 - (2) any Direct Costs payable in foreign exchange currency;
 - (3) Margin due to the NOPs; and
 - (4) Risk or Reward amounts or KRA Payments that may be payable.
- (c) The approved cash flow forecast will be updated monthly to reflect the AOC to date and any changes forecast in the Direct Costs to be incurred. Where changes to the TOC have been approved by the PTA, the cash flow forecast will include the revised Margin amount to be earned by the NOPs.
- (d) The project cost forecast shall detail the TOC and the forecast of the AOC as at the Date of Final Completion. For the avoidance of doubt the first project cost forecast will be the TOC comprised in the Final Proposal.
- (e) The approved project cost forecast will be updated monthly to reflect any changes forecast in the AOC as at the Date of Final Completion.

- (2) in respect of the KRA Payment, the amount against the relevant KRA set out in Schedule 6.
- (c) If a Risk is determined to be payable, the PTA must submit a Tax Invoice to the NOPs showing the total Risk determined by the ALT to be payable and the amount to be paid by the NOPs to the PTA, calculated in accordance with the percentage exposure set out in Schedule 6.
- (d) Subject to clause 8.15(a), Risk or Reward or KRA Payment must be paid by the relevant Alliance Participant to the party issuing the Tax Invoice in accordance with this clause 8.6 within 7 Days of receiving the Tax Invoice.

8.7 Payment of Direct Costs and Margin out of Project Bank Account

- (a) Direct Costs incurred by the NOPs shall be paid from the funds in the Project Bank Account.
- (b) The PTA shall make payment of the Margin into the Project Bank Account at the time payment is made in accordance with clause 8.5(c). The NOPs shall arrange for payments of their share of the Margin to be made to the individual, nominated bank accounts of the NOPs directly from the Project Bank Account or as otherwise agreed by the NOPs.

8.8 Subcontractors and Subsidiary Subcontractors

- (a) The principle underpinning this clause 8.8 is that unless the TOC provides for work under our Agreement to be performed by a Subcontractor there will be no Margin claimed by the NOPs on any amount paid to a Subsidiary Subcontractor.
- (b) If any of the work under our Agreement is performed by a Subcontractor (including a Subsidiary Subcontractor) and the TOC does not provide for the particular work to be performed by a Subcontractor the NOPs will not be entitled to be paid, and will not claim, any Margin on the amounts paid to the Subcontractor or Subsidiary Subcontractor, but will be entitled to claim the amounts so paid as Direct Costs.
- (c) All Related Body Corporate transactions will be conducted on an arms length basis with the prior approval of the ALT.
- (d) Notwithstanding the principle underpinning clauses 8.8(a), 8.8(b), and 8.8(c) the ALT may approve the payment of Margin to the NOPs in respect of work performed by a Subcontractor, otherwise prevented by clause 8.8, in circumstances where the ALT determines, and the PTA accepts, that it is Best for Project to do so.

8.9 Financial Reports

The Alliance finance manager shall prepare and submit a monthly financial report to the ALT, in a form determined by the ALT, which sets out, at the date of the report and for the year to date:

- (a) the Direct Costs incurred by the NOPs in performing the work under our Agreement compared against the TOC;
- (b) the total Margin amount paid to the NOPs;
- (c) the sum of the Assessed Amounts pursuant to clause 8.4;
- (d) the current value of the Works;
- (e) an income statement;
- (f) the amount of interest earned from the Project Bank Account;

- (1) the relevant NOP, Subcontractor or supplier has paid for the materials and equipment and that clear unencumbered title will pass to the PTA upon payment;
 - (2) the NOP, Subcontractor or supplier the ultimate beneficiary of the payment for any unfixed materials or equipment has provided security in a form identified in Schedule 8 in an amount equal to the payment; or
 - (3) suitable alternative arrangements acceptable to the PTA in the circumstances of an individual procurement are in place.
- (b) The NOPs must ensure that all unfixed materials and equipment are properly stored, labelled and identified as the property of the PTA and are adequately insured, noting the interests of all Alliance Participants.

8.12 Maintenance of Documentation

To ensure that the NOPs' commitment to an open book alliance is faithfully maintained the NOPs will:

- (a) during the performance of the work under our Agreement, ensure that the AMT maintains a complete set of:
 - (1) accounting records of this Alliance following best practice accounting principles recording all AOC incurred in performing the work under our Agreement;
 - (2) all other documentation and Records prepared by the NOPs for the purposes of performing the work under our Agreement; and
 - (3) a register of equipment created or purchased by the Alliance Participants for the purposes of our Agreement, including where appropriate, details of the purchase price, where the item was purchased from, the price for which it was disposed of and to whom and the location of the equipment;
- (b) following the expiry or termination of our Agreement or as otherwise required by the PTA, ensure that the originals of the documents and Records referred to in paragraph (a) are returned to the PTA for storage such that the PTA can comply with the State Records Act 2000 (WA).
- (c) Each NOP may retain a copy of the accounting, financial and taxation documentation and Records returned to the PTA for compliance and archival purposes so long as these are not confidential documents that the PTA requires to be returned without a copy being retained.

8.13 Transparency

We are committed to ensuring that the highest possible standards and degree of transparency operate within our Alliance. The NOPs will fully co-operate with any adviser, auditor or investigator appointed by the PTA or the ALT to achieve this goal.

8.14 Audit

- (a) The PTA, or any person nominated by the PTA, or the WA Auditor-General at his or her discretion, may at any time during the performance of the work under our Agreement, inspect, audit, or investigate any Record prepared or maintained by the Alliance for the purposes of performing the work under our Agreement.
- (b) The NOPs will provide whatever Records, access, facilities or assistance is necessary to conduct whatever audit, inspection or investigation is required by the PTA or any person nominated by the PTA, or the WA Auditor-General or any person nominated by the WA Auditor-General.

input tax credit may be claimed by the party to be reimbursed or indemnified, or by its representative member.

- (h) If an Adjustment Event results in the GST on a Taxable Supply being different from the GST recovered from the recipient then the supplier:
 - (1) must refund to the recipient any excess; and
 - (2) is entitled to recover from the recipient any additional GST payable upon issuing a valid adjustment note.

- (b) If the AMT does not believe that a direction given by the PTA is a Scope Variation the direction must be immediately complied with in accordance with our Agreement.
- (c) The ALT must consider any Scope Variation Report that it receives from the AMT and determine whether a direction given by the PTA is a Scope Variation having regard to the Works, the material assumptions adopted by the Alliance Participants in determining the TOC and the examples set out in Schedule 11.
- (d) Subject to clause 9.2(g), if the ALT determines that a direction given by the PTA is a Scope Variation, the ALT must determine the effect, if any, of the Scope Variation on the Commercial Framework and the MCOS. If the ALT determines that the Margin should be varied, the following principles apply:
 - (1) If the scope of the work under our Agreement is increased, the Margin may be increased;
 - (2) If the scope of the work under our Agreement is decreased, the Margin may be decreased; and
 - (3) to increase or decrease the Margin, the Margin is calculated as a percentage of the TOC as specified in Schedule 5 and the increase or decrease is proportionate to the change in the scope of the work under our Agreement.
- (e) The ALT must recommend its determination of the effect of the Scope Variation on the Commercial Framework and the MCOS to the PTA for its approval.
- (f) If the PTA accepts the ALT's recommendation, the PTA will notify the ALT of its acceptance and the Commercial Framework and the MCOS (as relevant) will be amended in accordance with the ALT's recommendation. If the PTA does not accept the ALT's recommendation, the PTA may withdraw the direction or refer the matter back to the ALT for consideration to address the PTA's concerns. If the matter is referred back to the ALT, subclauses (d) and (e) apply again.
- (g) We acknowledge and accept that notwithstanding clause 9.2(d), the NOPs shall immediately comply with a direction given by the PTA under clause 9.1 notwithstanding that it may be a Scope Variation.
- (h) If a Scope Variation omits or deletes any part of the Works or the work under our Agreement, the PTA may carry out the omitted or deleted Works or work under our Agreement itself or by engaging others.

9.3 Recommendations by ALT

- (a) The ALT, at any time until the Date of Practical Completion, may recommend to the PTA:
 - (1) a change to the design or specification of the whole or any part of the Works;
 - (2) a change in the Works or any part of the Works;
 - (3) an increase, decrease or omission of any part of the Works;
 - (4) a change in the character or quality of any part of the Works;
 - (5) a change in the levels, lines, positions or dimensions of all or any part of the Works;
 - (6) a change in the means, methods or techniques of the performance of all or any part of the work under our Agreement; or
 - (7) to execute additional work or perform additional services under our Agreement.

10 The work under our Agreement

10.1 Standard of the Works

We will perform the work under our Agreement to meet the MCOS.

10.2 Statutory Requirement

- (a) The PTA, as a Client with the assistance of the NOPs where identified in Schedule 12, will obtain all approvals, authorisations and consents listed in Schedule 12. The NOPs will otherwise obtain all other approvals, authorisations and consents required by any Statutory Requirements necessary for the performance of the work under our Agreement or the use, operation or maintenance of the Works.
- (b) Each of the Alliance Participants must satisfy and comply with all Statutory Requirements relating to the work under our Agreement or the Works to be performed by them including as a minimum the:
 - (1) RS Act and any accreditation issued to the PTA under the RS Act from time to time;
 - (2) OS&H Act;
 - (3) EP Act and any other environmental approvals for the Works; and
 - (4) any works approvals or planning approvals for the Works.

10.3 Procurement

- (a) The Alliance Manager must ensure that all procurement activities for the purposes of the work under our Agreement are performed in accordance with the Procurement Plan. The Procurement Plan must require the NOPs to execute a deed of novation, in the form included in Schedule 14, whereby the NOPs will be substituted as principal to the various contracts executed by the PTA as principal with each of the specialist consultants and contractors identified by the PTA in the RFP.
- (b) If the AMT requires a change to the Procurement Plan including any change to the subcontract terms and conditions, it must submit a request for the change together with detailed supporting reasons to the ALT. The ALT must consider a request for change made by the AMT. If the ALT accepts the AMT's recommendation, the Procurement Plan (and if relevant the subcontract terms and conditions) is amended accordingly. If the ALT does not accept the AMT's recommendation, the request must be withdrawn by the AMT.
- (c) The Alliance Manager must also ensure that:
 - (1) the PTA's representatives on the ALT are immediately provided with a copy of any application for adjudication or notice issued by a Subcontractor, supplier or consultant or judgement debt application served on an Alliance Participant under or in respect of the Construction Contracts Act 2004 (WA) as amended from time to time; and
 - (2) the PTA's representatives on the ALT are immediately provided a copy of any application for arbitration or notice of dispute by a Subcontractor, supplier or consultant under the Commercial Arbitration Act 1985 (WA) as amended from time to time.
- (d) A NOP must only enter into a subcontract, supply or services agreement in accordance with the Procurement Plan and must not enter into a subcontract, supply or services agreements for any of the work under our Agreement

- (m) a quality plan which includes inspection, testing, commissioning and certification procedures;
 - (n) a completion and commissioning plan, including for phased completions, where applicable;
 - (o) a Statutory Requirements management and compliance plan which identifies key Statutory Approvals to be obtained and Statutory Requirements to be satisfied by the Works, the methodology (including resourcing requirements) by which key Statutory Approvals and Statutory Requirements will be obtained and/or satisfied;
 - (p) a disability access and inclusion plan consistent with the PTA's Disability Access and Inclusion Plan, available from www.pta.wa.gov.au under "Publications and Policies";
 - (q) an implementation reporting plan which during the Term requires:
 - (1) procurement to be monitored against the "Industry Participation Plan" which formed part of the Final Proposal; and
 - (2) the PTA to be provided with an "Implementation Report", in the form and containing the information required by the Government's "Building Local Industry Policy – Procedural Guidelines" available from http://www.commerce.wa.gov.au/ScienceInnovation/PDF/Publications/publications_industrydevelopment.html 12 months after the Date of our Agreement, annually during the term of our Agreement and again at Practical Completion;
 - (r) an emergency plan, consistent with the PTA's Emergency Management Manual, available from www.pta.wa.gov.au under "Publications and Policies", "Emergency Management";
 - (s) a security plan, consistent with the PTA's Security Policy and Procedures document number Ref: 9002_000_015 Rev 1.03;
 - (t) a drug and alcohol plan, consistent with the PTA's Drug and Alcohol Policy, available from www.pta.wa.gov.au under "Publications and Policies", "Contractor Safety Resources";
 - (u) an asset management plan, including maintenance requirements and "whole of life" requirements for the future operation of the Works;
 - (v) a finance and administration plan including value assurance and audit activities;
 - (w) a ground settlement, building and underground structures protection and repair plan for pre-existing buildings and structures;
 - (x) an outline geotechnical interpretive report; and
 - (y) any other plan referred to in the Basis of Design and Construction,
- for the performance of the work under our Agreement by the NOPs for the ALT's consideration and approval.

10.5 Quality System Requirements

- (a) The NOPs must, by the Date of our Agreement, establish, implement and maintain a quality assurance plan for the Project which complies with AS/NZ ISO 9001-2000 for the performance of the work under our Agreement.
- (b) The NOPs will, at all times, provide the PTA and each other with full access to all Records connected with the quality plan for the Project.
- (c) The PTA, the ALT or the Alliance Manager may at any time arrange for audits of the quality system.

- (2) provide and maintain workplaces, plant and systems of work of a kind that do not expose persons to hazards;
- (3) provide information, instruction, training and supervision of all people as is necessary to enable them to perform their work or services in such a manner that does not exposed them to hazards;
- (4) provide people with adequate personal protective clothing and equipment so as to protect them against hazards to their occupational safety and health;
- (5) ensure that:
 - (A) the use, cleaning, maintenance, transportation and disposal of plant; and
 - (B) the use, handling, processing, storage, transportation and disposal of substances,
 - (C) at the Site or elsewhere, the Works are carried out in such a manner that people are not exposed to hazards;
- (6) do all things necessary to ensure that, in respect of any plant or equipment to be used in the performance of any work under our Agreement:
 - (A) a system is implemented and maintained to identify any hazards associated with the plant, and assess the risks of a person being exposed to those hazards; and
 - (B) all practical measures are taken to reduce those risks,in order to ensure that the duties of employers to provide and maintain a safe working environment in relation to plant and equipment is performed successfully and effectively; and
- (7) ensure that access to the Site for persons who will be engaged in Construction Work is restricted to those persons who:
 - (A) have completed a WorkSafe approved "Construction Safety Awareness Course"; and
 - (B) hold a current safety awareness training certificate ("blue card") that complies with the requirements of the Occupational Safety and Health Amendment Regulations (No 2) 2005 (WA).

10.9 Protection of people and property

The NOPs are committed to protecting people and property and must, in performing the work under our Agreement:

- (a) provide all things and take all measures necessary to protect people and property;
- (b) avoid unnecessary interference with people or property;
- (c) prevent damage, obstruction or other interference with people or property;
- (d) prevent and/or mitigate hazards and prevent nuisance and unnecessary interference or disturbance with people or property; and
- (e) prevent damage to the Environment or pollution.

10.10 Care of the Works

- (a) The NOPs are responsible for the care of the work under our Agreement and the Works from the Date of our Agreement until 4:00pm on the Date of Practical Completion.

10.14 Indigenous heritage and native title

- (a) We are committed to the protection of all indigenous heritage and indigenous rights and will ensure that our employees, subcontractors, consultants and agents are genuinely sensitive and responsive to any indigenous heritage issues or indigenous rights that may arise during the performance of the work under our Agreement. To that end, we will immediately inform the ALT of any notification we receive under or in accordance with the Aboriginal Heritage Act 1972 (WA) or the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth).
- (b) We will immediately inform the ALT of any claim we receive under or in accordance with the Native Title (State Provisions) Act 1999 (WA) or the Native Title Act 1993 (Cth) and then promptly follow any instructions from the PTA.

10.15 Co-operation with others

The PTA has engaged contractors other than the NOPs and may, in the future, engage other contractors to carry out works associated with the Project and the Works or related to the PTA's ongoing operations (**Third Party Works**). We will, when carrying out the work under our Agreement, co-operate with any person carrying out Third Party Works in order to avoid any unnecessary disruption to the work under our Agreement, the Third Party Works, or the PTA's ability to provide public passenger transport services generally.

10.16 Disability Access and Inclusion Plan

- (a) The NOPs acknowledge and accept that the PTA is committed to:
 - (1) ensuring that its business is accessible and inclusive and minimises the effect of disability and disadvantage on its customers; and
 - (2) ensuring, among other things, that access to its buildings and facilities is improved with the aim of providing universal access.
- (b) The NOPs will comply with the DS Act and DAA Legislation and, to the extent practicable:
 - (1) implement the PTA's disability access and inclusion plan (available from www.pta.wa.gov.au under "publications and policy") in performing the work under our Agreement; and
 - (2) that the design of the Railway provides for universal access.

Cost Estimate, and that any actual cost incurred by the NOPs to rectify Defects over and above the Total Defects Cost Estimate, is payable entirely by the NOPs.

- (c) The PTA may, or may engage others to, rectify any Defect if:
- (1) the rectification works must, for any reason, be carried out urgently or for the protection of, or to remove any danger to, persons or property; or
 - (2) the NOPs are not able or willing to undertake the rectification work or fail to undertake the rectification work promptly,
- and the cost of doing so will be added to the AOC insofar as that cost exceeds the Total Defects Cost Estimate incorporated into the TOC.

11.5 Separable Portions

The ALT may recommend to the PTA, for its approval, that any part of the Works are a separable portion and the interpretations of, and the obligations of the Alliance Participants in respect of:

- (a) Certificate of Practical Completion;
- (b) Certificate of Final Completion;
- (c) Practical Completion;
- (d) Date for Practical Completion;
- (e) Date of Final Completion;
- (f) Defect;
- (g) Defects Correction Period; and
- (h) Works,

will apply separately to each separable portion.

The PTA may approve or reject the recommendation in its absolute discretion.

- (2) Force Majeure was not caused by, or contributed to, by the Affected Party; and
- (3) the Affected Party has taken every reasonable measure available to it to prevent or avoid the occurrence of, or avoid or mitigate the effects of, the Force Majeure,

the following clauses 12.2(b) to 12.2(e) apply.

- (b) Without limiting any other obligations under our Agreement, or the intent of the Alliance, if an event of Force Majeure occurs which affects one or more of the NOPs, the NOPs will manage and mitigate the effect of the Force Majeure on the performance of the work under our Agreement, including varying the performance of the work under our Agreement and, if necessary, the NOPs will undertake repairs arising out of or in connection with the Force Majeure. We acknowledge and agree that:
 - (1) all costs incurred by the PTA to assist the NOPs to manage and mitigate the effect of the Force Majeure on the performance of the work under our Agreement, up to the amount of \$### for each Force Majeure Event (**Threshold Amount**) will form part of the AOC for the purposes of the Risk/Reward Regime;
 - (2) subject to clause 12.2(b)(3), all costs incurred by the NOPs to manage and mitigate the effect of the Force Majeure on the performance of the work under our Agreement, will be reimbursed by the PTA to the NOPs as if those costs are Direct Costs; and
 - (3) all costs reimbursed by the PTA to the NOPs under clause 12.2(b)(2) up to the Threshold Amount will form part of the AOC for the purposes of the Risk/Reward Regime.
- (c) The ALT may, where appropriate and having regard to the effect of the event of Force Majeure on our Alliance and the work under the Agreement, recommend to the PTA that:
 - (1) the Commercial Framework and the MCOS be altered if the costs exceed the Threshold Amount; or
 - (2) our Agreement be terminated and recommend the consequences which flow from such a termination in accordance with the principles of our Agreement.
- (d) The PTA may in its sole and unfettered discretion accept the ALT's recommendations, refer the matter back to the ALT for consideration to address the PTA's concerns or reject the recommendation. If the matter is referred back to the ALT, clause 12.2(c) applies again.
- (e) The ALT, in determining any reasonable modifications which need to be made to the Commercial Framework and the MCOS arising out of the occurrence of an event of Force Majeure, will consider and recognise that the NOPs accept and will be responsible for the Threshold Amount impact on the Risk/Reward Regime caused by each Force Majeure as their shared commitment with the PTA to provide incentive to the Alliance Participants to overcome the impact of any and all Force Majeure events. The Alliance Participants acknowledge and accept that the TOC already incorporates a robust risk and opportunity analysis reflecting the real probability of the risk of the occurrence and consequence of Force Majeure events and that in the circumstances the treatment of costs incurred in relation to the occurrence of a Force Majeure event under this clause 12.2(e) is fair and equitable.
- (f) Each of the Alliance Participants will take every reasonable measure or step available to them to mitigate the effect that any of the acts, events or

13 Intellectual Property

13.1 PTA Documentation

Any PTA documentation supplied to the Alliance:

- (a) must not be used, copied or reproduced for any purpose other than performing the work under our Agreement; and
- (b) remains the property of the PTA and must be returned to it upon its request.

13.2 Existing Intellectual Property Rights

- (a) All IPR owned or held by the PTA at the Date of our Agreement (PTA's Existing IPR) remains the property of the PTA.
- (b) All IPR owned or held by a NOP at the Date of our Agreement (NOP's Existing IPR) remains the property of that NOP.

13.3 Licence of Existing Intellectual Property Rights

- (a) The PTA grants to each NOP, from the Date of our Agreement to the end of the Term, a non-exclusive, personal, non-transferable, royalty free licence to use, modify, enhance, alter or decompile (**Use**) the PTA's Existing IPR which are required by that NOP to perform the work under our Agreement, which may be Used by that NOP solely for the performance of the work under our Agreement.
- (b) Each NOP grants to the PTA (including the PTA as Owner Participant) a non-exclusive, irrevocable, perpetual, sub-licensable and royalty free licence to Use the NOP's Existing IPR which are required by the PTA for:
 - (3) the performance of the work under our Agreement;
 - (4) the use, operation, support, maintenance and enjoyment of the Works; and
 - (5) any other project provided that the PTA undertakes that project in conjunction with the NOP.
- (c) Each NOP grants to each other NOP, from the Date of our Agreement to the end of the Term, a non-exclusive, personal, non-transferable and royalty free licence to Use the NOP's Existing IPR which are required by that other NOP to perform the work under our Agreement, which may be Used by that NOP solely for the performance of the work under our Agreement.

13.4 Third Party Intellectual Property Rights

If any third party's IPR forms part of the Works or is necessary for the proper functioning or operation of the Works (**Third Party IPR**), the NOPs will ensure that the PTA is granted a licence to use the Third Party IPR on the best available commercial terms.

13.5 Enhancements to Existing Intellectual Property Rights

- (a) Any enhancement or development (**Enhancements**) of the PTA's Existing IPR is the property of the PTA.
- (b) Any Enhancements of the NOP's Existing IPR is the property of the relevant NOP.
- (c) The PTA grants to each NOP, from the Date of our Agreement to the end of the Term, a non-exclusive, personal, non-transferable and royalty free licence to Use any Enhancements to the PTA's Existing IPR which are required by that NOP to

any of the Alliance Participants or any third party provided that the infringement has not arisen out of a breach of any licence provided under this clause 13. Accordingly, each NOP (**Indemnitor**) must indemnify each other Alliance Participant against all costs, loss, expense or damage arising out of or in connection with any such infringement by that Indemnitor.

- (b) In performing the work under our Agreement the PTA promises to the NOPs that the Use of:

- (1) the PTA's Existing IPR; or
- (2) the Enhancement of the PTA's Existing IPR,

for the performance of the work under our Agreement or the use, operation, support or maintenance of the Works, does not and will not infringe the IPR of any of the Alliance Participants or any third party provided that the infringement has not arisen out of a breach of any licence provided under this clause 13. Accordingly, the PTA must indemnify each other Alliance Participant against all costs, loss, expense or damage arising out of or in connection with any such infringement by the PTA.

13.10 Moral Rights Consent

- (a) Each NOP must use its best endeavours to procure from every person who is an author (**Author**) of any copyright work forming part of the work under our Agreement (**Material**), consent in writing prepared by the PTA and acceptable to the ALT authorising:

- (1) the Alliance Participants;
- (2) the Alliance Participants' licensees and successors in title; and
- (3) any other person authorised by the Alliance Participants or by any such licensee or successor in title,

to exercise all acts comprised in the copyright in the Material.

- (b) The consent obtained under clause 13.10(a) must include consent for the use, dealing, reproduction, transmission, publication, exhibition or adaptation of that Material:

- (1) without attribution of authorship to the Author;
- (2) without bearing the name of the Author or the relevant Alliance Participant (as applicable in accordance with clause 13 or any licensees and successors in title);
- (3) even if it results in "derogatory treatment" which may be prejudicial to the Author's honour or reputation; and
- (4) by changing, relocating, demolishing or destroying any three dimensional reproduction of that material without notice to or consultation with the Author.

- (c) Each NOP must ensure that the consent is genuinely given and not obtained by duress or by the making of any false or misleading statement. The Alliance Participants must provide a certified copy of all consents obtained to the ALT, who must record their receipt in the minutes of the next ALT meeting and retain the consents upon receipt of a direction to do so by the ALT.

13.11 Protection of Alliance Participant's Intellectual Property

- (a) A NOP must:

14 Insurance

14.1 General

- (a) Unless otherwise determined by the PTA or the ALT with the approval of the PTA, the Alliance Participants' current expectations of the insurance policies to be effected and maintained by the PTA until the Date of Final Completion include Project based:
- (1) public liability insurance with a limit of liability of \$## million with all Alliance Participants being named insureds;
 - (2) contract works insurance in respect of the Works for the value of the Works for loss and damage to the work under our Agreement or the Works prior to Practical Completion with all Alliance Participants being named insureds;
 - (3) marine cargo insurance for the value of the goods being transported with all Alliance Participants being named as insureds; and
 - (4) a policy to cover any plant and equipment purchased, leased by or hired by any of the Alliance Participants for the performance of the work under our Agreement or for which an Alliance Participant has otherwise assumed responsibility or may acquire an insurable interest, for its replacement value. All plant and equipment purchased, leased or hired must be procured in the name of the PTA and every 3 months the Alliance Participants must provide a list of all plant and equipment to the PTA for declaration to the insurer,
- with limits of indemnity and deductibles, identified in clause 14.1(c), nominated by the PTA and accepted by the ALT for the performance of the work under our Agreement and the Works.
- (b) Each NOP acknowledges and agrees that before entering into our Agreement it was given a copy of, and satisfied itself as to, the provisions, terms, exclusions and excesses of the draft policy wordings of the insurance policies referred to in clause 14.1(a).
- (c) At all times the NOPs must comply with any exclusions and conditions of the insurances effected by the PTA under our Agreement and for the payment of the excesses applicable to such insurances. The excesses applicable to the insurances effected by the PTA are:
- (1) public liability: \$### per claim and \$## per worker to worker claim;
 - (2) contract works: \$## per claim; and
 - (3) marine cargo: \$## per claim.
- The NOPs must pay the applicable excess and may not claim those costs as Direct Costs.
- (d) If the PTA at any time discontinues any insurance or changes any of the insurers providing any of the policies referred to in clause 14.1(a), the PTA must notify the NOPs in writing within 30 Days of any such change or discontinuance.
- (e) In addition to these Alliance based insurance policies it is expected that each NOP must from the Date of our Agreement, on its own behalf, effect and maintain until the Date of Final Completion:
- (1) workers compensation insurance to cover liability arising out of death or injury to persons employed by them including liability by statute and at

15 Suspension

15.1 Our suspension

- (a) The performance of the whole or any part of the work under our Agreement must not be suspended by the NOPs unless the Alliance Manager considers, or the ALT determines, suspension is necessary to prevent:
 - (1) personal injury or death or loss of or damage to any property;
 - (2) adverse impact upon the safety or health of persons, the Environment or the community; or
 - (3) a breach of a Statutory Requirement.
- (b) If the NOPs suspend the whole or any part of the work under our Agreement for any of the above reasons, the NOPs will recommence the performance of the work under our Agreement when directed to do so by the ALT.

15.2 PTA's suspension

- (a) The NOPs accept that the PTA as the Client may without cause and for any reason at any time, in its absolute and unfettered discretion, direct the Alliance to suspend the progress of the whole or any part of the work under our Agreement for such period as the PTA decides and the NOPs must immediately suspend the performance of the whole or that part of the work under our Agreement.
- (b) Upon receipt of a suspension direction from the PTA, the NOPs will immediately suspend the performance of the work under our Agreement and take all measures necessary to protect the safety and health of people and property.
- (c) The NOPs will recommence the whole or part of the work under our Agreement when directed to do so by the PTA.
- (d) If the PTA directs a suspension of the whole or part of the work under our Agreement the AMT will, within 7 Days of the direction, prepare for the ALT's consideration and approval appropriate Best for Project proposals to manage our resources during the period of suspension.
- (e) In the event that the whole or part of the work under our Agreement is suspended in accordance with clause 15.2(a), the PTA must pay the NOPs:
 - (1) their Direct Costs incurred during the period of suspension; and
 - (2) the Margin as calculated in accordance with Schedule 5.
- (f) The NOPs acknowledge and accept that the payments in clause 15.2(e), and any modification in accordance with clause 12.1, will be the limit of their entitlement arising out of, or in connection with, a suspension of the whole or any part of the work under our Agreement in accordance with clause 15.2(a).
- (g) The NOPs will use their best endeavours to mitigate any Direct Costs incurred during any period of suspension.

Completion of the Works, which the NOPs are legally liable to pay and cannot be mitigated and which have not previously been included in any payment by the PTA; and

- (C) the reasonable Direct Costs incurred by the NOPs and Margin of the NOPs for complying with any directions given by the PTA upon, or subsequent to, the date of termination; and
- (2) an amount equal to any amounts which the PTA has previously paid to the NOPs under our Agreement, or for those parts of the work under our Agreement, performed prior to the date of termination.
- (b) The NOPs acknowledge and accept that the payment in clause 16.3(a) will be the limit of their entitlements arising out of or in connection with the termination of our Agreement in accordance with clause 16.1 and the NOPs will not otherwise be entitled to, and release the PTA from, any cost, loss, expense or damage arising out of or in connection with our Agreement, the Works or the termination of our Agreement.

16.4 Termination Documentation

- (a) If our Agreement is terminated, the NOPs will execute any documentation, including appropriate confidentiality requirements, licences, releases and deeds of novation requested by the PTA, or agreed to by the ALT, to deal with, resolve or close out any acts, events, circumstances or issues arising out of or in connection with the termination of our Agreement.
- (b) The NOPs acknowledge and accept that, in the event that the PTA terminates our Agreement, the PTA may use any documentation or information prepared by or on behalf of an Alliance Participant for any purpose whatsoever including engaging any third party or any NOP to perform all or any part of the work under our Agreement. The NOPs will facilitate the provision of any documentation or information to the PTA, requested by the PTA under this clause 16.4(b).

payments or KRA payments which may be payable to or by the Defaulting NOP; and

(2) the sum of:

(D) the amount which the PTA has previously paid to the Defaulting NOP under our Agreement; and

(E) the amount owing by the Defaulting NOP pursuant to clause 17.7.

For the avoidance of doubt, if the amount in (1) is greater than the sum in (2), the PTA must pay the Defaulting NOP and if the sum in (2) is greater than the amount in (1), the Defaulting NOP must pay the PTA. The Defaulting NOP will not otherwise be entitled to, and releases the PTA from, any cost, loss, expense or damage arising out of or in connection with our Agreement, the Works or suspension of payment under our Agreement.

17.3 Act of Insolvency

- (a) If the PTA or a NOP considers that an Act of Insolvency has occurred in respect of a NOP, the PTA or the NOP with the knowledge, as the case may be, must as soon as practicable upon becoming aware of the Act of Insolvency, inform the other parties and then consider the Act of Insolvency.
- (b) If the PTA determines that an Act of Insolvency has occurred, it may immediately, or at any time thereafter, without prejudice to any other rights it may have, give a notice to the Defaulting NOP and the Non-Defaulting NOPs of the Act of Insolvency notifying of its intention to exercise its rights under clause 17.3(b)(1) and 17.3(b)(2) (**Default Notice**). The PTA may at any time thereafter, without prejudice to any other rights it may have, give a written notice to the Defaulting NOP and the Non-Defaulting NOPs of the exercise of one or more of the following rights to:
 - (1) wholly or partially suspend until the Date of Final Completion any payment, or any entitlement to payment, of any Direct Cost, Margin or any Reward due to the Defaulting NOP whether or not the entitlement to payment arose on or before the date of the Default Notice; or
 - (2) subject to clause 17.4(a) exclude the Defaulting NOP and any of the Non-Defaulting NOPs from further participation in our Alliance in which case, each NOP that has been excluded must immediately cease performing the work under our Agreement, except the obligations contained in this clause 17.

17.4 Exclusion of a Non-Defaulting NOP

- (a) The PTA before exercising its rights to exclude a Non-Defaulting NOP under clause 17.2(b) or 17.3(b) must:
 - (1) provide the Non-Defaulting NOP 5 Business Days notice of its intention to exercise its rights under clause 17.2(b) or 17.3(b);
 - (2) request the Non-Defaulting NOP to submit a proposal, before the expiry of the period in clause 17.4(a), outlining the Non-Defaulting NOP plan to perform the remaining work under our Agreement without the Defaulting NOP including details of the:
 - (A) Non-Defaulting NOPs' expertise and resources to perform the work under our Agreement;
 - (B) amendments to the Non-Defaulting NOPs share of the Risk/Reward Regime;

17.5 Exclusion of all of the NOPs

If the PTA excludes all of the NOPs from further participation in the Alliance:

- (a) this Agreement terminates on the date of the last notice to be given under clause 17.2(b), clause 17.3(b)(2) or clause 20.14(a);
- (b) the NOPs must take all measures directed by the PTA necessary to protect the safety and health of people and property, and comply with the obligations in clauses 16.2(b) and 16.4; and
- (c) termination is without prejudice to any rights which may have arisen against any NOP prior to the date of termination.

17.6 Consequences of Exclusion of any (but not all) of the NOPs

If the PTA excludes any (but not all) of the NOPs (**Excluded NOP**) from further participation in the Alliance:

- (a) the PTA and any of the NOPs which have not been excluded from further participation in our Alliance (**Remaining Alliance Participants**) may suspend until the Date of Final Completion any payment, or any entitlement to payment, of any Direct Cost, Margin or Reward to the Defaulting NOP whether or not the entitlement to payment arose on or before the date of the Default Notice under clause 17.2(b), clause 17.3(b)(2) or clause 20.14(a);
- (b) the Remaining Alliance Participants may terminate any future entitlement to payment of any Direct Cost, Margin or Reward to the Excluded NOP occurring, or that may otherwise occur but for this clause 17.6(b), after:
 - (1) in the case of the Defaulting NOP, the date of the Default Notice under clause 17.1(d) or clause (b); and
 - (2) in the case of any other Excluded NOP not being a Defaulting NOP, the date of the notice given under clause 17.2(b), clause 17.3(b)(2) or clause 20.14(a);
- (c) the Remaining Alliance Participants may:
 - (1) employ and pay other persons to replace the Excluded NOP in the performance of the work under our Agreement;
 - (2) elect to perform the remaining work under our Agreement themselves; or
 - (3) assume (or determine that any or a combination of the Remaining Alliance Participants assume) the role of the Excluded NOP under our Agreement and assume all rights in respect of the Excluded NOP's:
 - (A) Reward and other payment entitlements under our Agreement; and
 - (B) percentage Margin under our Agreement;
- (d) the Excluded NOP will no longer be entitled to be represented on the ALT and the AMT or otherwise participate in our Alliance from:
 - (1) in the case of the Excluded NOP being a Defaulting NOP, the date of the Default Notice under clause 17.1(d) or clause 17.3(b); and
 - (2) in the case of the any other Excluded NOP not being a Defaulting NOP, the date of the notice given under clause 17.2(b) or clause 17.3(b)(2);
- (e) the Remaining Alliance Participants may use all Temporary Works, Construction Plant and materials provided by the Excluded NOP (in which title has passed to the PTA under clause 8.4), to perform the remaining work under our Agreement;
- (f) the Excluded NOP must promptly, as and when required by the Remaining Alliance Participants:

- (2) against any Margin paid by the PTA to the Defaulting NOP after the date the Default occurred, in circumstances where the Default was not immediately notified to the PTA;
- (3) against the share of any Risk of the Defaulting NOP for the period prior to the exclusion of the Defaulting NOP which the ALT determines, or has determined, is payable by the Defaulting NOP to the PTA; and
- (4) for the period after the exclusion of the Defaulting NOP, the share of any Risk of the Defaulting NOP which the ALT determines or has determined is payable by the Defaulting NOP to the PTA as if:
 - (A) the Defaulting NOP had not been excluded from further participation in our Alliance or our Agreement; and
 - (B) the Risk/Reward Regime in place at the time of the Default remained in place and continued to operate with respect to the Defaulting NOP until the Date of Final Completion,

and must pay the PTA and the Non-Defaulting NOPs the indemnified amount on demand from the PTA or the Non-Defaulting NOPs as may be relevant. The Defaulting NOP releases the PTA and the Non-Defaulting NOPs from any claim, action, demand or damages, at law or in equity, arising out of or in connection with the indemnity in this clause 17.7(a), which it would have had but for its waiver and release in accordance with this clause 17.7(a).

- (b) For the purpose of this clause 17 any reference to the ALT, the Alliance or the PTA excludes:
 - (1) a Defaulting NOP;
 - (2) the representative of the Defaulting NOP appointed to the ALT.

17.8 Access to Unconditional Undertaking

- (a) Without limiting clause 20.21, if a NOP commits a Wilful Default or if an Act of Insolvency has occurred in respect of a NOP, the PTA may:
 - (1) have recourse to and convert into cash the full amount of the Unconditional Undertaking provided by the Defaulting NOP and held by the PTA at that time;
 - (2) apply the cash in subclause (1) to:
 - (A) any bona fide claim of the PTA for costs, losses, expenses and damages reasonably anticipated to be incurred or suffered by the PTA (including any amounts that the PTA may be required to pay to a Remaining Alliance Participant) arising out of or in connection with the Defaulting NOP's Wilful Default or Act of Insolvency; and
 - (B) any failure by the Defaulting NOP to honour an indemnity for the benefit of the PTA provided under clause 17.7(a); and
 - (3) once subclause (2) has been complied with, hold the remaining cash until the earlier of:
 - (A) the Unconditional Undertaking provided by the Defaulting NOP and held by the PTA at that time being re-instated by the NOPs in accordance with clause 20.21;
 - (B) the Unconditional Undertaking provided by the Defaulting NOP and held by the PTA at that time not been converted to cash, the date that the PTA would have been obliged to return the Unconditional Undertaking to the issuing bank under clause 20.21,

after which, the remaining cash must be paid to the Defaulting NOP; and

18 Transition Phase

18.1 Appointment of a Transition Manager

- (a) Where any NOP that employs or has engaged the Alliance Manager is excluded from the Alliance under clause 17 the PTA will appoint a Transition Manager to assume the day to day delivery and management of the incomplete Works under the Agreement. The Transition Manager will be appointed from the date of the Default Notice until the date that a new Alliance Manager is appointed by the ALT. The ALT may appoint an Alliance Manager to replace the Transition Manager after notice has been given to a NOP under clause 17.2(b) or 17.3(b)(2) or after the date on which the Default is remedied to the PTA's satisfaction.
- (b) The Transition Manager's role is:
 - (1) to ensure that the Works are completed in accordance with the Agreement;
 - (2) perform the duties and functions of the Alliance Manager; and
 - (3) to do all things which are required or desirable for giving effect to the provisions of the Agreement and bring the Works to Final Completion,until the expiration of the Transition Manager's appointment under clause 18.1(a).

18.2 Transition Management

From the time of appointment of the Transition Manager until Final Completion of the work under the Agreement or the Works, or until the expiration of the Transition Manager's appointment under clause 18.1 (a), the Alliance Participants will:

- (a) not do anything, nor omit to do anything, that will or may have the effect of interfering with the Transition Manager's performance of its powers and functions; and
- (b) ensure that the AMT:
 - (1) follow the directions of the Transition Manager; and
 - (2) do not do anything, nor omit to do anything, that will or may have the effect of interfering with the Transition Manager's performance of its powers and functions.

18.3 Responsibilities and Reporting Requirements

The Transition Manager is deemed to be in control of the AMT and therefore has the same powers and duties of the Alliance Manager under our Agreement, and will be subject to the same reporting requirements as the Alliance Manager specified in Schedule 4. The Transition Manager must keep the ALT fully informed of the activities of the AMT while it is under the control of the Transition Manager.

18.4 Payment

The PTA shall pay the cost of providing the Transition Manager and any costs actually and necessarily incurred by the Transition Manager in performing the functions set out in clauses 18.1(b) and 18.3 and those costs will be added to the AOC.

20 Miscellaneous

20.1 Assignment

We will not assign, novate or encumber any of our rights, benefits, title, interests or obligations under our Agreement, except with the consent of all other Alliance Participants (such consent not to be unreasonably withheld).

20.2 Costs

We will each meet our own costs relating to the formation and execution of our Agreement.

20.3 Governing law

The construction, validity and performance of our Agreement is governed by the jurisdiction of Western Australia. The parties irrevocably:

- (a) submit to the exclusive jurisdiction of Western Australia; and
- (b) waive any objections which they may have now or in the future to the venue of any proceedings brought in the courts of the jurisdiction of Western Australia.

20.4 Severability

If a clause or part of a clause of our Agreement is illegal, unenforceable or invalid, that clause or part is to be treated as severed from our Agreement, but the rest of our Agreement is not affected.

20.5 Variation

The terms of our Agreement can only be varied by the unanimous written agreement of the Alliance Participants expressly acknowledged as a variation of our Agreement.

20.6 Confidentiality

- (a) We will not, and we must ensure that those for whom we are responsible, do not:
 - (1) disclose to any person any information; or
 - (2) publish any documentation or information,relating to our Agreement, the Works or the Project without the ALT's prior written consent. We will, if requested by the PTA, execute a confidentiality agreement in relation to any information obtained by us for the purposes of our Agreement, the Works or the Project.
- (b) The obligation in clause (a) does not extend to:
 - (1) information already in the public domain other than due to a breach of our Agreement;
 - (2) any disclosure required by a Statutory Requirement or by the rules of a stock exchange on which the shares of the relevant NOP are listed;
 - (3) any disclosure which is required to be made to any Governmental Agency whether in connection with the granting of any licence or otherwise; or
 - (4) any disclosure to our auditors, legal advisers or third parties necessary for the performance of or in connection with our obligations under our Agreement.

enforceable and to survive the termination, completion or expiry of our Agreement. Any indemnified person under an indemnity provided under our Agreement must take all reasonable steps to mitigate any amounts payable pursuant to the indemnity.

- (b) Each indemnity given by the PTA under our Agreement is a continuing obligation separate and independent from the PTA's other obligations under our Agreement and notwithstanding anything else in our Agreement is intended to be enforceable and to survive the termination, completion or expiry of our Agreement. Any indemnified person under an indemnity provided under our Agreement must take all reasonable steps to mitigate any amounts payable pursuant to the indemnity.

20.13 No Representation or Reliance

Each of us acknowledges and agrees that:

- (a) none of us have made any representations or other inducements, other than those incorporated into our Agreement, to induce us to enter into our Agreement; and
- (b) we did not enter into our Agreement in reliance upon any representation or other inducement, other than those incorporated into our Agreement.

20.14 Change in Control

- (a) Each NOP will provide the PTA and the ALT with reasonable prior notice of any proposed Change in Control of that NOP. In the event of a proposed Change in Control occurring, the NOP concerned (**Affected NOP**) will provide the PTA with any documentation or information requested by the PTA and the Affected NOP must attend any meetings reasonably requested by the PTA, including arranging for attendance at those meetings by the third party acquiring or exercising control over the Affected NOP. The PTA will utilise the information so obtained to determine, in its absolute discretion, whether the proposed Change in Control will have any prejudicial effect on the PTA's interests, the Alliance or the performance by the Affected NOP of its obligations under our Agreement. If the PTA determines that the proposed Change in Control is not in the PTA's interests, and any conditions of the PTA cannot be satisfied, the PTA may choose to exclude the NOP and the provisions of clauses 17.4(c) to 17.4(e), 17.5 and 17.6 will apply.
- (b) The Affected NOP agrees that they will procure, if required by the PTA, an undertaking from the third party involved in the proposed Change in Control to execute any documentation requested by the PTA, which may include a deed of guarantee in the form required in clause 20.16(a).

20.15 Language

All information and documentation prepared and/or delivered by us under our Agreement will be in English.

20.16 Deed of Guarantee

- (a) Each NOP has agreed that it will, if required by the PTA and before executing our Agreement, procure its then current parent company to execute a deed of guarantee in favour of the PTA in the form required by the PTA as set out in Schedule 9.
- (b) If, prior to the Date of Final Completion, a NOP's parent company that executed a deed of guarantee under subclause (a) ceases to be the NOP's parent

- (b) The PTA may have recourse to the Unconditional Undertakings in the event of:
 - (1) a Default, in which case clause 17.8 applies; or
 - (2) any other moneys being owed by a NOP to the PTA under our Agreement which the relevant NOP has not paid within 30 Days of the due date for payment.
- (c) The PTA will return one Unconditional Undertaking provided by each NOP to the relevant issuing financial institution for cancellation at the following times:
 - (1) as soon as practicable after the Date of Practical Completion; and
 - (2) as soon as practicable after the Date of Final Completion.
- (d) Subject to subclause (c), the value of the Unconditional Undertakings provided by each NOP must be maintained at the value referred to in subclause (a) at all times until the Date of Practical Completion or the Date of Final Completion whichever is applicable at the time, so that if any of the Unconditional Undertakings are called upon by the PTA, the Unconditional Undertakings must be replaced or supplemented by the NOPs so that the total value of the Unconditional Undertakings supplied by a NOP remains at the value applicable at all times up until the Date of Practical Completion or the Date of Final Completion whichever is applicable.
- (e) If any NOP assumes the rights and obligations of an Excluded NOP pursuant to clause 17.6(c), the PTA may require, and that NOP shall provide, additional or supplemented Unconditional Undertakings to the value of the Unconditional Undertakings formerly provided by the Excluded NOP.
- (f) All costs of establishing and supplementing the Unconditional Undertakings must be borne by the relevant NOP and will not be a Direct Cost.
- (g) The NOPs must not, at any time, seek or obtain a court injunction or other legal remedy to take or instigate any other action to hinder or prevent the PTA from having recourse to the Unconditional Undertakings.

20.20 Financial difficulties

We must immediately notify each other in writing if we form the opinion that we will be unable to, or be unlikely to be able to, satisfy any of our financial obligations in relation to our Agreement from the financial resources available, or likely to be available, to us at the time that the financial obligation is due.

20.21 The PTA's statutory functions

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

- (a) the PTA or placing any fetter on its statutory rights, duties, powers and functions, including those contained or referred to in any Act of Parliament; and
- (b) the Auditor-General for the State of Western Australia or placing any fetter on its statutory rights, duties, powers and functions under the Financial Management Act 2006 (WA).

20.22 Further assurances

We must do all things necessary and execute all further documents necessary to give full effect to our Agreement.

21 Term of our Agreement

- (a) The Term of our Agreement is deemed to have commenced on the Date of our Agreement and will continue until the later of:
 - (1) our performance of each and every obligation under our Agreement; or
 - (2) the time at which our Agreement is terminated either in accordance with clause 16 (Termination for Convenience) or clause 17 (Default).
- (b) Clauses 1 (Definitions and Interpretation), 2 (Principles and Objectives), 3 (Commitments), 5 (No Dispute), 8.12 (Maintenance of Documentation), 8.14 (Audit), 12 (Review Events), 13 (Intellectual Property), 14 (Insurance), 16 (Termination for Convenience), 17.7 (Loss and Damage), 17.8 (Access to Bank Guarantee) 19.2 (Our relationship), 20.3 (Governing law), 20.6 (Confidentiality), 20.7(a) (Publicity or media statements) and 20.8 (Taxes) survive the fulfilment of each and every obligation of the Alliance Participants or the termination of our Agreement.

Schedule 1

1 Basis of Design and Construction

- (10) promote a co-operative approach to our Agreement in each participating organisation;
 - (11) make recommendations to the Alliance Participants regarding the most appropriate methods for investigating and reporting issues, implementing improvements and apportioning the costs and benefits which would result from any proposed process or productivity improvement;
 - (12) facilitate and encourage open and forthright communication between the Alliance Participants both by way of formal and informal means which the ALT will determine;
 - (13) monitor and report to the Alliance Participants on the performance of the Alliance Manager, the Alliance Management Team and to make recommendations as to how communication, co-operation and performance may be enhanced by changes to the Alliance Management Team or the mode of operation of the Alliance Management Team;
 - (14) attend meetings with, and periodically report to, the PTA on the Alliance, the health of the Alliance, the progress of the Works and any other matter which may be advised to the ALT by the PTA;
 - (15) consider overall strategies relating to the implementation of the work under our Agreement;
 - (16) monitor performance of the Alliance Participants and consider measures that may be required to prevent or retrieve any adverse trends in relation to the TOC;
 - (17) consider any other matter that the Alliance Participants may from time to time agree and or which may be referred to the ALT by any of the Alliance Participants;
 - (18) approve changes to the Procurement Plan; and
 - (19) provide coaching and mentoring to AMT members.
- (b) The duties of the ALT DO NOT include the day to day management of the Alliance.
- (c) The following protocols will regulate the business of our ALT meetings.

S2.3 ALT Meetings

- (a) The ALT will agree a schedule of future ALT meetings on a 3 - 6 month forward schedule. Meetings of the ALT must be held at least monthly or as may be otherwise agreed by the ALT, unless there is pressing business to be undertaken.
- (b) Whilst the ALT has a declared preference to meet in person, a representative may, provided adequate notice is provided to all ALT representatives, participate in an ALT meeting by video or telephone conference.
- (c) An ALT representative may not attend an ALT meeting by video or telephone conference:
 - (1) if another ALT representative requests personal attendance; or
 - (2) for 2 ALT meetings in succession.
- (d) Unless otherwise agreed by the ALT, meetings are to be held:
 - (1) at the Project office; or

business Days of any objection we have to the minutes. Any objection to the minutes will be the first agenda item at the next ALT meeting.

- (c) The minutes approved or deemed to be approved in draft of the minutes must be signed by the person who acted as the chairperson at the meeting concerned or if he or she is not available, the person acting as chairperson of the succeeding meeting of the ALT.
- (d) A representative who was not in attendance at a meeting of the ALT is not entitled to object to any draft minutes of that meeting.
- (e) The ALT secretary must maintain a log of all resolutions and actions taken by the ALT such that any resolution or action can be expeditiously tracked to the ALT meeting at which a resolution was made or an action was required

S2.7 ALT Meeting Procedures

- (a) Each representative has, subject to subclause (b) below, the right to speak and be heard at meetings of the ALT.
- (b) Notwithstanding clause 6.4(b) if all ALT representatives (or their notified alternative representatives) are not present at a properly convened meeting within 20 minutes (or such longer time not exceeding 2 hours as the representatives in attendance agree) of the appointed time of any meeting, the meeting will be adjourned for such number of Business Days (being not less than 2 and no more than 5) as those representatives present determine and, on resumption of the meeting, that number of representatives present will constitute a quorum for the purpose of conducting only that business contained in the original notice of meeting for the adjourned meeting.
- (c) Prompt notice of the date of resumption of an adjourned meeting must be given by the ALT secretary to all representatives. In determining what is prompt notice for the purposes of this sub-clause, the ALT secretary is to have regard to the matters which are to be considered at the adjourned meeting.
- (d) In addition to the scheduled meetings, the ALT secretary may, at the request of an Alliance Participant, by giving 5 Business Days' notice to the representatives on the ALT, call a special meeting for the ALT for the purposes of considering any material special business or affairs relating to our Agreement within the power of the ALT. The purpose of any such meeting must be described in at least general terms in the notice.
- (e) A resolution in writing, approved by the signature of each representative who would be eligible to decide on the subject matter of the resolution if it were put to a meeting of the ALT, is as valid and effectual as if the resolution had been passed by all representatives of the ALT at a duly convened meeting of the ALT on the date when the resolution is last signed.
- (f) A written resolution may consist of one or more documents in like terms.
- (g) The written resolution may be communicated to each representative by facsimile.
- (h) Each Alliance Participant must bear the costs associated with the attendance of its representative at ALT meetings.

- (g) provide effective leadership to the wider team;
- (h) produce and implement Alliance Management Plan;
- (i) supervise, measure, forecast, report project performance to ALT;
- (j) create alignment within the wider team;
- (k) harness project resources from parent organisations;
- (l) take corrective action where necessary; and
- (m) manage human resources, industrial relations, community and other critical relationships with stakeholders.

statutory leave (e.g. sick leave), payroll tax, workers' compensation insurance, Fringe Benefit Tax and superannuation).

S4.3 Staff Bonuses

Staff bonuses, where these have been agreed by the ALT and are directly related to work performed for the Alliance.

S4.4 Mobile Phone Costs

Only the cost of calls incurred by a NOP on Alliance business is a Direct Cost. The provision and maintenance of mobile telephony is a corporate overhead and forms part of the Margin.

S4.5 Mobilisation and Demobilisation

The cost of mobilising and de-mobilising any employee of a NOP to Western Australia, in line with the employment policies of the employing NOP (which have been reviewed and accepted by the PTA as described in clause S4.2(b)).

S4.6 Contracted Services

All contracted third party external service suppliers, equipment, utilities, professional consultant services or contract and technical services directly engaged by NOP from third party sources to perform the work under our Agreement.

S4.7 Project Office

Establishment, maintenance and operation of the Project Office including rent, outgoings, utilities, consumables and dedicated telecommunications and information technology services and the like necessary to perform the work under our Agreement.

S4.8 Construction Plant and Temporary Works

Subject to the following paragraph, the actual cost to the NOP for the provision of Construction Plant and Temporary Works to perform the work under our Agreement.

Unless the purchase and subsequent sale of Construction Plant and Temporary Works is specifically identified in the TOC, it will be assumed that no such purchase is intended by the Alliance and, therefore, it cannot be claimed as a Direct Cost. Whether purchased or leased, the AOC will contain the net cost of usage of assets.

S4.9 Small Plant and Equipment

Equipment, materials, goods, consumables and small plant purchased by the NOPs specifically for the work under our Agreement.

S4.10 Site and Facilities

Establishment, maintenance and operation of the Site, any site accommodation reasonably required, ablutions, warehousing, storage or other facilities, including:

- (a) all transportation facilities, utilities, consumables and dedicated telecommunications and information technology services and the like necessary to perform the work under our Agreement;
- (b) mobilisation and demobilisation;
- (c) Site access and lay-down areas including traffic management;
- (d) connection and disconnection of temporary services;
- (e) Site fencing, hoardings and protection of existing facilities including site security;
- (f) project signboards;
- (g) rubbish removal;

S4.17 Safety (including rail safety)

All personal protective or site safety equipment, occupational health & safety requirements (including compliance with the PTA's Health, Safety and Environment Handbook, available www.pta.wa.gov.au under "Publications and Policies", "Contractor Safety Resources") and the cost to provide and maintain a safe working environment and to take all practicable steps to ensure the safety of all persons performing or affected by any aspect of the work under our Agreement including, without limitation, the cost to provide training and obtain suitable accreditation permits to personnel who will be required to work on or near an operating railway, in accordance with the rail safety management plan unless that training is provided by or on behalf of the PTA.

S4.18 Entertainment

Any reasonable expense in relation to entertainment where the event or entertainment relates wholly and exclusively to the work under our Agreement is a Direct Cost. For example, an event that is open to or staged for the benefit of all Alliance Participants, such as a milestone event celebration, Christmas party or team building event is a Direct Cost.

S4.19 Unconditional Undertakings

Any fee in relation to establishing or supplementing an unconditional undertaking, where the unconditional undertaking relates wholly to the work under our Agreement, is a Direct Cost. Any Alliance Participant's cost in arranging their overall unconditional undertaking facility is part of that Participant's corporate overhead.

S4.20 Project Bank Account

Any fee in relation to establishing and the ongoing management and operation of the Project Bank Account is a Direct Cost.

S4.21 Direct Cost Exclusions

The following items, costs and/or expenses are not Direct Costs:

- (a) any off-site administrative or support function which is not:
 - (1) directly involved in performing the work under our Agreement; and
 - (2) under the immediate control and direction of the Alliance Manager;
- (b) labour and/or salary costs of our ALT members performing ALT duties or determinations and attending ALT meetings, including the travel and subsistence costs in performing these obligations;
- (c) corporate bonuses that are paid as a result of the performance of one of our organisations as distinct from project related bonuses described in clause S4.3 of this Schedule;
- (d) any contribution to our corporate overhead costs or expenses or any profit or unreasonable advantage from the utilisation of our people, plant, equipment or resources;
- (e) indirect salary costs e.g. non-Alliance specific training and development, provision of home office space and equipment to staff on short-term assignment to the Alliance;
- (f) any and all costs, losses, expenses or damages suffered by or incurred by a Defaulting NOP which arise out of or in connection with or are contributed to by a Default;
- (g) any fine, penalty or sanction imposed by a court or other Statutory Authority/Government Agency upon an Alliance Participant or its employees, contractors or agents;

Schedule 5

5 Margin

S5.1 The Margin payable to the NOPs is intended to deliver to the NOPs the only contribution under our Agreement, other than Reward, to the costs and expense of its corporate overhead structure and its corporate profit expectations. The Margin payable to the NOPs under our Agreement is fixed and can only be varied in accordance with the terms of our Agreement. The Margin is presented in our Agreement as an amount in Australian dollars and will be converted by the PTA into a percentage from the Direct Cost component of the TOC for the purpose of:

- (a) clause 8.5(a) to calculate the NOPs entitlement to Margin for each month; and
- (b) clause 9 to calculate the amount by which the Margin will be increased or decreased in the event of a Scope Variation.

Margin

S5.2 The Margin payable by the PTA to the NOPs in accordance with our Agreement is:

Margin = TOC x [.....]

S5.3 NOPs respective share of the Margin

NOP1 [insert]

NOP2 [insert]

NOP3 [insert]

- (b) the Date of Final Completion,
to determine the amounts payable under the Risk/Reward Regime by or to the NOPs.

S6.5 After the first comparison, as at the Date of Practical Completion:

- (a) if a cost saving is calculated, the PTA will pay 50% of the amount calculated to be owing to the NOPs; and
(b) if a cost overrun is calculated, the NOPs will pay 50% of the amount calculated to be owing to the PTA.

S6.6 After the second comparison, as at the Date of Final Completion:

- (a) if a cost saving is calculated, the PTA will pay the remainder of the amount calculated to be owing to the NOPs; and
(b) if a cost overrun is calculated, the NOPs will pay the remainder of the amount calculated to be owing to the PTA.

In determining whether there is an overall cost saving or cost overrun, and whether the PTA is required to make a payment to the NOPs or vice versa, the second comparison will take into account the amount of the payment that was made after the first comparison and who the payment was made to, to ensure that the principles set out in clause S7.7 and clause S7.8 of this Schedule are achieved.

Cost Savings

S6.7 If the Actual Outturn Cost is less than the TOC (as modified by any Scope Variations), that is a cost saving and the NOPs, in aggregate, will be paid an amount by the PTA equal to 50% of the difference between the Actual Outturn Cost and the TOC (as modified by any Scope Variations).

There is no cap on the amount that the NOPs can earn from savings achieved in the Actual Outturn Costs in comparison to the TOC.

Any amounts payable to the NOPs are due in the invoice period following agreement by the ALT of the amounts payable.

Cost Overruns

S6.8 Should the Actual Outturn Cost be more than the TOC (as modified by any Scope Variations), that is a cost overrun and the NOPs, in aggregate, will pay to the PTA an amount equal to 50% of the calculated cost overrun.

The maximum amount that the NOPs will pay to the PTA as a result of an overrun is capped at 100% of the Margin.

The NOPs must pay any amounts payable to the PTA in the invoice period following agreement by the ALT of the amounts payable.

Position as Between NOPs

S6.9 As between the NOPs, the percentage liability of the NOPs for any risk payment to be made under the Risk/Reward Regime is as follows:

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Each NOP takes the benefit of any Reward payment to be made under the Risk/Reward Regime in the same percentages as it is liable for a Risk payment.

Each NOP warrants that it will not enter into any agreement, arrangement or understanding which has the effect of amending the percentage of Reward payment to which the NOP is entitled or the percentage Risk payment that the NOP is obliged to pay.

Schedule 7

7 Details

Clause Number	Description	Details
11.4	Defects Correction Period	24 months after the Date of Practical Completion
11.1	Date for Practical Completion	(insert)

DATED at this day of 20....

Executed by.

(PRINT NAME)

(SIGNATURE)

Title

Witness

(PRINT NAME)

(SIGNATURE)

Title

- d) this Guarantee will not at any time during the period which it remains in force be deemed to be discharged or wholly or partly satisfied by the payment, liquidation, settlement or compromise of any monies or the whole or partial performance of any term, covenant or obligation of the Alliance Agreement from time to time during that period payable or to be performed respectively by the Subsidiary or the Guarantor;
 - e) the liability of the Guarantor will not be affected or avoided by any agreement or arrangement made between any party to the Alliance Agreement (whether with or without the consent of the Guarantor or notice being given to the Guarantor) or by any alteration or variation to the rights or obligations of any of the parties to the Alliance Agreement or by the granting of any time or other indulgence or forbearance by the PTA to any party to the Alliance Agreement;
 - f) the PTA may without notice to the Guarantor make any credit arrangement with, take and deal with any security given by the Subsidiary or assent to any deed of assignment by, or arrangement or composition of the Subsidiary without affecting the liability of the Guarantor under this Guarantee;
 - g) this Guarantee is independent of and additional to any other security the PTA may now hold or may at any time obtain from the Subsidiary; and
 - h) the covenants of the Guarantor will bind the assigns and successors of the Guarantor.
3. Any demand or request to be made on the Guarantor will be in writing signed on behalf of the PTA's Representative (as that term is defined in the Alliance Agreement) and delivered by hand or sent by pre-paid post addressed to the Guarantor at its address referred to above.
- A demand sent by post will be deemed to have been served three Business Days after the day of posting. Business Day means a day on which banks are open for general banking in Perth, Western Australia excluding a Saturday, Sunday or public holiday.
4. The PTA will pay all stamp duty payable in respect of this Guarantee.
5. This Guarantee will in all respects be governed by and construed in accordance with the laws for the time being in force in the State of Western Australia and the Guarantor submits to the exclusive jurisdiction of the courts of that State and such courts as have appellate jurisdiction therefrom.

THE COMMON SEAL of

[Insert name of the Guarantor]

is affixed hereto in the presence of:

.....
...
Director.....
...
Secretary/Director.....
...
Name of Director (print).....
...
Name of Secretary/Director (print)

DATED at this day of 20....

Executed by.

(SIGNATURE) (PRINT NAME)
Title _____

Witness

(SIGNATURE) (PRINT NAME)
Title _____

Item	Description	Variation Yes/No
	Minor works and improvements are identified and directed by the PTA acting reasonably during the design stage and /or the construction e.g fencing, perimeter security treatments, lighting, landscaping, extra parking bays and extra toilets.	N
	Design costs greater than estimated in TOC.	N
	A PTA person in the alliance makes an error that costs money or delay.	N
	Sub contractor is late in delivery or has unacceptable quality.	N
	Correction of Defects in Defects Correction Period to an extent greater than estimated in the TOC	N
	Major structure change in a proponent group causes cost changes (now a sub-contractor).	N
	Discovery of artefacts causes delays to construction	N
	Discovery of a previously unknown Aboriginal site causes delays to the Project.	N
	Class IV or V contaminated material is encountered and needs to be treated and managed.	N
	Existence of an unknown service that requires additional work costing less than \$50,000.	N
	Construction is delayed because a service is not in the location shown on services drawings.	N
	Contaminated water is encountered and has to be treated and disposed of.	N
	Misinterpretation of BDC or Works Sequencing Plan results in re-work.	N
	Changes in Australian Standards, policies or guidelines results in re-design or re-work.	N
	Temporary works required by the Alliance but not previously identified.	N
	An item or service that the PTA has committed to provide to the alliance on a free issue basis becomes unavailable or the PTA is unable to honour its commitment and this materially impacts the TOC or causes significant delay.	Y
	Equipment in accordance with the BDC is purchased but upon delivery is found not to meet those requirements or once installed does not perform as required under the BDC.	N
	Equipment is purchased which is of an inferior or a better quality than that specified in the BDC.	Y
	Scope of work described in the BDC is reduced eg provision made for expansion works increased or decreased.	Y

Approval Type	Responsibility	Approving Authority	Status
Contaminated site validation report for hand over of lots 1193 and 1178 to EPRA	Alliance	Department of Environment and Conservation	Not yet submitted.

The NOPs Safety Plan (and Quality Plan where this is a requirement) shall be subject to the approval of the PTA. The NOPs and Sub-contractors shall not commence Works on Site until approval has been obtained.

Site specific safety plans shall be developed in the course of the Project to address rail safety requirements for the tasks being performed. The site specific safety plans will include method statements and job safety analysis (risk assessments) sufficient to allow an analysis of how the work is to be performed and to include rail safety requirements. Site specific safety plans shall be subject to validation or approval by the PTA.

The Safety Plan shall demonstrate / evidence the NOPs requirement to comply with the Rail Safety Act 1998, AS4292 and Rail Safety Regulations 1999.

S13.2 WORKING ON OR NEAR A RAILWAY

S13.2.1 Network Rules 2000

NOPs will be provided with one controlled copy of the Network Rules and Appendix. Arrangements can be made for the purchase of additional copies of the Network Rules 2000 and Appendix to the Network Rules 2000 by contacting the Public Transport Authority's Corporate Document Controller, telephone (08) 9326 2209.

Amendments and additions will be advertised in the Weekly Notice issued by the PTA. Registered holders of hard copy documents will be advised by e-mail or by post to the last registered address of the NOP. Replacement pages will be issued to registered holders of hard copy controlled documents.

The NOPs sub-contractors or employees engaged on works closer than three metres from the nearest rail or overhead traction power equipment shall have a qualified Safeworking Supervisor in charge of them.

The Safeworking Supervisor shall be in possession of:

- Current train running information in accordance with Rule 187;
- A copy of the current Weekly Notice;
- Equipment, as listed in Rule 185;
- A copy of any other relevant notices of working arrangements for that location;
- Ready access to a copy of the Network Rules; and,
- Ready access to a copy of the Appendix to the Network Rules.

A Safeworking Supervisor shall hold Track Access Accreditation to a minimum level of WPW 15.

S13.2.2 Track Access Accreditation

Procedures have been established to provide suitably qualified persons with the skills and knowledge to undertake work on or about the PTA's network in a safe and secure manner. It is essential for the safety of the individual and of the PTA's operations that any person working at or adjacent to the railway shall have successfully completed an appropriate safety induction program, prior to commencing rail safety work or on the railway network. The safety induction program includes formal training and a medical examination. Details of training and medical requirements form part of Instruction 141.

The level of training and medical fitness will depend on the accreditation level required to complete the task also defined in the Appendix to the Network Rules Instruction 141.

The documented conditions for granting the Permit to Work will be explained to the NOP's personnel by the Track & Civil Infrastructure Planning & Standards Engineer and these instructions shall be observed.

S13.4.3 Vicinity Form

Where any work is to be performed within three metres of live overhead track wiring equipment, the NOP shall give notice to the PTA's Electrical Control Officer and apply for a Vicinity Form in accordance with the Appendix to the Network Rules.

Once the Vicinity Form is issued the NOP shall comply with all of the conditions detailed on the Vicinity Form.

S13.5 CONSTRUCTION & MAINTENANCE RAIL OPERATING STANDARDS

The NOPs, as part of the NOPs certified quality management system, shall develop the management controls, systems and procedures as outlined in this document. The NOPs' Quality Plan and inspection and test plans shall also include the requirements of rail safety in accordance with the relevant sections of AS 4292 to the satisfaction of the PTA where this is a requirement of the Agreement.

S13.6 REQUIREMENTS FOR UNDERTAKING WORK IN GENERAL EXEMPTION AREA

S13.6.1 All workers are required to wear High Visibility clothing in accordance with the PTA's standards and other safety equipment as instructed by the site supervisors; to include safety footwear in accordance with Australian Standards AS/NZS 2210 (not including elastic sided boots) at all times.

S13.6.2 The PTA shall revoke the general exemption if there is any breach of the conditions of this general exemption or if the PTA determines that there are circumstances that require this action.

S13.6.3 Non accredited workers shall not carry out safeworking duties.

S13.6.4 Non accredited workers shall not enter any part of the railway reserve not covered by this exemption unless an appropriate exemption certificate is issued and they are accompanied by suitably qualified employees, who will act as supervisors.

S13.6.5 Train Information shall be obtained in accordance with Rule 187 of the Network Rules 2000 and the appropriate Train Controller advised prior to any work party entering any part railway reserve not covered by this exemption.

S13.6.6 Access to signalling equipment shall be provided as required and as the Works progress.

S13.6.7 The NOPs shall liaise with the Track Infrastructure Maintenance Manager's office (9326 2365) for all local requirements including emergency procedures for the area.

S13.6.8 The NOPs shall be responsible for implementing site management procedures to ensure appropriate processes are in place to inform all persons working on the site of the exemption conditions and local instructions. A copy of the safety briefing shall be supplied to the PTA.

S13.6.9 Machinery with booms or jibs including the load shall not come within 3m or above of the Overhead Traction Wiring Equipment without a permit to work being issued. Refer to section 4.16 Cranes and Lifting Machines of the Safety Instructions for the Electrified Area

S13.6.10 All fencing erected for the project must comply with section 4.24 Boundary Fences of the Safety Instructions for the Electrified Area and procedure 8110-800-047. No materials are to be stacked so that it will lean against the fence.

S13.6.11 All work shall comply with the requirements of the Safety Instructions for the Electrified Area.

Schedule 14

14 Deed of Novation

THIS DEED is made on the date stated in Item 1 of the Schedule BETWEEN the Principal named in Item 2 of the Schedule, the Consultant stated in Item 3 of the Schedule and the Alliance Party named in Item 4 of the Schedule.

RECITALS

- (A) The Principal has called for proposals for the design and construction of the project stated in Item 5 of the Schedule (the Project).
- (B) The Principal and the Consultant have entered into a prior contract set out in Item 6 of the Schedule (the Consultancy Contract) whereby the Consultant will provide certain services more particularly described in the Consultancy Contract (the Consultancy Services) and which will form part of the Project.
- (C) The Consultancy Contract provides that the Consultant will enter into this Deed of Novation with the successful proponent for the Project.
- (D) The Alliance Party is the successful proponent for the Project and has contracted to design and construct the Project for the Principal; and
- (E) The Alliance Party has been directed by the Principal to enter into this Deed of Novation with the Consultant.

AGREEMENT

1. The Alliance Party shall punctually perform, carry out and complete all of the obligations of the Principal under the Consultancy Contract as far as they are not performed. The Alliance Party acknowledges itself to be bound by the terms and conditions of the Consultancy Contract in all respects and in every way as if the Alliance Party had originally been named in the Consultancy Contract as a party to the Consultancy Contract in place of the Principal.
2. The Consultant hereby releases and forever discharges the Principal from the further performance of the Consultancy Contract and from all claims and demands whatsoever in respect of the Consultancy Contract and accepts the liability of the Alliance Party upon the Consultancy Contract in place of the liability of the Principal.
3. The Consultant shall punctually perform, carry out and complete all of its obligations under the Consultancy Contract and be bound by the terms of the Consultancy Contract in each and every way as if the Alliance Party had originally been named in the Consultancy Contract as a party to the Consultancy Contract in place of the Principal.
4. The governing law of this Deed shall be the governing law stated in the Consultancy Contract between the Consultant and the Principal.

The **COMMON SEAL** of the)
PUBLIC TRANSPORT AUTHORITY)
OF WESTERN AUSTRALIA is)
affixed in the presence of:)

Chief Executive Officer

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

Director (signature) Director/Secretary (signature)

Name (please print) Name (please print)

Executed by the **Alliance Party** in)
accordance with section 127 of the)
Corporations Act 2001 (Cth):)
)
)

Signing page

Executed as an agreement

The **COMMON SEAL** of the)
PUBLIC TRANSPORT AUTHORITY)
OF WESTERN AUSTRALIA is)
affixed in the presence of:)

Chief Executive Officer

(insert sealing clauses of each NOP)