

# [Insert Owner Organization][Insert Name of Project] Briefing on Adjustment Event alignment process

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## Acronyms in this document

AE	Adjustment Event
AEGs	Adjustment Event Guidelines
ALT	Alliance Leadership Team
AMT	Alliance Management Team
AOC	Actual Outturn Cost
NOP	Non-Owner Participant
OKS	Overall KRA score
PAA	Project Alliance Agreement
R/O	Risk/opportunity
TCE	Target Cost Estimate
TOC	Target Outturn Cost

## **1 Sharing of risk/opportunity – setting the overall context**

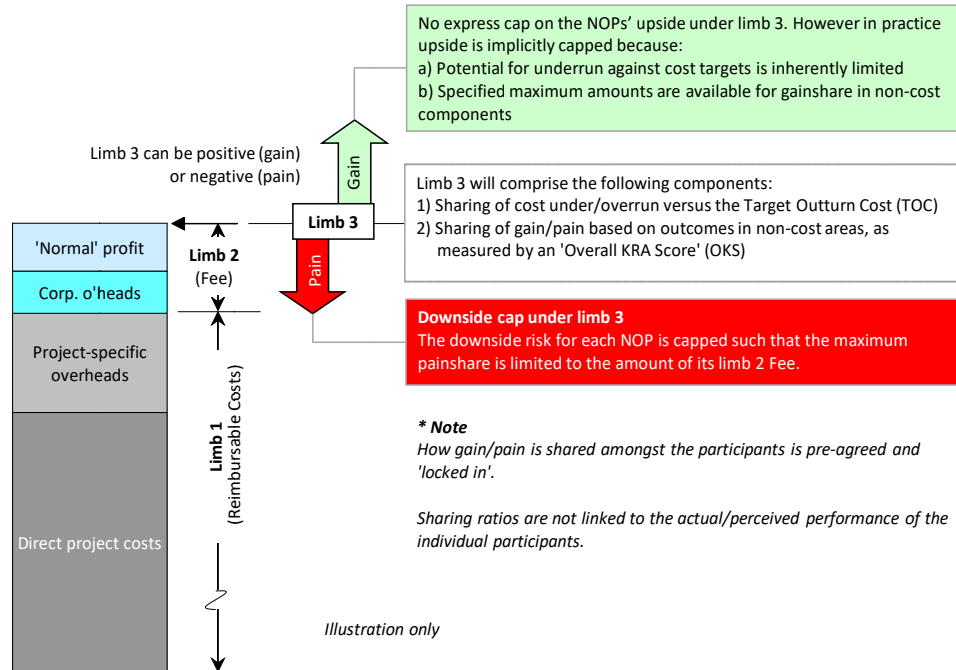
- 1.1 Under the '3-limb' compensation framework, risk/opportunity is either shared collectively (by all the Alliance Participants) or retained unilaterally by the Owner. There is no option for risk/opportunity to be borne unilaterally by the Non-Owner Participants (NOPs).
- 1.2 All risk/opportunity is shared collectively except for those types of risk/opportunity the participants have agreed are retained unilaterally by the owner.
- 1.3 The 'Adjustment Event alignment process' described in this briefing paper enables the participants to reach informed alignment on what risks/opportunities will be borne unilaterally by the owner.
- 1.4 While focussed primarily on commercial alignment the process is as much, if not more, about cultural alignment. The process is designed to facilitate a radical and rapid transition from conventional risk-transfer mindset to an alliance mindset and a "one-team" environment where high-performance is the norm.

## **2 Purpose of this briefing paper**

- 2.1 The legal/commercial context of the *Adjustment Event Guidelines* and the process by which they will be developed during the Alliance Development Phase are set out in this briefing paper.
- 2.2 Specifically, this briefing paper:
  - (a) explains the contractual/commercial context of Adjustment Events (AEs);
  - (b) provides guidance on the commercial rationale for the treatment of risk/opportunity in a high-performance alliance;
  - (c) describes the AE alignment process and confirms the logistics for the AE alignment workshop, and
  - (d) provides instructions for completing and returning the attached 'Scenario Questionnaire'.
- 2.3 Note that it is essential you read this briefing paper thoroughly before starting to complete the Scenario Questionnaire.

### 3 Adjustment Events – commercial context

3.1 The diagram below illustrates the NOP compensation framework. The concept of an Adjustment Event (AE) needs to be considered in the context of this compensation model and in particular the gainshare/painshare regime.



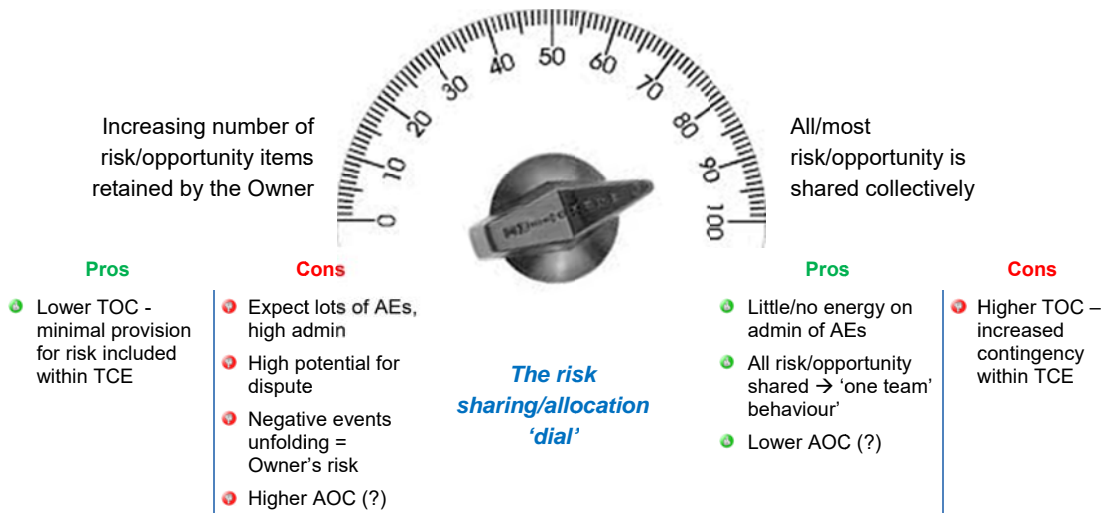
3.2 As noted above, there are only two options for how risk/opportunity (R/O) is shared/allocated:

Option	Commercial and administrative implications
R/O is shared collectively by the participants	<ul style="list-style-type: none"> <li>Provisions for risk/opportunity must be included in the Target Cost Estimate (TCE) consistent with the risks/opportunities being borne collectively by the participants.</li> <li>If the risk/opportunity eventuates there is no adjustment to the Target Outturn Cost (TOC) or any of the non-cost targets.</li> </ul>
R/O is borne unilaterally by the Owner	<ul style="list-style-type: none"> <li>If the risk/opportunity eventuates then the TOC and/or non-cost limb 3 targets <u>may</u> need to be adjusted, consistent with the agreed associated impact. In other words, it is an Adjustment Event.</li> <li>It is not required or appropriate to allow any provisions in the build-up of the TCE for risks (or opportunities) that are being borne unilaterally by the Owner.</li> <li>The Owner will need to make an allowance, separate from the TCE, for the net costs associated with Adjustment Events.</li> </ul>

3.3 The default presumption is that all risks/opportunities are shared. In order to be able to finalise the provisions for risk/opportunity within the TCE the participants must align on what situations, if any, will be considered to be an Adjustment Event (AE) i.e. they must agree the circumstances, if any, where the associated risk/opportunity, should those circumstances eventuate, will be borne unilaterally by the Owner.

## 4 Putting risk allocation in perspective

- 4.1 It is important to understand that there is no ‘right’ or ‘wrong’ approach, and the decision on whether risk/opportunity should be shared collectively or retained unilaterally by the Owner involves striking a balance between two extremes, as illustrated in simplistic terms in the following diagram:



- 4.2 The decisions at the AE alignment workshop(s) can be likened to turning the ‘risk sharing/allocation dial’ towards either end of the spectrum – in this respect:
- (a) The further to the right the dial is turned (ie. more risk/opportunity shared collectively), the more robust will be the ‘one team’ foundation of the alliance. The downside is that this will put upwards pressure on the TOC.
  - (b) The upward pressure on the TOC can be eased by increasing the number of situations where the risk/opportunity is retained unilaterally by the Owner (ie. turn the dial back towards the left). The more you turn the dial away from full risk/opportunity sharing the more you weaken the commercial foundation of the alliance, shifting it back towards a traditional potentially adversarial form of contract.
- 4.3 At the AE alignment workshops we will explore this concept further so that the whole group (Owner and Proponent) clearly understands the implications of moving the dial (to the left) away from full sharing of risk/allocation.

## 5 Legal/contractual context – why the AE Guidelines really matter

5.1 Clause 12 of the draft PAA sets out the legal context of the Adjustment Event Guidelines very clearly:

*12.2 The Participants have agreed to share all risks and opportunities associated with the Alliance Works, regardless of whether:*

*12.2.1 those risks or opportunities are within the control of the Participants;*

*12.2.2 the Participants could (or should) reasonably have foreseen or made allowance for them; or*

*12.2.3 any provision was made for them in the Target Outturn Cost,*

*except for those risks or opportunities (or portions of such types of risks or opportunities) that the Participants have specifically agreed will be retained solely by the Owner as indicated in the Adjustment Event Guidelines.*

*12.3 The Participants acknowledge that:*

*12.3.1 the types of scenarios in the Adjustment Event Guidelines for which a risk or opportunity is shared are not exhaustive;*

*12.3.2 the types of scenarios in the Adjustment Event Guidelines for which a risk or opportunity is retained unilaterally by the Owner is exhaustive; and*

*12.3.3 there are no other types of events or circumstances for which a risk or opportunity is retained unilaterally by the Owner, except for events or circumstances expressly stated elsewhere in this Agreement to be an Adjustment Event.*

5.2 Given this legal context the guidelines developed at the AE alignment workshop(s) play a critical role in determining and clarifying how risk/opportunity will be shared amongst the participants.

5.3 There are times when the ALT is unable to reach agreement on contested Adjustment Events. Typically, in each of those cases the following root causes (amongst others) are significant in giving rise to the misalignment:

(a) Key players involved in developing the TCE failed to grasp the significance/importance of the Adjustment Event Guidelines. Typically, the TCE/TOC report contained lists of 'assumptions' which many of the key players, more accustomed to conventional tendering, thought would mean that an Adjustment Event would apply if the assumptions proved to be incorrect. But they failed to have regard to the Adjustment Event Guidelines which made no mention of any such assumptions and therefore by default, were a shared risk/opportunity.

(b) There was little or no attempt to ensure that new/replacement members of the ALT had the same understanding of the Adjustment Event Guidelines as the people who were involved in the Adjustment Event alignment workshop(s).

## 6 AE alignment process overview

- 6.1 Selected personnel from the Owner and each Proponent, through this briefing paper, are asked to complete and return the attached Scenario Questionnaire giving their personal/individual view as to whether the risk (or opportunity) in each of the hypothetical scenarios would/should be shared collectively (by all Participants) or retained unilaterally by the Owner (i.e. an Adjustment Event).
- 6.2 Please note that getting individual, not corporate, perspectives is fundamental to the integrity of the alignment process, in order to ensure the level and quality of understanding, debate and eventual ownership of the agreed outcome – i.e. we want your personal view, not the ‘corporate position’.
- 6.3 A [Insert Name of Alliance Facilitator]-facilitated alignment workshop will be conducted with each Proponent, seeking to reach alignment for each hypothetical scenario whether or not it would be treated as an AE. It may be necessary to hold a shorter follow-up workshop soon after the main workshop to enable the group to reach alignment on all scenarios.
- 6.4 Ideally, based on the respective outputs of the alignment workshops, the Owner will be able to put forward a single set of Adjustment Events Guidelines seeking agreement from each Proponent to use it as the Adjustment Event Guidelines (to form part of Schedule 5 of the PAA). Where there is major divergence between the risk/opportunity appetite of the two groups it may be necessary to have a different set of AE Guidelines for each Proponent. In that case the Owner, guided by the Third Party Estimator, will make an allowance for the difference in risk/opportunity profiles when evaluating the two Project Proposals.
- 6.5 The timeline for the alignment process is shown below:

[Insert Alignment Process Schedule Graphic]

## 7 Outline for the AE alignment workshop and who should attend

- 7.1 The overall purpose of the AE alignment workshop with each Proponent is to align on a well-informed set of draft Adjustment Event Guidelines.
- 7.2 The workshop will be facilitated by [Insert Name of Alliance Facilitator].
- 7.3 This workshop will be held over 3 x half-day sessions [Insert Location] (with a 4<sup>th</sup> half-day reserved as a contingency in case extra time is needed):

Commencing [Insert Date] starting at [Insert time] (sharp) and aiming to finish no later than [insert time]. A draft sample agenda is set out below:

Day 1, [Insert Date]	1	14.00	Preliminaries	<ul style="list-style-type: none"> <li>Opening comments, brief introductions, housekeeping</li> <li>Confirm purpose and agenda for this workshop</li> <li>Set up for effective conversations, agree protocols (conduct, outputs, parking lot) and confirm commitment to participate positively</li> </ul>
	2	14.30	Framing the workshop	<ul style="list-style-type: none"> <li>Review compensation framework and putting AEs in proper perspective</li> <li>Commercial context – there is no ‘right’ answer. Co-creating the right foundation.</li> <li>Align on expectations of each other at this workshop</li> <li>Process briefing</li> </ul>
		15.45	Break	
	3	16.00	Onscreen review and alignment	<ul style="list-style-type: none"> <li>Work through and aim to reach aligned view for each scenario whether or not it would constitute an Adjustment Event</li> </ul>
	4	17.30	Summarise progress	<ul style="list-style-type: none"> <li>Review Day 1 progress and remaining scenarios</li> <li>Reflect &amp; correct exercise</li> <li>Insights and lessons from this session</li> <li>Overnight actions / requests</li> </ul>
		18.00	Day 1 close	
Day 2, [insert Date]	5	14.00	Set up day 2	<ul style="list-style-type: none"> <li>Team check in &amp; review any overnight actions</li> <li>Agree priorities for use of remaining time</li> </ul>
	6a	14.20	Onscreen review and alignment	<ul style="list-style-type: none"> <li>Work through and aim to reach aligned view for each scenario whether or not it would constitute an Adjustment Event</li> </ul>
		15.45	Break	
	6b	16.00	Onscreen review and alignment	<ul style="list-style-type: none"> <li>Work through and aim to reach aligned view for each scenario whether or not it would constitute an Adjustment Event</li> </ul>
	7	17.30	Summarise and close out	<ul style="list-style-type: none"> <li>Review Day 2 progress &amp; behaviours</li> <li>Reflect &amp; correct exercise</li> <li>Overnight actions/requests</li> </ul>
	18.00	Day 2 close		
[Insert Date]	8	14.00	Set up day 3	<ul style="list-style-type: none"> <li>Review any overnight actions</li> <li>Agree priorities for use of remaining time</li> </ul>
	9a	14.20	Onscreen review and	<ul style="list-style-type: none"> <li>Work through and aim to reach aligned view for each scenario whether or not it would constitute an Adjustment Event</li> </ul>

		alignment	
	15.45	Break	
9b	16.00	Onscreen review and alignment	<ul style="list-style-type: none"> <li>• Work through and aim to reach aligned view for each scenario whether or not it would constitute an Adjustment Event</li> </ul>
10	17.30	Summarise and close out	<ul style="list-style-type: none"> <li>• Review status &amp; confirm next steps</li> <li>• Reflect &amp; correct exercise</li> <li>• General feedback and residual issues</li> <li>• Overnight actions/requests (if continuing to day 4)</li> </ul>
	18.00	Day 3 / workshop close	
Day 4 [Insert Date]			Placeholder if required

- 7.4 We expect that only these 3 half-day sessions will be required but participants should keep the fourth session available as a contingency.
- 7.5 Proponents are invited to bring a total of between 10 and 12 people to the workshop in line with the guidance provided below. Proponents are required to confirm in writing no later than [Insert Date] who will be attending.
- 7.6 The workshop should be attended by those who need to be involved because they have a relevant commercial role in the establishment and/or delivery of the alliance along with others who can make a valuable contribution to the conversation. In this respect:
- (a) Given that in most instances it will be the ALT that determines whether circumstances justify an AE, it is expected that all nominated Proponent ALT members attend.
  - (b) In practice, once the alliance is under way it is expected that the discussion on whether a set of circumstances justifies an AE will initially take place within the Alliance Management Team (AMT) before being referred to the ALT. On that basis it is expected that the nominated Alliance Project Manager and relevant nominees for the AMT and those with a relevant leadership role in the alliance attend this workshop.
  - (c) Proponents can choose to bring members of their commercial and estimating team (i.e. people who will be responsible for the Project Proposal TCE development) to the workshop. However, legal representation at this workshop is not expected or required.



- 7.7 NOTE\* - It is a requirement that **each person** attending the workshop completes and returns the Scenario Questionnaire (refer instructions below). Having people attend the workshop who haven't completed/returned the Scenario Questionnaire or vice versa introduces unhelpful and unnecessary complications into the process.



## 8 Instructions for completing the questionnaire

- 8.1 The questionnaire is provided as an Excel spreadsheet (CDHRP\_AEG\_Q1-**[Insert Proponent Name]**\_MyName.xlsx). The first step is to **save the file under a new name** replacing the “My.Name” bit of the filename with your name - eg. **[Insert Name]** would save the file as: CDHRP\_AEG\_Q1-**[Insert Proponent Name]**\_ **[insert name]** .xlsx.

	A	B	C	D	E	F
1	© PCI Group 2021		Initials			
2		Insert your name here				<- Participant you represent
3						<- Insert "ALT" if you are nominated as ALT Representative
5	No	Scenario and impact	AE?			Comments
6			Yes	No	?	
7	Sample	Early on in the delivery phase the design team realises that the concept design used to generate the Initial Target Outturn Cost (TOC) does not comply with the requirements of Schedule 2: Specifications. A more complex design and construction solution is now required. This results in additional design costs of \$250k and additional construction costs of \$700k.		1		Not an Adjustment Event. The consequences of failure to comply with the specified requirements are a shared risk.

- 8.2 Insert your full name in cell B2, your initials in cell C2 (**please use 3 letters**), click on cell D2 to select from the drop-down list which organisation you represent. If you are nominated as a member of the ALT, click on cell E2 and select “ALT”, if not leave cell E3 blank.
- 8.3 For each of the **[Insert Number of Scenarios]** set scenarios, read the scenario carefully and then indicate (by inserting a ‘1’ in column C, D or E) whether or not you think that situation should/would be treated as an Adjustment Event (AE). Give reasons for your answer in the ‘Comments’ column (column F). Avoid using column E (‘?’ indicating ‘Depends’) if possible but if you do use it, please give full details in column F. [Note: - assume that each scenario occurs after the TOC is locked in - as the concept of an Adjustment Event only comes into play after the TOC is locked in.]
- 8.4 Below the **[Insert Number of Scenarios]** set scenarios, you may insert one or two additional scenarios (A, B) covering situations that are not already covered by the set scenarios, where you think there might be misalignment. If you do insert extra scenarios please ensure you provide a description that clearly explains the context, cause and associated implications (with the same level of detail as in the set scenarios).
- 8.5 The spreadsheet is protected so you can only edit cells that are intended to be user changeable. **Please do not remove the protection or try to change the structure of the spreadsheet** (e.g. insert new row or remove rows).



**\*\* NOTE – very important \*\***

Please complete and return the questionnaire **on your own** – remember there are no ‘right’ or ‘wrong’ answers. Please do not check your responses with others or work with others to respond to the questionnaire.

## 9 Instructions for returning the completed questionnaires

- 9.1 E-mail your completed (renamed) Excel file to Proponent Contact Representative.
- 9.2 The Proponent Contact Representative is required to submit an e-package to the Contact Person by no later than [Insert Date] comprising:
  - (a) a list of those who will be attending the workshop, and
  - (b) for each person attending the workshop a completed individual Excel Questionnaire.
- 9.3 If you have any technical problems with the spreadsheet, please have your query forwarded to the Contact Person.

