

**[Insert Project Name]**

## **Project Alliance Agreement**

**[Insert Owner Name]**

**AND**

**[Insert Names of NOPs]**

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## Participants

[Insert Owner Name] (Owner)

[Insert Names of NOPs]

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## Background

- A The Owner is delivering the [Insert Name of Project] (**Project**) consisting of:
- a. [Insert Project Details as appropriate];
  - b. ;
  - c. ;
  - d. ; and
  - e. .
- B The Owner has determined that an alliance focusing on an integrated project team motivated by a value focused performance based incentive delivery approach is needed to achieve the Project Alliance Objectives for the Project.
- C The Owner developed and implemented the Competitive Alliance Selection Process to select participants to form an alliance to deliver the Project.
- D Through this competitive selection process the Owner has selected the NOPs.
- E The Participants have agreed to form the Alliance in the manner and on the terms set out in this Agreement.

## 1. PURPOSE AND PRINCIPLES

### Project Alliance Objectives

- 1.1 The purpose of our Alliance is to perform the Alliance Works to achieve the Project Alliance Objectives.

### Alliance Principles

- 1.2 We agree that in performing the Alliance Works:
- 1.2.1 we will act in Good Faith;
  - 1.2.2 all decisions will be made on a Best for Project basis;
  - 1.2.3 we all win, or we all lose, based on project outcomes. Win-lose outcomes are not acceptable;
  - 1.2.4 we will have a peer relationship where each Participant has an equal say in the decisions of the ALT;
  - 1.2.5 all risks and responsibilities are managed collectively by the Participants;

- 1.2.6 we will have clear accountabilities within a no blame culture;
- 1.2.7 we will develop and foster a culture of trust, collaboration and innovation;
- 1.2.8 the ALT and the AMT are empowered to make decisions and take actions on behalf of all Participants;
- 1.2.9 all financial and commercial transactions are fully Open Book;
- 1.2.10 communication between us will be open and honest; and
- 1.2.11 all our dealings will be ethical and socially responsible.

## **2. OBLIGATIONS**

2.1 In performing the Alliance Works, we will:

- 2.1.1 achieve the Project Alliance Objectives and the KRA Objectives;
- 2.1.2 ensure that the Alliance Works at Substantial Completion and Final Completion satisfy the requirements of this Agreement and are Fit for Purpose;
- 2.1.3 perform Alliance Works in a manner consistent with the Alliance Principles;
- 2.1.4 take collective responsibility for managing all of the risks in performing the Alliance Works;
- 2.1.5 manage and mitigate all of the risks involved in bringing the Alliance Works to Final Completion;
- 2.1.6 establish an integrated collaborative team environment to encourage open, honest and efficient working;
- 2.1.7 comply with our No Dispute commitments and obligations;
- 2.1.8 encourage innovation and innovative thinking;
- 2.1.9 develop and maintain a high standard of consultation and communication with our stakeholders and immediate community groups;
- 2.1.10 create positive peer relationships in an environment of mutual support, appreciation and encouragement;
- 2.1.11 at all times exercise Good Industry Practice in the performance of Alliance Works; and
- 2.1.12 perform the Alliance Works to comply with the requirements of this Agreement.

## **3. NO DISPUTE**

3.1 We will work cooperatively to avoid or to identify and resolve all Disputes.

- 3.2 We will immediately notify each other of any Dispute, or potential Dispute, arising out of or in connection with this Agreement. If the AMT is unable to resolve the Dispute acting in accordance with the Alliance Principles and Project Alliance Objectives, the Dispute will be promptly elevated to the ALT for resolution.
- 3.3 The ALT:
- 3.3.1 will deal proactively with any Dispute elevated to the ALT on a Best for Project basis;
  - 3.3.2 must unanimously resolve any Dispute elevated to the ALT; and
  - 3.3.3 will determine whatever action it believes is necessary to resolve the Dispute (which may include the appointment of an independent expert, mediator or adjudicator to assist the ALT to unanimously resolve any Dispute).
- 3.4 The rights, entitlements, obligations and liabilities set out in this Agreement (which in some cases may be determined by the ALT in the future) will exclusively govern our rights, entitlements, obligations and liabilities in relation to the Alliance Works.
- 3.5 To the extent permitted by law, we agree that only an act or omission of a Participant in performing, or failing to perform, the Alliance Works which amounts to a Wilful Default or an Act of Insolvency will give rise to enforceable obligations, entitlements, rights or remedies under this Agreement, including a right to claim or recover any Loss, or otherwise at law or in equity.
- 3.6 To the extent permitted by law, we release and discharge each other from any Loss, effects, claims, actions or proceedings under this Agreement or otherwise at law or in equity arising from or as a result of any act or omission in performing, or failing to perform, the Alliance Works which does not amount to a Wilful Default or an Act of Insolvency in respect of which we may have otherwise had recourse under this Agreement or otherwise at law or in equity but for this release and discharge.
- 3.7 The Participants agree that nothing in this Section 3 will operate to limit a Participant's statutory motor vehicle insurer exercising a right of subrogation or statutory right of recovery, to the extent it is permitted to do so, against a Participant or a Participant's insurer.

#### **4. DIRECTIONS AND OWNER RESERVED POWERS**

##### **Directions**

- 4.1 We acknowledge and agree that the Owner (in its discretion) or the ALT (in accordance with Section 4.2) may, by issuing a direction in writing to the Participants in accordance with this Section 4.1, direct us to:
- 4.1.1 change the Specifications or the Owner's requirements for the whole or any part of the Alliance Works;
  - 4.1.2 change the design of the whole or any part of the Alliance Works;
  - 4.1.3 increase, decrease, delete or omit any part of the Alliance Works;
  - 4.1.4 change the character or quality of any part of the Alliance Works;
  - 4.1.5 change the levels, lines, positions or dimensions of all or any part of the Alliance Works;

- 4.1.6 change the timing of the performance of all or any part of the Alliance Works;
- 4.1.7 change the means, methods or techniques of the performance of all or any part of the Alliance Works;
- 4.1.8 execute additional Alliance Works; or
- 4.1.9 demolish or remove material, works, services or parts of the Alliance Works no longer required by the Owner,

and we will immediately comply with the direction. Any direction must clearly indicate that it is a direction issued by the Owner or the ALT, as the case may be, in accordance with Section 4.1.

- 4.2 If, prior to a unanimous determination of the ALT in respect of a direction proposed to be issued in accordance with Section 4.1, any ALT representative believes (acting reasonably) that the ALT should consult with the Owner prior to issuing the direction, the ALT will:

- 4.2.1 provide the Owner with a draft of the proposed direction together with detailed reasons substantiating the need for the proposed direction;
- 4.2.2 outline the impact of the proposed direction on the Specifications or Owner's requirements for the Alliance Works;
- 4.2.3 outline the impact of the proposed direction on the Project Alliance Objectives, the TOC or any KPIs; and
- 4.2.4 inform the Owner whether the proposed direction will constitute an Adjustment Event,

and the Owner and the ALT will, acting in accordance with the Alliance Principles, seek to agree on the issue of the proposed direction. Any proposed direction referred to the Owner in accordance with this Section 4.2 must, subject to Section 4.3, obtain the Owner's written consent prior to the ALT issuing the direction in accordance with Section 4.1.

- 4.3 We acknowledge and accept that notwithstanding Sections 4.1 and 4.2, the Owner may by exercising an Owner Reserved Power in accordance with Section 4.5.3, refuse its consent to any proposed direction by the ALT to be issued in accordance with Section 4.1.
- 4.4 No direction issued in accordance with Section 4.1 will:
  - 4.4.1 invalidate this Agreement; or
  - 4.4.2 unless the direction gives rise to an Adjustment Event, give rise to any adjustment to the Compensation Framework.

#### **Owner Reserved Powers**

- 4.5 We agree that determinations in respect of the following matters are reserved to the Owner in its discretion (each, an **Owner Reserved Power**):
  - 4.5.1 any decision expressly reserved to the Owner under this Agreement;

- 4.5.2 a direction by the Owner issued in accordance with Section 4.1, including a direction by the Owner to delete, decrease or omit any part of the Alliance Works for any purpose, including engaging a third party to perform work that would otherwise be Alliance Works;
  - 4.5.3 withholding or refusing consent to any proposed direction by the ALT to be issued in accordance with Section 4.1;
  - 4.5.4 the appointment of independent advisors in accordance with Section 7.1;
  - 4.5.5 issuing a Defect notice in accordance with Section 11.9;
  - 4.5.6 a suspension of the Alliance Works under Section 15.4;
  - 4.5.7 termination of this Agreement for the Owner's convenience in accordance with Section 16.1;
  - 4.5.8 the rejection of, or a direction to amend, a notice issued in accordance with Section 17.8.3;
  - 4.5.9 the exercise of any statutory rights, duties, powers or functions of the Owner in accordance with Section 18.8;
  - 4.5.10 issuing any publicity or media statements or communications with respect to the Alliance or the Alliance Works in accordance with Section 21.9;
  - 4.5.11 urgent protection of the Alliance Works, people, other property, or the environment; and
  - 4.5.12 any other matter which the ALT unanimously agrees should be an Owner Reserved Power;
- and we will immediately implement the exercise of any of the Owner Reserved Powers.

#### **Owner's Representative**

- 4.6 The Owner will perform its obligations under this Agreement through the Owner's Representative. The Owner's Representative will exercise the rights and entitlements reserved to the Owner under this Agreement. The Participants will provide all assistance necessary to enable the Owner's Representative to efficiently and effectively exercise the Owner's rights and entitlements and perform the Owner's role and responsibilities under this Agreement.
- 4.7 The Owner has initially selected the person identified in Schedule 1 as the Owner's Representative for the purposes of the Agreement. The Owner may, from time to time in its discretion, change the Owner's Representative by giving written notice to the NOPS. Any replacement Owner's Representative will be bound by any earlier decision or determination made by any previous Owner's Representative, unless otherwise agreed by the ALT.

#### **Perceived contravention of Law**

- 4.8 If a Participant perceives that compliance with an Owner's direction issued under Section 4.1 would cause a Participant or a Participant's Officer, director or employee to do or omit to do anything that contravenes any Law, the Participant must immediately give notice in writing to the other Participants and the ALT providing the details of the Law and the manner so contravened. The ALT will consider the matters identified in the notice and:

- 4.8.1 satisfy the relevant Participant that the Owner's direction may be complied with, and agree to comply with the Owner's direction in such manner to avoid, manage or mitigate the risk of noncompliance; or
- 4.8.2 agree that the Owner's direction presents a real risk of contravening the Law and make a recommendation to the Owner addressing the Owner's direction and the possible contravention of the Law. The Owner will consider the ALT's recommendation and make a further direction after taking into account the ALT's recommendation.

## **5. LEADERSHIP AND MANAGEMENT**

### **ALT**

- 5.1 The Participants have, by this Agreement, established the ALT. The ALT will:
  - 5.1.1 comprise three ALT representatives appointed by the Owner, one ALT representative appointed by each NOP and one ALT representative appointed by IBC in accordance with Section 5.25.1;
  - 5.1.2 establish and implement the strategic leadership and direction of the Alliance;
  - 5.1.3 establish and implement transparent governance and accountability structures for the Alliance; and
  - 5.1.4 remain accountable to the Participants for the performance of the Alliance and the Alliance Works.
- 5.2 The ALT will comply with the ALT Accountabilities and Responsibilities Matrix.

### **Representation**

- 5.3 Each Participant has appointed the representatives identified in Schedule 4 as its ALT representative.
- 5.4 We promise to each other that our ALT representatives have, in accordance with and subject to this Agreement, the power delegated to them, or have been otherwise authorized, to represent and bind the Participant on any matter relating to the Alliance and this Agreement. Where a substitute or delegate attends an ALT meeting in accordance with Section 5.8, that substitute or delegate has the powers of an ALT Representative in accordance with Section 5.4 as if they were appointed by a Participant as an ALT representative under Section 5.3.
- 5.5 Every ALT determination will be made unanimously on a Best for Project basis. Every ALT determination is binding upon the Participants.

### **ALT Meetings**

- 5.6 A quorum for an ALT meeting requires the attendance of two ALT representatives of the Owner and one ALT representative appointed by each NOP.
- 5.7 Each of us acknowledge that our ALT representatives' continuous representation on, involvement in, and attendance at the ALT meetings is critical to the success of our Alliance.

- 5.8 We each commit to a principle of not removing or replacing our ALT representatives and not allowing substitutes or delegates to attend ALT meetings, other than in the event of a personal conflict of interest or in exceptional circumstances.
- 5.9 We will comply with the procedures and requirements for ALT meetings set out in Schedule 4.

#### **AMT and WPT**

- 5.10 The AMT is an integrated project management team formed by us to enable us to perform the Alliance Works.
- 5.11 The APM is appointed by the ALT to lead the AMT. The APM will comply with the APM Accountabilities and Responsibilities Matrix.
- 5.12 The ALT will, in consultation with the APM, appoint each member of the AMT on a best person for the job basis to create an integrated project team. Each of us will not remove any of our people appointed to the AMT or any of the Key Individuals without the ALT's consent.
- 5.13 The ALT may, as required by the progress of the Alliance Works, or as recommended by the APM, alter the composition and size of the AMT.
- 5.14 The WPT is an integrated project team to perform the Alliance Works on a Best for Project basis.

#### **Personnel**

- 5.15 We will ensure that all persons engaged in connection with the performance of Alliance Works:
- 5.15.1 will perform their role in the Alliance acting in a manner consistent with the Alliance Principles;
  - 5.15.2 are careful, skilled, qualified and experienced in their respective trades and professions and suitably qualified and experienced in the type and nature of work they are undertaking to perform the Alliance Works;
  - 5.15.3 are registered and licensed as necessary under any Law for the purposes of, or incidental to, the performance of the Alliance Works;
  - 5.15.4 have been inducted by the Alliance in accordance with the Alliance's orientation program; and
  - 5.15.5 will comply with this Agreement.
- 5.16 The Participants acknowledge and accept that if the ALT or the APM (in each instance acting reasonably) is of the opinion that a person does not or has not met the requirements of Section 5.15, the ALT or the APM (as the case may be) may direct the removal of any person from a Site or the Alliance Works.
- 5.17 We will ensure that any person subject to a direction under Section 5.16 does not become involved in the performance of the Alliance Works in any capacity without the written consent of the ALT.

## Key Individuals

- 5.18 We will ensure that the Key Individuals specified in Schedule 8 are involved in the Project until Substantial Completion or the period stated in Schedule 8.
- 5.19 If a Key Individual becomes the subject of a direction under Section 5.16, is no longer employed by a Participant or is unable to perform the Alliance Works due to death, illness or incapacity, the Participant who is the employer of that person will promptly notify the ALT of that fact and provide details of an alternative, suitably qualified and experienced person to replace the relevant Key Individual.
- 5.20 The ALT will notify the Participant in writing within 10 Business Days as to whether or not it accepts the replacement individual proposed by the Participant in accordance with Section 5.19 as an acceptable replacement Key Individual. If the ALT does not accept the person proposed by the Participant as an acceptable replacement Key Individual, the Participant must nominate another person as a proposed Key Individual. We agree that that ALT is not required to state any reasons why a person proposed by a Participant is not an acceptable replacement Key Individual.
- 5.21 A Participant may only replace a Key Individual for reasons other than those outlined in Section 5.19 if the ALT is satisfied:
- 5.21.1 as to the qualifications and experience of the proposed replacement member of the Key Individual; and
  - 5.21.2 that the replacement of a member of the Key Individual will not adversely affect the quality of the relationship between the Participants or the performance of the Alliance Works in accordance with this Agreement.
- 5.22 We agree that if a Key Individual, for any of the reasons identified in Sections 5.16, 5.19 or 5.20, ceases to be involved in the Alliance Works, the ALT may agree that the role previously performed by that person is no longer required to be performed.

## Infrastructure BC

- 5.23 The Owner has collaborated with IBC for the purposes of championing the alliance contracting model for the procurement and delivery of the Project.
- 5.24 The Owner has formed the view that it is in the best interest of all Participants to engage with and to leverage the expertise, experience and relationships of IBC within the Government of British Columbia and the wider construction and infrastructure market for the benefit of the delivery of the Project and the implementation of alliance contracting as a delivery model for projects in British Columbia.
- 5.25 The Owner has elected to exercise its discretion to:
- 5.25.1 invite IBC to nominate a permanent IBC representative to participate in all discussions, considerations and decisions of the ALT on a Best for Project basis “as if” IBC was a “Participant”; and
  - 5.25.2 invite IBC to offer nominated personnel to perform roles in the ALT and Wider Project Team on a Best for Project basis.
- 5.26 By executing this Agreement the Participants acknowledge and accept:

- 5.26.1 the role of IBC under the Agreement; and
- 5.26.2 the IBC's representative's participation in all discussions, considerations and decisions of the ALT.

## **6. GOVERNANCE AND ALLIANCE MANAGEMENT SYSTEM**

### **Governance Framework**

- 6.1 The Alliance Governance Framework for the Alliance comprises:
  - 6.1.1 this Agreement;
  - 6.1.2 the Owner's reserved powers and directions in accordance with Section 4;
  - 6.1.3 the leadership and management functions of the ALT, APM and AMT in accordance with Section 5 including the obligation to comply with the:
    - (a) ALT Accountabilities and Responsibilities Matrix; and
    - (b) APM Accountabilities and Responsibilities Matrix; and
  - 6.1.4 the development and implementation of the Alliance Management System.
- 6.2 We will implement and comply with the Alliance Governance Framework.

### **Alliance Management System**

- 6.3 The Alliance Management System will:
  - 6.3.1 incorporate the Alliance Management Plans outlined in Schedule 7;
  - 6.3.2 be provided to the ALT on a "rolling basis" for consideration and review as soon as practicable, and in any event within the period outlined in Schedule 7 or such other date agreed by the ALT; and
  - 6.3.3 if determined by the ALT as being acceptable for the performance of the Alliance Works, be approved by the ALT.
- 6.4 Alliance Works will not commence on Site until the ALT determines that all such Alliance Management Plans necessary to control, manage and govern the performance of the Alliance Works proposed to be undertaken are developed and are approved by the ALT in accordance with this Agreement.
- 6.5 If the ALT does not approve an Alliance Management Plan, the ALT will provide reasons to the APM for any Alliance Management Plan it does not approve. The AMT will amend the Alliance Management Plan to address the reasons given and resubmit the Alliance Management Plan for approval.

### **Compliance with Alliance Management System**

- 6.6 In performing the Alliance Works we will comply with, and not deviate from, the Alliance Management System approved in accordance with Section 6.5 unless such deviation is determined as acceptable by the ALT in advance of any such deviation.

## **Alliance Management System Updates**

- 6.7 We will update and revise the Alliance Management System when necessary to do so as a result of any:
- 6.7.1 material change in the circumstances of the performance of the Alliance Works or that otherwise necessitates or requires a change to an Alliance Management System;
  - 6.7.2 change in equipment, systems or procedures in performing the Alliance Works; or
  - 6.7.3 or when directed by the ALT.

All updates and revisions to Alliance Management System will be prepared and approved in accordance with Sections 6.3 and 6.5.

## **Post Implementation review**

- 6.8 The Participants will, progressively during the performance of the Alliance Works, collect and report to the Owner such information and documentation that may be reasonably required by the Owner for the preparation of a post implementation review report.

## **7. ASSURANCE**

### **Appointment of Advisors**

- 7.1 We acknowledge that the Owner will appoint advisors including:
- 7.1.1 fairness or financial advisors, auditors or investigators;
  - 7.1.2 construction, engineering or technical advisors;
  - 7.1.3 cost planners, estimators and auditors; and
  - 7.1.4 any additional expert or advisor,
- to perform tasks requested by the Owner to report on the performance of the Alliance Works in accordance with this Agreement.
- 7.2 We acknowledge and accept that any advisor appointed under Section 7.1:
- 7.2.1 is accountable to the Owner to assist the Owner's governance and oversight of the Alliance;
  - 7.2.2 may be replaced or have its role amended by the Owner;
  - 7.2.3 will be paid by the Owner and such cost or expense will not be an Owner Alliance Cost or aggregated into the TOC or AOC; and
  - 7.2.4 notwithstanding that the Owner's advisors will closely interact with the NOPs, does not owe any duty of care or any other legal duty, liability or obligation to a NOP.

## Maintenance of Records

7.3 The Participants acknowledge and agree that:

- 7.3.1 the Owner, as a public body, has obligations to maintain control of all documentation and Records prepared by us for the purposes of performing the Alliance Works to substantiate the expenditure of public monies; and
- 7.3.2 the Owner retains legal and beneficial ownership and custody of all documentation and Records prepared by us for the purposes of performing the Alliance Works.

7.4 We will, during the performance of the Alliance Works and for the period set out in Section S1.6 of Schedule 1 from the Final Completion Date:

- 7.4.1 ensure that Records are properly and accurately created and maintained:
  - (a) on an Open Book basis;
  - (b) in a form that is capable of audit; and
  - (c) in accordance with GAAP;
- 7.4.2 not destroy or discard Records except with the Owner's prior written consent;
- 7.4.3 ensure that Records are available for inspection and verification by the Owner or any of its officers, agents, employees, or advisors upon reasonable notice being provided;
- 7.4.4 provide all other reasonable assistance requested by the Owner or any of the Owner's officers, agents, employees, and advisors for the purposes of inspecting the Records or conducting an audit; and
- 7.4.5 provide the Owner, upon reasonable notice being provided, with copies of all Records that the Owner determines (acting reasonably) it requires for the purposes of investigating, inspecting or auditing Records in accordance with Section 7.4 or 7.9 or the expenditure of public monies with respect to the performance of Alliance Works.

7.5 The Participants acknowledge that:

- 7.5.1 the Owner does not assume or owe any duty of care to any Participant to review Records for errors, omissions or compliance with the requirements of this Agreement or by Law; and
- 7.5.2 an inspection of Records will not:
  - (a) limit or relieve the Participants of, any obligation or liability under this Agreement;
  - (b) limit any right of the Owner under this Agreement;
  - (c) constitute acceptance by the Owner of the performance of the Participants' obligations under this Agreement; or

- (d) be considered as a representation or acknowledgement by the Owner that the document complies with the requirements of this Agreement.
- 7.6 Notwithstanding any other provision of this Section 7, each NOP may retain its working papers and one copy of the Records, subject to the provisions of this Agreement relating to ownership, confidentiality and Intellectual Property persisting.
- 7.7 To enable the Owner to comply with its obligations we will, for the period set out in Section S1.6 of Schedule 1 from the Final Completion Date:
  - 7.7.1 maintain a full and accurate set of:
    - (a) accounting Records following GAAP recording all Limb 1 Reimbursable Costs incurred in performing the Alliance Works; and
    - (b) all other documentation and Records prepared or received by us for the purposes of performing the Alliance Works; and
  - 7.7.2 maintain all documentation and Records prepared by us for the purposes of performing the Alliance Works in a format which satisfies the Owner's requirements and supports access, preservation, accessibility and audit.
- 7.8 We will:
  - 7.8.1 provide the Owner access to all documentation and Records prepared for the purposes of performing the Alliance Works (including any copies) for the period set out in Section S1.6 of Schedule 1 from the Final Completion Date; and
  - 7.8.2 transfer to the Owner all documentation and Records prepared for the purposes of performing the Alliance Works of the type and at the intervals set out in the document control and Records management plan and in any event prior to the Final Completion Date.

## **Audit**

- 7.9 The Owner, the Auditor General of British Columbia or any person appointed or allowed by either of them, may at any time until the expiry of the period set out in Section S1.6 of Schedule 1 from the Final Completion Date audit, inspect or investigate Records, the Site or any Other Site prepared or maintained by a Participant for the purpose of the Alliance Works.
- 7.10 We will provide whatever access or facilities are necessary to conduct any such audit, inspection or investigation.
- 7.11 Any Records provided, or to which any person has access, for the purposes of any audit, inspection or investigation will, subject to Law, be treated as Confidential Information in accordance with Sections 21.1 to 21.4.

7.12 We acknowledge and agree that:

7.12.1 the Auditor General of British Columbia or any person appointed or allowed by the Owner may at its discretion elect to audit, inspect or investigate any Record prepared or maintained by a Participant for the purposes of performing the Alliance Works; and

7.12.2 subject to Law, Sections 7.9 to 7.12 inclusive will apply to any such audit, inspection or investigation by the Auditor General of British Columbia.

7.13 If an audit, inspection or investigation in accordance with Section 7.9 identifies that any payments under this Agreement are less than, or exceed, a Participant's entitlement, then, as the case may be:

7.13.1 the Owner will pay the NOPs any shortfall;

7.13.2 the relevant NOP will reimburse the Owner any excess; or

7.13.3 the NOPs will adjust or redistribute any payments amongst themselves as determined by the ALT, **[Note to all Proponents – this section 7.13.3 will be deleted from this Agreement if there is no joint venture structure utilised by a Proponent for the purposes of the Alliance Works.]**

in accordance with this Agreement, plus any GST paid or payable in respect of the shortfall or excess.

7.14 If an audit, inspection or investigation in accordance with Section 7.9 identifies that the Owner's Alliance Costs advised by the Owner to the APM are less than or exceed the actual Owner's Alliance Costs incurred by the Owner, the Owner will allocate any shortfall to the Alliance or set off or deduct any excess against the AOC.

7.15 In the event of an audit, inspection or investigation by the Auditor General of British Columbia or any person appointed or allowed by the Auditor General of British Columbia Sections 7.13 and 7.14 apply notwithstanding that Final Completion has occurred, this Agreement has been terminated and whether an audit, inspection or investigation is carried out under this Agreement or otherwise.

## 8. COMPENSATION FRAMEWORK AND PAYMENT

### Overview of Compensation Framework

8.1 Each NOP will be compensated in accordance with the Compensation Framework.

### Payment Claim

8.2 At the end of each month, by a date determined by the ALT, each NOP will prepare a monthly progress payment report (in a format and including such information and documentation determined by the ALT) detailing the amount payable to that NOP in accordance with Compensation Framework and submit the monthly progress payment reports to the APM.

8.3 The monthly progress payment reports under Section 8.2 will include a statutory declaration by a representative of each NOP in the form of CCDC 9A, as adapted by the Financial Auditor in consultation with the ALT for use under the Agreement.

- 8.4 Within five Business Days of the NOPs' submission of the monthly progress payment reports to the APM, the APM will:
- 8.4.1 consolidate the monthly progress payment reports;
  - 8.4.2 prepare and sign a Progress Payment Schedule substantially in the form set out in Schedule 6;
  - 8.4.3 procure that the Financial Auditor signs the Progress Payment Schedule signed by the APM; and
  - 8.4.4 for any monthly progress payment report that includes any Limb 3 payment of gainshare by the Owner to the NOPs or Limb 3 payment of painshare by the NOPs to the Owner (as the case may be) procure that an ALT representative of each Participant signs the Progress Payment Schedule signed by the APM and the Financial Auditor:
- and issue the signed Progress Payment Schedule to the Owner certifying the amounts payable to each NOP in accordance with this Agreement.
- 8.5 Within two Business Days of the date of issue of the signed Progress Payment Schedule, the APM will obtain an invoice from each NOP in the amount certified as payable in accordance with Section 8.4 and submit the payment certificate and the invoices to the Owner for payment.
- 8.6 The Owner, subject to the Owner's entitlement in Section 8.8 and within 15 Business Days of receiving the Progress Payment Schedule in accordance with Section 8.4, will pay to each NOP the amount certified for payment to each NOP in the Progress Payment Schedule plus any amount payable for GST by electronic funds transfer to the bank account or bank accounts (as the case may be) nominated in writing to the Owner. If Section 168(3)(c) of the *Excise Tax Act* is applicable on any payment remaining to be invoiced by a NOP to the Owner at Substantial Completion a NOP will have the right, and the Owner will be required to pay, the GST applicable to the payment subject to Section 168(3)(c) of the *Excise Tax Act*.

### Payments on Account

- 8.7 We acknowledge and accept that:
- 8.7.1 the payment process in this Section 8, other than Section 8.4 and 8.8, may be adjusted by the ALT from time to time; and
  - 8.7.2 payments by the Owner are payments on account and:
    - (a) are not evidence that the whole or any part of the Alliance Works have been performed in accordance with this Agreement; and
    - (b) are subject to audit in accordance with the procedure set out in Sections 7.9 to 7.13 inclusive.

### Set-Off

- 8.8 The Owner may set-off from any amount payable to a NOP under this Agreement any amount due from that NOP to the Owner under this Agreement.

- 8.9 A NOP may set-off from any money which is payable by the NOP to the Owner under this Agreement, any amount payable by the Owner to that NOP under this Agreement.

### **Passing of Title**

- 8.10 We will ensure that all rights, title and ownership in each part of any plant, materials, equipment, assets or items (for the purpose of Section 8.10 and 8.11 '**Materials**') that form part of, or are to be incorporated into, the Alliance Works, will pass to the Owner unencumbered and free of any liens, charges and encumbrances held or claimed by any third party, upon the earlier of:

8.10.1 installation or affixing of the Material into or on the Site; or

8.10.2 payment by the Owner of the payment claim of which the relevant Materials form part.

### **Payment for Unfixed Materials**

- 8.11 We will ensure that when payment is requested for any unfixed or off-site plant, materials, equipment or goods that the ALT satisfied that:

8.11.1 in respect of Materials supplied directly by a NOP:

- (a) clear and unencumbered title will pass to the Owner upon payment; and
- (b) the unfixed Materials are properly stored, labelled and identified as the property of the Owner and that they are adequately insured noting the interests of the Owner;

8.11.2 in respect of Materials supplied directly by a Subcontractor unless otherwise determined by the ALT, that:

- (a) the Subcontractor has paid for the Materials and that clear and unencumbered title will pass to the Owner upon payment; and
- (b) the Subcontractor has provided security in the form of an unconditional bank undertaking or unconditional letter of credit in the form approved by, and in favour of, the Owner equal to the amount claimed for the Materials. The unconditional bank undertaking or unconditional letter of credit (as the case may be) will be released upon delivery of the relevant Materials to the Site and the Subcontractor providing evidence and documentation which establishes that unencumbered ownership has passed to the Owner; and
- (c) the Materials are properly stored, labelled and identified as the property of the Owner and that they are adequately insured noting the interests of the Owner.

### **Builders Lien Act**

- 8.12 The Owner will retain and release the Lien Holdback in accordance with the provisions of the BLA.
- 8.13 For purposes of the BLA, the Financial Auditor will be the payment certifier for this Agreement.

- 8.14 We will submit applications to the Financial Auditor for certification of completion under the BLA and will provide the Financial Auditor with all information required by the Financial Auditor for this purpose.
- 8.15 We will do everything necessary, including through the institution, prosecution or defence of legal proceedings, to promptly discharge from title to the Site any claims of builder's lien, builder's liens or certificates of pending litigation by any Subcontractor or other person claiming under or through us or a Subcontractor.

#### **Owner Alliance Costs**

- 8.16 The Owner Alliance Costs will be treated in the manner set out in the Compensation Framework.

### **9. ALLIANCE WORKS**

#### **Commencement**

- 9.1 The Alliance Works will not commence prior to a date advised by the Owner, which in any case will be no earlier than the Commencement Date.

#### **Design Development**

- 9.2 In performing the Alliance Works we will ensure that any designs for the Alliance Works:
- 9.2.1 satisfy the Owner's requirements for the Alliance Works and the Project;
  - 9.2.2 are such that, when constructed, the Alliance Works will be Fit for Purpose and of the quality and standard of work required by this Agreement;
  - 9.2.3 satisfy the performance and operational requirements required by this Agreement;
  - 9.2.4 are performed by personnel who, at all times, remain suitably qualified and experienced and exercise Good Industry Practice;
  - 9.2.5 optimize whole of life cost for the Alliance Works having regard to the various design lives of each component of the Alliance Works and the Owner's requirements; and
  - 9.2.6 are developed and submitted to the Owner in accordance with the Design Management Plan and in a structured and timely manner to enable the Participants to seek all necessary review and approvals for the Alliance Works.

#### **Standard of Construction**

- 9.3 In performing construction works or services forming part of the Alliance Works we will ensure that:
- 9.3.1 the Alliance Works will be Fit for Purpose and of the quality and standard of work required by this Agreement;
  - 9.3.2 they are performed by personnel who, at all times, remain suitably qualified and experienced and exercise Good Industry Practice;

- 9.3.3 they are of the highest quality consistent with the Project Alliance Objectives;
- 9.3.4 they satisfy the performance and operational requirements, and are otherwise performed, in accordance with this Agreement.

#### **Access to a Site**

- 9.4 We will ensure that:
  - 9.4.1 to the extent that we enjoy rights of access to a Site we will provide such access to each other and any person engaged, or employed by us or any one of us, as is necessary or appropriate for the performance of the Alliance Works;
  - 9.4.2 to the extent that we do not enjoy rights of access to a Site we will secure sufficient access that is necessary or appropriate for the performance of the Alliance Works on a Best for Project basis; and
  - 9.4.3 the Site and the Alliance Works and the means of access to and egress from the Site and the Alliance Works are such that persons who are at the Site and the Alliance Works, or use the Site and the Alliance Works or a means of access to or egress from the Site and the Alliance Works, are not exposed to hazards.
- 9.5 Where the Owner provides access to any part of a Site such access is provided on the basis that:
  - 9.5.1 we will comply with all reasonable requirements, restrictions and directions of the Owner;
  - 9.5.2 we will maintain the Site and any other lands and places required to perform the Alliance Works in a safe, clean and tidy condition;
  - 9.5.3 at Substantial Completion we will remove all Construction Plant, Temporary Works, surplus materials and rubbish from the Site and leave it in a safe, clean and tidy condition; and
  - 9.5.4 the Owner, its employees and agents and any other person nominated by the Owner, may at any time, subject to compliance with the Alliance Management System, have access to any part of the Site for any purpose.
- 9.6 Unless otherwise determined by the Owner, we will not mobilize our resources or establish any accommodation, facilities or presence on any part of the Site before the date determined by the Owner in Section 9.1

#### **Protection of people and property**

- 9.7 In performing the Alliance Works we will:
  - 9.7.1 provide all things and take all measures necessary to protect people and property;
  - 9.7.2 avoid unnecessary interference with people or property;
  - 9.7.3 prevent damage to and unlawful obstruction or unlawful interference with people or property;

- 9.7.4 prevent nuisance and unnecessary obstruction, interference or disturbance with people or property;
- 9.7.5 ensure that so far as is reasonably practicable persons are not exposed to risks to their health and safety arising from the Alliance Works; and
- 9.7.6 prevent unlawful environmental damage or pollution.

## **Subcontracting**

- 9.8 If any of us enter into a Subcontract with a Subcontractor for the performance of any part of the Alliance Works, we will do so in accordance with the Procurement and Contracting Management Plan within the Alliance Management System.
- 9.9 Where a Participant enters into a Subcontract with a Subcontractor for the performance of any part of the Alliance Works:
  - 9.9.1 the Participant will do so in its own right as principal;
  - 9.9.2 if required by the Owner, the Participant will require the third party to enter into a direct agreement with the Owner, so that the Owner may exercise all rights under the Subcontract on and from Substantial Completion;
  - 9.9.3 to the extent that Section 9.9.2 does not apply, the Participant will ensure that prior to Substantial Completion, the benefit of the Subcontract is assigned, or otherwise transferred, to the Owner, so that the Owner may exercise all rights under the contractual arrangement or agreement on and from Substantial Completion;
  - 9.9.4 we collectively assume the risk of the performance of the Subcontractor under the Subcontract; and
  - 9.9.5 the performance of the Subcontractor under the Subcontract will not relieve us of our obligations under the Agreement.

## **Stakeholder and Community Relations**

- 9.10 We are committed to developing deeply engaged stakeholder consultation and communication practices with genuine commitment and responsiveness.
- 9.11 We are committed to doing everything within our power to ensure that our employees, subcontractors, consultants and agents are genuinely sensitive and responsive to all local and broader community issues that may arise during the performance of the Alliance Works.
- 9.12 We will immediately inform the ALT and the Owner of any local or broader community issue which relates to the performance of the Alliance Works and will promptly follow any instructions from the Owner in respect of that issue.
- 9.13 We will take all steps necessary to meet the Owner's obligations and commitments to our local community and stakeholders as they relate to the performance of the Alliance Works.

## Testing and Commissioning

- 9.14 We will ensure that all testing and commissioning of the Alliance Works is carried out in accordance with the Commissioning Plan and completed as required by and in accordance with this Agreement (including the requirements of Schedule 2) and any applicable Laws.
- 9.15 All testing and commissioning which is required to be performed in accordance with this Agreement (including the requirements of Schedule 2) will be:
- 9.15.1 performed and completed by the Participants;
  - 9.15.2 certified and or licensed in accordance with the requirements of Law; and
  - 9.15.3 certified by the APM as having been performed and successfully completed, prior to Substantial Completion.

## 10. COMPLIANCE

### Laws

- 10.1 We will satisfy and comply with all Laws relating to the Alliance Works. We will obtain all permits, approvals, authorizations and consents required by any Laws necessary for the performance of the Alliance Works.
- 10.2 We understand and acknowledge that the Owner has obtained or may obtain, for the purposes of the Alliance Works a number of licences, permits or regulatory approvals. We will, in performing the Alliance Works, observe the requirements and obligations of these licences, permits or regulatory approvals and will ensure that we, and our employees, subcontractors and agents, do not do anything that in any way prejudices or affects the Owner's rights and obligations and entitlements under these licences, permits or regulatory approvals.

### Work Health and Safety

- 10.3 Throughout the performance of the Alliance Works we are committed to:
- 10.3.1 the development of a safe and respectful workplace to ensure the health, safety and wellbeing of our people;
  - 10.3.2 proactively preventing any form of bullying, harassment or discrimination, and actively encouraging diversity and inclusion in each workplace performing any part of the Alliance Works;
  - 10.3.3 safety being as equally important as any commercial objective; and
  - 10.3.4 creating a safe workplace and doing everything necessary to maintain a workplace free of accidents and injury.
- 10.4 We will ensure the health and safety of all persons engaged by us, including all workers, as defined in the OHS Legislation, to perform any aspect of the Alliance Works, including taking all steps necessary to:

- 10.4.1 provide and maintain a working environment where people are not exposed to hazards;
- 10.4.2 provide and maintain workplaces, plant and systems of work of a kind that do not expose persons to hazards;
- 10.4.3 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 expose them to hazards;
- 10.4.4 provide people with adequate personal protective clothing and equipment so as to protect them against hazards to their occupational health and safety;
- 10.4.5 consult with workers and consult, co-operate and co-ordinate with other duty holders in accordance with the OHS Legislation;
- 10.4.6 ensure that:
  - (a) the use, operation, cleaning, maintenance, transportation and disposal of plant; and
  - (b) the use, handling, processing, storage, transportation and disposal of substances,are carried out in such a manner that people are not exposed to hazards;
- 10.4.7 develop procedures for dealing with emergencies that may arise while persons are at work;
- 10.4.8 ensure so far as is reasonably practicable that the health and safety of members of the public are not placed at risk by the performance of the Alliance Works; and
- 10.4.9 do all things necessary to ensure that, in respect of any plant or equipment to be used in the performance of any Alliance Works:
  - (a) a system is implemented and maintained to identify any hazards associated with any plant or equipment, 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.
- 10.5 Prior to commencing the Alliance Works, each Participant will provide the ALT with satisfactory written evidence of compliance by it with all requirements under the OHS Legislation, including payments of assessments due under it to WorkSafeBC. Without limiting the foregoing, the ALT may at any time require that any Participant provide evidence of compliance with all requirements under the OHS Legislation, or payment of assessments due under it to WorkSafeBC, or both.

#### **Prime Contractor**

- 10.6 We acknowledge and accept that for the purposes of the performance of the Alliance Works:

- 10.6.1 the Owner appoints **[Insert name of lead contractor NOP]** as the 'Prime Contractor' for the purposes of the performance of the Alliance Works;
- 10.6.2 the Owner gives all necessary authority to **[Insert name of lead contractor NOP]** to discharge the duties of a Prime Contractor under the OHS Legislation and to enable it to manage or control any workplace to the extent necessary to discharge the duties imposed on a Prime Contractor;
- 10.6.3 subject to Section 10.6.7, **[Insert name of lead contractor NOP]** acknowledges and agrees that it accepts the appointment and will be responsible for, and bear the responsibility of, all obligations as the 'Prime Contractor';
- 10.6.4 **[Insert name of lead contractor NOP]** will:
- (a) exercise and fulfil the functions and obligations of the Prime Contractor;
  - (b) file any documents necessary to comply with the OHS Legislation, including a notice of project;
  - (c) comply with all Laws and other requirements of this Agreement concerning the OHS Legislation;
  - (d) ensure that we perform our obligations under this Agreement in a manner which ensures we satisfy our obligations under the OHS Legislation and all occupational health and safety requirements established by **[Insert name of lead contractor NOP]** to fulfil **[Insert name of lead contractor NOP]**'s obligations as Prime Contractor;
  - (e) ensure that all Participants and Subcontractors comply with their respective obligations under the OHS Legislation and with all occupational health and safety requirements established by **[Insert name of lead contractor NOP]** to fulfil **[Insert name of lead contractor NOP]**'s obligations as Prime Contractor, and will ensure that all Subcontractors coordinate and schedule their construction activities at the Site in accordance with the reasonable instructions of **[Insert name of lead contractor NOP]**;
  - (f) at all reasonable times provide the Owner and any relevant Authority with access to any Records necessary to establish **[Insert name of lead contractor NOP]**'s compliance with its obligations under this Section and the OHS Legislation;
  - (g) immediately inform the ALT and the Owner of all incidents involving injury to any person arising out of or in connection with the performance of the Alliance Works; and
  - (h) provide the ALT and the APM with a copy of any document, notice or report that **[Insert name of lead contractor NOP]**, as the Prime Contractor, is required to author or that it receives;
- 10.6.5 we will coordinate and schedule our construction activities at the Site in accordance with the reasonable instructions of **[Insert name of lead contractor NOP]**;
- 10.6.6 each Participant will do anything, and will refrain from doing all things, necessary to allow **[Insert name of lead contractor NOP]** to fulfil and exercise its obligations and functions as Prime Contractor; and

- 10.6.7 if **[Insert name of lead contractor NOP]**, for any reason, is no longer capable of discharging its obligations as 'Prime Contractor', the Owner will revoke the appointment of **[Insert name of lead contractor NOP]** and will appoint a replacement 'Prime Contractor'.

### Protection of the Environment

- 10.7 We are committed to implementing and pursuing environmental practices in a manner consistent with Good Industry Practice in performing the Alliance Works and will do everything necessary to ensure that we minimize all environmental impacts.
- 10.8 We will take all steps necessary to minimize impacts on the environment in performing the Alliance Works including by:
- 10.8.1 providing and maintaining systems, means, methods and techniques of working that minimize environmental impact;
  - 10.8.2 ensuring that any plant or equipment used on a Site is so arranged, designed, made and maintained so that it minimises environmental impact;
  - 10.8.3 ensuring that environments that we encounter or engage with are not exposed to risks of unlawful damage or pollution;
  - 10.8.4 developing and complying with procedures for:
    - (a) avoiding and responding to environmental hazards or emergencies (or potential environmental hazards or emergencies); and
    - (b) avoiding or mitigating risks of unlawful damage or pollution that may arise; and
  - 10.8.5 developing procedures for engaging with any Authority regarding the environment.

### Indigenous and cultural heritage

- 10.9 We are committed to the protection of indigenous and cultural heritage and indigenous rights and will ensure that our employees, subcontractors, consultants and agents are genuinely sensitive and responsive to any indigenous and cultural heritage issues or indigenous rights that may arise during the performance of the Alliance Works.
- 10.10 Upon discovery at the Site of any fossils, remains, coins, articles of value or antiquity, including all heritage objects (as defined in the *Heritage Conservation Act* (British Columbia)), we will:
- (a) immediately notify the Owner;
  - (b) take all steps not to disturb the item and, if necessary, suspend construction activities to the extent required if performing those construction activities would endanger the item or prevent or impede its excavation;
  - (c) take all necessary steps to preserve the item in the same position and condition in which it was found; and

- (d) comply with all Laws and all requirements of governmental authorities with respect to such discovery, including pursuant to the *Heritage Conservation Act* (British Columbia).

## **11. CARE, SUBSTANTIAL COMPLETION AND FINAL COMPLETION**

### **Care of Alliance Works**

- 11.1 From and including the Commencement Date until 4:00pm on the Substantial Completion Date we are responsible for the care of the Alliance Works and the Site.
- 11.2 From 4:00pm on the Substantial Completion Date until Final Completion, we are responsible for:
  - 11.2.1 the care of any outstanding Alliance Work, Defects, Construction Plant or Temporary Works remaining on the Site and other such work as provided by this Agreement; and
  - 11.2.2 any loss or damage to:
    - (a) the Alliance Works or the Site;
    - (b) any property of the Owner on or adjacent to the Site; and
    - (c) any property of any third party,arising out of or in connection with a Defect or the rectification of Defects or the performance of Alliance Works.
- 11.3 At all times until Final Completion we:
  - 11.3.1 are responsible for any loss or damage to any property of a Participant or any third party arising out of or in connection with the Alliance Works;
  - 11.3.2 are responsible for any loss of use arising as a consequence from such loss or damage; and
  - 11.3.3 will repair or reinstate any such loss or damage.
- 11.4 The cost to rectify, repair, reinstate or make good any loss, damage or Defect or to take care under Sections 11.1 to 11.3 will be Limb 1 Reimbursable Costs in accordance with Schedule 5.

### **Completion of Alliance Works**

- 11.5 We will perform the Alliance Works to achieve Substantial Completion by the Target Substantial Completion Date.
- 11.6 When the AMT is satisfied that Substantial Completion has been achieved the APM will deliver a Substantial Completion Report to the ALT:
  - 11.6.1 certifying that the Alliance Works have achieved Substantial Completion; and
  - 11.6.2 documenting that the Alliance has complied with the requirements of this Agreement.

- 11.7 The ALT will meet as soon as practicable after receipt of the Substantial Completion Report to consider whether Substantial Completion has been achieved. If the ALT considers that Substantial Completion:
- 11.7.1 has been achieved, the ALT will issue a Certificate of Substantial Completion stating the Substantial Completion Date; or
  - 11.7.2 has not been achieved, the ALT will identify those matters or things which need to be addressed before Substantial Completion can be achieved and the process in Sections 11.6 and 11.7 will be repeated until the ALT issues a Certificate of Substantial Completion stating the Substantial Completion Date.

### **Defect Rectification**

- 11.8 We will rectify and make good any Defect in the Alliance Works prior to Final Completion.
- 11.9 The Owner or the ALT may:
- 11.9.1 at any time prior to Final Completion, direct us in writing to attend to the rectification of any Defect; and
  - 11.9.2 state a date for the commencement of the rectification of a Defect and whether there will be a separate Defect Correction Period for that Defect (which if so, will commence at 4:00pm on the date the rectification of the Defect is completed and will expire six months after that date).
- 11.10 The cost of making good any Defect acting in accordance with Section 11.9 will be a Limb 1 cost (for costs incurred by a NOP) and an Owner Alliance Cost (for costs incurred directly by the Owner) in accordance with the Compensation Framework.

### **Final Completion of the Alliance Works**

- 11.11 The AMT will notify the ALT when the APM is satisfied that Final Completion has been achieved.
- 11.12 The ALT will meet as soon as practicable after receipt of the notice in Section 11.11 to consider whether Final Completion has been achieved. If the ALT considers that Final Completion:
- 11.12.1 has been achieved, the ALT will issue a Certificate of Final Completion stating the Final Completion Date;
  - 11.12.2 has not been achieved, the ALT will identify those matters or things which need to be addressed before Final Completion can be achieved and the process in Sections 11.11 will be repeated until issue a Certificate of Final Completion stating the Final Completion Date.
- 11.13 The Participants acknowledge and agree that prior to, and as a precondition to:
- 11.13.1 Substantial Completion, the NOPs will provide the Owner with all Records required by the Owner to conduct a post implementation review and prepare a post implementation report ; and
  - 11.13.2 Final Completion, the NOPs will provide the Owner with any supplementary or additional Records required by the Owner to finalize the post implementation report.

## **Separable Portions**

- 11.14 The Owner may determine that any part of the Alliance Works will be a separable portion and the interpretations of:

11.14.1 Alliance Works;

11.14.2 Defect Correction Period ;

11.14.3 Certificate of Substantial Completion;

11.14.4 Substantial Completion;

11.14.5 Target Substantial Completion Date;

11.14.6 Substantial Completion Date;

11.14.7 Defects; and

11.14.8 Final Completion,

will apply separately to each separable portion.

## **12. ADJUSTMENT EVENTS**

### **Adjustment Events**

- 12.1 When the ALT is considering whether an event or circumstance is an Adjustment Event, they will act consistently with this Section 12.

- 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 that 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.

### **Adjustment Event Approval Process**

- 12.4 No adjustment to the Compensation Framework in respect of an Adjustment Event will be made unless and until the ALT has approved the Adjustment Event.
- 12.5 Any adjustment to the Compensation Framework in respect of an Adjustment Event that has been approved by the ALT will be calculated in accordance with the Compensation Framework.

## **13. INTELLECTUAL PROPERTY**

### **Intellectual Property Rights and obligations**

- 13.1 The Participants' rights and obligations relating to Intellectual Property are set out in Schedule 11.

### **Perpetual obligation**

- 13.2 The NOPs' obligations set out in Schedule 11 are perpetual, and survive the suspension, termination, expiry or completion of this Agreement. If a NOP sells any NOP's Existing IPR or any Enhancement to a NOP's Existing IPR, the NOP will ensure that these obligations bind each successor in title to the NOP's IPR, so far as is relevant to, or required by, this Agreement.

### **Non-Infringement**

- 13.3 In performing the Alliance Works we promise to each other that:

13.3.1 our Existing IPR and the use of our Existing IPR; or

13.3.2 the Enhancement by us of Existing IPR; or

13.3.3 the use of New IPR,

for the purposes of the Alliance Works or to use, support, maintain, repair, renovate, or operate the Alliance Works or the Project, do not and will not infringe the IPR of any third party.

## **14. INSURANCE<sup>1</sup>**

### **General**

- 14.1 The Participants will obtain and maintain the insurance specified for each of them under the Insurance Conditions, and will otherwise comply with the Insurance Conditions.

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<sup>1</sup> Note to Draft – the Owner and the Proponent acknowledges and agrees that Section 14 (Insurance) and Schedule 13 (Insurance Conditions) will be reviewed, discussed in detail and finalised in the AD Phase in accordance with the ADA and the ADA Request for Proposals

- 14.2 Before beginning the Alliance Work, each Participant will deliver to each other Participant copies of all insurance coverage obtained by the Participant in accordance with the Insurance Conditions, or such other proof of that insurance as is satisfactory to the ALT.

#### **Cross liabilities and waiver of Subrogation**

- 14.3 Where an insurance policy under this Agreement is obtained and maintained in more than one name, the policy of insurance must provide that:
- 14.3.1 except with respect to the limits of insurance, and any rights or duties specifically assigned to the indemnified entities and insofar as the policy may cover more than one indemnified entity, all insurance policy agreements and endorsements will operate in the same manner as if there were a separate policy of insurance covering each party comprising the indemnified entity and that a failure by one indemnified entity to disclose all material circumstances will not prejudice the rights of any other indemnified entity to indemnity under the policy or cover; and
  - 14.3.2 that the insurer waives all rights, remedies or relief arising out of or in connection with this Agreement to which it might become entitled by way of subrogation against any of the parties constituting the indemnified entity and that failure by any indemnified entity to observe and fulfil the terms of the policy or covers will not prejudice the insurance or covers in regard to any other indemnified entity.

#### **Pass Through**

- 14.4 To the extent that any Participant receives payment under an insurance policy that reimburses any cost loss or expense that was reimbursed or is reimbursable under this Agreement, that Participant must pass on that payment to the Owner in full, and within a further 28 days the Owner must do each of the following:
- 14.4.1 arrange for an audit in accordance with Section 7.9 to 7.14 inclusive to take account of the insurance pass through amount received under the policy; and
  - 14.4.2 issue further payments to the NOP, if required by the audit, in accordance with Section 7.13.

#### **Maintaining insurance and notices**

- 14.5 In relation to the policies to be effected by a Participant under our Agreement each Participant will:
- 14.5.1 ensure that insurance premiums are paid on time and ensure the conditions of cover are otherwise complied with;
  - 14.5.2 promptly notify the ALT of any proposed variation, amendment or endorsement to any insurance policy which adversely affects the amount, scope or terms of such policy and not effect, or consent to, any such variation, amendment or endorsement without the ALT's written approval;
  - 14.5.3 immediately notify the Participants of any event which may result in any insurance policy lapsing (other than by expiry of the period of insurance and, where such policy is renewable or is renewed) or being cancelled or avoided;

- 14.5.4 promptly give written notice to the Participants if an insurer gives notice of cancellation, avoidance or other notice in respect of any insurance policy; and
- 14.5.5 immediately give written notice to the Participants of any intention by a Participant to cancel or intentionally let lapse any insurance policy.
- 14.6 In relation to the insurance policies required to be effected by a Participant under this Agreement the Participant:
  - 14.6.1 will not do, or omit to do, anything which might vitiate, impair or derogate from the cover or prejudice any claim under any such insurance policy;
  - 14.6.2 will give notice to the Participants as soon as practicable after discovery that a term, condition or section of any insurance policy has been breached;
  - 14.6.3 will as soon as practicable notify the Participants of any occurrence that may give rise to a claim and which could materially reduce the available limit under any such insurance policy and thereafter keep the Participants informed of developments concerning the claim; and
  - 14.6.4 will promptly notify the Participants if, at any point, it fails to comply with any of its obligations under this Agreement.
- 14.7 In relation to the insurance policies required to be effected by a Participant under this Agreement other than owned automobile insurance the Participant will require each policy of insurance will bear an endorsement to the effect that the insurer will not effect any cancellation of the policy without first giving at least 30 days prior written notice by registered mail to the Owner and each of the other named insureds and loss payees, provided that the Wrap-up Liability Insurance and the Course of Construction Insurance will each bear an endorsement providing that the policy is non-cancellable by the insurer except for the following:
  - 14.7.1 non payment of the premium;
  - 14.7.2 bankruptcy or insolvency of the named insured;
  - 14.7.3 termination of the Project prior to the expiry date of the policy (termination does not refer to the early completion of the Project); or
  - 14.7.4 indefinite suspension of the Project,and the Wrap-up Liability Insurance and the Course of Construction Insurance will each bear an endorsement providing that the insurers will not effect any material adverse change to either such policy

#### **Insurances and covers primary**

- 14.8 The Participants intend that any insurance policy required under the Insurance Conditions is to be primary to, and not coordinate, or be secondary or subordinate to, any other indemnity or payment required to be granted or made by the Owner or another Participant under, or in connection with, this Agreement.
- 14.9 The Participants acknowledge that if a claim is made by the Owner under an insurance policy required under the Insurance Conditions, it is the Participants' intention that the insurer cannot require the Owner

to exhaust any indemnities referred to in this Agreement before the insurer considers or meets the relevant claim.

#### **No Release**

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

#### **Wilful Default**

- 14.11 In respect of any insurance policy effected by a Participant under the Insurance Conditions any act or omission by a Participant, or any of a Participant's officers, employees, agents or any other Person for whom a Participant is solely responsible, including:

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

14.11.2 a deliberate or reckless failure to observe and fulfil the terms and conditions of any such insurance policy or cover,

that causes, in whole or in part:

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

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

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

#### **Notice of Potential Claims or Claims**

- 14.12 The Participants must ensure that the ALT notifies the Owner of potential and actual claims on any insurance policy to be obtained and maintained in accordance with this Agreement. Where the potential or actual claim is made under any insurance policy obtained and maintained by the Owner in accordance with the Insurance Conditions, the ALT will ensure that the Participants comply with any reasonable requirements of the Owner (including the Owner's insurers and legal advisors) with respect to the management, administration and defence (as the case may be) of the potential or actual claim.
- 14.13 The Participants must ensure that the ALT keeps the Owner informed of subsequent developments or updates concerning potential and actual claims on an insurance policy obtained and maintained by the Owner in accordance with the Insurance Conditions.

## 15. SUSPENSION

### Alliance suspension

15.1 Subject to Sections 15.3 and 15.4, the performance of the whole or any part of the Alliance Works will not be suspended by us unless the APM, the ALT or the **[Insert name of lead contractor NOP]** in its capacity as the Prime Contractor considers suspension is necessary to prevent:

15.1.1 personal injury or death of people or loss of or damage to any property;

15.1.2 an adverse impact upon the environment, public health or safety or the community; or

15.1.3 a breach of a Law.

If we suspend the whole or any part of the Alliance Works for any of the above reasons we will recommence the performance of the Alliance Works when directed to do so by the ALT in accordance with Section 15.2.

15.2 As soon as:

15.2.1 the ALT is satisfied that the reasons for suspension in Section 15.1 no longer exist or have been appropriately managed or addressed, the ALT will direct us to recommence the suspended work as soon as reasonably practicable and we will promptly comply with that direction; or

15.2.2 **[Insert name of lead contractor NOP]** in its capacity as the Prime Contractor is satisfied that the reasons for suspension in Section 15.1 no longer exist or have been appropriately managed or addressed, **[Insert name of lead contractor NOP]** will notify the ALT to issue a direction under Section 15.2.1.

15.3 Other than in the event of an urgent event or circumstance which requires an immediate suspension of the whole or any part of the Alliance Works, **[Insert name of lead contractor NOP]** will consult with and use its best efforts to obtain the agreement of the ALT to any proposed exercise of its suspension right under Section 15.1.

### Owner suspension

15.4 The NOPs accept that the Owner may without cause and for any reason at any time at the Owner's discretion issue a written notice directing the Participants to suspend the performance of the whole or any part of any Alliance Works for any time period as the Owner decides.

15.5 If the Owner issues a written notice of suspension under Section 15.4:

15.5.1 we will immediately suspend the performance of the Alliance Works that are the subject of the direction;

15.5.2 the APM will, within five Business Days of the direction, prepare for the ALT's consideration and approval, an appropriate Best for Project recommendation to manage our resources and protect the Alliance Works during the period of suspension; and

15.5.3 we will only recommence the performance of the suspended Alliance Works when directed to do so by the Owner.

15.6 We will use our best efforts to mitigate any Limb 1 Reimbursable Costs and Owner Alliance Costs incurred during any period of suspension.

## **16. TERMINATION FOR CONVENIENCE**

### **Notice of Termination**

16.1 Notwithstanding anything else in this Agreement the Owner may, by written notice, without cause and for any reason at any time in its discretion terminate this Agreement effective immediately or at any time thereafter identified in the notice upon service of the notice on the NOPs.

### **Compliance with Notice of Termination**

16.2 Upon receipt of a notice of termination under Section 16.1, the NOPs will:

16.2.1 cease performing the Alliance Works and take all measures necessary to protect people, property and the Alliance Works; and

16.2.2 comply with any directions by the Owner to bring about an immediate winding down and cessation of the Alliance Works, such winding down to include:

- (a) the protection and return of property (including the Alliance Works) in the possession or control of the Participants in which the Owner has, or may acquire, an interest;
- (b) termination, assignment, transfer or novation to the Owner (at the Owner's determination) of all rights, benefits and obligations of any agreements or any interests in any arrangements entered into, acquired or created by the Participants, a NOP or the NOPs for the performance of any part of the Alliance Works;
- (c) giving the Owner possession of all materials and other things on or about the Site which are owned or leased by the Participants and which are reasonably required by the Owner to achieve Substantial Completion of the Alliance Works;
- (d) giving the Owner ownership and possession of all items reasonably required by the Owner to achieve Substantial Completion of the Alliance Works which have formed, or will form, part of any payment made or to be made by the Owner;
- (e) vacating the Site of all Engaged Persons, Temporary Works, Construction Plant and other belongings of the Participants; and
- (f) giving to the Owner any Records which the NOPs or any of their Engaged Persons have prepared prior to or as at termination as required by this Agreement. We agree that the Owner may use any such Records in its discretion.

## Termination Payments

16.3 Subject to any rights the Owner has arising out of or in connection with this Agreement, including a right to withhold or set off payment and recover all amounts to which any of the NOPs may be liable under this Agreement, and subject to Section 16.8, in the event of termination in accordance with Section 16.1 the Owner will pay the NOPs, or the NOPs will pay the Owner as the case may be, the difference between:

16.3.1 the sum of:

- (a) for the Alliance Works performed prior to the date of termination, amounts payable in accordance with the Compensation Framework in respect of:
  - (i) Limb 1 Reimbursable Costs;
  - (ii) Limb 2; and
  - (iii) Limb 3 (if any) determined on a just and equitable basis (including consideration of any relevant Owner Alliance Costs) by the ALT having regard to the performance of the Participants up to the point in time of the issue of the notice of termination, as if a notice of termination under Section 16.1 had not been issued;
- (b) the Limb 1 Reimbursable Costs reasonably incurred by the NOPs for materials, plant and equipment reasonably ordered by the NOPs which the NOPs are legally liable to accept and pay for, but only if the materials, plant and equipment become the unencumbered property of the Owner upon payment;
- (c) the Limb 1 Reimbursable Costs reasonably incurred by the NOPS in the reasonable expectation of performing the whole of the Alliance Works which the NOPs are legally liable to pay, including costs or damages incurred by reason of the NOPs having to terminate contractual arrangements with third parties that were entered into for the purposes of the Alliance Works;
- (d) the reasonable Limb 1 Reimbursable Costs incurred in demobilizing from the Site; and
- (e) the reasonable Limb 1 Reimbursable Costs incurred by the NOPs as a result of complying with any direction given by the Owner on or after termination; and

16.3.2 an amount equal to any amounts which the Owner has previously paid to the NOPs under this Agreement;

and the NOPs will not otherwise be entitled to recover, and release and discharge the Owner from, any and all Loss arising out of or in connection with this Agreement, the Alliance Works or the termination of this Agreement save and except for any entitlement to be indemnified by the Owner in accordance with Sections 13.3 and 17.13.

16.4 We will mitigate any costs, loss, expense or damages incurred or arising out of or in connection with a termination for convenience in accordance with Section 16.1.

## **Termination Documentation**

- 16.5 In the event of termination in accordance with Section 16.1 the Participants will execute any documentation, including appropriate confidentiality requirements, licences and releases, reasonably requested by the Owner, to deal with and close out any acts, events, circumstances or issues arising out of or in connection with the termination of this Agreement.
- 16.6 We acknowledge and accept that, in the event of termination in accordance with Section 16.1, the Owner may use any documentation or information prepared by us for the purposes of, or arising out of or in connection with, the Alliance Works for any purpose whatsoever including engaging any third party or any NOP to perform all or any part of the Alliance Works. The Owner accepts the risk of, and subject to Sections 13.3 and 17.9, indemnifies the NOPs against the risk of using, or providing to third parties for their use, any such documentation or information.

## **Continuation of Alliance Works**

- 16.7 Without prejudice to any of the Owner's rights, entitlements or powers under this Agreement, the Owner may, upon termination of this Agreement under Section 16.1, itself or by third parties, continue to perform and complete any incomplete Alliance Works.

## **Termination arising from Wilful Default**

- 16.8 The participants acknowledge and agree that:
- 16.8.1 if a NOP commits a Wilful Default and fails to rectify the Wilful Default within the period stated in the Default Notice, the Owner may terminate this Agreement in accordance with Section 16.1 because of, in response to, as a consequence of, or to manage or mitigate the effects of the Wilful Default and/or the failure to rectify the Wilful Default;
- 16.8.2 if the Owner terminates this Agreement on the basis set out in Section 16.8.1:
- (a) all references to the "NOPs" or a "NOP" in Section 16.3 will exclude the Defaulting NOP; and
  - (b) the Defaulting NOP will not be entitled to recover, and releases and discharges the Owner from, any and all Loss arising out of or in connection with the Wilful Default, this Agreement, the Alliance Works or the termination of this Agreement.

## **17. WILFUL DEFAULT AND INSOLVENCY**

### **NOP Wilful Default**

- 17.1 If a NOP prior to Final Completion commits a Wilful Default the Owner, after consultation with the ALT, may issue a written notice to the Defaulting NOP:
- 17.1.1 specifying details of the Wilful Default; and
- 17.1.2 requiring the Defaulting NOP to rectify the Wilful Default within 10 Business Days of the date of the Default Notice.

The Owner may prior to the expiry of the period stated in the Default Notice, extend in writing the period in the Default Notice to a longer period determined by the Owner (in its discretion) if the Owner is satisfied (acting reasonably) that the Defaulting NOP has demonstrated:

17.1.3 a genuine need for a period longer than 10 Business Days to rectify the Wilful Default; and

17.1.4 a bona fide intention and/or effort (as the case may be) to rectify the Wilful Default,

and such later period extended in writing by the Owner will be deemed to be the “period stated in the Default Notice” for the purposes of clause 17.2 and/or clause 16.8.1 (as the case may be) .

### **Failure to Remedy a Wilful Default**

17.2 If the Defaulting NOP fails to remedy the Wilful Default identified in the Default Notice within the period stated in the Default Notice, the Owner, after consultation with the ALT and without prejudice to any other rights it may have under the Agreement (including under Section 16.8.1) or otherwise at law, may at any time thereafter, by giving written notice to the Defaulting NOP, exercise one or more of the following rights:

17.2.1 wholly or partly suspend any payment, or any entitlement to payment of any Limb 1 Reimbursable Costs, Limb 2 or Limb 3 due or that may become due to the Defaulting NOP, whether or not the entitlement to payment arose on, before or after the date of the Default Notice, until the Default has been remedied;

17.2.2 exclude the Defaulting NOP from further participation in the Alliance or this Agreement; or

17.2.3 terminate any entitlement to payment of any Limb 1 Reimbursable Costs, Limb 2 or any Limb 3 to the Defaulting NOP occurring, or that may otherwise occur but for this Section 17.2.3, on and from the date of the Default Notice until the Default has been remedied.

17.3 Any notice issued to the Defaulting NOP under Section 17.2 will (subject to the terms of the notice) be effective immediately and is without prejudice to the Non-Defaulting Participants' rights against the Defaulting NOP under this Agreement or otherwise at law.

17.4 Notwithstanding any Wilful Default by a Defaulting NOP, but subject to any notice under Section 16.1, the Non-Defaulting Participants will continue to perform the Alliance Works.

### **NOP Act of Insolvency**

17.5 If an Act of Insolvency occurs in respect of a NOP or its Guarantor the Owner, after consultation with the ALT, may at any time thereafter by giving written notice to the Defaulting NOP, exercise one or more of the following rights:

17.5.1 wholly or partly suspend any payment, or any entitlement to payment of any Limb 1 Reimbursable Costs, Limb 2 or Limb 3 due or that may become due to the Defaulting NOP whether or not the entitlement to payment arose on, before or after the date of the Default Notice until the Default has been remedied;

17.5.2 exclude the Defaulting NOP from further participation in the Alliance or this Agreement; or

17.5.3 terminate any entitlement to payment of any Limb 1 Reimbursable Costs, Limb 2 or Limb 3 to the Defaulting NOP occurring, or that may otherwise occur but for this Section 17.5.3, on and from the date of the Default Notice until the Default has been remedied.

17.6 Any notice issued to a Defaulting NOP under Section 17.5 will (subject to the terms of the notice) be effective immediately and is without prejudice to the Non-Defaulting Participants' rights against the Defaulting NOP under this Agreement or otherwise at law.

17.7 Notwithstanding any Act of Insolvency occurring in respect of a NOP or its Guarantor, but subject to any notice under Section 16.1, the Non-Defaulting Participants will continue to perform the Alliance Works.

## Exclusion

17.8 If the Owner excludes a Defaulting NOP from further participation in the Alliance in accordance with Sections 17.2.2 or 17.5.2:

17.8.1 the Owner may:

- (a) suspend until Final Completion any payment, or any entitlement to payment, of any Limb 1 Reimbursable Costs, Limb 2 or Limb 3 to the Defaulting NOP whether or not the entitlement to payment arose on or before the date of the Default Notice;
- (b) terminate any future entitlement to payment of any Limb 1 Reimbursable Costs, Limb 2 or Limb 3 to the Defaulting NOP occurring, or that may otherwise occur but for this Section 17.8.1(b);
- (c) use all Temporary Works, Construction Plant and materials provided by the Defaulting NOP to perform the remaining Alliance Works, without incurring any liability to pay or reimburse the Defaulting NOP for the use of such all Temporary Works, Construction Plant and materials; and

17.8.2 the Defaulting NOP:

- (a) will promptly, as and when required by the ALT, assign, transfer or novate (as directed by the Owner) to the Non-Defaulting Participants without payment the benefit of any agreements or arrangements or any interests in any agreements or arrangements entered into by the Participants or any IPR owned or held by the Defaulting NOP required by the Non-Defaulting Participants for the performance of any part of the Alliance Works;
- (b) will promptly, as and when required by the ALT, deliver to the ALT any documentation or information prepared by, or on behalf of, the Participants under this Agreement prior to the Default;
- (c) will, as and when directed by the ALT (but not before), remove from the Site at the cost of the Defaulting NOP any Temporary Works, Construction Plant and other property of the Defaulting NOP. If the Defaulting NOP fails to do so then, not less than five Business Days after written notice to the Defaulting NOP of the intention to do so (but without being responsible for any loss or damage) the Non-Defaulting Participants may remove and/or sell any such Temporary Works, Construction Plant or other property and the proceeds of

such sale will be available to be set-off, or accounted for by the Non-Defaulting Participants to reduce the AOC;

- (d) will no longer be entitled to be represented on the ALT or the AMT or otherwise participate in our Alliance or the Project;
- (e) will have no interest in the Alliance, this Agreement or the Alliance Works from the date of the Default Notice;
- (f) waives any objection to any determination or decision under Section 17.8;
- (g) releases and discharges the Non-Defaulting Participants from any Loss and any claims of builder's liens, builder's liens or certificates of pending litigation arising out of or in connection with any decision under Section 17.8 which it may have had but for this release and discharge;
- (h) acknowledges and agrees that the Defaulting NOP appoints the Non-Defaulting Participants to act as agent for and on the Defaulting NOP's behalf (but excluding any duty of good faith as an agent) to do all such things on its behalf as are necessary for the performance of the Alliance Works; and
- (i) notwithstanding Section 17.8.2(h), will execute such deeds and documents that the Non-Defaulting Participants decides are necessary for the completion of the Alliance Works; and

17.8.3 the ALT will notify the Owner of the manner by which the ALT proposes that the Non-Defaulting Participants will continue with the performance of the Alliance Works, including whether (and to what extent) any additional parties or resources may need to be engaged by the Non-Defaulting NOPs or the Owner (as the case may be) as a result of the exclusion of the Defaulting NOP.

## Indemnity and Release

17.9 Notwithstanding any other provision of this Agreement, the Defaulting NOP will be liable for and will indemnify each Non-Defaulting Participant for:

17.9.1 any Loss suffered or incurred by the relevant Non-Defaulting Participant arising out of or in connection with the:

- (a) relevant Wilful Default or Act of Insolvency by the Defaulting NOP;
- (b) exclusion of the Defaulting NOP in accordance with this Section 17; and
- (c) termination of this Agreement in accordance with Section 16.8.1;

17.9.2 the Defaulting NOP's share of any Limb 3 (as determined in accordance with the Compensation Framework) for the period prior to the relevant Wilful Default or Act of Insolvency which is payable by the Defaulting NOP; and

17.9.3 the Defaulting NOP's share of any Limb 3 suffered or increased (as determined in accordance with the Compensation Framework) or Limb 3 foregone or reduced (as determined in accordance

with the Compensation Framework) for the period after the relevant Wilful Default or Act of Insolvency which is payable by the relevant Defaulting NOP as if:

- (a) the Defaulting NOP had not been excluded from further participation in the Alliance;
- (b) the Compensation Framework in place at the time of the Wilful Default or the Act of Insolvency remained in place and continued to operate with respect to the Defaulting NOP until Final Completion; and/or
- (c) this Agreement had not been terminated as a result of the Wilful Default.

17.10 The Defaulting NOP releases and discharges each Non-Defaulting Participant from any Loss arising out of or in connection with:

17.10.1 a Wilful Default notified under Section 17.1;

17.10.2 an Act of Insolvency notified under Section 17.5;

17.10.3 any exercise by the Owner of any of the rights in Sections 17.2 or 17.5;

17.10.4 termination of this Agreement in accordance with Section 16.8.1; and

17.10.5 the indemnity in Section 17.9,

which the Defaulting NOP may have had but for the release in this Section 17.10.

17.11 For the purpose of this Section 17 any reference to the ALT, the Alliance or each Non-Defaulting Participant excludes:

17.11.1 the Defaulting NOP; and

17.11.2 any representatives of the Defaulting NOP appointed to the ALT in accordance with Section 5.3.

#### **Owner Wilful Default**

17.12 If the NOPs, acting in Good Faith as if they were the ALT in the absence of the Owner, unanimously determine that the Owner has committed a Wilful Default, the NOPs may give a unanimous written notice to the Owner specifying details of the Wilful Default and requiring the Wilful Default to be remedied by the Owner within 20 Business Days of the date of the notice.

17.13 If the NOPs, acting in Good Faith as if they were the ALT in the absence of the Owner, unanimously determine that the Owner has committed a Wilful Default, the Owner will indemnify the NOPs for:

17.13.1 Limb 1 Reimbursable Costs incurred;

17.13.2 Limb 2 on any Limb 1 Reimbursable Costs in Section 17.13.1; and

17.13.3 Limb 3 suffered or increased or forgone or reduced;

arising out of or in connection with the Wilful Default.

- 17.14 The NOPs acknowledge and accept that the indemnity by the Owner in Section 17.13 will be the limit of the NOPs' entitlements, and the Owner's liability or obligation, arising out of or in connection with an Owner Wilful Default. Each NOP releases and discharges the Owner from any Loss arising out of or in connection with the Owner's Wilful Default which the NOPs may have had but for this release in this Section 17.14.

### **Exclusion of Negligence Act**

- 17.15 To the extent permitted by law, the Participants agree that *Negligence Act* (British Columbia) has no operation in relation to the obligations of a Participant under this Agreement.

## **18. RIGHTS AND OBLIGATIONS**

### **Our Relationship**

- 18.1 By forming the Alliance and by executing this Agreement we do not intend, and nor should we be understood, to have created any express or implied partnership, joint venture or fiduciary relationship between us other than the establishment of any joint venture expressly agreed to in this Agreement in Section 18.9.
- 18.2 We do not, except as may otherwise be set out in this Agreement or determined by the ALT, confer a right in any of us to enter any commitment on our behalf or to otherwise act as our agent.
- 18.3 Each of us is an independent entity and, for the purposes of this Agreement, the employees or agents of one of us will not be considered to be employees or agents of another, unless as otherwise deemed by Law, and we will each pay all costs associated with our respective employees.

### **Exclusive**

- 18.4 To the extent permitted by law, we intend that the rights, obligations and liabilities set out in this Agreement will exclusively govern our rights and liabilities in relation to the Alliance Works. We agree that it is our intention that we will have no other rights or remedies arising out of or in connection with the Alliance Works at law or in equity other than as set out in this Agreement.

### **Enforceable**

- 18.5 It is our intention that this Agreement create rights between us enforceable only in accordance with the terms of this Agreement despite the fact that certain matters are to be determined by the ALT in the future.
- 18.6 Any provision of this Agreement which seeks to limit or exclude a right or liability is to be construed as doing so only to the extent permitted by law.
- 18.7 With the exception of:
- 18.7.1 an Act of Insolvency;
  - 18.7.2 an act or omission that amounts to a Wilful Default; or
  - 18.7.3 a liability under an indemnity in Sections 17.9 or 17.13,

we will not pursue the recovery of any Loss arising out of or in connection with any act or omission by a Participant in performing the Alliance Works.

## No Constraint or Fetter

- 18.8 We acknowledge and accept that nothing in, implied by, or any document contemplated by, this Agreement has the effect of placing any fetter, constraint or limitation on the exercise by the Owner of any of its statutory rights, duties, powers or functions.

## Joint Venture

***[Note to Proponents – the inclusion of Sections 18.9 and 18.10 are not intended by [Insert owner] and IBC to encourage the use of joint ventures (incorporated or unincorporated) by Proponents and/or NOPs. [Insert owner] and IBC is satisfied that the range of commercial objectives and interests sought to be achieved or protected by parties in forming joint ventures in other contracting structures in use in the construction and infrastructure sectors, can readily be achieved through the existing Agreement and Compensation Framework structures.]***

- 18.9 **[NOP]** and **[NOP]** have elected to form and create an unincorporated joint venture known as the "**[Insert name of joint venture]**" and have agreed that:
- 18.9.1 the sole purpose of the creation of the Joint Venture is to facilitate procurements by **[NOP]** and **[NOP]** for the performance of Alliance Works for ease of administration, calculation and receipt of payments to the NOPs under this Agreement;
  - 18.9.2 **[NOP]** and **[NOP]** will prior to the Commencement Date execute the joint venture agreement (**JVA**) in a form approved by the Owner;
  - 18.9.3 **[NOP]** and **[NOP]** will prior to the execution of the JVA provide the Owner with a final and complete copy of the JVA for the Owner's consideration;
  - 18.9.4 **[NOP]** and **[NOP]** will not amend the JVA or any aspect of their Joint Venture relationship without the Owner's consent;
  - 18.9.5 **[NOP]** and **[NOP]** expressly acknowledge and agree that any attempt to amend or an amendment to the JVA, Joint Venture relationship or any aspect of the joint venture relationship between the joint venturers without the Owner's consent will be a Wilful Default;
  - 18.9.6 **[NOP]** and **[NOP]** expressly acknowledge and agree that any duty or obligation, if any, created by the JVA or their joint venture relationship as joint venturers will be subordinated to, and superseded by, their obligations under this Agreement;
  - 18.9.7 the JVA will expressly provide that any committee of management governing the management, actions, behaviour or performance of the Joint Venture can only meet in the presence of an Owner ALT representative and will consult with the Owner ALT representatives prior to making any decision or determination and will perform such management or partnership committee functions and responsibilities as if they were ALT duties and determinations under this Agreement;
  - 18.9.8 any costs or expenses incurred by either **[NOP]** and **[NOP]** in the administration, operation or conduct of the Joint Venture, other than procurement obligations or liabilities entered into by

[NOP] and [NOP] or the Joint Venture on behalf of all Participants other than [NOP] and [NOP] will be met by [NOP] and [NOP] and will not be a Limb 1 Reimbursable Costs; and

18.9.9 [NOP] and [NOP] will establish a bank account in the name of the Joint Venture. The purpose of the bank account will be to receive payments from the Owner and to make payments to third parties. At the end of each operating period any interest earned in the dedicated Joint Venture bank account less any bank charges and fees will be credited against the AOC and TOC for the operating period.

18.10 The Owner acknowledges and accepts that whilst [NOP] and [NOP], trading as the Joint Venture, are Participants to this Agreement:

18.10.1 [NOP] and [NOP] will provide and make available to the Joint Venture plant, equipment, resources and personnel for the purposes of work under this Agreement;

18.10.2 [NOP] and [NOP] may issue invoices to the Joint Venture; and

18.10.3 the Joint Venture may provide monthly payment claim details to the AMT in accordance with Section 8.2 and issue invoices to the Owner in accordance with Section 8.5.

## Other Agreements

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

## 19. PARENT COMPANY GUARANTEE

### Parent Company Guarantee

19.1 Each NOP will on or before the Commencement Date procure its ultimate holding company to execute the Parent Company Guarantee in the form of Schedule 14.

19.2 If during the Term, the Guarantor who executes the Parent Company Guarantee (**First Parent Company Guarantee**) ceases to be the ultimate holding company or an Affiliate of the NOP, the NOP will procure a substitute Parent Company Guarantee (**Substitute Parent Company Guarantee**) in the form of the Parent Company Guarantee in Schedule 14 (or equivalent security as determined by the Owner) by a party determined as acceptable by the Owner. Upon the Owner's receipt of the Substitute Parent Company Guarantee:

19.2.1 the Owner will release and discharge the substituted guarantor from any and all liabilities in respect of the First Parent Company Guarantee; and

19.2.2 the Owner will simultaneously return the First Parent Company Guarantee to the substituted guarantor.

19.3 Any agreement between the Guarantor and the Owner with respect to any amounts to be paid to the Owner under a Parent Company Guarantee is without prejudice to the Owner's right to make continuing claims against the NOPs or any guarantor under a Parent Company Guarantee in relation to any matters covered by the Parent Company Guarantee.

## Return of security

- 19.4 Any Parent Company Guarantee provided in accordance with this Section 19, will be returned by the Owner as soon as practicable after Final Completion.

## Financial Statements

- 19.5 Each year until the expiry of the Term each NOP will provide, and will procure that their Guarantor will provide, to the Owner:

19.5.1 audited or unaudited half yearly financial statements;

19.5.2 audited annual statements or if audited annual financial statements are not prepared by the NOP or the Guarantor (as the case may be), unaudited annual financial statements; and

19.5.3 to the extent that a NOP and/or its Guarantor has a credit rating, confirmation of the current credit rating provided by a recognised rating agency acceptable to the Owner (acting reasonably),

of the NOPs and the Guarantor (as the case may be) within 20 Business Days of the latter of the date they are signed off by the relevant auditor, accepted by the board of the NOPs or the Guarantor (as the case may be) or lodged with the relevant Authority or securities exchange, as the case may be. The NOPs acknowledge and accept that if a NOP and/or its Guarantor do not have audited annual statements they will provide such additional information or documentation reasonably requested by the Owner or the Financial Auditor.

## Irrevocable Letter of Credit

- 19.6 If at any time prior to the Final Completion Date in relation to a Guarantor of one of the NOPs (for the purpose of Sections 19.6 and 19.7, the “**relevant NOP**”):

19.6.1 the Financial Auditor, on the request of the Owner or the ALT, determines from any information provided in accordance with Section 19.5 that there has been a material deterioration, or there is a credible threat of a material deterioration, in the financial strength, capacity or performance of a Guarantor of the relevant NOP; or

19.6.2 an Act of Insolvency occurs with respect to the Guarantor of the relevant NOP,

the Owner may direct the relevant NOP to provide within 10 Business Days of a direction by the Owner under this Section 19.6:

- (a) issued prior to the Substantial Completion Date, an irrevocable letter of credit in an amount equal to 50% of the Limb 2 Fee identified in the TOC at the Commencement Date as payable to the relevant NOP for the performance of the Alliance Works in accordance with the Agreement; or
- (b) issued after the Substantial Completion Date but prior to the Final Completion Date, an irrevocable letter of credit in an amount equal to 25% of the Limb 2 Fee identified in the TOC at the Commencement Date as payable to the relevant NOP for the performance of the Alliance Works in accordance with the Agreement,

to secure the relevant NOP's performance under the Agreement, including any liability to pay Limb 3 painshare, where the irrevocable letter of credit will be in the form set out in Schedule 16 from a bank listed under Schedule I of the *Bank Act* (Canada) that has the Required Rating.

19.7 The Owner will:

19.7.1 withhold any further payment of Limb 2 until the Owner receives an irrevocable letter of credit on the basis set out in Section 19.6.2(a) or Section 19.6.2(b);

19.7.2 for any irrevocable letter of credit provided by the relevant NOP in accordance with Section 19.6.2(a):

- (a) release 50% of the value of the irrevocable letter of credit within 40 Business days after the interim determination of Limb 3 painshare or gainshare determined in accordance with Schedule 5; and
- (b) release the remaining value of the irrevocable letter of credit within 60 Business Days after the Final Completion Date; and

19.7.3 for any irrevocable letter of credit provided by the relevant NOP in accordance with Section 19.6.2(b) release the irrevocable letter of credit within 60 Business Days after the Final Completion Date.

**Convert Irrevocable Letter of Credit**

19.8 Each NOP acknowledges and agrees that if the NOP fails to pay the Owner monies due under this Agreement, including monies due under any indemnity under this Agreement, within 20 Business Days (or such longer period agreed in writing by the Owner) of such monies becoming due under this Agreement, the Owner may immediately make a demand under any irrevocable letter of credit provided by the NOP in accordance with Section 19.6.2(a).

**20. GENERAL**

**Assignment and Novation**

20.1 The NOPs will not assign, transfer or novate to any third party any of their obligations or entitlements under this Agreement without the prior written approval of the Owner, which consent may be given or withheld by the Owner in its discretion.

20.2 An approval given by the Owner permitting the NOPs to assign, transfer or novate any of their obligations or entitlements under this Agreement does not relieve the NOPs from their obligations and liabilities pursuant to this Agreement, and the NOPs will be responsible for acts and omissions of any assignee or novatee.

20.3 The Owner may assign, transfer or novate its rights or obligations to any person or entity that the Owner can demonstrate has the resources to perform the Owner's obligations or entitlements under this Agreement.

## **Costs**

- 20.4 Each party will pay its own legal and other costs and expenses of negotiating this Agreement and in preparing, drafting, executing and performing its obligations under this Agreement, any amendments to this Agreement or any agreement replacing this Agreement.

## **Entire agreement**

- 20.5 The Agreement contains everything we have agreed to in relation to our Alliance. None of us will rely on any earlier document prepared, or statement made, by one of us before this Agreement was executed.

## **Governing law**

- 20.6 The Agreement will be governed by and construed in accordance with the Laws of the Province of British Columbia and the Laws of Canada applicable therein, and the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of British Columbia and any courts entitled to hear appeals from the courts of British Columbia.

## **Severability**

- 20.7 Any provision of this Agreement which is or becomes illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and will not invalidate the remaining provisions and will be read in such a way as to make it consistent with, and ensure the integrity of, our commitments in Section 2, our Alliance Principles and Project Alliance Objectives.

## **Further Assurances**

- 20.8 We will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as may be necessary for the purpose of giving effect to this Agreement.

## **Variation**

- 20.9 The parties agree that with the exception of the Exhibits attached to Schedules, which can be amended, replaced or added by agreement in writing of the parties' respective ALT representatives, this Agreement may not be changed or modified in any way after it has been signed except in writing signed by or on behalf of the parties.

## **Counterparts**

- 20.10 This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement so that it will not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. A party may deliver an executed copy of this Agreement by facsimile or other electronic means.

## **Taxes**

- 20.11 Except as provided by Section 20.12 and the Compensation Framework all taxes, duties, excises, levies, assessments and other charges of any kind levied by any government or government body arising out of

or in connection with the Alliance Works will be Limb 1 Reimbursable Costs. If Section 182 of the *Excise Tax Act* is applicable to any amount payable by the Owner to a NOP as compensation on termination or settlement under this Agreement, such amounts will be increased such that after remitting the applicable GST, the NOP will be in the same position it would have been in as if Section 182 of the *Excise Tax Act* did not apply.

20.12 Notwithstanding Section 20.11 we agree that:

20.12.1 any corporate or personal income tax or capital gains tax imposed on a Participant, and/or the Joint Venture of NOPs created in accordance with Section 18.9;

20.12.2 GST; and

20.12.3 any penalties and/or fines on any of the matters referred to in Section 20.11,  
are not Limb 1 Reimbursable Costs.

### **Currency**

20.13 All amounts payable under this Agreement will be paid in Canadian Dollars.

### **Waiver**

20.14 Any waiver or relaxation of any part of this Agreement will be determined by the unanimous written agreement of the ALT expressly acknowledged as a waiver or relaxation of that part of this Agreement. Any waiver or relaxation will only apply to a particular occasion unless determined by the ALT to be continuing. It will not constitute a waiver or relaxation of any other term of this Agreement.

### **Authority**

20.15 We each represent and warrant to each other that we have full power to enter into and perform our obligations under this Agreement so as to constitute a legally valid and binding obligation upon us in accordance with its terms.

### **Indemnities**

20.16 Each indemnity given by us under this Agreement is a continuing obligation separate and independent from our other obligations under this Agreement and notwithstanding anything else in this Agreement is intended to be enforceable and to survive the termination, completion or expiry of this Agreement. An indemnified party will take all reasonable steps to mitigate any amounts payable pursuant to the indemnity. Despite any other provision in this Agreement, a party's liability under an indemnity will be reduced proportionally to the extent that the indemnified party has caused or contributed to the relevant cost, loss, expense, damage or liability.

### **No Representation or Reliance**

20.17 Each of us acknowledges and agrees that:

20.17.1 none of us have made any representations or other inducements, other than those incorporated into this Agreement, to induce us to enter into this Agreement;

20.17.2 we did not enter into this Agreement in reliance upon any representation or other inducement, other than those incorporated into this Agreement; and

20.17.3 we will not bring any claim against another Participant for any misrepresentation or misleading conduct unless the misrepresentation or misleading conduct amounts to an act of Wilful Default.

#### **No offer of employment**

20.18 We will not, at any time up to six months after Substantial Completion, engage or make an offer of employment to any person employed by another Participant.

20.19 No Participant will be in breach of Section 20.18 if a Participant makes an offer of employment to a person, or employs a person, in response to an application from the person for a position that has been publicly advertised in accordance with the usual recruitment practice of the Participant.

#### **Successors and Assigns**

20.20 This Agreement enures to the benefit of and binds the Owner, its successors and its assigns and all other Participants and their successors and permitted assigns.

#### **Joint and several liability**

20.21 Where a Participant comprises two or more persons, each of them are jointly and severally liable for all of that party's liabilities and obligations under or arising out of or in connection with this Agreement.

#### **Financial Difficulties**

20.22 Each Participant will immediately notify each Participant in writing if it becomes reasonably likely that the Participant may not be able to satisfy any of its financial obligations in relation to this Agreement from the financial resources available, or likely to be available to it, at the time the financial obligation is due.

#### **Early Works and Alliance Mobilization Works**

20.23 The Participants acknowledge and agree that prior to the Commencement Date:

20.23.1 the Owner may perform, or may procure a third party to perform, Early Works, and such Early Works will not form part of the Alliance Works; or

20.23.2 the Owner may procure the Participants to perform Alliance Mobilization Works under the Alliance Development Agreement or any other agreement or arrangement with the Owner and such Alliance Mobilization Works will be deemed to be Alliance Works "as if" the Alliance Mobilization Works were performed under the Agreement by the Participants.

20.24 The Participants acknowledge and agree that for the purposes of the Agreement and the Compensation Framework:

20.24.1 the costs incurred by the Owner performing, or procuring the performance of, Early Works prior to the Commencement Date will not be considered Owner Alliance Costs and will not form part of the TOC or the calculation of AOC; and

20.24.2 the costs incurred by the Participants performing Alliance Mobilization Works prior to the Commencement Date will be considered Owner Alliance Costs or Limb 1 Reimbursable Costs, as the case may be, and will form part of the TOC and the calculation of AOC.

## **21. CONFIDENTIALITY AND PERSONAL INFORMATION**

### **Confidentiality**

21.1 We will not, and we will ensure that those for whom we are responsible, will not:

21.1.1 disclose to any person any Confidential Information; or

21.1.2 publish any documentation or Confidential Information,

without the prior written consent of the Participant that designated the information as Confidential Information and/or the Owner (as the case may be). We will ensure that any recipient to whom Confidential Information is disclosed will be subject to confidentiality obligations acceptable to the Participant that designated the information as Confidential Information and/or the Owner (as the case may be).

21.2 We will, if requested by the Owner, execute a confidentiality agreement in relation to any Confidential Information obtained by us for the purposes of this Agreement or the Project.

21.3 The obligations in Section 21.1 will not extend to:

21.3.1 any disclosure that has prior written consent from the Owner;

21.3.2 any disclosure required by FIPPA;

21.3.3 Confidential Information already in the public domain other than due to a breach of this Agreement;

21.3.4 any disclosure to our auditors, legal advisers or third parties necessary for the performance of our obligations under this Agreement;

21.3.5 any disclosure that is required to a stock exchange licenced to trade securities;

21.3.6 any disclosure of information reasonably required in order to comply with a request for information made by the Auditor-General for British Columbia or any use of such information or publication, disclosure or release of any report, finding, conclusion or recommendation by the Auditor-General of British Columbia arising from any such information or disclosure;

21.3.7 any disclosure to an employee, agent or Subcontractor of a Participant when the disclosure is reasonably necessary for the conduct of the Alliance Works;

21.3.8 information reasonably required in order to publish appropriate and comprehensive performance data relating to the Alliance Works; and

21.3.9 Confidential Information required by, or provided to, any provincial ministry, Infrastructure BC and any other government department, statutory authority or senior officer of a government

department or a statutory authority or any use, release, announcement, publication or disclosure of such information by any of them in any forum in any media or medium.

21.4 If we are or become required by law to disclose any documentation or Confidential Information we will:

21.4.1 immediately inform the ALT;

21.4.2 take all reasonable steps to lawfully resist or narrow the requirement of disclosure; and

21.4.3 assist and co-operate with the Owner if it seeks to limit or resist the requirement for the disclosure.

## **Privacy**

21.5 Each Participant will only collect, hold, process, use, store and disclose Personal Information:

21.5.1 with the prior consent of the Owner; or

21.5.2 to the extent necessary to perform its obligations under this Agreement and in circumstances where the Owner itself could collect, hold, process, use, store and disclose Personal Information if the Owner itself performed such obligations, and

in accordance with applicable Laws, including FIPPA, as if the provisions of such Laws applied directly to the Participants.

21.6 The NOPs acknowledge that they are each a “service provider” as defined in FIPPA.

21.7 The NOPs will allow the Owner on reasonable notice to inspect the measures of the NOPs and the Subcontractors to protect Personal Information.

21.8 The Owner may from time to time provide guidance to the NOPs on the requirements of Sections 21.5 to 21.7. For greater certainty, the provisions of Sections 21.5 to 21.7 that refer to FIPPA will apply to the NOPs and the Subcontractors only to the extent necessary to fulfil the Owner’s obligations under FIPPA.

## **Publicity or media statements**

21.9 We:

21.9.1 accept that the Owner is responsible for all media for the Project;

21.9.2 accept that we are responsible for the development and implementation of a media and communications plan for the Project that satisfies the Owner's requirements;

21.9.3 acknowledge and accept that we will not issue any information, publication, document or article relating to our Alliance or the Project without the prior written approval of the Owner's community relations manager and the Owner;

21.9.4 will immediately refer to the Owner any media enquiries relating to the Alliance or the Project;

21.9.5 agree to comply with any reasonable request by the Owner regarding the media communications or media liaison for the Alliance or the Project, including ensuring that all communications comply with the Owner's brand and logo guidelines;

21.9.6 will comply with the media and communications strategy, including the disclosure of any information, publication, document or article relating to the Alliance, the performance of the Alliance Works or the Project and refer any media enquiries relating to the Alliance or the Project to the Owner; and

21.9.7 wherever practicable ensure that all communications material is printed on recycled paper.

21.10 We will develop a communication and engagement plan in accordance with the provisions set out in Schedule 7 which is consistent with the provisions of Section 21.9.

## **Compliance**

21.11 We will, during the performance of the Alliance Works and for the period set out in Section S1.6 of Schedule 1 from the Final Completion Date, comply with the requirements of this Section 21.

## **22. NOTICES**

### **Giving a communication**

22.1 A notice, demand, certification, process or other communication (**Notice**) relating to this Agreement will be in writing in English and is properly given or served by a party if that party:

22.1.1 delivers it by hand;

22.1.2 transmits it by electronic mail; or

22.1.3 transmits it by other electronic means,

to the address of the relevant party specified in Section S1.6 of Schedule 1, marked to the attention of the relevant person specified in Section S1.6 of Schedule 1.

### **Change of Address**

22.2 Each party will advise the other of any change in the address or identity of the relevant person to whom Notices are to be addressed.

### **Deemed Receipt**

22.3 A Notice is deemed to be received if:

22.3.1 delivered by hand, when the party who sent the notice holds a receipt for the Notice signed by a person employed at the physical address for service;

22.3.2 sent by electronic mail, only in the event that the other party acknowledges receipt by any means;  
or

22.3.3 sent by any other electronic means, only in the event that the other party acknowledges receipt by any means.

## 23. TERM AND SURVIVAL

### Term

23.1 We agree that this Agreement will commence on the Commencement Date and will continue until the later of the date that:

23.1.1 this Agreement is terminated by the Owner;

23.1.2 each and every obligation under this Agreement is complete, satisfied or discharged; and

23.1.3 the Owner issues the Certificate of Final Completion.

### Survival

23.2 This Agreement does not affect any rights or liabilities which have accrued to either party before or at termination or expiry, nor any liabilities which may arise from damages deriving from a breach of this Agreement before or at termination.

23.3 The obligations in Sections 3, 7, 8, 9, 11.1, 11.12 to 11.14, 13.2 to 13.3, 14, 15, 17, 18, 19, 20.16, 21 and 24, and Schedule 1, Schedule 5, Schedule 6, Schedule 7 and Schedule 11, or parts of schedules necessary to give effect to the Participant's intention with respect to this Section 23, are continuing obligations and those Sections survive rescission, termination, completion or expiration of this Agreement. **[NTD: To be reviewed and conformed prior to the Commencement Date]**

## 24. CHANGE IN CONTROL

24.1 Subject to Section 24.2, the NOPs will:

24.1.1 provide the Owner with reasonable prior notice of any proposed Change in Control of a NOP or its Guarantor; and

24.1.2 obtain the Owner's prior written agreement to any Change in Control in respect of a NOP or its Guarantor.

24.2 Where the Change in Control has occurred as a result of a Change in Control of a corporation listed on a stock exchange, and the NOP or Guarantor the subject of the Change in Control is unable to, or it is not practicable to, comply with Section 24.1, the NOP or Guarantor the subject of the Change in Control will:

24.2.1 provide the Owner with notice of the Change of Control as soon as possible following the Change in Control; and

24.2.2 obtain the Owner's written agreement to any Change in Control which has occurred in respect of it.

and the relevant Change in Control will not be a Wilful Default.

- 24.3 The NOP or Guarantor the subject of the Change in Control will provide the Owner with any documentation or information requested by the Owner and attend any meetings (including, where reasonably requested by the Owner with any third party acquiring or exercising control over the NOP or Guarantor) arising out of or in connection with the proposed Change in Control.
- 24.4 The NOP or Guarantor the subject of the Change in Control will use its best efforts to procure any third party involved in the Change in Control to execute any documentation requested by the Owner (which may include an appropriate parent company undertaking or guarantee) to enable the Owner to determine whether the proposed Change in Control will have any prejudicial effect on the Owner's interests or the Alliance Works.
- 24.5 The NOP the subject of the Change in Control will use its best efforts to make all necessary administrative arrangements so as to minimize any adverse impact of a Change in Control on the Owner's interests or the Alliance Works.
- 24.6 In the event of any Change in Control of a NOP or Guarantor, the NOP the subject of the Change of Control agrees, and will procure its Guarantor the subject of a Change in Control to agree, that it will use its best efforts to make all necessary administrative arrangements (including closing any Joint Venture bank account referred to in Section 18.9.9 and opening a new joint venture bank account, making suitable arrangements for GST and, where appropriate, terminating the Joint Venture JVA referred to in Section 18.9.2 and execute a new joint venture agreement) so as to minimize any adverse impact on the Project.
- 24.7 Any costs incurred by the NOPs arising out of or in connection with a Change in Control and performing their obligations under Section 24 will not be reimbursed by the Owner as a Limb 1 cost.

## SCHEDULE 1 DEFINITIONS AND INTERPRETATION

### Definitions

S1.1 In this Agreement the following definitions apply:

**Act of Insolvency** means any of the following events:

- (a) a receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of a NOP or its Guarantor;
- (b) any proceedings with respect to a NOP or its Guarantor being commenced under the *Companies' Creditors Arrangement Act* (Canada) and if such proceedings are commenced against a NOP or its Guarantor and are disputed by that NOP, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 30 Business Days;
- (c) a NOP or its Guarantor making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against a NOP or its Guarantor under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in any jurisdiction and, if proceedings are commenced against a NOP or its Guarantor and are disputed by that NOP or Guarantor, such proceedings are not stayed, dismissed or otherwise remedied within 30 Business Days; or
- (d) a NOP or its Guarantor ceases to carry on business,

or any conduct, act, event or circumstance that has substantially the same effect as any of the conduct, acts, events or circumstances identified above.

**Actual Outturn Costs (AOC)** has the meaning in Schedule 5.

**AD Phase** has the meaning given to that term in the ADA.

**Adjustment Event** means an event or circumstance that may justify an adjustment to the Compensation Framework targets governing Limb 3 Gainshare/Painshare, being either:

- (a) an event or circumstances expressly stated in this Agreement to be an Adjustment Event;
- (b) an event or circumstance stated in Schedule 5 to be an Adjustment Event; or
- (c) an event or circumstance determined by the ALT to be an Adjustment Event by reference to the Adjustment Event Guidelines in accordance with Section 12.

**Adjustment Event Guidelines** means the guidelines with that name set out in Schedule 5.

**Affiliate** in respect of a Person means any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person where

“control” means, with respect to the relationship between or among two or more Persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person.

**Agreement** means this agreement between the Participants.

**Alliance** means this alliance which we have established to perform the Alliance Works.

**Alliance Development Agreement** or **ADA** means the agreement entered into between the Owner and the NOPs dated [Date] under which the NOPs developed and submitted the Project Proposal.

**Alliance Governance Framework** has the meaning given to that term in Section 6.1.

**Alliance Leadership Team (ALT)** means the leadership team established under Section 5.1.

**Alliance Management Plans** are the management plans prepared by the AMT to comply with the Alliance Management Plan Requirements as approved by the ALT in accordance with Section 6.3.

**Alliance Management Plan Requirements** are set out in Schedule 7.

**Alliance Management System** or **AMS** has the meaning in Schedule 7.

**Alliance Management Team (AMT)** means the management team established under Section 5.10.

**Alliance Mobilization Works** has the meaning given to that term in the ADA.

**Alliance Project Manager (APM)** means the leader of the AMT appointed by the ALT.

**Alliance Principles** are set out in Section 1.2.

**Alliance Team Charter** has the meaning given in Schedule 9.

**Alliance Works** means the:

- (a) works, services and undertakings required to perform our obligation under this Agreement; and
- (b) permanent works to be delivered to the Owner on Substantial Completion in accordance with this Agreement,

as the case may be, and the circumstances under this Agreement require.

**ALT Accountabilities and Responsibilities Matrix** means the ALT accountabilities and responsibilities matrix set out in Schedule 9.

**APM Accountabilities and Responsibilities Matrix** means the APM accountabilities and responsibilities matrix set out in Schedule 10.

**Authority** means any statutory or government body or organisation or any non-government body or organisation (and their respective departments, agencies, authorities or officers or representatives) in Canada that have authority or jurisdiction over:

- (a) all or part of the Alliance Works;
- (b) a Participant;
- (c) the Site; or
- (d) any land external to the Site on which Alliance Works may be carried out.

**Best for Project** means an outcome, decision, solution or result that is consistent with our Alliance Principles, achieves the Project Alliance Objectives, enables or facilitates the efficient performance of the Alliance Works and which is arrived at or taken for the ultimate purpose of providing Fit for Purpose assets to the Owner.

**BLA** means the *Builders Lien Act* (British Columbia).

**Business Day** means a day means a day that is not a Saturday, Sunday, or statutory holiday in British Columbia.

**Certificate of Final Completion** means the certificate issued in accordance with Section 11.12.

**Certificate of Substantial Completion** means the certificate issued in accordance with Section 11.7.

**Change in Control**<sup>2</sup> means with respect to a relevant Person:

- (a) any direct or indirect change by contract or otherwise (other than as set out in (b)) which results in a Person or group of Persons having the ability to direct or cause the direction of the management, actions or policies of the relevant Person; or
- (b) any:
  - (i) direct or indirect change in the ownership or control of any legal, beneficial or equitable interest in any or all of the shares, units or equity in the relevant Person (including the control over the exercise of voting rights conferred on equity share capital, unit interests or equity interests or the control over the right to appoint or remove directors, a general partner or other managers), including changes arising from assignment or transfer of existing shares, units or equity, issuance of new shares, units or equity or amalgamation, merger consolidation, amendment of a limited partnership certificate or other reorganization; or
  - (ii) other direct or indirect change,

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<sup>2</sup> Note to Draft – The Owner acknowledges and accepts that the definition of “Change in Control” may need to be reviewed by the Owner to reflect the nature of the shareholding and governance of the NOP selected by the Owner through the AD Phase.

which results in a Person or group of Persons, other than the equity holders of the relevant Person immediately prior to the change, directly or indirectly:

- (A) controlling the composition of the majority of the board of directors of the relevant Person or of a general partner or manager of the relevant Person;
- (B) controlling the decisions made by or on behalf of the relevant Person, including by controlling the voting power of the board of directors or by controlling the voting power of any class of shareholders or equity holders of any of the relevant Person, a general partner of the relevant Person or a manager of the relevant Person or otherwise;
- (C) holding equity (either beneficially or otherwise) of the relevant Person with a subscribed value (taking into account contributions to be made in the case of a limited partnership) of more than one half of the subscribed value (taking into account contributions to be made in the case of a limited partnership) or equity (either beneficially or otherwise) of the relevant Person with more than one half of the voting rights; or
- (D) having the ability to direct or cause the direction of the management, actions or policies of the relevant Person.

**Commencement Date** means the date this Agreement is executed by the Owner.

**Compensation Framework** is set out in Schedule 5.

**Competitive Alliance Selection Process** has the meaning in the ADA.

**Confidential Information** means any information of a party that the party has designated as confidential at the time of disclosure and which is supplied, or to which access is granted, to or on behalf of the other party (whether before or after the date of this Agreement), either in writing, or in any other form, directly or indirectly pursuant to discussions with the other party and includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a party which contain or otherwise reflect or are derived from such designated information.

**Construction Plant** means plant, equipment and appliances used in the performance of the Alliance Works which do not form part of the permanent Alliance Works.

**Default** for the purposes of Section 17 means either a Wilful Default or an Act of Insolvency.

**Default Notice** for the purposes of Section 17 means a notice issued under Section 17.1 or Section 17.5, as the case may be.

**Defaulting NOP** means a NOP:

- (a) who has committed a Wilful Default; or
- (b) in respect of which an Act of Insolvency has occurred; or
- (c) in respect of whose Guarantor, an Act of Insolvency has occurred.

**Defect** means any defective, non-complying, incomplete or omitted works or services in the Alliance Works other than any defective, non-complying or incomplete or omitted works or services:

- (a) caused by fair wear and tear; or
- (b) arising out of or in connection with a failure to perform operations and maintenance activities in accordance with operations and maintenance manuals approved by the ALT prior to Substantial Completion as satisfying the requirements of this Agreement.

**Defect Correction Period** means in respect of the Alliance Works:

- (a) a 24 month period for the rectification of Defects under Section 11.8 commencing on the Substantial Completion Date; and
- (b) where the Owner determines that there will be a separate Defect Correction Period for a Defect, the Defect Correction Period for that Defect will be the later of the expiry of the period described in sub-paragraph (a) of this definition and the separate Defect Correction Period calculated in accordance with Section 11.9.2.

**Design Elements** has the meaning in the Specification.

**Design Management Plan** means the design management plan referred to in Schedule 7.

**Dispute** means any real or perceived conflict, difference of opinion, dispute or unresolved issue in connection with the Alliance Works or this Agreement.

**Early Works** mean any work carried out by or on behalf of the Owner prior to the Commencement Date that is not intended to form part of the Alliance Works.

**Engaged Person** means any individual engaged by any one of the Participants to perform any works, services or activities forming part of the Alliance Works.

**Enhancement** has the meaning given to that term in Schedule 11.

**Establishment Audits** has the meaning given in Section S5.3(a).

**Existing Intellectual Property Rights** or **Existing IPR** means all Intellectual Property Rights owned or held by any of the Participants as at the Commencement Date or created by a Participant independently of the performance of the Alliance Works.

**Financial Auditor (FA)** means a financial auditor appointed by the Owner for the purposes of this Agreement.

**Final Completion** means that stage in the performance of Alliance Works when Substantial Completion has occurred, all Defect Correction Periods have expired, all Defects are rectified and each and every obligation under this Agreement is complete, satisfied or discharged (other than an obligation to pay, or an entitlement to receive payment of, Limb 3 in accordance with Schedule 5).

**Final Completion Date** means the date certified in the Certificate of Final Completion that the Alliance Works achieved Final Completion.

**FIPPA** means the *Freedom of Information and Protection of Privacy Act* (British Columbia).

**Fit for Purpose** an asset is fit for purpose when it achieves:

- (a) the benefits or purpose required by this Agreement (including performance and functional requirements of the Specification) or those purposes necessarily inferred from this Agreement; and
- (b) the purpose which, having regard to the performance and functional requirements of the Specification could be reasonably inferred by a person experienced and competent in the performance of works and services required for projects similar to the Project.

**First Parent Company Guarantee** has the meaning given in Section 19.2.

**GAAP** means generally accepted accounting principles in effect in Canada including the accounting recommendations published in the Handbook of the Canadian Institute of Chartered Accountants.

**Good Faith** means:

- (a) acting fairly, reasonably, honestly and with integrity at all times;
- (b) doing all proper and reasonable things to enable each other to perform the Alliance Works; and
- (c) doing all proper and reasonable things to give effect to the spirit and intent of this Agreement.

**Good Industry Practice** means practices, procedures, means, methods and techniques followed when works and services are performed:

- (a) in a sound and workmanlike manner;
- (b) with due skill, care and diligence;
- (c) with due expedition and without unnecessary or unreasonable delay;
- (d) in a manner which allows for this Agreement to be efficiently performed;
- (e) using materials of new merchantable quality which are Fit for Purpose;
- (f) to the standard expected of a person experienced and competent in the performance of works similar to the Alliance Works;
- (g) in accordance with all applicable Laws; and
- (h) consistently with accepted industry practice for the design, procurement, supply, construction, testing and commissioning of works similar to the Alliance Works.

**GST** means the goods and services tax imposed pursuant to section IX of the *Excise Tax Act* (Canada).

**Guarantor** means the party that executes a Parent Company Guarantee in accordance with Section 19.1 or 19.2 as the case may be.

**Infrastructure BC (IBC)** means Infrastructure BC Inc., being a provincial crown corporation providing planning and procurement expertise for major infrastructure projects in the public sector in British Columbia.

**Initial TOC** has the meaning given in Section S5.4.

**Insurance Conditions** are set out in Schedule 13.

**Intellectual Property Rights (IPR)** means all intellectual property rights and interests (including common law rights and interests), including but not limited to all:

- (a) patents, trademarks, copyrights, registered and unregistered designs, trade names, domain names, symbols and logos;
- (b) patent applications and applications to register trademarks, and designs;
- (c) methods, plans, data, drawings, specifications, characteristics, inventions, improvements, know how, experience, trade secrets, confidential information or other information; and
- (d) licences or similar user rights in respect of any such rights and interests,

in Canada and the world, whether registered or unregistered for the duration of the rights and interests.

**Joint Venture** means the joint venture created by [NOP] and [NOP] in accordance with Section 18.9.

**JVA** has the meaning given in Section 18.9.2.

**Key Individual** means any person nominated in Schedule 8.

**Key Performance Indicator (KPI)** means the measures used to assess performance against the KRAs, as outlined in the KRA Performance Management Plan.

**Key Result Areas (KRAs)** and the **KRA Objectives** against which our performance will be measured are:

No	Key Result Area (KRA)	KRA Objective
1	<b>Schedule and Commissioning</b>  Delivering the Project within a defined window to support activation of the operations	<u>Scheduling</u> <ul style="list-style-type: none"><li>Delivering Substantial Completion by no earlier or later than [Insert Date] to ensure [Insert operational goal] no later than [Insert Date].</li></ul> <u>Commissioning</u> <ul style="list-style-type: none"><li>All mission critical building systems and equipment operate as intended, prior to Substantial Completion at a full integrated level and are verified prior to [Insert operational goal].</li></ul>
2	<b>Key User Satisfaction</b>	<ul style="list-style-type: none"><li>Stakeholders are engaged and satisfied that their feedback</li></ul>

	Achievement of key outcomes through effective and meaningful engagement with key users	<p>on key design objectives is prioritized.</p> <ul style="list-style-type: none"> <li>Indigenous people are engaged and satisfied that their feedback is prioritized during design and construction.</li> </ul>
<b>3</b>	<p><b>Design Elements Outcomes</b></p> <p>Enhance operational and infrastructure outcomes through optimal Design Elements</p>	<ul style="list-style-type: none"> <li>Achievement of key operational, and infrastructure outcomes enabled by relevant Design Elements</li> <li>Design Elements in the Project Proposal are achieved</li> </ul>
<b>4</b>	<p><b>Whole of Life and Environmental Sustainability</b></p> <p>Design and construction teams have a consideration for Whole of Life Costs for asset management, and organizational operation costs, minimize Green House Gas emissions, and maximize Energy efficiency</p>	<ul style="list-style-type: none"> <li>Design and construction teams access and have a consideration for Whole of Life Costs for asset management and organizational operation.</li> <li>Minimize GHG emissions</li> <li>Maximize Energy efficiency</li> </ul>
<b>5</b>	<b>[NOT USED]</b>	<ul style="list-style-type: none"> <li></li> </ul>
<b>6</b>	<p><b>Health of Alliance</b></p> <p>Developing and sustaining a high-performing collaborative alliance culture</p>	<ul style="list-style-type: none"> <li>Generate and maintain a high-performing collaborative alliance culture.</li> <li>Creation of a positive safety culture</li> <li>Creation of a culturally safe and respectful work environment</li> </ul>

**Law** means all laws (including the common law), statutes, regulations, treaties, judgments and decrees and all official directives, by-laws, rules, consents, approvals, authorizations, guidelines, orders and policies of any Authority having the force of law from time to time.

**Lien Holdback** means the holdback required under the BLA.

**Limb 1 Reimbursable Costs** (also referred to as **Limb 1** and/or **Reimbursable Costs**) has the meaning given in Schedule 5.

**Limb 2** has the meaning given in Schedule 5.

**Limb 3** has the meaning given in Schedule 5.

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

**Materials** has the meaning given in Section 8.10.

**Minimum Conditions of Satisfaction (MCOS)** means the minimum acceptable level of performance nominated in this Agreement for each KPI or KRA as the case may be.

**New Intellectual Property Rights or New IPR** means all Intellectual Property Rights created by a Participant for the purposes of performing the Alliance Works.

**No Dispute** means our commitments to, and agreement with, each other set out in Section 3 to resolve all disputes, disagreements or differences of opinion unanimously at and within the ALT in accordance with this Agreement.

**Non-Defaulting NOP or Non-Defaulting NOPs** means the NOPs other than the Defaulting NOP.

**Non-Defaulting Participants** means the Owner and the Non-Defaulting NOPs.

**Non-Owner Participant and Non-Owner Participants (NOP or NOPs)** means [TBA].

**officer/Officer** means an “officer” as such term is used in the *Business Corporations Act* (British Columbia);

**OHS Legislation** means the *Workers Compensation Act* (British Columbia), the *Occupational Health and Safety Regulation* and all other regulations made under that Act, as may be amended from time to time.

**Open Book** is a reference to the Participants' commitments to share on a transparent and full and continuing disclosure basis all information and documentation of the financial costs of performing the Alliance Works to ensure the highest standards of fairness and integrity are achieved so that only the true and bona fide costs of performing the Alliance Works are sought to be, and are in fact, reimbursed under this Agreement as Limb 1 Reimbursable Costs.

**Other Site** means any lands or areas other than the Site made available by the Owner to the Participants for the purposes of performing the Alliance Works and any land which the Participants enter in or on, or occupy, for the purposes of the Alliance Works.

**Owner Alliance Costs or (OAC)** has the meaning given in Schedule 5.

**Owner Reserved Power** has the meaning given in Section 4.5.

**Owner's Representative** means the person identified in Section S1.6 of Schedule 1 or any other person nominated by the Owner to the Participants as the Owner's Representative in accordance with Section 4.7.

**Parent Company Guarantee** means a guarantee to be executed in accordance with Section 19.

**Participants** means the Owner and each NOP that executes the Agreement.

**Person** includes an individual, a body corporate, company, firm, joint venture, partnership, trust, association or unincorporated body.

**Personal Information** means “personal information” as defined in FIPPA, which is collected, acquired, obtained by a Participant in relation to or in the course of providing the Alliance Works under this Agreement, and includes any information about an identifiable individual other than contact information, which is the name, position name or title, business telephone number, business address, business email or business fax number of the individual, or as otherwise defined in FIPPA.

**Prime Contractor** has the same meaning given to that term under the OHS Legislation.

**Progress Payment Schedule** means the payment certificate in the form set out in Schedule 6.

**Project** means the [Insert Name of Project].

**Project Alliance Objectives** the Owner will assess the efficacy of the Alliance based on the ability of the Participants to achieve the following objectives:

- (a) provision of a flexible and adaptable, state-of-the-art facility that, through incorporation of evidence-based design, improves the quality, safety, efficiency and effectiveness of delivery now and into the future;
- (b) the successful delivery of the Project to achieve occupancy in [Insert Date] to support activation of operations and achieve [Insert operational goal] in [Insert Date];
- (c) delivery of the Project within the TOC;
- (d) quality, sustainability and whole of life costs are considered in the design of the Project to deliver a facility that reduces the Owner's energy consumption and greenhouse gas emissions through enhanced energy conservation measures;
- (e) develop a diverse and skilled construction workforce, that leverages the local community and skills, in a culturally safe and respectful work environment, including having a construction site free of racism and discrimination; and
- (f) ensure the local community is represented and valued in the design, to provide a welcome and culturally sensitive and safe facility.

**Project Proposal** means the proposal submitted by the NOPs in accordance with the Alliance Development Agreement as accepted by the Owner.

**PST** means the tax imposed pursuant to the *Provincial Sales Tax Act* (British Columbia).

**Records** includes any and all records or documents relating to this Agreement or the performance of the Alliance Works which include both electronic or physical versions of data, ledgers, payroll, quality records, correspondence, information, software (including source code and object code versions) manuals, diagrams, instructions, measurements, calculations, drawings, plans, graphs, charts, projections, specifications, estimates, concepts, accounts, plans, formulae, designs, methods, techniques, processes, correspondence, invoices, dockets, receipts, vouchers, letters and papers of every description including

all copies of and extracts from the same disclosed or produced in connection with or pursuant to this Agreement or the performance of the Alliance Works but excluding documents the subject of a valid claim of legal professional privilege (except in circumstances of common interest privilege), tax records (including taxation structuring advice), documents relating to the determination of Limb 2 and the NOPs' board papers or minute books.

**Reimbursable Costs** (also referred to as **Limb 1** and/or **Limb 1 Reimbursable Costs**) has the meaning given in Schedule 5.

**Required Rating** means a Rating of at least either A- (in respect of Standard & Poor's) or A3 (in respect of Moody's Investor Service).

**Separable Portion** means any part of the Alliance Works identified as Separable Portions in this Agreement or those parts of the Alliance Works determined by the Owner in accordance with Section 11.14 to be a Separable Portion of the Alliance Works.

**Site** means the lands identified in Schedule 3 as the Site, made available by the Owner to the Participants for the purposes of performing the Alliance Works.

**Specification** means the specifications set out in Schedule 2 as may be amended in accordance with this Agreement.

**Subcontract** means a subcontract, supply consultancy, works or services agreement or other arrangement which the Participants have entered into with a Subcontractor for the performance of any part of the Alliance Works.

**Subcontractor** means any Person engaged as a subcontractor to perform any part of the Alliance Works pursuant to the Subcontract and includes an agent, manufacturer, operator, professional advisor, contractor, supplier, consultant or service provider and any other provider of goods, materials, services or works.

**Substantial Completion** means that stage in the performance of the Alliance Works when:

- (a) the Alliance Works are complete except for minor omissions and minor Defects which the ALT determines:
  - (i) do not prevent the Alliance Works from being reasonably capable of being used for their intended purpose; and
  - (ii) the rectification of which will not adversely affect the safe and convenient use or operation of the Alliance Works;
- (b) the ALT determines that all inspections, testing, verification, commissioning and certifications that are required to be carried out prior to or as a precondition to the occupation and use of the Alliance Works by the Owner have been satisfactorily completed;
- (c) the requirements of the Specification required to be satisfied, complied with or completed prior to or as a precondition of Substantial Completion have been satisfied, complied with or completed;

- (d) the requirements of all relevant certifying and permitting authorities in respect of the Alliance Works that are required to be provided prior to or as a precondition of Substantial Completion have been met;
- (e) the benefit of all material or substantial Subcontracts essential for the use, operation and maintenance of the Alliance Works have been assigned, or otherwise transferred, to the Owner, so that the Owner may exercise all rights under the Subcontract on and from Substantial Completion in the manner required by Section 9.9.3;
- (f) all documents and other information associated with the Alliance Works and essential for all use, operation and maintenance of the Alliance Works, including standard operating procedures, unit process guidelines, operations and maintenance manuals, and technical design data have been supplied to, and accepted by, the ALT;
- (g) all operations and maintenance training and inductions have been performed and training manuals and materials are complete in order to enable the Owner to operate the Alliance Works; and
- (h) the Financial Auditor has certified that substantial performance of the Alliance Works under the BLA has been achieved.

**Substantial Completion Date** means the date certified in the Certificate of Substantial Completion that the Alliance Works achieved Substantial Completion.

**Substantial Completion Report** means the report referred to in Section 11.6 setting out the basis upon which the APM has certified that the Alliance Works have achieved Substantial Completion.

**Substitute Parent Company Guarantee** has the meaning given in Section 19.2.

**Target Outturn Cost (TOC)** is the estimate accepted by the Owner of all costs and expense (including risk and contingency provisions) for us to perform our obligations under this Agreement as summarised in the Compensation Framework.

**Target Cost Estimate (TCE)** has the meaning given in Section S5.4.

**Target Substantial Completion Date** means the date identified in Section S1.6 of Schedule 1.

**Temporary Works** means work performed under this Agreement but not forming part of the Alliance Works.

**Term** has the meaning given in Section 23.

**Whole of Life Costs** has the meaning given in the Specification.

**Wider Project Team (WPT)** means the personnel managed by and reporting to the AMT in order to perform the Alliance Works.

**Wilful Default** means any of the following:

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

- (i) was dishonest, illegal, fraudulent or wrongful; or
  - (ii) would likely have harmful consequences or was carried out with disregard to harmful consequences;
- (b) a failure by a Participant to pay monies within 20 Business Days (or such longer period agreed by the ALT) of monies becoming due under this Agreement including under any indemnity under this Agreement;
- (c) an intentional or reckless act or omission by a Participant or any of its officers or directors or any of its representatives appointed to the ALT or AMT that:
  - (i) is a breach of any Law; or
  - (ii) prevents a Non-Defaulting Participant from performing a role, responsibility or function or discharging an obligation under any Law;
- (d) a refusal of, or failure by, a Participant to effect and maintain, or to comply with, an insurance policy which it is required to effect and maintain under Section 14;
- (e) a refusal of, or failure by, a Participant to ensure that all financial and commercial transactions are fully Open Book;
- (f) a refusal of, or failure by, a Participant to comply with its audit obligations under Sections 7.9 to 7.15;
- (g) an intentional or reckless refusal of, or an intentional or reckless failure by, a Participant to honour its confidentiality and publication obligations under Section 21.1;
- (h) an intentional or reckless refusal of, or an intentional or reckless failure by, a Participant to honour its privacy obligations under Section 21.5;
- (i) an intentional or reckless refusal of or an intentional or reckless failure by:
  - (i) a Participant or any of its officers or directors to act in Good Faith; or
  - (ii) any officer or representative of a Participant appointed to the ALT or AMT to act in Good Faith;
- (j) a repudiation of this Agreement by a Participant;
- (k) a failure by a NOP to comply with Section 13.3 (Infringe IPR);
- (l) a failure by a NOP to comply with Section 20.1 (assignment or novation without consent);
- (m) a failure by a NOP to comply with Section 24.2 (Change of Control without Owner consent);
- (n) a failure by a NOP to comply with Section 18.9.4 (change to a joint venture agreement without Owner consent);
- (o) a failure by a relevant NOP (as that term is defined in Section 19.6) to comply with a direction by the Owner issued in accordance with Section 19.6 (failure to provide an irrevocable letter of credit); or

(p) a Wilful Default as set out in Section 14.11 (breach of insurance policy),

but, with the exception of paragraph (p), does not mean any innocent act, omission, mistake or error of judgement, whether negligent or not, by a Participant or any of a Participant's officers or directors or any of its representatives appointed to the ALT or AMT acting in Good Faith.

## Interpretation

S1.2 We agree that when interpreting this Agreement interpretations which are Best for Project and consistent with our Alliance Principles and our commitments in Section 2 are to be adopted.

S1.3 In this Agreement, unless the context otherwise requires:

- (a) words or acronyms in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined, its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a Section to the disadvantage of a party merely because that party put forward the Section or would otherwise benefit from it;
- (f) if the date on or by which any act will be done under this Agreement is not a Business Day, the act will be done on or by the next Business Day;
- (g) where the use of the acronym NOP in this Agreement is grammatically incorrect this Agreement will be interpreted as if the acronym NOPs replaced the acronym NOP; and
- (h) a reference to:
  - (i) 'we', 'us' or 'our' is a collective reference to the Participants and, to the extent necessary in the circumstances, includes representatives of IBC participating in the governance of the alliance and/or the performance of the Alliance Works;
  - (ii) a Person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
  - (iv) '\$', 'dollars' or 'CAD' is a reference to the lawful currency of Canada;
  - (v) this Agreement is a reference to this entire agreement including all Schedules, appendices and exhibits to it and any obligation of a party included in, expressly or by reference, or referred to in the agreement or any Schedule, appendix or exhibit to this Agreement;
  - (vi) a Section, a Schedule or an exhibit is, unless otherwise stated, a reference to a Section, Schedule or an exhibit of or to this Agreement;

- (vii) references and cross-references to provisions of this Agreement prefaced with "S" are a reference to the corresponding provision in a Schedule to this Agreement;
- (viii) proceedings includes reference, litigation, arbitration, and investigation;
- (ix) time is a reference to the time in Victoria, British Columbia;
- (x) a period of time is specified and dates from, after or before, a given day or the day of an act or event, and is to be calculated exclusive of that day;
- (xi) any agreement or document is to that agreement or document as amended, notated, supplemented, varied or replaced from time to time;
- (xii) anything (including any right) includes any part of that thing, but nothing in this paragraph (xii) implies that performance of part of an obligation constitutes performance of the entire obligation;
- (xiii) any legislation includes all subordinate or delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them all as modified or replaced;
- (xiv) liquidation includes official management, appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death;
- (xv) the obligation to comply with any document referenced in this Agreement remains an obligation, but the document so referenced will not form part of this Agreement; and
- (xvi) whenever any matter is stated to be at the discretion of the Owner, the Owner may act in its absolute and unfettered discretion, which may be exercised for purposes connected with this Agreement or otherwise in the interests of the Owner.

## Language

S1.4 All information and documentation prepared and/or delivered by us under this Agreement will be in English.

## Ambiguity, Discrepancy and Inconsistency

S1.5 The ALT will promptly notify the Owner of any ambiguity, discrepancy or inconsistency in the documents comprising this Agreement together with the ALT's recommendation to resolve the ambiguity, discrepancy or inconsistency. The Owner will determine the resolution of any ambiguity, discrepancy or inconsistency in the documents comprising this Agreement.

## Detailed Particulars

S1.6 The detailed particulars of the Alliance Agreement are set out below:

Section	Term/Description	Details
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Section	Term/Description	Details
S1.1	The Owner's Representative	<i>[TBA by the Owner]</i>
S1.1	Target Substantial Completion Date	<i>[TBA by the Owner]</i>
7.4, 7.7 and 7.8	Period for maintenance of Records	In respect of any Record the original, or a copy, of which is not provided to the Owner prior to the Final Completion Date, the expiry of seven years after Final Completion
21	Period that Confidentiality and Personal Information provisions apply	Five years after the Final Completion Date
7.9	Period for Audit	Seven years after the Final Completion Date.
22	Address for notices	<p><b>The Owner</b></p> <p><i>[TBA by the Owner]</i></p> <p><b>NOPs</b></p> <p><b>[TBA by each NOP]</b></p>

**SCHEDULE 2**  
**SPECIFICATION - ALLIANCE WORKS AND PROJECT DESCRIPTION**

### **SCHEDULE 3 PROJECT PROPOSAL**

## **SCHEDULE 4**

### **GOVERNANCE, LEADERSHIP AND MANAGEMENT**

#### **ALT membership and accountabilities**

S4.1 The representatives of the Owner are:

- (a) [TBA];
- (b) [TBA]; AND
- (c) [TBA].

S4.2 The representatives of the NOPs are:

- (a) [NOP #1] - [TBA];
- (b) [NOP #2] - [TBA];
- (c) [NOP #3] - [TBA].

S4.3 The IBC representative to attend at and participate in meetings of the ALT is [TBA].

S4.4

#### **ALT Meetings**

S4.5 The Owner will convene the first ALT meeting and nominate one of the Owner's ALT representatives as an acting chair to manage the conduct of the first ALT meeting

S4.6 The ALT has determined that the following protocols will regulate the business of ALT meetings:

- (a) there will be a secretariat appointed for the ALT;
- (b) we will hold ALT meetings at times determined by the ALT;
- (c) at the first ALT meeting, the ALT will agree on the appointment of the chair of the ALT and any protocol or procedure relating to the replacement of the chair of the ALT;
- (d) the Participants agree that the ALT may delegate any general administrative function, including any part of its functions under Section 8 of this Agreement, to an Owner ALT representative;
- (e) the ALT will agree a schedule of future ALT meetings on a three to six month forward schedule;
- (f) 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 or another form of instantaneous electronic communication platform;

- (g) an ALT representative may not attend an ALT meeting in the manner permitted under Section S4.6(f):
  - (i) if another ALT representative requests personal attendance; or
  - (ii) for two ALT meetings in succession without the consent of the chair of the ALT;
- (h) the ALT meetings will be characterised by a commitment to a peer relationship amongst the ALT representatives where all participants have an equal say; and
- (i) each ALT Representative will, prior to each ALT meeting, do all that they are reasonably able to do to ensure that they have the power to represent and bind their Participant at any ALT meeting in respect of any item of business on the ALT agenda.

### **ALT agenda**

S4.7 The ALT agenda will be determined in accordance with the following requirements:

- (a) the APM, after consultation with the AMT, will provide the ALT with the ALT agenda and discussion papers for any item on the ALT agenda no later than 10 Business Days prior to the ALT meeting or as otherwise agreed by the ALT. The ALT secretariat will immediately distribute the ALT agenda to all ALT representatives;
- (b) a Participant may, within five Business Days of receipt of the ALT agenda, request the ALT secretariat to add a new item of business to the ALT agenda;
- (c) the ALT secretariat will add the new item of business to the ALT agenda and immediately distribute the amended ALT agenda to all ALT representatives;
- (d) the Participant proposing the new item of business will, no later than three Business Days prior to the next ALT meeting, provide the ALT secretariat with a discussion paper and any relevant information regarding the new item of business added to the ALT agenda; and
- (e) the ALT secretariat will immediately provide the ALT members with any discussion paper or relevant information provided for any new item of business added to the ALT agenda.

### **Principles of ALT agenda**

S4.8 The ALT agenda and discussion papers will be prepared on the principle that:

- (a) early, open and honest communication with “no surprises” should be achieved; and
- (b) an ALT representative will not be expected to unanimously agree on any material issue not set out in the ALT agenda.

### **ALT minutes**

S4.9 The secretariat will attend all ALT meetings and prepare minutes to record all decisions and actions arising out of an ALT meeting. For the purposes of the first ALT meeting, the Owner will appoint a person to perform the secretarial functions.

S4.10 The secretariat will distribute the minutes of an ALT meeting within two Business Days. We will inform the secretariat within two 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.

#### **APM and AMT**

S4.11 The APM will be appointed by the ALT on a Best for Project basis. The AMT will be recommended by the APM and confirmed by the ALT to perform our obligations under this Agreement.

#### **APM Responsibilities**

S4.12 We agree that the:

- (a) APM will report exclusively to the ALT;
- (b) ALT will conduct periodic performance and development reviews of the APM's performance of its role in the Alliance; and
- (c) the APM will comply with the APM Accountabilities and Responsibilities Matrix in Schedule 10.

#### **Personal conflicts of interest**

S4.13 We will ensure that each representative appointed to the AMT or the ALT will fully 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 (collectively referred to as "a personal conflict of interest"). 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.

S4.14 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.

S4.15 Where a representative, on the grounds of a personal conflict of interest, is excluded from any discussion or determination arising out of or in connection with the acts, events or circumstances creating a personal conflict of interest, then any such discussion or determination cannot proceed at the:

- (a) AMT until the person who is excluded on the ground of a personal conflict of interest excuses him or herself and is replaced by an appropriate person on a Best for Project basis; and
- (b) ALT until the quorum required by Section 5.6 can be formed by representatives from each Participant not affected by the personal conflict of interest attending the ALT meeting.

S4.16 Each representative appointed to the AMT or the ALT from the NOPs will execute the conflict of interest declaration as set out in Schedule 12.

#### **Corporate conflict of interest**

S4.17 Each ALT representative will fully disclose any actual or potential conflict of interest of which that ALT representative is aware that the Participant it represents may have in respect of any action, decision or determination to be taken or made by the ALT.

S4.18 The ALT will 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.

## **SCHEDULE 5 COMPENSATION FRAMEWORK**

Drafting note: This draft version of Schedule 5 assumes that NOP1 & 2 are builder-type NOPs and NOP3 is a designer-type NOP. The structure of this schedule will be adjusted as required to accommodate the actual NOP entities executing the ADA.

Drafting Note: Some items in this Schedule 5 cannot be finalized until the Project Proposal developed under the ADA has been accepted by the Owner. These items will be updated in the final Agreement prior to execution. Those items are flagged with the following symbol in the left-hand margin:



In all other respects this Schedule 5 will be finalized prior to execution of the ADA and will not be subject to change.

## Overview and General Provisions

### S5.1 Overview of NOP compensation

- (a) The compensation to each NOP for carrying out the Alliance Works will comprise three 'limbs' as summarised in **Table 1** below:

<b>Limb 1</b> Reimbursable Costs	Reimbursement of actual direct costs and Project-specific overheads incurred in performing the Alliance Works (including mistakes, rework and wasted effort) determined in accordance with Sections 8 and 9
<b>Limb 2</b> The Fee	A fee to cover profit and a contribution towards NOPs' non-Project-specific overheads, determined in accordance with Sections S5.10 to S5.12
<b>Limb 3</b> Gainshare/Painshare	Payment of Gainshare by the Owner to the NOPs, or payment of Painshare by the NOPs to the Owner as the case may be, depending on how actual outcomes compare with pre-agreed targets in cost and non-cost performance areas, determined in accordance with Section S5.13 to S5.18

**Table 1 – Overview of compensation to NOPs**

### S5.2 Application of GST

- (a) All references to amounts and payments in this schedule are exclusive of GST and inclusive of PST. GST must be applied in accordance with Section 8.6.

### S5.3 Payments subject to validation

- (a) Prior to the execution of this Agreement the Financial Auditor conducted audits (the **Establishment Audits**) on the financial records of each of the NOPs to:
- (i) clarify the basis for calculating Reimbursable Costs, and
  - (ii) establish a clear demarcation between what is intended to be a Reimbursable Cost and what is intended to be covered by the Limb 2 Fee and therefore not directly reimbursed.
- (b) All payments made are subject to investigation by the Financial Auditor pursuant to Sections 7.9 to 7.15. In attempting to resolve any issue between the Participants relating to compensation to the NOPs under this Agreement the ALT and the Financial Auditor will have regard to the requirements of this Schedule 5 and the principles of reimbursement determined during the Establishment Audits or those principles as amended by the ALT.

### S5.4 Target Cost Estimate (TCE)

- (a) The Project Proposal included a detailed build-up of the Target Cost Estimate (TCE). The Target Outturn Cost (TOC) is a figure extracted from the TCE. The amount of the TOC prior to any changes arising from Adjustment Events (**Initial TOC**) along with a high-level summary of the make-up of the TOC are shown in Table 3 in **Appendix 1**.

## Owner Alliance Costs

- S5.5 Owner Alliance Costs are costs incurred directly by the Owner in relation to the Alliance Works (**Owner Alliance Costs**) other than payments made to a NOP in accordance with this Agreement. Owner Alliance Costs include costs incurred by the Owner in the following categories:
- (a) Provision of staff to the AMT and WPT;
  - (b) costs of procuring goods or services required to perform the Alliance Works;
  - (c) costs associated with claims from third parties against the Owner to the extent that such costs are not covered by insurances in accordance with Section 14;
  - (d) other out-of-pocket expenses necessarily incurred by the Owner in performing or supporting the Alliance Works; and
  - (e) any other cost which is specified in this Agreement to be an Owner Alliance Cost or which the ALT agrees is an Owner Alliance Cost.
- S5.6 Any funds received or receivable by the Owner in relation to the Alliance Works in the form of refunds, rebates, discounts, proceeds of insurance, third party settlements and the like will be credited in the reduction of Owner Alliance Costs to the extent that they are a reimbursement to the Owner of costs that are Owner Alliance Costs.
- S5.7 If it is not clear whether an item is an Owner Alliance Cost, an assessment will be made by the Financial Auditor based on interpretation of this Schedule 5 and the Establishment Audits, having regard to the principles mentioned in Section S5.5. If a Participant does not agree with the Financial Auditor's assessment the matter shall be referred to the ALT for a determination.

## Limb 1 – Reimbursable Costs (RCs)

### S5.8 Reimbursable Costs - overview

- (a) Reimbursable Costs are costs that are wholly and specifically incurred by the NOPs in performing the Alliance Works and which have been approved by the Alliance Project Manager in line with policies approved by the ALT. Reimbursable Costs will be determined based on the following principles:
  - (i) A NOP will not receive any contribution to its non-Project-specific or corporate overhead costs or expenses or derive any profit or unreasonable advantage from the utilisation of its people, plant, equipment or resources.
  - (ii) A NOP cannot recover anything that is not a bona-fide specific cost or expense incurred by it in performing the Alliance Works. A NOP can only recover a maximum of 100% of any bona-fide specific cost or expense incurred by it. There must not be any duplicate recovery of any cost or expense or allowance for cost or expense (i.e. no double dipping).
  - (iii) Where a NOP receives payments (refunds, rebates, discounts, proceeds of insurance, third party settlements and the like) arising from its performance of Alliance Works (other than payments received from the Owner for Limb 2 Fee and Limb 3 Gainshare) such payments will be taken to account as a reduction of Reimbursable Costs.

- (iv) Reimbursable Costs must not include any contribution to the NOP's profit or recovery of its corporate overhead costs/expenses.
  - (v) Costs associated with off-site administrative or functional support not directly involved in the performance of the Alliance Works and under the immediate control/direction of the Alliance Project Manager will not be Reimbursable Costs unless stated otherwise in this Agreement or otherwise approved by the ALT.
- (b) In determining the quantum of a Reimbursable Cost, the below items shall be included:
- (i) all cash, trade and other discounts, allowances and credits shall be treated as a deduction from Reimbursable Costs;
  - (ii) statutory liabilities such as accrued entitlement to annual leave, public holidays, sick leave etc. for employees will be Reimbursable Costs, but only to the extent that such liabilities are likely (based on historical evidence) to be eventually paid out by the NOP; and
  - (iii) statutory taxes (excluding GST) duties and rebates, including customs duty and sales tax payable by a NOP will be treated as reimbursable Costs.
- (c) Where unfixed materials, minor plant and the like treated as a Reimbursable Cost and held by the Alliance on behalf of the Owner become excess to what is required to complete the Alliance Works, the Alliance Project Manager will arrange for their sale at fair market value, the proceeds of the sale will accrue to the Owner and be deducted from the Actual Outturn Cost.
- (d) If it is not clear whether an item is a Reimbursable Cost, an assessment will be made by the Financial Auditor based on interpretation of this Schedule 5 and the Establishment Audits, having regard to the principles mentioned in Section S5.9. If a Participant does not agree with the Financial Auditor's assessment the matter shall be referred to the ALT for a determination.

#### S5.9 Reimbursable Costs - details

- (a) The table in **Appendix 2** identifies which categories of cost will be Reimbursable Costs, any category-specific conditions, and details of how each category will be treated for the purposes of Limb 1. Where category-specific conditions identified in **Appendix 2** are not precisely consistent with the principles mentioned in Section S5.8(a), in the absence of manifest error **Appendix 2** will prevail to the extent of such category-specific inconsistencies. Regardless of whether a cost is incurred in connection with the Alliance Works, unless the item is stated to be a Reimbursable Cost in **Appendix 2**, or is expressly stated to be a Reimbursable Cost elsewhere in this Agreement, the item will be deemed to be covered by the Limb 2 Fee and will not be a Reimbursable Cost.
- (b) The tables in Appendix 3, Appendix 4 and Appendix 5 set out details in respect of Reimbursable Cost recovery parameters that are specific to each NOP. If information in those appendices is in conflict with information in **Appendix 2**, **Appendix 2** will prevail to the extent of that inconsistency.

## Limb 2 - Fee

### S5.10 The Fee - general

- (a) The Fee payable to a NOP determined under Sections S5.10 to S5.12 will be deemed to fully compensate that NOP for
- (i) all direct and indirect expenditure by that NOP associated with the performance of Alliance Works and the fulfilment of its obligations under this Agreement,
  - (ii) an appropriate contribution towards the costs and expense of its corporate overhead structure, and
  - (iii) profit,

not otherwise covered by Reimbursable Costs or Gainshare/Painshare.

### S5.11 Fees for NOP1 and NOP2

- (a) The Fee payable to NOP1 ( $Fee_{NOP1}$ ) will be calculated as follows:

➤  $Fee_{NOP1} = RC_{NOP1} \times Fee\%_{NOP1}$ , where:

$RC_{NOP1}$  = the total amount of Reimbursable Costs payable to NOP1; and

$Fee\%_{NOP1}$  = the mark-up percentage stated in Appendix 1

- (b) The Fee payable to NOP2 ( $Fee_{NOP2}$ ) will be calculated as follows:

➤  $Fee_{NOP2} = RC_{NOP2} \times Fee\%_{NOP2}$ , where:

$RC_{NOP2}$  = the total amount of Reimbursable Costs payable to NOP2; and

$Fee\%_{NOP2}$  = The mark-up percentage stated in Appendix 1

### S5.12 Fee for NOP3

- (a) The Fee payable for NOP3 ( $Fee_{NOP3}$ ) will be calculated as follows:

➤  $Fee_{NOP3} = (RC\text{-}staff_{NOP3} \times Fee\%\text{-}staff_{NOP3}) + (RC\text{-}OTS_{NOP3} \times Fee\%\text{-}OTS_{NOP3})$

where:

$RC\text{-}staff_{NOP3}$  = the total amount of Reimbursable Costs payable to NOP3 in respect of salaries and wages for NOP3's staff, including full-time and part-time employees;

$Fee\%\text{-}staff_{NOP3}$  = the mark-up percentage stated in **Appendix 1**;

$RC\text{-}OTS_{NOP3}$  = the total amount of Reimbursable Costs payable to NOP3 in respect of all items provided or procured by NOP3 other than  $RC\text{-}staff_{NOP3}$  including all sub-consultants and out-of-pocket expenses; and

Fee%-OTS<sub>NOP3</sub> = the mark-up percentage stated in **Appendix 1**.

### Limb 3 – Gainshare/Painshare

#### S5.13 Overview of Gainshare/Painshare

- (a) The Gainshare/Painshare regime will comprise two components as set out in Table 2 below. Each component is explained in detail further below.

1) TOC underrun / overrun	A sharing of cost underrun or overrun determined in accordance with Section 5 by comparing the Actual Outturn Cost ( <b>AOC</b> ) with the final TOC
2) Performance in key result areas (KRAs)	KRA-related Gainshare/Painshare payments determined in accordance with Section 7 to incentivise performance against targets (other than TOC) that the Owner regards as being of significant value to the Owner and the Project

**Table 2 - Gainshare/Painshare components**

- (b) **Appendix 7** contains charts and worked examples to illustrate the operation of the Gainshare/Painshare regime. All charts and examples assume there are no Adjustments Events – i.e. the final TOC is identical to the Initial TOC.

#### S5.14 NOP downside risk cap

- (a) Notwithstanding how poor the actual outcomes are or what figures are derived by the application of the various formulae set out in Sections S5.13 to S5.18, the maximum Painshare payable by each NOP (Pain<sub>Max</sub>) will be a sum equal to the Fee paid/payable to the NOP under this Agreement pursuant to Sections S5.10 to 2.

#### S5.15 TOC underrun / overrun

- (a) Subject to Section S5.14(a), where the AOC determined in accordance with Section S5.22 exceeds the final TOC determined in accordance with Section S5.20(e), the overrun will be shared between the Owner and the NOPs collectively in the proportions stated in **Appendix 1**.
- (b) Where the AOC is less than the final TOC the underrun will be distributed in the proportions stated in **Appendix 1** between the Owner, the NOPs collectively, and a portion to top-up the funds available to pay for KRA-related Gainshare (OKS<sub>Top-up</sub>).

#### S5.16 KRA-related Gainshare/Painshare

Drafting note: Appendix 1 of this Schedule 5 contains the following details used to determine KRA-related Gainshare/Painshare:

- (i) Key Result Areas (KRAs) and weightings; and
- (ii) Essential parameters for KPIs used to measure performance in each KRA.

Item (i) above has been determined by the Owner prior to issuing this draft PAA. Item (ii) will be developed during the AD Phase as part of the Project Proposal and updated in this PAA prior to ADA

execution. Following execution, remaining details of the KRA Measurement Framework will be developed and approved as part of the Alliance Management system in accordance with Section 6 of the PAA. Note that each KRA score is likely to comprise the weighted aggregate of several KPI scores, some of which may not cover the full performance spectrum from -100 to +100, in which case the mathematical limits of the associated KRA score may be narrower than -100 to +100.

- (a) The KRA Measurement Framework (one of the plans within the Alliance Management System) sets out the details of the methods and procedures that will be used to measure performance in various key result areas (KRAs).
- (b) Pursuant to the KRA Measurement Framework:
  - (i) A KRA score between the limits of -100 and +100 will be determined for each KRA using the KPI parameters stated in Appendix 1. Each KRA score reflects actual performance in respect of that KRA across the following spectrum:
    - a) Minus 100, indicating very poor Alliance performance for which maximum KRA-related Painshare will be payable;
    - b) Zero, representing an outcome and Alliance performance in line with the agreed minimum conditions of satisfaction (MCOS) target for which there will be no KRA-related Gainshare/Painshare; and
    - c) Plus 100, indicating outstanding Alliance performance for which maximum KRA-related Gainshare will be payable.
  - (ii) An overall KRA performance score (OKS) between the limits of -100 and +100 will be calculated as the weighted aggregate of the KRA scores, using the KRA weightings stated in Appendix 1.

#### S5.17 KRA-related Gainshare/Painshare payments

- (a) Where the value of OKS determined in accordance with Section S5.16(b) is greater than zero, the NOPs collectively will be entitled to an OKS Gainshare amount ( $\text{Gain}_{\text{OKS}}$ ) calculated as follows:
  - $$\text{Gain}_{\text{OKS}} = \frac{\text{OKS}}{100} \times (\text{OKS}_{\text{Seed}} + \text{OKS}_{\text{Top-up}})$$
 where:
    - OKS = the value determined in accordance with Section S5.16(b); and
    - $\text{OKS}_{\text{Seed}}$  = the amount stated in Appendix 1; and
    - $\text{OKS}_{\text{Top-up}}$  = a portion of cost underruns, if any, determined in accordance with Section S5.15(b)
- (b) Subject to Section S5.14(a), if OKS is less than zero the NOPs collectively will be obliged to pay the Owner an OKS Painshare amount ( $\text{Pain}_{\text{OKS}}$ ) calculated as follows:

- $$\text{Pain}_{\text{OKS}} = \frac{\text{OKS}}{-100} \times \text{MaxPain}_{\text{OKS}}, \text{ where:}$$
- OKS has the same meaning as in Section S5.17(a); and
- MaxPain<sub>OKS</sub> = the amount stated in **Appendix 1**.

- (c) The following chart, based on a hypothetical Initial TOC of \$[Insert Number], illustrates how the amount at stake for the NOPs related to OKS (Y-axis) varies with the extent of cost underrun/overrun (X-axis) – specifically, the potential KRA-related Painshare remains fixed whereas the potential KRA-related Gainshare increases with increasing cost underrun due to OKS<sub>Top-up</sub>.

#### S5.18 Sharing of gain or pain amongst NOPs

- (a) Any amounts the Owner has to pay to the NOPs collectively (Gainshare) under Sections S5.13 to S5.18 will be distributed amongst the NOPs in the proportions stated in **Appendix 1**.
- (b) Any amounts the NOPs collectively have to pay to Owner (Painshare) under Sections 3 to 8 will be paid by the respective NOPs in the proportions stated in **Appendix 1**.

### Impact of Adjustment Events

#### S5.19 Adjustment to performance targets

- (a) For each Adjustment Event (AE) that it approves pursuant to Section 12 the ALT will determine adjustments to targets impacting Limb 3 in accordance with Sections S5.19 to S5.21 such that Gainshare/Painshare is not materially affected by the Adjustment Event – i.e. the position in respect of Gainshare/Painshare remains as it would have been if the Adjustment Event had not occurred.

#### S5.20 Adjustment to TOC including Limb 2 Fees

- (a) For each Adjustment Event the ALT will determine what adjustment (up, down or nil) will be made in respect of Owner Alliance Costs (OACs) and Reimbursable Costs (RCs) arising from the Adjustment Event (AE<sub>Δ-L1</sub>) based on an estimate of the impact of the Adjustment Event on the Alliance Works. The estimate must be based on the same estimating principles that were used to develop the TCE. Where Monte Carlo analysis is used to model uncertainties in the estimate, AE<sub>Δ-L1</sub> will be the point that matches a probability of 50% (the P50 point) on the cost probability distribution curve. Where possible, additional work arising from an Adjustment Event will only be carried out after AE<sub>Δ-L1</sub> has been determined by the ALT. Where additional costs arising from an Adjustment Event are incurred before AE<sub>Δ-L1</sub> has been determined, those costs will be included in the estimate as known actual costs.
- (b) The estimate will include a breakdown into the various elements necessary to enable adjustments to Limb 2 Fees to be calculated in accordance with Section S5.20(d).
- (c) A Participant or the ALT may require a third-party estimator appointed in accordance with Section 7.1.3 to confirm that AE<sub>Δ-L1</sub> conforms with the requirements of this Agreement

and is a reasonable estimate of the likely additional or reduced costs arising as a result of the Adjustment Event, the allowances for risk and opportunity within  $AE_{\Delta-L1}$  are reasonable and  $AE_{\Delta-L1}$  represents value for money (VFM) for the Owner.

- (d) The TOC will be adjusted (up or down) for each Adjustment Event ( $AE_{\Delta-TOC}$ ) using the following formula:

➤  $AE_{\Delta-TOC} = AE_{\Delta-L1} + AE_{\Delta-L2}$  where:

$AE_{\Delta-L1}$  = The sum of estimated adjustments to OACs and RCs determined in accordance with Section S5.20(a); and

$AE_{\Delta-L2}$  = the sum of the estimated additional Fee for each NOP associated with the Adjustment Event calculated by applying the applicable formulae in Sections S5.11 and S5.12 to their respective RC amounts within  $AE_{\Delta-L1}$ .

- (e) The final TOC for the purposes of determining cost-related Gainshare or Painshare in accordance with Section 5 will be calculated as:

➤ **Initial TOC +  $\Sigma AE_{\Delta-TOC}$**  where:

Initial TOC = the amount stated in **Appendix 1**; and

$\Sigma AE_{\Delta-TOC}$  = the cumulative total for all Adjustment Events of  $AE_{\Delta-TOC}$  determined in accordance with Section S5.20(d) for each Adjustment Event.

#### S5.21 Adjustment to KRA performance targets

- (a) For each Adjustment Event the ALT will determine the adjustment, if any, to each of the KRA-related performance targets having regard to the principle mentioned in Section S5.19(a).

## Actual Outturn Cost (AOC)

### S5.22 Calculation of AOC

- (a) The Actual Outturn Cost (AOC) will be determined as follows:

➤  $\Sigma RC + \Sigma OAC + \Sigma Fee - \Sigma \$in$ , where:

- $\Sigma RC$  = The total aggregate amount of actual Limb 1 Reimbursable Costs paid/payable under this Agreement across all NOPs;
- $\Sigma OAC$  = The total aggregate amount of Owner Alliance Costs (OACs) incurred under this Agreement;
- $\Sigma Fee$  = The total aggregate Limb 2 Fee paid/payable to the NOPs under this Agreement pursuant to Sections 10 to 2; and
- $\Sigma \$in$  = The net income receivable by any of the Participants from the following sources:
- a) proceeds of an insurance policy under Section 14;
  - b) recovery from claims against 3<sup>rd</sup> parties to the extent that such claims relate to costs that have been treated as Owner Alliance Costs or NOP Reimbursable Costs under this Agreement.
  - c) disposal of items or other adjustments pursuant to Sections S5.8(b) and S5.8(c).

## Quantum of Payments

### S5.23 Overriding principle of cash neutrality

- (a) Notwithstanding the various formulae set out below in Sections S5.24 to S5.27, the amounts allowed for accruals within each progress claim/payment will be adjusted to ensure that the NOPs remain approximately 'cash neutral' (other than impacts of the Builders Lien Act) in respect of Reimbursable Cost expenditure and reimbursement (including recognition of any interest incurred or earned), as determined by the Financial Auditor.

#### S5.24 Progress payments

- (i) Except as provided in Section S5.26 and subject to Section S5.25, progress payments pursuant to Section 8.2 will comprise amounts for each NOP calculated as follows:

➤  **$[(RC_{TD} + Fee_{TD} - HB_{TD}) - \Sigma Paid]$** , where:

$RC_{TD}$  = Reimbursable Costs up to the cut-off date for the invoice, based on actual cost of items which have already been invoiced to and/or paid by that NOP;

$Fee_{TD}$  = A payment calculated by applying the applicable Fee%(s) in accordance with Sections 10 to S5.12 to that NOP's Reimbursable Costs to date;

$HB_{TD}$  = Total amount of holdbacks to date as required by the BLA, including any holdback amount which has been or should be released due to substantial performance of any part of the Alliance Works; and

$\Sigma Paid$  = The total amount (excluding GST) previously paid to that NOP up to that time under this Agreement.

#### S5.25 Interim Limb 3 payments

- (a) We are committed to avoiding a situation arising at any time where a Painshare amount payable by a NOP to the Owner exceeds the aggregate of the Limb 1 and Limb 2 amounts that remain payable by the Owner to that NOP.
- (b) If it becomes likely at any stage that the situation contemplated in Section S5.25(a) could arise, the ALT will take all steps reasonably necessary to give effect to Section S5.25(a), which may include a direction that:
  - (i) an interim payment of Painshare be included in monthly progress payments; and/or
  - (ii) security, in a form acceptable to the Owner, be provided by the relevant NOPs.
- (c) The ALT may at any time direct that an interim payment of Limb 3 be made, but in doing so must:
  - (i) be satisfied that the consistent trend of Alliance performance and current forecast cost to complete the Alliance Works support the interim Limb 3 payment;
  - (ii) act consistently with Sections S5.25(a) and S5.25(b), and with conservative accounting principles and practices; and
  - (iii) minimise unnecessary volatility in payments under this Agreement.
- (d) We acknowledge that any interim Limb 3 payments will be subject to the BLA.

#### S5.26 Following Substantial Completion Date

- (a) As soon as practical and no more than 40 Business Days after the Substantial Completion Date, the following amounts will be payable to each NOP:

➤  **$[(RC_{TD} + Fee_{TD} + G/P_{Prov}) - \Sigma Paid]$** , where

$RC_{TD}$ , and  $Fee_{TD}$  have the same meaning as in Section S5.24(i);

$G/P_{Prov}$  = A provisional estimate of the net amount of Gainshare or Painshare payable to or by that NOP as determined by the ALT in accordance with Section S5.25 and having made a reasonable allowance for the cost of attending to defects up to the expiry of the relevant Defects Correction Period; and

$\Sigma Paid$  = The total amount previously paid (excluding GST) previously paid to that NOP up to that time under this Agreement.

#### S5.27 Final Payment

- (a) As soon as practical and no more than 60 Business Days after the Final Completion Date, the Financial Auditor will complete and finalize all investigations in accordance with Section S5.3 and the following amounts will be payable to each NOP:

➤  **$[(RC + Fee + G/P) - \Sigma Paid]$** , where:

$RC$  = Total actual Reimbursable Costs payable to that NOP pursuant to Sections S5.8 to S5.9 (accruals are not acceptable);

$Fee$  = The Fee payable to that NOP pursuant to Sections S5.10 to S5.12;

$G/P$  = The Gainshare/Painshare payable to or by that NOP as determined by the ALT pursuant to Sections S5.13 to S5.18; and


$\Sigma Paid$  = The total amount (excluding GST) previously paid to that NOP up to that time under this Agreement.

## Appendix 1 - Compensation Particulars

Ref	Particulars
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S5.4 The TOC is the amount shown in cell S18 in Table 3 immediately below.


Drafting note: At the time of issuing this draft PAA the example below is purely hypothetical. Once the Project Proposal is finalized this will be updated.

	D	E	F	G	H	I	J	K	L	M	N	O	P	S
1		Owner		Constructor / Builder NOPs				Designer / Architect NOPs				Σ all NOPs	Owner + NOPs Total	
2				NOP1	NOP2			NOP3	NOP4					
3	Limb 2 Fee mark-up % on all Reimbursable Costs:			5.00%	6.00%			25.00%	30.00%					
4	Limb 2 Fee mark-up % on Other-than-staff (NOP3&4)							5.00%	0.00%					
5	OACs/Limb 1 RCs	15,000,000		200,000,000	220,000,000			40,000,000	30,000,000			490,000,000	505,000,000	
6	Consultants OTS Limb 1 RCs							15,000,000	10,000,000			25,000,000	25,000,000	
7	Total OACs/RCs excluding R&O	15,000,000		200,000,000	220,000,000			55,000,000	40,000,000			515,000,000	530,000,000	
8														
9	Unallocated R&O provisions - OACs/RCs	708,177		9,442,360	10,386,596			1,888,472	1,416,354			23,133,781	23,841,958	
10	Unallocated R&O provisions - OTS							708,177	472,118			1,180,295	1,180,295	
11		708,177		9,442,360	10,386,596			2,596,649	1,888,472			24,314,076	25,022,253	
12														
13	OACs/RCs including R&O	15,708,177		209,442,360	230,386,596			41,888,472	31,416,354			513,133,781	528,841,958	
14	Consultants OTS RCs incl. R&O							15,708,177	10,472,118			26,180,295	26,180,295	
15	Total (estimated) OACs + RCs	15,708,177		209,442,360	230,386,596			57,596,649	41,888,472			539,314,076	555,022,253	
16	Limb 2 Fee mark-up % (blended NOP3/4)			5.00%	6.00%			19.55%	22.50%			8.34%		
17	Limb 2 Fee - \$			10,472,118	13,823,196			11,257,527	9,424,906			44,977,747	44,977,747	
18	OACs/RCs (Limb 1) + Fee (Limb 2)	15,708,177		219,914,478	244,209,791			68,854,176	51,313,378			584,291,823	600,000,000	

**Table 3 – Summary of the build-up of the TOC**

S5.11(a)	Fee% <sub>NOP1</sub>		
	Fee% <sub>NOP2</sub>		
S5.12(a)	Fee%-staff <sub>NOP3</sub>		
	Fee%-OTS <sub>NOP3</sub>		
S5.15(a)	Sharing of cost overruns between Owner and NOPs	Owner	50%
		NOPs (collectively)	50%
S5.15(b)	Sharing of cost overruns between Owner, NOPs and OKS <sub>Top-up</sub>	Owner	40%
		NOPs (collectively)	40%
		OKS <sub>Top-up</sub>	20%
S5.16(b)	KRA weightings	KRA1: Scheduling and Commissioning	20%
		KRA2: Stakeholder Satisfaction	15%
		KRA3: Design Elements Outcomes	15%
		KRA4: Whole of Life and Environmental Sustainability	15%

Ref	Particulars		
		KRA5: [NOT USED]	20%
		KRA6: Health of Alliance	15%

Ref	Particulars					
S5.16(b)	Essential KPI parameters					
	Drafting note: KPI parameters are illustrative only; to be updated from the Project Proposal					
		Summary KPI definition	KPI weight within KRA	Performance for KPI score of:		
				Minus 100	Nil (MCOS)	Plus 100
	KRA1	[Substantial completion date]	[X%]	[worst date]	[target]	[best date]
		[Pre-occupancy commissioning]	[Y%]	[93%]	[98%]	[100%]
	 2					
	KRA3					
	KRA4					
	KRA5					
	KRA6					
S5.17(a)	OKS <sub>Seed</sub>				2.0% x TOC	
S5.17(b)	MaxPain <sub>OKS</sub>				2.0% x TOC	
S5.18(a)	Gainshare will be distributed amongst the NOPs:				In proportion to the total Limb 2 Fee payable to each NOP	
S5.18(b)	Painshare will be distributed amongst the NOPs:				In proportion to the total Limb 2 Fee payable to each NOP	
Drafting note: Parameters and structure of this table from this point onwards will be updated to reflect the results of the Establishment Audits.						
Appendix 3 of Schedule 5	Employment related overhead (ERO)s for NOP1	Salaried staff ERO uplift factor (normal time)				
		Salaried staff ERO uplift factor (overtime)				
		Contracted staff ERO uplift factor (normal time)				
		Contracted staff ERO uplift factor (overtime )				
		Wages ERO uplift factor (normal time and overtime)				
Appendix 4 of Schedule 5	EROs for NOP2	Salaried staff ERO uplift factor (normal time)				
		Salaried staff ERO uplift factor (overtime)				
		Contracted staff ERO uplift factor (normal time)				
		Contracted staff ERO uplift factor (overtime)				

Ref	Particulars		
		Wages ERO uplift factor	
Appendix 5 of Schedule 5	EROs for NOP3	Salaried staff ERO multiplier (normal time)	
		Salaried staff ERO multiplier (overtime)	
		Contracted staff ERO multiplier (normal time)	
		Contracted staff ERO multiplier (overtime)	

## Appendix 2 – Reimbursable Costs – general guidelines (all NOPs)

No.	Item	RC?	Treatment
1			
2	Wages and salary costs	Yes	<p>Total remuneration (TR) for full and part time Project staff, based on actual costs paid to employees, plus employment related overhead (ERO) to cover accrued employment liabilities.</p> <p>Project staff means any member of the NOP team that has a direct role in performing the Alliance works as evidenced by timesheets or the like, except where specifically excluded in accordance with this Schedule 5.</p> <p>For wages personnel, the actual direct labour costs incurred by a NOP will be calculated in accordance with the relevant collective agreement or employment agreement, as validated by the Financial Auditor, and any relevant policies approved by the ALT.</p> <p>Treatment of each ERO element is summarised below.</p> <p>Details on how TR and ERO are calculated for each NOP are set out in Appendices 3, 4 and 5.</p>
3	ERO: Annual leave	Yes	Based on employee's annual leave entitlement as set out in their individual employment contract or letter of offer.
4	ERO: Employee health and Medical Benefits	Yes	Employee contributions to employee health, medical and disability plans as set out in their individual employment contract, letter or offer.
5	ERO: Public / statutory holidays	Yes	Capped at the number of days gazetted as statutory holidays in British Columbia.
6	ERO: WorkSafe BC Premiums	Yes	Based on the prevailing premium rates as prescribed by WorkSafe BC.
7	ERO: Canada Pension Plan and Employment Insurance Contributions	Yes	Based on employee's actual statutory entitlement (employer contribution).
8	ERO: Salaried staff overtime	Depends	<p>Overtime will not be a Reimbursable Cost except as approved by the ALT.</p> <p>The ALT must be satisfied that overtime payable to the nominated staff member is proper and reasonable and is consistent with standard operating procedure for the NOP.</p>

No.	Item	RC?	Treatment
9	Redundancy or severance pay (wages personnel)	Depends	Redundancy or severance payments to wages personnel will not be a Reimbursable Cost except where severance pay entitlement is included in a project-specific collective agreement on terms specifically approved by the ALT prior to their inclusion.
10	Redundancy or severance pay (non-wages personnel)	No	Redundancy or severance payments to non-wages personnel will not be a Reimbursable Cost.
11	Health checks and pre-existing medical conditions	Depends	<p>Where a NOP is obliged to pay for health checks under the relevant collective agreement or employment agreement, such costs actually incurred will be Reimbursable Costs.</p> <p>Costs of new employee health assessment or other or periodic health checks (including drug and alcohol testing) required under a OHS policy approved by the ALT will be Reimbursable Costs.</p> <p>Otherwise, the costs of health checks including costs associated with pre-existing medical conditions will not be Reimbursable Costs.</p>
12	Salary increases	Depends	<p>Costs associated with increases in salary for non-wages personnel will only be Reimbursable Costs to the extent that such increases have been expressly and specially approved by the ALT.</p> <p>Where the ALT approves an increase in salary, a new cost rate for that person is to be determined in consultation with the Financial Auditor using the same methodology that was used by the Financial Auditor to establish the staff rates in the Establishment Audits.</p> <p>If at any time a NOP considers that a pre-agreed staff rate no longer accurately reflects the actual cost of providing that person, it may ask the ALT to direct that the rate be revised. The rate shall remain unchanged unless the ALT directs otherwise.</p>
13	Increases in employee's employment entitlements	Depends	Costs associated with increases in an employee's employment entitlements will only be Reimbursable Costs to the extent that such increases have been specifically approved by the ALT.
14	Bonuses	Depends	NOP-specific treatment as per Appendices 3, 4 and 5

No.	Item	RC?	Treatment
15	Recruitment	Depends	Costs associated with salaried staff will be treated in a NOP-specific way in accordance with Appendices 3, 4 and 5. Costs associated with recruitment mobilisation and screening of wages personnel including verification of competencies and associated project -specific human resource management activities will be Reimbursable Costs.
16	Relocation costs	Depends	Relocation costs will only be Reimbursable Costs where they have been recommended by the Alliance Project Manager (APM) and specifically approved by the ALT.
17	Personnel travel and accommodation	Depends	Costs associated with personnel travel and accommodation will only be Reimbursable Costs where they have been recommended by the APM and are consistent with Provincial Travel Guidelines.
18	Project allowances	Depends	Costs incurred in respect of Project allowances for wages personnel paid in accordance with the relevant collective agreement or employment agreement will be Reimbursable Costs.  Any other costs incurred in respect of Project allowances will only be Reimbursable Costs where they have been specifically approved by the ALT.
19	Living away from home allowances (LAHA)	Depends	Costs incurred in respect of LAHA allowances for wages personnel paid in accordance with the relevant collective agreement or employment agreements which were in existence prior to the effective date of this Agreement will be Reimbursable Costs.  Any other costs incurred in respect of LAHA allowances will only be Reimbursable Costs where they have been specifically approved by the ALT.
20	Project training	Yes	Alliance-specific training conducted in accordance with an ALT-approved Alliance Training Plan and site inductions approved by the ALT will be a Reimbursable Cost.
21	Alliance health-checks and coaching.	Yes	The costs of conducting Alliance 'health checks' and coaching of the Alliance team (including the ALT) will be a Reimbursable Cost.
22	Corporate training	No	Non-Project-specific training will not be a Reimbursable Cost.
23	Industrial relations	Depends	Costs associated with negotiation of collective agreements, or attendance at industrial agreement meetings will not be Reimbursable Costs, except where they are specific to the Alliance and specifically approved by the ALT prior to being incurred

No.	Item	RC?	Treatment
24	Off-site administration costs	No	Off-site administration costs (payroll, accounts payable, internal audits including OHS or environmental audits, HR / IR advice, project risk reviews and the like) will not be Reimbursable Costs, notwithstanding that it may be normal practice for a NOP to levy a charge against projects to recoup such costs.
25	ALT time inputs on ALT duties	No	Costs associated with time spent by ALT members fulfilling the role and duties of a ALT member will not be Reimbursable Costs.
	ALT out-of-pocket expenses	No	Out-of-pocket expenses incurred by ALT members fulfilling the role and duties of a ALT member are not Reimbursable Costs.
26	Corporate peer review and audit costs	No	These are not Reimbursable Costs.
27	Corporate entertainment	No	Costs incurred on corporate entertainment are not Reimbursable Costs.
28	Alliance reward and recognition schemes, team-building, entertainment etc.	Depends	Costs associated with Alliance-specific reward and recognition schemes (e.g. gifts to recognise achievements of full-time alliance personnel) and for team-building or entertainment (e.g. alliance team barbeques, Christmas events) will only be Reimbursable Costs where approved in writing in advance by the ALT.
29	Procurement tender and management costs	Yes	Costs associated with preparation of tenders and contracts for the engagements of Subcontractors and Suppliers and the normal administration of those contracts are a Reimbursable Cost.

No.	Item	RC?	Treatment
30	Legal costs	Depends	<p>The costs associated with pursuing, defending or settling claims or civil lawsuits brought by or made against third parties (including any Subcontractor or insurer) arising out of or in connection with the Alliance Works, including legal and experts costs and any award of damages will be Reimbursable Costs provided that they are specifically approved by the ALT and incurred in accordance with ALT-approved procedures. Any award of damages made against a third party (including any Subcontractor or insurer) in favour of the Participants arising out of or in connection with the Alliance Works will be credited to and/or deducted from the Actual Outturn Cost.</p> <p>Legal costs incurred by a NOP associated with any legal action against the Owner or another NOP arising from this Agreement will not be Reimbursable Costs. Legal costs associated with formation and execution of this Agreement and the Alliance Development Agreement and similar NOP governance-related legal requirements are not Reimbursable Costs.</p>
31	Donations and sponsorships	Depends	Costs associated with donations and sponsorships will only be Reimbursable Costs to the extent they are specifically approved by the ALT.
32	Alliance branding	Depends	Costs associated with alliance branding will only be Reimbursable Costs to the extent they are specifically approved by the ALT.

No.	Item	RC?	Treatment
33	Information and communications technology (ICT)	General notes	<p>Where a NOP supplies information and communications technology (ICT) infrastructure, software and/or services and support to the Alliance (including secondment of ICT support staff to the Alliance on a short-term basis) as directed and agreed by the APM and in accordance with policies endorsed by the ALT, the costs may be Reimbursable Costs, as indicated below in this table.</p> <p>Where an item is indicated as being a Reimbursable Cost, fair and reasonable charges will be determined by the Financial Auditor taking into account the relevant NOP ICT policy and the prevailing standard NOP recharge rate.</p> <p>ICT platforms will be established on a Best for Project basis, taking into consideration all Participants' ICT resources and the NOP corporate ICT charges, if any, that are indicated as being Reimbursable Costs.</p> <p>ICT hardware and software purchased specifically for the Alliance Works and treated as a Reimbursable Cost will be accounted for in accordance with item 44 of this table.</p>
34	Information technology (ICT) - people	Depends	ICT support for Alliance staff will only be a Reimbursable Cost to the extent that such costs are additional to existing corporate software/systems support and the expense is incurred solely in support of the Alliance.
		Yes	Costs associated with ICT support staff working at the Alliance project office on Alliance-specific software/hardware matters will be Reimbursable Costs.
		No	Costs associated with ICT support staff working at the NOP's corporate head office will not be Reimbursable Costs.
35	ICT - software	Yes	Costs associated with the use or purchase of software/licenses specifically for use in the Alliance project office will be Reimbursable Costs.
		Yes	Costs associated with the use or purchase of additional software/licenses/ upgrades within the Alliance project office (corporate software – Microsoft, payroll, accounting etc.) will be Reimbursable Costs.
		No	Software development costs associated with corporate software or other forms of non-Alliance-specific software will not be Reimbursable Cost.

No.	Item	RC?	Treatment
36	ICT – network and hardware	Yes	Costs of project-specific printers, monitors, servers, telephones, phone and internet connections and other Alliance-specific ICT installations at the Alliance project office of Alliance work sites will be Reimbursable Costs.
37	ICT – operating costs	Yes	Costs of Alliance-specific personal data devices (utilised for Project purposes) including mobile phones, tablets, laptops will be Reimbursable Costs.
		Depends	Phone and internet charges will only be Reimbursable Costs to the extent that they relate to the Alliance Works will be Reimbursable Costs.
38	Insurance	Depends	<p>The costs incurred by a NOP in providing the insurances required pursuant to this Agreement will only be a Reimbursable Cost to the extent that the costs are additional to the costs that the NOP would have incurred anyway without the Alliance.</p> <p>Costs incurred by a NOP for supplementary policies that relate to differences in the terms/conditions of insurance policies procured by a NOP for the benefit of that NOP, over and above and the terms/conditions required pursuant to this Agreement, will not be Reimbursable Costs.</p>
39	Performance bonds, parent company guarantees bank guarantees and the like	No	Costs associated with the procurement and maintenance of performance bonds, parent company guarantees, unconditional undertakings and irrevocable letters of credit by a NOP to support a NOP's obligations under this Agreement are not Reimbursable Costs.
40	Financing costs	Yes	<p>Financing costs arising from any negative cash flow under this Agreement, will be Reimbursable Costs.</p> <p>Project specific bank account setup costs will also be reimbursable costs.</p>
41	Professional library	No	Costs related to the purchase or maintenance of a professional library, including periodicals, books, publications, subscriptions, etc., will not be a Reimbursable Cost.

No.	Item	RC?	Treatment
42	Major plant and equipment owned by a NOP	Yes	<p>The actual costs of providing construction plant and equipment owned by a NOP to perform the Alliance Works will be Reimbursable Costs, subject to:</p> <p>(a) the rate for each item of plant/equipment must reflect the actual cost of providing the item without any return on capital, profit or corporate overhead component (but including depreciation costs);</p> <p>(b) the rate will be subject to audit and verification by the Financial Auditor in accordance with the above principles.</p> <p>Where there is a choice between using an item of plant owned by a NOP or hiring an equivalent item externally, the decision will be made on a Best For Project basis.</p>
43	Minor plant and equipment (excluding tools of trade)	Depends	<p>Where minor plant and equipment items (other than tools of trade) are purchased specifically for the Alliance and the NOPs do not intend to hold such assets on their own books, the capital cost of such items (but not any depreciation) will be a Reimbursable Cost, and the APM will maintain an asset register on behalf of the Owner to track all such assets with a value greater than \$1,000 (excluding GST), and will arrange for their sale on the Owner's behalf when no longer required in accordance with Section S5.8(c).</p>
44	Tools of trade	No	<p>Costs associated with the tools of trade that a person normally owns themselves and bring to a project in order to perform his or her occupation (in accordance with the relevant employment agreement) will not be Reimbursable Costs.</p>
45	Health and safety, personal protective equipment (PPE)	Yes	<p>All personal protective or site safety equipment, workplace health and safety requirements and the cost or expense 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 Alliance Works will be a Reimbursable Cost.</p>
46	Mobilisation and de-mobilisation, Site accommodation	Yes	<p>The cost of mobilising and de-mobilising to Site and all relevant Site accommodation in accordance with the mobilisation policy determined by the ALT will be a Reimbursable Cost.</p>
47	Materials and construction activity	Yes	<p>Costs associated with materials and construction activity related to the Alliance Works will be Reimbursable Costs. Excess materials will be treated in accordance with Section S5.8(c).</p>

No.	Item	RC?	Treatment
48	Subcontractors and Suppliers	Yes	<p>Costs associated with the engagement and payment of Subcontractors and Suppliers required to perform the Alliance Works will be Reimbursable Costs.</p> <p>Project-specific procurement-related finance costs (including the costs of any bonds, surety, unconditional undertaking or irrevocable letter of credit etc.) provided by a Subcontractor in accordance with the terms of a Subcontract will be Reimbursable Costs.</p>
49	Major plant and equipment (hired from third parties)	Yes	<p>The costs associated with hiring plant and equipment to perform the Alliance Works will be Reimbursable Costs. <i>Note that where there is a choice between using an item of plant owner by a NOP or hiring an equivalent item externally, the decision will be made on a Best For Project basis.</i></p>

**Table 4 – Reimbursable Costs – general (all NOPs)**

### Appendix 3 – Reimbursable Costs specific to NOP1

Reimbursable Costs for NOP1 salaried staff will be determined on the basis of the NOP-specific factors set out in Table 5 below.

Drafting note: content is illustrative only; parameters and structure of this appendix will be updated to reflect the results of the Establishment Audits.

No.	Item	RC?	Treatment
1	TR and ERO	Yes	<p>[Total remuneration (TR) for full and part time Project staff, calculated on the basis of total hours, plus the ERO factor shown in Appendix 1, will be a Reimbursable Cost.</p> <p>Depending on the applicable collective agreement or employment agreement, reimbursement will be based on the following maximum total hours:</p> <ul style="list-style-type: none"> <li>- 40 hours/week and 2,080 hours per annum; or</li> <li>- 37.5 hours/week and 1,950 hrs per annum.]</li> </ul>
2	Individual Bonuses	Depends	[Non-Project-specific staff bonus will be Reimbursable Cost on a pro-rata basis to that person's time spent on the project. Actual cost of any Project-specific bonuses will be Reimbursable Cost where so approved by the ALT.]
3	Staff Recruitment costs	Depends	[Project-specific recruitment costs will be Reimbursable Costs subject to a pro-rata clawback if the relevant individual is removed from the Project by the NOP within 12 months of commencement, but not if the individual leaves the NOP organisation.]

**Table 5 – Reimbursable Costs - NOP1 salaried staff**

Reimbursable Costs for NOP1 wages personnel will be determined on the basis of the NOP-specific factors set out in Table 6 below.

No.	Item	RC?	Treatment
1	TR and ERO	Yes	[TR for wages personnel in accordance with the relevant collective agreement or employment agreement, calculated on the basis of total hours, plus the ERO factor shown in Appendix 1, will be a Reimbursable Cost. Reimbursement will be based on a maximum of 40 hours/week and 2,080 hours per annum.]
2			

**Table 6 – Reimbursable Costs - NOP1 wages staff**

#### Appendix 4 – Reimbursable Costs specific to NOP2

Reimbursable Costs for NOP2 salaried staff will be determined on the basis of the NOP-specific factors set out in Table 7 below.

**Drafting note:** Parameters and structure of this appendix will be updated to reflect the results of the Establishment Audits.

No.	Item	RC?	Treatment
1	TR and ERO	Yes	[Total remuneration (TR) for full and part time Project staff, calculated on the basis of total hours, plus the ERO factor shown in Appendix 1, will be a Reimbursable Cost.  Total hours will be a maximum of 40 hours/week and 2,080 hours per annum.]
2	Individual Bonuses	Depends	[Non-Project-specific staff bonus will be Reimbursable Cost on a pro-rata basis to that person's time spent on the project. Actual cost of any Project-specific bonuses will be Reimbursable Cost where so approved by the ALT.]
3	Staff Recruitment costs	Depends	[Project-specific recruitment costs will be Reimbursable Costs subject to a pro-rata clawback if the relevant individual is removed from the Project by the NOP within 12 months of commencement, but not if the individual leaves the NOP organisation.]

**Table 7 – Reimbursable Costs – NOP2 salaried staff**

Reimbursable Costs for NOP2 wages personnel will be determined on the basis of the NOP-specific factors set out in Table 8 below.

No.	Item	RC?	Treatment
1	TR and ERO	Yes	[TR for wages personnel in accordance with the relevant collective agreement or employment agreement, calculated on the basis of total hours, plus the ERO factor shown in Appendix 1, will be a Reimbursable Cost. Reimbursement will be based on a maximum of 40 hours/week and 2,080 hours per annum.]
2			

**Table 8 – Reimbursable Costs - NOP2 wages staff**

## Appendix 5 – Reimbursable Costs specific to NOP3

Reimbursable Costs for NOP3 salaried staff will be determined on the basis of the NOP-specific factors set out in Table 9 below.

**Drafting note: Parameters and structure of this appendix will be updated to reflect the results of the Establishment Audits.**

No.	Item	RC?	Treatment
1	Individual bonuses	Depends	[50% of historic average salaried staff bonus will be Reimbursable Cost recovered by the salaried staff ERO multiplier.]
2			

**Table 9 – Reimbursable Costs – NOP3 salaried staff**

The NOP3 “Salaried staff ERO multiplier” shown in Appendix 1 will be applied to NOP3’s direct costs for staff ordinary time, based on a maximum of [40 hours/week and 2,080] hours per annum, to compensate NOP3 for costs which the Participants have agreed to treat as project-specific Reimbursable Costs.

The build-up of the ERO multiplier applicable to NOP3 salaried staff ordinary time and overtime (where reimbursable in accordance with **Appendix 2** of this Schedule 5), and to other categories of NOP3 personnel are set out in Table 10 below.

Item	Contribution to ERO multiplier	Personnel category			
		Salaried staff (ordinary time)	Salaried staff (overtime)	Casual and contractor staff	Sub-consultants
Direct Salaries	1.0	1.0	1.0	1.0	1.0
Payroll ERO	[0.65]	[0.65]	[0]	[0.24]	[0]
Project-specific overhead:					
• Health & Safety	[0.01]	[0.01]	[0]	[0.01]	[0]
• Project allowances	[0.02]	[0.02]	[0.02]	[0.02]	[0]
• Recruitment	[0.01]	[0.01]	[0]	[0]	[0]
• Professional Training	[0.01]	[0.01]	[0]	[0]	[0]
• Office rent	[0.19]	[0.19]	[0]	[0.19]	[0]
• IT Expenses	[0.12]	[0.12]	[0]	[0.03]	[0]
• Depreciation	[0.06]	[0.06]	[0]	[0]	[0]
• Insurances	[0.11]	[0.11]	[0]	[0]	[0]
• Printing & Stationery	[0.03]	[0.03]	[0.03]	[0.03]	[0]
Project overhead sub-total	[0.56]	[0.56]	[0.05]	[0.28]	[0]
<b>Total ERO multiplier</b>	<b>[2.21]</b>	<b>[2.21]</b>	<b>[1.05]</b>	<b>[1.52]</b>	<b>[1.0]</b>

**Table 10 – Build-up of NOP3 salaried staff ERO multiplier**

## Appendix 6 – Owner Alliance Costs (OACs)

Table 11 below identifies items which will be treated as Owner Alliance Costs (in both TOC and AOC) and the basis on which those costs will be quantified.

Drafting note: Parameters and structure of this appendix will be updated to reflect the results of work performed by the Financial Auditor during the period of the Establishment Audits, to be reviewed and agreed by the Participants as part of the commercial alignment process.

OAC category	Basis of costing	Quantification parameters
Owner employees assigned into the alliance structure	Actual salary plus ERO as determined by the FA divided by nominal fixed annual working hours	[ERO: 0.82] [Working hours per year: 2,080]
Goods and services procured by the Owner [Insert examples]	[Actual supplier invoice cost]	[Invoice value]

**Table 11 – Owner Alliance Costs**

## Appendix 7 – Hypothetical outcome scenarios



Drafting note: In this draft PAA all materials in this Appendix 7 are based on the build-up of the hypothetical \$600m TOC shown in Appendix 1. This appendix will be fully updated to reflect the actual TOC in the execution version of the PAA.

### Preamble

This appendix contains the following spreadsheet extracts:

- (a) Fully detailed 'sample scenario' with notes explaining how the financial outcomes for the Owner and each of the NOPs are calculated based on sample values for the two performance variables – i.e. the actual cost underrun/overrun and OKS.
- (b) A table showing 16 scenarios that illustrate how different outcomes (for cost and OKS) impact on each Participant's financial outcome.
- (c) A set of charts that illustrate the financial outcomes for the Owner and each of the NOPs for a cost outcome ranging between 15% under to 25% over (assuming the cost performance factor is the same for all Participants). Note that 3 separate chart lines are shown for each parameter:

----- the value of the parameter if OKS = -100  
----- the value of the parameter if OKS = 0  
----- the value of the parameter if OKS = +100

All scenarios and charts are based on the assumption that there are no Adjustment Events – i.e. the final TOC is the same as the Initial TOC (as shown in the build-up in Appendix 1 above).

**Detailed sample scenario with explanatory notes:**

- In this example the cost performance factor (\$PF) is assumed to be 0.95 (5% underrun) for all Participants (cell S26 and row 27) and the OKS (cell C48) = +50.
- The cost underrun of \$30m (cell S33) is shared as follows:
  - 40% Owner (cells E45, E46)
  - 40% NOPs (cells O45, O46)
  - 20% OKS<sub>Top-up</sub> (cells Q45, Q46)
- The NOPs' share of the cost underrun is distributed amongst the NOPs in proportion to their respective Limb 2 amounts (ratios shown in row 31).
- MaxGain<sub>OKS</sub> \$18m (cell Q48) comprises OKS<sub>Seed</sub> \$6m (cell Q47) plus the OKS<sub>Top-up</sub> amount of \$12m.
- An OKS score of +50 delivers 50% of the MaxGain<sub>OKS</sub> amount of \$18m to the NOPs – i.e. \$9m (cell O49) which is distributed amongst the NOPs in proportion to their respective Limb 2 amounts (ratios shown in row 31).
- The Gainshare/Painshare amounts shown in row 51 (which ignores the

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S
1					Owner		Constructor / Builder NOPs				Designer / Architect NOPs				Σ all NOPs		OKS pool		Owner + NOPs Total
2							NOP1	NOP2			NOP3	NOP4							
15		<b>Target Outturn Cost</b>		Total (estimated) OACs + RCs	15,708,177		209,442,360	230,386,596			57,596,649	41,888,472			539,314,076				555,022,253
16				Limb 2 Fee % (blended NOP3/4)			5.00%	6.00%			19.55%	22.50%			8.34%				
17				Limb 2 Fee - \$			10,472,118	13,823,196			11,257,527	9,424,906			44,977,747				44,977,747
18				OACs + RCs (L1) + Fee (L2)	15,708,177		219,914,478	244,209,791			68,854,176	51,313,378			584,291,823		TOC		600,000,000
24																			
26		<b>Hypothetical AOC</b>		\$PF - assume same all Participants															0.9500
27				Cost Performance Factor (each Participant)	0.9500		0.9500	0.9500			0.9500	0.9500							0.9500
28				OACs/Limb 1 RCs	14,922,768		198,970,242	218,867,266			54,716,816	39,794,048			512,348,372				527,271,141
29				Fee\$ (Limb 2)			9,948,512	13,132,036			10,694,650	8,953,661			42,728,859				42,728,859
30				<b>Actual Outturn Cost (AOC)</b>	14,922,768		208,918,754	231,999,302			65,411,467	48,747,709			555,077,232				570,000,000
31				Ratio of NOP Limb 2 Fees within AOC			23.28%	30.73%			25.03%	20.95%			100.00%				
33				<b>Underrun</b>	785,409		10,995,724	12,210,490			3,442,709	2,565,669			29,214,591				30,000,000
44																			
45				Total under/overrun sharing	Share %s	40.00%	9.31%	12.29%			10.01%	8.38%			40.00%		20.00%		100.00%
46				(ignoring OKS)	Amounts	12,000,000	2,793,946	3,688,009			3,003,492	2,514,552			12,000,000		6,000,000		30,000,000
47																	12,000,000		OKS <sub>Seed</sub>
48			OKS	50			23.28%	30.73%			25.03%	20.95%			100.00%		18,000,000		MaxGain <sub>OKS</sub>
49							2,095,460	2,766,007			2,252,619	1,885,914			9,000,000		(12,000,000)		MaxPain <sub>OKS</sub>
50																			
51				<b>Total Gainshare/Painshare (ignoring caps)</b>			4,889,406	6,454,016			5,256,112	4,400,466			21,000,000				
53																			
54				<u>Test against applicable caps</u>	Pain cap for NOPs		(9,948,512)	(13,132,036)			(10,694,650)	(8,953,661)			(42,728,859)		63,728,859		
55					Painshare cap 'headroom'		14,837,918	19,586,052			15,950,762	13,354,127			63,728,859		< Limb 3 cap headroom		
56							N/A	N/A			N/A	N/A							
57																			
58				<b>Gain/Pain flowing to/from the NOPs (caps applied)</b>			4,889,406	6,454,016			5,256,112	4,400,466			21,000,000				
59																			
60				<b>Overall summary</b>															
61					Owner		Constructor / Builder NOPs				Designer / Architect NOPs				Σ all NOPs		OKS pool		Owner + NOPs Total
62				<b>Target</b>			NOP1	NOP2			NOP3	NOP4							
63				OACs + Limb 1 RCs	15,708,177		209,442,360	230,386,596			57,596,649	41,888,472			539,314,076				555,022,253
64				Fee (Limb 2)			10,472,118	13,823,196			11,257,527	9,424,906			44,977,747				44,977,747
65				OAC/Limb 1 + Limb 2	15,708,177		219,914,478	244,209,791			68,854,176	51,313,378			584,291,823				600,000,000
66				Limb 2 as % of Limb 1 for NOPs			5.00%	6.00%			19.55%	22.50%			8.34%				Owner provision
67				<b>Actual</b>															
68				OACs + Limb 1 RCs	14,922,768		198,970,242	218,867,266			54,716,816	39,794,048			512,348,372				527,271,141
69				Fee (Limb 2)			9,948,512	13,132,036			10,694,650	8,953,661			42,728,859				42,728,859
70				Nett Gainshare/Painshare (Limb 3) to/from NOP			4,889,406	6,454,016			5,256,112	4,400,466			21,000,000				21,000,000
71				Limbs 1 + 2 + 3 (total revenue for NOPs)	14,922,768		213,808,160	238,453,318			70,667,579	53,148,175			576,077,232				591,000,000
72				Limbs 2 + 3 (gross mark-up for NOPs)			14,837,918	19,586,052			15,950,762	13,354,127			63,728,859				
73				<b>Returns</b>															Owner underspend
74				Actual (L2 + L3) as a % of Limb 1 RCs allowed in TOC			7.08%	8.50%			27.69%	31.88%			11.82%				9,000,000
75				Actual (L2 + L3) as a % of actual Limb 1 RCs (i.e. actual mark-up %)			7.46%	8.95%			29.15%	33.56%			12.44%				0.9850
				Actual (L2 + L3) as a % of (L1 + L2 + L3) (i.e. actual margin %)			6.94%	8.21%			22.57%	25.13%			11.06%				Spend Factor (SF)

Limb 3 cap) are tested against the applicable Limb 3 caps (rows 54 to 56). In this example the cap 'headroom' (row 55) is very large as the overall outcome is in net Gainshare. The Limb 3 cap therefore is not applicable and the Limb 3 amounts in row 58 are the same as shown in row 51.

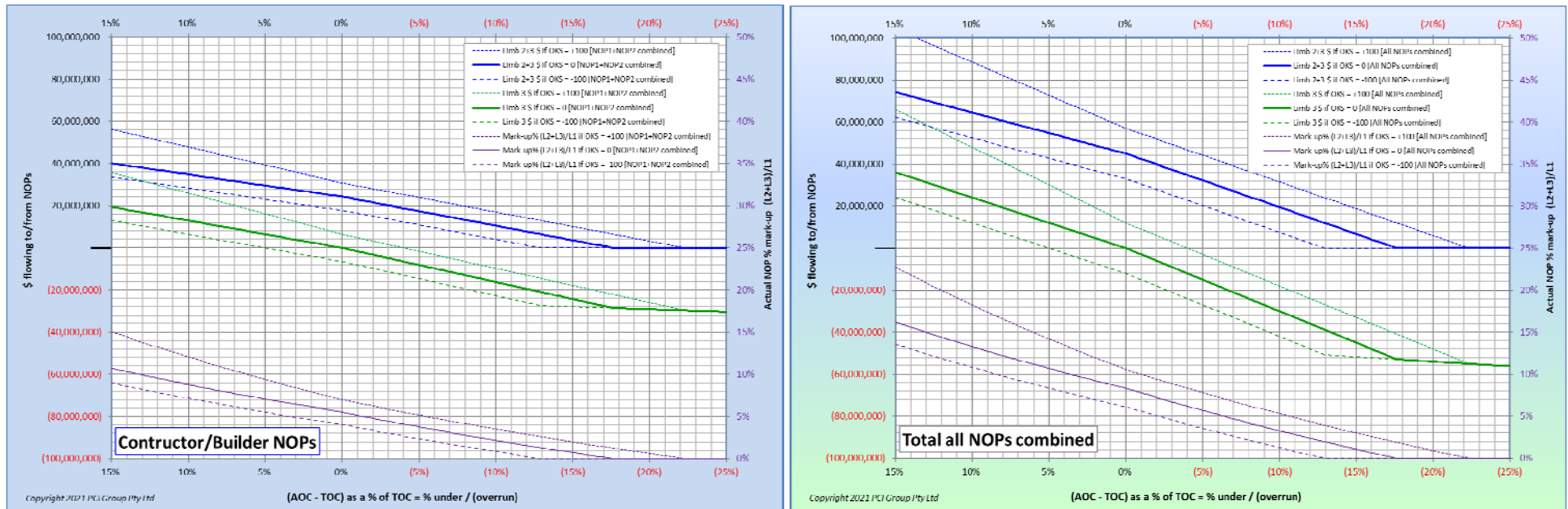
- An overall summary is provided in rows 60 to 75.
  - The % figures in the red shaded cells in row 74 show, for each NOP (cells G74 to L74) and all NOPs combined (cell O74), the aggregate of Limb 2 and Limb 3 combined expressed as a % of actual Limb 1 reimbursable costs – i.e. the actual mark-up %.
  - The % figures in row 75 show the aggregate of Limb 2 and Limb 3 expressed as a % of actual total revenue – i.e. the actual margin %.
  - The blue-shaded figure in cell S74 shows the overall 'Owner spend factor' taking into account all payments to/from the NOPs - i.e. actual cost to Owner compared to the TOC.

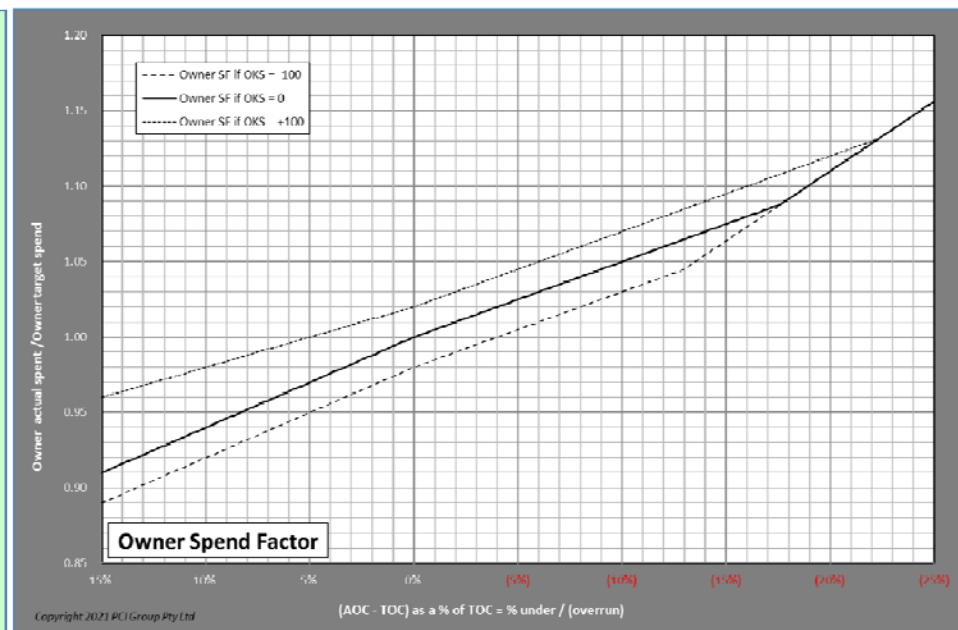
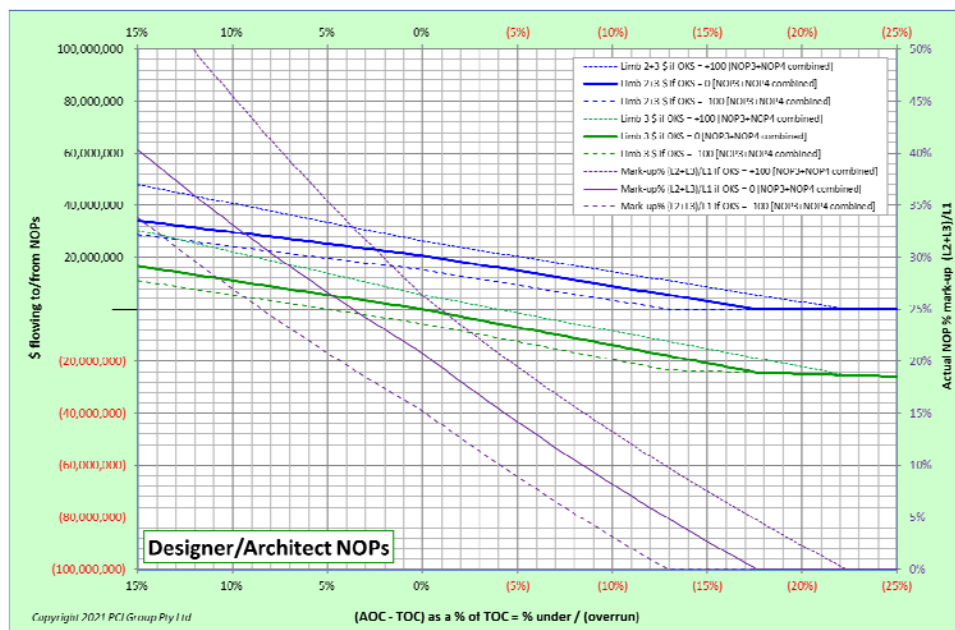
### **Table of scenarios:**

The sample scenario detailed above is scenario number 2 in the table below.

		Cost performance factor (PF) (actual/target)						% Under / Over	Actual Outturn Cost (AOC) \$	\$ Under / Over	OKS	Limb 3 cap 'headroom'	NOPs: Gross mark-up % and \$ amounts (L1 + L2)/L1								Owner outcome																		
		Owner	NOP1	NOP2	NOP3	NOP4	Avg						NOP1		NOP2		NOP3		NOP4		Spend Factor	Over/under spend	Comprised of \$m (in/out) related to																
													%	Amount	%	Amount	%	Amount	%	Amount			Cost \$m	OKS \$m	>Cap														
Cell reference in spreadsheet -->												E27	G27	H27	K27	L27	S27	T33	S30	S33	C48	O55	G74	Amount	G71	H74	Amount	H71	K74	Amount	K71	L74	Amount	L71	S74	S73	E46+Q46	Q45	Q54 (if <0)
1	All on target (neutral)	1.00	1.00	1.00	1.00	1.00	1.00	-	600,000,000	-	-	44,977,747	5.00%	10,472,118	6.00%	13,823,196	19.55%	11,257,527	22.50%	9,424,906	1.0000	-	-	-	-														
2	Good all areas (sample)	0.95	0.95	0.95	0.95	0.95	0.95	5.00%	570,000,000	30,000,000	50	63,728,859	7.46%	14,837,918	8.95%	19,586,052	29.15%	15,950,762	33.56%	13,354,127	0.9850	9,000,000	18,000,000	(9,000,000)	-														
3	Excellent all areas	0.90	0.90	0.90	0.90	0.90	0.90	10.00%	540,000,000	60,000,000	75	82,479,972	10.19%	19,203,719	12.23%	25,348,909	39.82%	20,643,998	45.84%	17,283,347	0.9700	18,000,000	36,000,000	(18,000,000)	-														
4	Extreme good (unrealistic)	0.80	0.80	0.80	0.80	0.80	0.80	20.00%	480,000,000	120,000,000	90	116,382,197	16.17%	27,097,136	19.41%	35,768,219	63.22%	29,129,421	72.77%	24,387,422	0.9340	39,600,000	72,000,000	(32,400,000)	-														
5	Poor all areas	1.05	1.05	1.05	1.05	1.05	1.05	(5.00%)	630,000,000	(30,000,000)	(10)	31,026,634	3.28%	7,223,896	3.94%	9,535,543	12.84%	7,765,688	14.78%	6,501,507	1.0230	(13,800,000)	(15,000,000)	1,200,000	-														
6	Very poor all areas	1.10	1.10	1.10	1.10	1.10	1.10	(10.00%)	660,000,000	(60,000,000)	(25)	16,475,521	1.67%	3,835,977	2.00%	5,063,490	6.51%	4,123,675	7.49%	3,452,379	1.0450	(27,000,000)	(30,000,000)	3,000,000	-														
7	Extremely poor all areas (very unlikely)	1.20	1.20	1.20	1.20	1.20	1.20	(20.00%)	720,000,000	(120,000,000)	(50)	(12,026,704)	0.00%	-	0.00%	-	0.00%	-	0.00%	-	1.1100	(66,026,704)	(60,000,000)	6,000,000	(12,026,704)														
8	Huge overrun, good OKS (unlikely)	1.20	1.20	1.20	1.20	1.20	1.20	(20.00%)	720,000,000	(120,000,000)	50	(26,704)	0.00%	-	0.00%	-	0.00%	-	0.00%	-	1.1100	(66,026,704)	(60,000,000)	(6,000,000)	(26,704)														
9	10% overrun, good OKS	1.10	1.10	1.10	1.10	1.10	1.10	(10.00%)	660,000,000	(60,000,000)	50	25,475,521	2.57%	5,931,437	3.09%	7,829,497	10.06%	6,376,295	11.59%	5,338,293	1.0600	(36,000,000)	(30,000,000)	(6,000,000)	-														
10	10% underrun, poor OKS	0.90	0.90	0.90	0.90	0.90	0.90	10.00%	540,000,000	60,000,000	(50)	58,479,972	7.22%	13,615,826	8.67%	17,972,890	28.24%	14,637,013	32.50%	12,254,243	0.9300	42,000,000	36,000,000	6,000,000	-														
11	Mixed cost performance A, OKS = 0	1.05	0.95	1.00	1.20	1.00	1.01	(0.59%)	603,560,520	(3,560,520)	-	44,925,386	4.81%	9,569,309	5.77%	13,296,303	18.80%	12,994,114	21.64%	9,065,661	1.0030	(1,780,260)	(1,780,260)	-	-														
12	Mixed cost performance A, OKS = 50	1.05	0.95	1.00	1.20	1.00	1.01	(0.59%)	603,560,520	(3,560,520)	50	50,925,386	5.45%	10,847,336	6.54%	15,072,087	21.31%	14,729,540	24.53%	10,276,423	1.0130	(7,780,260)	(1,780,260)	(6,000,000)	-														
13	Mixed cost performance A, OKS = -50	1.05	0.95	1.00	1.20	1.00	1.01	(0.59%)	603,560,520	(3,560,520)	(50)	38,925,386	4.17%	8,291,282	5.00%	11,520,518	16.29%	11,258,688	18.75%	7,854,899	0.9930	4,219,740	(1,780,260)	6,000,000	-														
14	Mixed cost performance B, OKS = 0	0.95	1.05	0.95	0.95	1.30	1.02	(1.66%)	609,951,130	(9,951,130)	-	42,099,223	4.47%	9,833,532	5.37%	11,744,047	17.48%	9,504,280	20.12%	10,957,364	1.0083	(4,975,565)	(4,975,565)	-	-														
15	Mixed cost performance B, OKS = 50	0.95	1.05	0.95	0.95	1.30	1.02	(1.66%)	609,951,130	(9,951,130)	50	48,099,223	5.11%	11,235,011	6.13%	13,417,813	19.97%	10,927,386	22.99%	12,519,013	1.0183	(10,975,565)	(4,975,565)	(6,000,000)	-														
16	Mixed cost performance B, OKS = -50	0.95	1.05	0.95	0.95	1.30	1.02	(1.66%)	609,951,130	(9,951,130)	(50)	36,099,223	3.83%	8,432,053	4.60%	10,070,280	14.99%	8,201,175	17.25%	9,395,716	0.9983	1,024,435	(4,975,565)	6,000,000	-														

**Charts:** financial outcomes for Owner and each NOP for a cost outcome ranging between 15% under to 25% (for OKS -100, 0 and +100)





## SCHEDULE 6 PROGRESS PAYMENT SCHEDULE

### Part 1

(to be completed by Alliance Project Manager)

- The amount claimed by the Non-Owner Participants is as follows:

To period ending:

		NOP1	NOP2	NOP3	Total
Limb 1 Reimbursable Costs to date (L1 <sub>TD</sub> )	Internal Limb 1 Reimbursable Costs	\$	\$	\$	\$
	Third party Limb 1 Reimbursable Costs	\$	\$	\$	\$
	Total Limb 1 Reimbursable Costs	\$	\$	\$	\$
Limb 2 to date (L2 <sub>TD</sub> )		\$	\$	\$	\$
<b>Gross Entitlement to date</b> [A] = (L1 <sub>TD</sub> + L2 <sub>TD</sub> )		\$	\$	\$	\$
Less previous Gross Entitlement amount paid (excluding GST) [B]		\$	\$	\$	\$
<b>Net Entitlement (excluding GST)</b> [C] = ([A] - [B])		\$	\$	\$	\$
Less lien holdback [D]		\$	\$	\$	\$
GST applicable to Net Entitlement less lien holdback [E]		\$	\$	\$	\$
<b>Amount Due under this Progress Payment Schedule</b> ([C] - [D]) + [E]		\$	\$	\$	\$

- I attach a report from each Non-Owner Participant setting out the amount which has been calculated in accordance with Schedule 5 to this Agreement.
- All backup information requested by the Financial Auditor has been provided to the Financial Auditor.
- Substantiation information (in addition to the NOP the invoices) as requested by Owner and/or the Financial Auditor is attached.

Signed by Alliance  
Project Manager:

Name (Printed):

Date:

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**Part 2**

*(to be completed by the Financial Auditor)*

1. **[Note to Proponents – to be confirmed by the Owner prior to the Commencement Date].**
2. On receipt of this Progress Payment Schedule signed by the Financial Auditor, the Owner must pay the stated amount to the Non-Owner Participants in accordance with Section 8.6 of the Project Alliance Agreement.

Signed:

Name (Printed):

Date:

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**Part 3 – Subject to Section 8.4.4**

*(to be completed by the ALT Representatives)*

1. As the ALT, we are satisfied that the Alliance has sufficient records, systems and procedures in place to track, manage and record the Non-Owner Participants entitlements to payment under this Agreement and that these records, systems and procedures are available to be, and are in a format suitable to be, subject to review and audit in accordance with this Agreement.
2. On receipt of this Progress Payment Schedule signed by the ALT Representatives, the Owner must pay the stated amount to the Non-Owner Participants in accordance with Section 8.6 of the Project Alliance Agreement.

Signed:

Name (Printed):

Date:

## SCHEDULE 7 ALLIANCE MANAGEMENT SYSTEM

### Development of Alliance Management System

#### Develop AMS

S7.1 The Participants will develop the Alliance Management System (**AMS**) to manage and govern and to provide the necessary level of assurance of the performance of the Alliance Works.

#### Purpose of the AMS

S7.2 The purpose of the AMS is to:

- (a) establish the policies, procedures, protocols and management plans to guide and manage the AMT's and WPT's performance of the Alliance Works;
- (b) provide the APM with the management framework to manage the overall performance of the Alliance Works;
- (c) provide the ALT with the governance and oversight framework to enable the ALT to assure the Participants that the Alliance Works will satisfy the requirements of the Agreement; and
- (d) enable the Participants to assure themselves that the Alliance Works will be performed in accordance with the Agreement to satisfy the Project Alliance Objectives.

#### Requirements of the AMS

S7.3 The AMS:

- (a) where, and to the extent applicable, will be informed by and/or make reference to the Participants' existing management system policies, plans and procedures that would otherwise apply to the Alliance Works;
- (b) will, to the extent practicable, incorporate finalized policies, procedures, protocols and management plans developed as "draft versions" during the AD Phase;
- (c) will cover, as a minimum, the matters outlined in this Schedule 7 and as otherwise required in accordance with this Agreement;
- (d) will be developed to reflect Gender-based Analysis Plus and the Cultural Safety and Humility policies, which must be taken into account in preparing, and the finalisation of, the management plans;

- (e) will set out all key policies, procedures, protocols and management plans relating to the performance of all key aspects of the Alliance Works; and
- (f) will specify the delegated limits of accountabilities and responsibilities and the protocols for review and change of those delegated limits, including which aspects of the AMS (if any) can be amended by the APM and which aspects can only be amended by the ALT.

S7.4 The Participants must do all things reasonably required to develop and agree the AMS:

- (a) initially in accordance with this Schedule 7 and as otherwise required under this Agreement; and
- (b) subsequently to amend or replace elements of the AMS as may be required under Section S7.2(d) of this Schedule 7 and as otherwise required under this Agreement.

#### **Structure of AMS**

- S7.5 The structure and components of the AMS indicated in this Schedule 7 will not constrain the ALT in determining the final or optimal structure of the AMS, including the number of Management Plans and the coverage of each Management Plan, provided that, except as otherwise determined by the ALT, the AMS covers the matters listed in this Schedule 7.
- S7.6 The APM will submit a detailed proposal for the completion of the AMS and each Alliance Management Plan to the ALT for approval at the first ALT meeting following the Commencement Date.
- S7.7 The APM will then manage the development of the AMS by the Participants for submission to and approval by the ALT in accordance with the approved timeframe.
- S7.8 Except as directed by the ALT, no substantial Alliance Work will be performed under this Agreement until such review and endorsement has taken place.
- S7.9 The ALT may require periodic review and update of any part of the AMS where it considers such review and update is required to better achieve the Project Alliance Objectives.

## Alliance Management Plan Requirements

S7.10 The AMS must cover the following matters in relation to the performance of all aspects of the Alliance Works.

	Management Plan	Management Plan Requirements	Indicative Time of Delivery from the Commencement Date
1	AMS Structure	Development of a structured approach to plan, manage and provide oversight to the management of the delivery of all aspects of the Alliance Works necessary to satisfy the Project Alliance Objectives, including structure and hierarchy of documents (e.g. Policies, Plans, procedures, work instructions, records/forms).	To be submitted to the ALT within [60] days after the Commencement Date.
2	Project Reporting Plan	<p>Development of a structured approach outlining the scope, frequency, and depth of reporting required to develop detailed and summary level reports (as the case may be) by the APM (with the support of the AMT) to report to, and brief, the ALT and each Participant on all key or material aspects of the performance of the Alliance Works, including:</p> <ul style="list-style-type: none"> <li>• Alliance Work status report (including key technical and non-technical issues) against relevant milestones on the progress of the key elements of the Alliance Works</li> <li>• Recommendations, and the status of progress against previous recommendations, on key technical and non-technical issues;</li> <li>• earned value reports including: <ul style="list-style-type: none"> <li>○ a reconciliation, as at the date of the report, of the AOC of performing the Alliance Works against the TOC;</li> <li>○ any material errors or mistakes which have been made in the development of the TOC and identified by the Participants;</li> </ul> </li> <li>• an updated risk and opportunity register identifying any innovations or breakthroughs which have been made or opportunities which have been realized by the Participants in performing the Alliance Works and any innovations or breakthroughs or opportunities which are forecast to be made or</li> </ul>	To be submitted to the ALT within [60] days after the Commencement Date.

		<p>realized by the Participants;</p> <ul style="list-style-type: none"> <li>the status of the Participants' performance in each KRA and KPI against the objectives of and requirements for each KRA and KPI;</li> <li>reporting (including all applicable statistical analysis) of the Participants' performance in respect of workplace health and safety and applicable OHS Legislation;</li> <li>reporting (including all applicable statistical analysis) of the Participants' performance against major elements specified in the various management plans;</li> <li>reporting on employment status which addresses numbers of direct and indirect employees, construction labour, apprentices , including local residents, equity groups, Indigenous peoples, women and other visible minority groups traditionally underrepresented in the trades;</li> <li>cashflow statements covering a 12 month forward rolling period;</li> <li>proposed form and content of “dashboard reports” for reporting to meet the ALT's and each Participant's reasonable requirements; and</li> <li>an outline of how the APM will deal with and manage any adverse trends or projections in relation to schedule, cost, or other matters which are central to achievement of the Project Alliance Objectives; and</li> <li>any other information required by the ALT or a Participant necessary to validate compliance with this Agreement.</li> </ul>	
3	<b>Financial Management</b>	<p>Development of a plan for the management, control and reporting of all financial dealings and transactions incurred or entered into by the Participants for the performance of the Alliance Works, which includes the following:</p> <ul style="list-style-type: none"> <li>cost control plan – outlines the approach to establishing, implementing and maintaining a robust secure cost control system (necessarily aligned to the work breakdown structure forming the basis of the work package structures of the TOC), sufficient to record, track, manage, analyse and report all Limb 1 Reimbursable Costs, Limb 2 Fee applied to Limb 1 Reimbursable Costs and</li> </ul>	To be submitted to the ALT within [60] days after the Commencement Date.

		<p>Owner Alliance Costs consistent with GAAP and the PAA</p> <ul style="list-style-type: none"> <li>• financial reporting plan - outlines the approach to establishing, implementing and maintaining a robust secure financial reporting regime for the Alliance Works incorporating, at a minimum: <ul style="list-style-type: none"> <li>○ Monthly Financial Reports – reports of: <ul style="list-style-type: none"> <li>▪ comparison of “AOC vs TOC” for each past and current month of the current fiscal year; and</li> <li>▪ forecast AOC for each remaining month in the current fiscal year,</li> </ul> of all Limb 1 Reimbursable Costs, Limb 2 Fee applied to Limb 1 Reimbursable Costs and Owner Alliance Costs.</li> <li>○ Quarterly Financial Reports – reports of: <ul style="list-style-type: none"> <li>▪ comparison of “AOC vs TOC” for each past and current quarters of the current fiscal year;</li> <li>▪ forecast AOC for each remaining quarter in the current fiscal year, and</li> <li>▪ updated annual forecast AOC for each of the remaining fiscal years to completion of the Alliance Works</li> </ul> of all Limb 1 Reimbursable Costs, Limb 2 Fee applied to Limb 1 Reimbursable Costs and Owner Alliance Costs; and</li> <li>○ Annual Financial Reports – reports of <ul style="list-style-type: none"> <li>▪ comparison of “actual vs target” for each past and current fiscal years; and</li> <li>▪ an updated annual forecast AOC for each of the remaining fiscal years to completion of the Alliance Works,</li> </ul> of all Limb 1 Reimbursable Costs, Limb 2 Fee applied to Limb 1 Reimbursable Costs and Owner Alliance Costs,</li> </ul> </li> </ul>	
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		<p>all consistent with GAAP;</p> <ul style="list-style-type: none"> <li>• financial audit plan - outlines the approach to establishing, implementing and maintaining an accurate, robust and secure series of audit activities consistent with GAAP to be undertaken by the Financial Auditor (with the assistance of the AMT), including at a minimum: <ul style="list-style-type: none"> <li>○ an independent audit by the Financial Auditor of the implementation of the cost control system and financial reporting regime within 60 Business Days of the Commencement Date of the Alliance Works;</li> <li>○ regular ongoing financial audits (at intervals to be agreed by ALT within 60 days of the Commencement Date) that all Limb 1 Reimbursable Costs, Limb 2 Fee applied to Limb 1 Reimbursable Costs and Owner Alliance Costs are consistent with the Compensation Framework in the PAA;</li> <li>○ the process for the Financial Auditor to review and make recommendations to address (including prepare a summary report for the ALT) any anomalies or inconsistencies identified through audit activities;</li> <li>○ Confirm the roles and responsibilities of the NOPs, Owner, ALT and Financial Auditor for the ongoing series of audit activities.</li> </ul> </li> <li>• Substantial Completion and Final Completion Audits - outlines the approach to establishing and implementing a detailed audit of: <ul style="list-style-type: none"> <li>○ all Limb 1 Reimbursable Costs, Limb 2 Fee applied to Limb 1 Reimbursable Costs and Owner Alliance Costs incurred by the Participants in the performance of the Alliance Works; and</li> <li>○ determination of Limb 3 gainshare or painshare amounts (if any),</li> </ul> <p>within 60 Business days of the Substantial Completion Date and the Final Completion Date to ensure compliance with the Agreement.</p> </li> </ul>	
<b>4</b>	<b>Design Management</b>	<p>Development of a structured approach to the management and performance of all activities relating to the design management, design, value assurance, documentation, peer review, verification and validation of the Alliance Works (including Temporary</p>	<p>To be submitted to the ALT within [30] days after the Commencement Date.</p>

		<p>Works necessary for the performance of the Alliance Works) including:</p> <ul style="list-style-type: none"> <li>• a detailed workflow plan (including resource allocation) fully outlining how design development, submittals, submittal timing and review procedures will occur;</li> <li>• alignment with Schedule 2, Appendix P [Asset Management];</li> <li>• facility threat and risk assessment;</li> <li>• a design approval framework incorporating, safety in design, whole of life cycle consideration and analysis, all requirements of Law and a stakeholder management and compliance matrix;</li> <li>• documentation requirements for design and work package documentation such as Wayfinding and Asset Numbering Master Plan;</li> <li>• User Groups Plans including structured process and schedule for user group engagement and feedback;</li> <li>• Use of virtual or augmented reality technologies;</li> <li>• Mock-up and in-site Prototype In-situ Plans;</li> <li>• Gender-based Analysis Plus;</li> <li>• BIM execution and integration plan to Owner databases (e.g. Asset Management);</li> <li>• Site Instructions;</li> <li>• As-Built Management;</li> <li>• Energy Management and Modelling Plan supporting the New Construction Program;</li> <li>• LEED Certification Plan;</li> </ul>	
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		<ul style="list-style-type: none"> <li>• Equipment Integration;</li> <li>• OHS (WorkSafe BC) Legislative Compliance Plan;</li> <li>• CPTED; and</li> <li>• Risk Assessments – (e.g. IPAC, Sustainability, Emergency Management)</li> </ul>	
5	<b>Construction Management</b>	<p>Development of a structured approach to the management of the performance of all construction activities forming part of the Alliance Works outlining the roles, responsibilities, means and methods and techniques, for matters including:</p> <ul style="list-style-type: none"> <li>•</li> <li>• Resource Management Planning integrated with the Construction Schedule, including: <ul style="list-style-type: none"> <li>○ Advance rolling forecast of labour needs; and</li> <li>○ Agreed upon level of details from contractors needed for hiring and coordination;</li> </ul> </li> <li>• Site logistics for construction related activities access, security, offices and amenities, laydown, parking, hours of operations, temp services, waste management, etc.;</li> <li>• Construction Schedule – including Critical Path Modelling and job classification requirements and cashflow modelling of anticipated AOC;</li> <li>• Permitting schedule;</li> <li>• Dust, noise, settlement, vibration, noxious odours, erosion control measures;</li> <li>• Construction completion (aligned with Start Up and Hand Over);</li> <li>• Habitat Management Planning;</li> <li>• Environmental incident response plan;</li> </ul>	To be submitted to the ALT within [90] days after the Commencement Date.

		<ul style="list-style-type: none"> <li>• Waste Management;</li> <li>• Key and Access Control Plan;</li> <li>• Traffic control and site access management protocols and processes;</li> <li>• Temporary Site Services, including relocation, augmentation and removal at completion</li> <li>• Excavation and disposal plan; and</li> <li>• Crane Planning.</li> </ul>	
6	<b>Environmental Management Plan</b>	<p>Development of a structured approach to managing the impact of the performance of the Alliance Works on the environment, including:</p> <ul style="list-style-type: none"> <li>• outlining a system and way of working that minimize environmental impact;</li> <li>• assuring the environment is not exposed to risks of unlawful damage or pollution;</li> <li>• developing and complying with procedures for avoiding and responding to environmental hazards or emergencies; and</li> <li>• developing procedures for engaging with any Authority regarding the environment and heritage protection.</li> </ul>	To be submitted to the ALT within [90] days after the Commencement Date.
7	<b>Quality Assurance Management</b>	<p>Development of a structured approach to the quality of the performance of the Alliance Works including the development of a quality assurance system for the performance of the Alliance Works addressing:</p> <ul style="list-style-type: none"> <li>• the quality assurance and control requirements set out in the Specification;</li> <li>• a fully integrated QA management plan;</li> <li>• a description of key roles and responsibilities, including:</li> </ul>	To be submitted to the ALT within [60] days after the Commencement Date.

		<ul style="list-style-type: none"> <li>○ specific QA management plans, (e.g. CIV, ARCH);</li> <li>○ Design QA, such as systematic checking, peer reviews and coordination;</li> <li>○ Construction QA, such as testing and problem avoidance;</li> <li>○ Ensure QA/QC reports include QA deficiency lists and quality incident reports;</li> <li>○ Design performance and KPI;</li> <li>• inspection, testing, verification and validation requirements;</li> <li>• alignment with Schedule 2, Appendix 2P [Asset Management];</li> <li>• quality assurance records management, including the requirements of Law; and</li> <li>• the reporting of compliance with the implemented quality assurance system, including non-conformance reporting, corrective and preventative actions and opportunities for improvements.</li> </ul>	
8	<b>Respectful Workplace, Health and Safety Management Plan</b>	<p>A Respectful Workplace policy and procedure(s) that outlines specific responsibilities and process to address issues, promoting a safe and respectful work place for all members and an on-site culture fostering an environment free of discrimination, including:</p> <ul style="list-style-type: none"> <li>• each Participant's health and safety legal obligations including Employer responsibilities;</li> <li>• the Owner and Prime Contractor's legal obligations under the OHS Legislation;</li> <li>• stakeholder, site and facility orientation;</li> <li>• emergency responder engagement (e.g. fire and police) and related training;</li> <li>• Site safety, security, and emergency planning;</li> <li>• Culture Safety and Indigenous Cultural Competency Training and Equity</li> </ul>	To be submitted to the ALT within [60] days after the Commencement Date.

		<p>Training for all persons performing Alliance Work;</p> <ul style="list-style-type: none"> <li>• Collaboration the Alliance team to ensure all trade workers in Indigenous Culture Competency training</li> <li>• Develop an a safe system for racism disclosure and develop an alliance policy and procedure to address Racism complaints</li> <li>• a Health and Safety Program, reflective of the requirements of the WorkSafeBC Certificate of Recognition (COR) program, and safety-related policy and procedures that achieve or exceed all occupational health and safety requirements and results in full accountability for safety obligations; and</li> <li>• safety qualification, training and onboarding requirements for all persons performing Alliance Works.</li> <li>• Prime Contractor site safety orientation and training; and</li> <li>• Construction-related foundational and supervisor safety training.</li> </ul>	
9	<b>Training and Orientation Plan</b>	<p>Development of a structured approach to outlining how and when training and orientation will be implemented, including:</p> <ul style="list-style-type: none"> <li>• system and equipment qualification training;</li> <li>• emergency training;</li> <li>• training and orientation platforms;</li> <li>• identifying master trainers and responsibilities to train staff; and</li> <li>• training management plan for [Insert Owner Name] staff and equipment.</li> </ul>	To be submitted to the ALT within [60] days after the Commencement Date.
10	<b>Procurement and Contracting Management</b>	<p>Development of a structured approach setting out the requirements and processes for subcontracting, including:</p> <ul style="list-style-type: none"> <li>• a requirement that any procurement by a Participant for the purposes of performing Alliance Works will be procured on a Best for Project basis;</li> </ul>	To be submitted to the ALT within [90] days after the Commencement Date.

		<ul style="list-style-type: none"> <li>• ;</li> <li>• the requirements and processes for procuring materials and services, and subcontracting elements of the Alliance Works;</li> <li>• the structure of the multi criteria analysis (consistent with best practice, fairness and transparency principles) that the Participants will apply in determining the most appropriate Best for Project procurement methodology for procuring goods and services for the performance of the Alliance Works</li> <li>• an authorization and approvals process for the entering into of Subcontracts;</li> <li>• identification of the key people involved in coordinating, controlling and or managing procurement and subcontracting activities, and their roles and responsibilities;</li> <li>• a requirement that any proposed transaction with an Affiliate shall be on market tested commercially reasonable arm's length terms and only negotiated and entered into upon the prior agreement of the ALT;</li> <li>• that any standard template for a Subcontract is developed for the ALT's consideration and approval which shall not be substantially deviated from without the ALT's approval, which must include: <ul style="list-style-type: none"> <li>○ terms which ensure that unencumbered title to unfixed materials will pass to Owner upon payment and are protected and insured to Owner's reasonable satisfaction; and</li> <li>○ require that third parties enter into a direct agreement with the Owner, so that the Owner may exercise all rights under the Subcontract on and from Substantial Completion; or</li> <li>○ that the benefit of the Subcontract is assigned, or otherwise transferred, to the Owner, so that the Owner may exercise all rights under the contractual arrangement or agreement on and from Substantial Completion.</li> </ul> </li> </ul>	
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11	<b>KRA Performance Management Plan</b>	<p>Development of a structured approach as to how performance will be measured in the Key Result Areas (KRAs) including:</p> <ul style="list-style-type: none"><li>• Description of the Key Performance Indicators (KPIs) used to measure performance in each KRA;</li><li>• Where more than one KPI is used for a KRA, details of the method by which a KPI performance score will translate into a KRA score, such as weighting reasonably reflective of the relative importance of that KPI to the Project Alliance Objectives in relation to that KRA;</li><li>• For each KPI:<ul style="list-style-type: none"><li>○ Description of what the KPI will measure;</li><li>○ Numerical performance values relevant to the measurement methodology, including as a minimum the performance required to achieve the following KPI scores (<b>Performance Nodes</b>):</li></ul></li></ul> <table><tr><td>KPI score</td><td>Gainshare / Painshare in relation to that KPI</td></tr><tr><td>Minus 100%</td><td>Maximum painshare</td></tr><tr><td>Zero</td><td>Nil (Performance Target)</td></tr><tr><td>Plus 100%</td><td>Maximum gainshare</td></tr></table> <ul style="list-style-type: none"><li>○ Measurement methodology detailing how actual performance will be measured and converted to a KPI score between minus 100% and plus 100% reflecting alliance performance in relation to that KPI.</li><li>• The KPI Measurement Framework must be consistent with the following principles:<ul style="list-style-type: none"><li>○ KPIs should address aspects of the Project Alliance Objectives which are significantly impacted by the Alliance and for which performance has significant direct or indirect value to the Owner;</li></ul></li></ul>	KPI score	Gainshare / Painshare in relation to that KPI	Minus 100%	Maximum painshare	Zero	Nil (Performance Target)	Plus 100%	Maximum gainshare	<p>To be submitted to the ALT within [60] days after the Commencement Date.</p>
KPI score	Gainshare / Painshare in relation to that KPI										
Minus 100%	Maximum painshare										
Zero	Nil (Performance Target)										
Plus 100%	Maximum gainshare										

		<ul style="list-style-type: none"><li>○ KPI performance should be measurable by reasonably objective and repeatable methods;</li><li>○ The numerical performance value at each Performance Node should reflect the rate at which value to the Owner increases or decreases when actual performance is above or below the Performance Target, and the realistic range of potential Alliance outcomes; and</li><li>○ At the time of their establishment, performance values for each Performance Node must be set in accordance with the following guidelines:</li></ul> <table><tr><th>KPI score</th><th>Characteristics</th></tr><tr><td>Minus 100%</td><td><ul style="list-style-type: none"><li>• Level of performance that is materially detrimental to the Project Alliance Objectives</li></ul></td></tr><tr><td>Zero</td><td><ul style="list-style-type: none"><li>• Level of performance expected from a high quality, experienced, competent, and fully integrated Owner-NOP team working in accordance with the Alliance Principles</li><li>• Significantly better than what would normally be achieved by the individual Participants working in a traditional limited collaboration contracting environment</li><li>• Set at a P50 level such that there is equal (50%) probability of under-achievement or over-achievement within the TOC</li></ul></td></tr><tr><td>Plus 100%</td><td><ul style="list-style-type: none"><li>• Level of performance that will add material value to achievement of the Project Alliance Objectives over and above the Performance Targets</li><li>• Genuine breakthrough performance through new ways of thinking.</li></ul></td></tr></table>	KPI score	Characteristics	Minus 100%	<ul style="list-style-type: none"><li>• Level of performance that is materially detrimental to the Project Alliance Objectives</li></ul>	Zero	<ul style="list-style-type: none"><li>• Level of performance expected from a high quality, experienced, competent, and fully integrated Owner-NOP team working in accordance with the Alliance Principles</li><li>• Significantly better than what would normally be achieved by the individual Participants working in a traditional limited collaboration contracting environment</li><li>• Set at a P50 level such that there is equal (50%) probability of under-achievement or over-achievement within the TOC</li></ul>	Plus 100%	<ul style="list-style-type: none"><li>• Level of performance that will add material value to achievement of the Project Alliance Objectives over and above the Performance Targets</li><li>• Genuine breakthrough performance through new ways of thinking.</li></ul>	
KPI score	Characteristics										
Minus 100%	<ul style="list-style-type: none"><li>• Level of performance that is materially detrimental to the Project Alliance Objectives</li></ul>										
Zero	<ul style="list-style-type: none"><li>• Level of performance expected from a high quality, experienced, competent, and fully integrated Owner-NOP team working in accordance with the Alliance Principles</li><li>• Significantly better than what would normally be achieved by the individual Participants working in a traditional limited collaboration contracting environment</li><li>• Set at a P50 level such that there is equal (50%) probability of under-achievement or over-achievement within the TOC</li></ul>										
Plus 100%	<ul style="list-style-type: none"><li>• Level of performance that will add material value to achievement of the Project Alliance Objectives over and above the Performance Targets</li><li>• Genuine breakthrough performance through new ways of thinking.</li></ul>										
12	<b>Records Management Plan</b>	Development of a structured approach to document control and records management detailing compliance, storage, maintenance, retention, access, transfer, format, structure, security and privacy aspects of all documentation and Records prepared by	To be submitted to the ALT within [60] days after the Commencement Date.								

		<p>us for the purposes of performing the Alliance Works, including:</p> <ul style="list-style-type: none"> <li>• a file structure plan, detailing formats and structures of documents satisfying the Owner's requirements;</li> <li>• incorporating well-established collaboration platform (e.g. Aconex-like);</li> <li>• defect and compliance management platform;</li> <li>• photographic record platform;</li> <li>• access permission and point of contacts;</li> <li>• data, database and document management system (server must be Canadian-based);</li> <li>• intellectual property rights; and</li> <li>• compliance with FIPPA and [Insert Owner Name] records and information management requirements, including a documentation retention, storage and transfer plan.</li> </ul>	
13	<b>Delegations Matrix</b>	Development of a structured approach to the delegation of accountabilities and responsibility within our Alliance setting out the extent of delegations of operational (technical, commercial and financial) including which matters are delegated or capable of being delegated, and to whom, and the limits which apply at each level of delegation between the Owner, ALT, APM, AMT and WPT.	To be submitted to the ALT within [60] days after the Commencement Date.
14	<b>People and Culture Plan</b>	<p>Development of a structured approach to assist the management of our people, including:</p> <ul style="list-style-type: none"> <li>• the approach to developing and maintaining a high-performance cross-functional and cross-Participant team including: <ul style="list-style-type: none"> <li>○ means to overcome traditional client-contractor barriers that limit full collaboration and process optimisation;</li> <li>○ methods and approaches to enable those engaged in performing work under this Agreement to take full advantage of the potential for high</li> </ul> </li> </ul>	To be submitted to the ALT within [60] days after the Commencement Date.

		<p>performance which is created by a collaborative contracting environment;</p> <ul style="list-style-type: none"> <li>○ leadership and high-performance culture development approaches including mentoring, coaching, feedback, periodic health-checks and the like;</li> <li>• requirements for good human resources management in the Alliance environment including personnel management, retention, development, apprenticeships, training, and other matters required to build and develop an engaged and productive workforce, in a manner to satisfy all Participants' requirements, including: <ul style="list-style-type: none"> <li>○ developing an objective and transparent process outlining the selection of members to participate in the Alliance;</li> <li>○ developing clear documentation outlining details of the employment relationship (including employment status and reporting relationships) for members of the Alliance; and</li> <li>○ developing a recruitment plan for roles and build a succession plan to ensure continuity should members leave the Alliance.</li> </ul> </li> </ul>	
<b>15</b>	<b>Commissioning Manual</b>	<p>As detailed in Schedule 2, Appendix H [Testing and Commissioning] development of a structured approach to identify the manner in which the commissioning and completion of the Alliance Works will be staged, how the Alliance Works will be handed over to the Owner, and a defects response schedule prepared and defects closed out.</p> <p>It is expected that the Commissioning Manual will address the roles and responsibilities (within the Alliance and separately to be performed by the Owner), mean and methods and techniques, and phases and stages of Commissioning including consideration of:</p> <ul style="list-style-type: none"> <li>• the Owner's Project Requirements;</li> <li>• the basis of Design, including sequence of operation;</li> <li>• the Commissioning Plan;</li> <li>• static verification, start-up, and Functional Performance Testing check sheets and reports;</li> </ul>	To be submitted to the ALT within [120] days after the Commencement Date.

		<ul style="list-style-type: none"> <li>the commissioning reports;</li> <li>user and operator training reports;</li> <li>Commissioning Team representatives contact details;</li> <li>occupancy and operations evaluation reports,</li> <li>all relevant Project reports and correspondence;</li> <li>roles and responsibilities of all parties;</li> <li>any other relevant element as agreed and defined by the Participants;</li> <li>scheduling and coordination of commissioning; and</li> <li>post occupancy testing and validation (e.g. seasonal, weather, building loads) as a condition precedent to Final Completion.</li> </ul>	
16	<b>Equipment Plan</b> <i>(Proponents to Note - this Plan is to be aligned with Schedule 2 of the Agreement)</i>	<p>Development of a structured approach to outline and identify the manner in which the procurement and logistics for equipment will be managed by the Alliance including:</p> <ul style="list-style-type: none"> <li>Organization - The Equipment Plan will identify the structure for equipment management including: <ul style="list-style-type: none"> <li>a fair business policy and process</li> <li>guiding principles for the management and coordination of equipment;</li> <li>data base management and integration to the BIM environment; and</li> <li>clear roles and responsibilities required to achieve equipment needs.</li> </ul> </li> <li>Procurement - The Equipment Plan will provide for the approach for solicitation of proposals including <ul style="list-style-type: none"> <li>standardization opportunities or bundled purchases;</li> <li>specification and quantities;</li> </ul> </li> </ul>	To be submitted to the ALT within [90] days after the Commencement Date.

		<ul style="list-style-type: none"> <li>○ equipment analysis and recommendations;</li> <li>○ equipment acceptance testing;</li> <li>○ Owner approvals;</li> <li>○ equipment procurement schedule; and</li> <li>○ equipment reports.</li> <li>• Logistics - The Equipment Plan will fully address and outline a detailed Logistic Plan that provides for: <ul style="list-style-type: none"> <li>○ the responsibilities as outlined under Schedule 2 – Appendix 2I for both Owner and Alliance provided equipment;</li> <li>○ equipment verification through user group engagement;</li> <li>○ schedules and logistics for delivery, arrival, storage, installation, inspection, and quality checks;</li> <li>○ specific space, installation and integration requirements;</li> <li>○ commissioning requirement integrated with the Commissioning Plan;</li> <li>○ training requirements and resources integrated with the Training Plan; and</li> <li>○ hand over requirements integrated with the Start Up and Hand Over Plan.</li> <li>○</li> </ul> </li> </ul>	
17	<b>Start Up and Hand Over Plan</b>	<p>Development of a structured approach to outline how Hand Over will be managed, including;</p> <ul style="list-style-type: none"> <li>• Facility and System Start Up Schedule: sequence of operations – coordinated with commissioning, System Start Up Schedule – Coordinated with Training and Orientation, Construction Clean and Terminal Cleaning Schedule;</li> <li>• Specific Owner requirements such as: Facility Management Office, OHS,</li> </ul>	To be submitted to the ALT within [120] days after the Commencement Date.

		<p>Protection Services;</p> <ul style="list-style-type: none"> <li>• Occupancy Permit - Professionals of Record - Schedule Packages, Authority Health Jurisdiction, Fire Department hand-over;</li> <li>• Operational Readiness - commissioning, area set up, access – including keys;</li> <li>• Closeout activities (e.g. lessons learned, final reports, archive of documents); and</li> <li>• Activation.</li> </ul>	
18	<b>Communication and Engagement Plan</b>	<p>Development of a structured approach to share responsibilities (Owner, Prime Contractor and Alliance) regarding project and, community and stakeholder communications and engagement, including:</p> <ul style="list-style-type: none"> <li>• lead or supporting roles for communications;</li> <li>• emergency and issues management communications;</li> <li>• planning, community engagement;</li> <li>• media relations and media queries;</li> <li>• government relations and communications;</li> <li>• Stakeholder consultation – including engagement with local indigenous communities consistent with Owner's Indigenous Engagement Framework;</li> <li>• event planning and productions;</li> <li>• production and management of communications artefacts and tools;</li> <li>• Communications and escalation paths and decision points;</li> <li>• Roles, authority and level of participation of participants in external communications;</li> </ul>	<p>To be submitted to the ALT within [TBA by Owner] days after the Commencement Date.</p>

		<ul style="list-style-type: none"> <li>Regular project status communications for stakeholders and user groups; and</li> <li>Alignment with Ministry of [insert Name of Relevant Ministry] priorities, goals and objectives and apprise BC Government Communications and Public Engagement of external communications activities.</li> </ul>	
19	<b>Indigenous Engagement Plan</b>	<p>Development of a structured approach to engagement with local indigenous communities aligned with Indigenous Engagement Framework - Outlining requirements for: Policy/ framework to perform respectful indigenous engagement activities;</p> <ul style="list-style-type: none"> <li>Decision points/ authority as to making any commitments to the communities;</li> <li>Anti-Racism policy and procedure;</li> <li>The level of indigenous engagement activities; and</li> <li>Cultural Safety and Humility Training.</li> </ul>	To be submitted to the ALT within [TBA by Owner] days after the Commencement Date.
20	<b>[NOT USED]</b>	<ul style="list-style-type: none"> <li></li> </ul>	
21	<b>Risk and Opportunity Register and Management Plan</b>	<p>Development of a structured approach describing how risks and opportunities will be managed during the performance of the Alliance Works, addressing the treatment, mitigation and management of risks, including:</p> <ul style="list-style-type: none"> <li>risk and opportunity schedules;</li> <li>risk and opportunity workshop updates;</li> <li>risk mitigation and opportunity exploitation strategies; and</li> <li>risk and opportunity platform and reporting.</li> </ul>	To be submitted to the ALT within [TBA by Owner] days after the Commencement Date.

22	<b>Emergency Response and Incident Management Plan</b>	<p>Development of a structured approach to emergency response and incident management identifying how the Participants will respond to, and deal with, an incident, which involves, or may involve, a breach of Law (such as the OHS Legislation or environmental laws) and/or the imposition of a fine or other sanction on any or all of us. The plan will consider the role and responsibilities of the Prime Contractor. Once an Emergency Response and Incident Management Plan has been developed, it will be implemented, on the basis of the following principles:</p> <ul style="list-style-type: none"> <li>• maintain transparency, and open lines of communication amongst all Participants (without sacrificing our right to legal professional privilege); and</li> <li>• continue to make decisions collectively and for the best interests of the Project.</li> </ul>	<p>To be submitted to the ALT within [TBA by Owner] days after the Commencement Date.</p>
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**SCHEDULE 8  
KEY INDIVIDUALS**

<b>Role of Key Individual</b>	<b>Name of Key Individual</b>	<b>Commencement of Key Individual</b>	<b>Commitment of Key Individual</b>
<b>ALT Representative (Owner)</b>		Commencement Date	As required to perform the role of an ALT Representative under the Agreement
<b>ALT Representative (Owner)</b>		Commencement Date	As required to perform the role of an ALT Representative under the Agreement
<b>ALT Representative (Owner)</b>		Commencement Date	As required to perform the role of an ALT Representative under the Agreement
<b>ALT Representative (NOP)</b>		Commencement Date	As required to perform the role of an ALT Representative under the Agreement
<b>ALT Representative (NOP)</b>		Commencement Date	As required to perform the role of an ALT Representative under the Agreement
<b>ALT Representative (IBC)</b>		Commencement Date	As required to perform the role of an ALT Representative under the Agreement
<b>Alliance Project Manager</b>	[TBA]	[TBA]	[TBA]


NTD: Add additional key Individu als as per project requirements.

## SCHEDULE 9 ALT ACCOUNTABILITIES AND RESPONSIBILITIES MATRIX

Alliance Leadership Team			
Accountable for:	As tested by:	Responsible for the completion of the following tasks:	Delegate?
1. Development and deployment of the strategic framework for the Alliance	<ul style="list-style-type: none"> <li>Creation of a strategic framework</li> </ul>	1.1 Create a vision and purpose for the Alliance	No
		1.2 Align on the Alliance Principles	No
		1.3 Align on the Owner's KRAs, Objectives and MCOS	No
		1.4 Deploy and implement Alliance Principles, Project Alliance Objectives and working together commitments	No
		1.5 Develop strategy to deploy Strategic Framework throughout the Alliance	Yes
2. Development and deployment of a transparent governance framework across the Alliance	<ul style="list-style-type: none"> <li>Creation of a governance framework</li> </ul>	2.1 Endorsement of Alliance organisational structures	No
		2.2 Preparation of job description of APM	No
		2.3 Appointment of APM	No
		2.4 Performance management of APM	No
		2.5 Endorsement of job descriptions of AMT members	No
		2.6 Endorse succession plans for key functions	Yes
		2.7 Establish ALT modus operandi (including meeting, management and leadership protocols)	No
		2.8 Approve limits of delegation and authority for APM and AMT	No
		2.9 Endorse Alliance issue escalation and decision making processes	No

Alliance Leadership Team			
Accountable for:	As tested by:	Responsible for the completion of the following tasks:	Delegate?
		2.10 Structure, resource and deploy the Alliance Management System necessary for the Alliance to achieve MCOS in the Owner's KRAs and Objectives	Yes
		2.11 Endorse management system	No
		2.12 Approve, review and amend the Alliance Management Plans	No
		2.13 Initiate internal and Third Party Management System audits, review reports and act on findings	Yes
3. Delivery and performance of obligations under this Agreement	<ul style="list-style-type: none"> <li>Audit against checklist</li> </ul>	3.1 Prepare checklist of obligations arising under this Agreement obligations	Yes
		3.2 Monitor Alliance performance against checklist and take corrective action	Yes
		3.3 Issue directions, approvals and decisions under the Agreement	No
4. The Alliance achieving MCOS or better in the Owner's KRAs and Objectives	<ul style="list-style-type: none"> <li>Performance against KPIs</li> </ul>	4.1 Establish and endorse KPIs, performance spectrum and measurement methodology	No
		4.2 Establish KPIs, performance spectrum and measurement methodology	Yes
		4.3 Set challenging targets in KRAs	No
		4.4 Maintain team focus on KRAs	Yes
5. Agreement upon a Compensation Framework for the Alliance which is robust, transparent	<ul style="list-style-type: none"> <li>Compensation Framework</li> </ul>	5.1 Align on the Compensation Framework	No
		5.2 Model and test Compensation Framework	Yes

Alliance Leadership Team			
Accountable for:	As tested by:	Responsible for the completion of the following tasks:	Delegate?
and defensible		5.3 Determine any Adjustment Events	No
6. Ensuring that reporting to all Participants is timely, accurate and comprehensive	<ul style="list-style-type: none"> <li>Audit against reporting</li> <li>Feedback from the Owner's Representative</li> </ul>	6.1 Review and adopt the Owner's reporting requirements	No
		6.2 Ensure Alliance reporting meets the Owner's reporting requirements	Yes
		6.3 Monitor the Owner's satisfaction with reporting and respond to assure satisfaction	Yes
7. Structuring and resourcing the Alliance so as to be able to achieve MCOS in the Owner's KRA and Objectives	<ul style="list-style-type: none"> <li>Organisation charts</li> <li>People in position</li> <li>Job Descriptions</li> </ul>	7.1 Endorse organisational structure for key delivery phases	No
		7.2 Endorse organisational structures changes across the Project lifecycle	No
		7.3 Develop principles of selection, succession and access to people	No
		7.4 Ensure 'Best for Project' resources are provided to meet the demands of the Assignment Plan and curve	Yes
8. Providing and maintaining corporate support of the Alliance	<ul style="list-style-type: none"> <li>APM and AMT feedback</li> <li>Audit of minutes of ALT meetings</li> </ul>	8.1 Document expectations of corporate support in the strategic framework and/or Alliance Management Plans	No
		8.2 Act on corporate support requests	Yes
9. Ensuring all ALT decision making is unanimous	<ul style="list-style-type: none"> <li>Audit of minutes of ALT meetings</li> </ul>	9.1 Develop and document ALT decision making process (as part of modus operandi document)	No
		9.2 Endorse which issues require resolution/decision by ALT	No
		9.3 Document outcomes of ALT issues resolution and decision making	Yes

<b>Alliance Leadership Team</b>			
<b>Accountable for:</b>	<b>As tested by:</b>	<b>Responsible for the completion of the following tasks:</b>	<b>Delegate?</b>
		9.4 Ensure all actions, decisions and behaviours are consistent with Alliance Principles	Yes
10. Creating and sustaining a culture necessary to achieve exceptional Performance in all KRAs and Objectives	<ul style="list-style-type: none"> <li>Alliance People and Culture Development Plan</li> <li>Alliance on-going health checks and surveys</li> </ul>	10.1 Establish culture development and sustainment plan	Yes
		10.2 Monitor health of Alliance and act on any health issues	Yes
11. Implementation of the Owner's directions under this Agreement	<ul style="list-style-type: none"> <li>Feedback from the Owner</li> <li>Compliance</li> </ul>	11.1 See 3 above – obligations under this Agreement	No
12. Providing the leadership necessary for the Alliance to achieve the Owner's MCOS in all KRAs	<ul style="list-style-type: none"> <li>Performance against KPIs</li> <li>APM and AMT feedback</li> </ul>	12.1 Establish an alliance team charter ( <b>Alliance Team Charter</b> ) that defines Alliance vision, values, and behaviours	No
		12.2 Develop and model leadership behaviours consistent with the Alliance Team Charter	No
		12.3 Obtain feedback from APM and AMT on ALT leadership performance	No

## SCHEDULE 10 APM ACCOUNTABILITIES AND RESPONSIBILITIES MATRIX

Alliance Project Manager			
Accountable for:	As tested by:	Responsible for the completion of the following tasks:	Delegate?
1. Deployment of the strategic framework of governing Alliance Principles, Project Alliance Objectives and Alliance Purpose throughout the Alliance, such that Alliance team members at all levels of the Alliance (including sub-contractors) understand the elements of the strategic framework and their part in its delivery.	<ul style="list-style-type: none"> <li>Display of strategic framework across the Site</li> <li>Feedback from Alliance team members</li> </ul>	1.1 Display prominently elements of strategic framework at all Alliance worksites	Yes
		1.2 Inclusion of strategic framework in inductions	Yes
		1.3 Integrate strategic framework in job descriptions	Yes
		1.4 Monitoring performance of the Alliance against strategic framework	Yes
2. Development, endorsement and implementation of the organisational structure for performance of the Alliance Works	<ul style="list-style-type: none"> <li>Organizational structure</li> </ul>	2.1 Develop/refine organisation structure for TOC, delivery and update to reflect phase changes	Yes
		2.2 Develop resource plans in accordance with organisational structures and schedule	Yes
		2.3 Resource the team according to the resource plan	Yes
3. Development and deployment of AMT and AMT member job descriptions	<ul style="list-style-type: none"> <li>Job descriptions</li> </ul>	3.1 Develop job descriptions for AMT	No
		3.2 Performance management of AMT members	No
4. Development and deployment of a performance management process for the WPT	<ul style="list-style-type: none"> <li>Performance management process</li> </ul>	4.1 Develop performance management process	Yes
		4.2 Ensure performance management process is deployed	No
5. Establishing succession plans for Key Individuals	<ul style="list-style-type: none"> <li>Succession plan</li> </ul>	5.1 Develop succession plans for Key Individuals	Yes

Alliance Project Manager			
Accountable for:	As tested by:	Responsible for the completion of the following tasks:	Delegate?
of the AMT and WPT		5.2 Develop succession plans for critical discipline leads and supervisors	Yes
		5.3 Endorse succession plans	No
6. Development and effective deployment of Alliance issue escalation and decision making processes	<ul style="list-style-type: none"> <li>Issue resolution and escalation protocol</li> <li>Audit of issue resolution</li> </ul>	6.1 Develop issue escalation and decision making protocol	Yes
		6.2 Endorse issue escalation and decision making protocol	No
		6.3 Deploy issue escalation protocol (e.g. include in inductions etc.)	Yes
7. Deployment of Alliance Management System appropriate to the delivery of outstanding outcomes in all KRAs across the Alliance	<ul style="list-style-type: none"> <li>System implementation</li> <li>System audit</li> </ul>	7.1 Implement the Alliance Management System	Yes
		7.2 Ensure the Alliance Management System is capable of integration with Participants' systems	Yes
		7.3 Deploy the alliance management system across the Site	Yes
		7.4 Train Alliance team members in alliance management system use	Yes
		7.5 Monitor system compliance	Yes
8. Development and deployment of management plans appropriate to the delivery of MCOS outcomes in all KRAs	<ul style="list-style-type: none"> <li>Management plans</li> <li>Audit of plans</li> </ul>	8.1 Development of management plans	Yes
		8.2 Deploy plans	Yes
		8.3 Monitor plan compliance and implement corrective actions where required	Yes
9. Development and deployment of a reporting regime to meet ALT and the Owner's needs	<ul style="list-style-type: none"> <li>Alliance (monthly) report</li> </ul>	9.1 Ensure reports meet ALT needs	No
		9.2 Develop reports for ALT meetings	Yes
		9.3 Present reports at ALT meetings	No

Alliance Project Manager			
Accountable for:	As tested by:	Responsible for the completion of the following tasks:	Delegate?
		9.4 Amend reports based on ALT feedback	Yes
10. Development of a checklist of ALT, APM and AMT obligations under this Agreement, and ensuring that those relevant to the APM and AMT are delivered	<ul style="list-style-type: none"> <li>Obligations checklist</li> <li>Compliance with Agreement</li> </ul>	10.1 Develop checklist of obligations under this Agreement	Yes
		10.2 Deliver APM obligations	No
		10.3 Monitor and report on delivery of APM and AMT obligations	No
11. Establishment, deployment and reporting of KPIs, performance spectrum and measurement methodologies for Alliance performance in KRAs	<ul style="list-style-type: none"> <li>KPI reports</li> </ul>	11.1 Define KPIs in each KRA	Yes
		11.2 Complete performance spectrum	Yes
		11.3 Define measurement methodology	Yes
		11.4 Collate and analyse and display and report performance data	Yes
		11.5 Act on performance data	No
12. The Alliance team maintaining its focus on achieving targets in all KRAs endorsed by the ALT, over the life of the project	<ul style="list-style-type: none"> <li>Performance in KRAs</li> </ul>	12.1 Ensure Alliance team understands how they contribute to achieving KRAs	Yes
		12.2 Obtain personal commitments to contribute to KRA delivery (think global – act local)	Yes
		12.3 Publish and share KRA performance across all levels of Alliance	Yes
13. Development and deployment of a 'culture development and maintenance plan' that supports the delivery of the Project across the Alliance	<ul style="list-style-type: none"> <li>Culture development and maintenance plan</li> </ul>	13.1 Develop People and Culture Development plan	Yes
		13.2 Deploy People and Culture Plan	Yes
		13.3 Monitor compliance with plan and act accordingly	Yes

Alliance Project Manager			
Accountable for:	As tested by:	Responsible for the completion of the following tasks:	Delegate?
14. The AMT and WPT being led in a manner consistent with Alliance Principles and Alliance Team Charter to achieve all aspects of Alliance Project Objectives	<ul style="list-style-type: none"> <li>Feedback from ALT, AMT and WPT</li> <li>Performance against KRAs</li> </ul>	14.1 Develop and model leadership behaviours consistent with the Alliance Team Charter	No
		14.2 Coach and mentor and monitor AMT leadership behaviours	No
15. Timely communication of information relevant to the performance of the project to all project personnel	<ul style="list-style-type: none"> <li>Feedback from project personnel</li> <li>Alliance health checks</li> </ul>	15.1 Dissemination of relevant information from ALT to AMT and the WPT	Yes
		15.2 Development of internal communications strategy and plan for the Alliance	Yes
		15.3 Deployment of the internal communications strategy and plan	Yes
		15.4 Monitor feedback from team and act accordingly	Yes

## SCHEDULE 11 INTELLECTUAL PROPERTY

### Owner Documentation

- S11.1 Any Owner documentation or information supplied to the Alliance for the purposes of performing the Alliance Works will:
- (a) not be used, copied or reproduced by a NOP for any other purpose; and
  - (b) remain the property of the Owner and be returned to it upon request.

### Existing Intellectual Property Rights

- S11.2 All IPR owned or held by the Owner at the Commencement Date, or developed by the Owner independently of the Alliance Works after the Commencement Date, **(the Owner's Existing Intellectual Property Rights)** will remain the property of the Owner. The Participants acknowledge and agree that any IPR vested upon creation in the Owner will be deemed to be part of the Owner's Existing Intellectual Property Rights for the purposes of this Section S11.2.
- S11.3 All IPR owned or held by a NOP at the Commencement Date, or developed by a NOP independently of the Alliance Works after the Commencement Date, **(NOP's Existing Intellectual Property Rights)** will remain the property of that NOP.

### Licence of Existing Intellectual Property Rights

- S11.4 The Owner grants to the NOPs, until Final Completion, a non-exclusive, personal, non-transferable, royalty free licence, fully-paid to use, copy, modify, enhance, alter or decompile **(Use)** the Owner's Existing Intellectual Property Rights which are required by us for the performance of the Alliance Works.
- S11.5 Each NOP grants to the Owner a non-exclusive, irrevocable, perpetual, sub-licensable, assignable, royalty free, fully-paid licence to use the NOP's Existing Intellectual Property Rights which are required by the Owner for the:
- (a) performance of the Alliance Works; or
  - (b) use, operation, support, maintenance, repair, renovation, and enjoyment of the Alliance Works and the Project.
- S11.6 Each NOP grants to the other NOPs, until Final Completion, a non-exclusive, personal, non-transferable, royalty free licence to Use the NOP's Existing Intellectual Property Rights which are required by the Alliance for the performance of the Alliance Works.

### Third Party Intellectual Property Rights

- S11.7 If any third party's IPR forms part of the Alliance Works or is necessary for the proper functioning or operation of the Alliance Works or the Project **(Third Party Intellectual Property Rights)**, we will ensure that the Owner is granted a licence to the Third Party Intellectual Property Rights for the use, operation, support, maintenance, repair, renovation, and enjoyment of the Alliance Works and the Project on the best available commercial terms.

### **Enhancements to Existing Intellectual Property Rights**

- S11.8 Any enhancement, improvement, adaptation, change, modification or development (**Enhancements**) of the Owner's Existing Intellectual Property Rights will be the property of the Owner.
- S11.9 Any Enhancements of a NOP's Existing Intellectual Property Rights will be the property of the NOP.
- S11.10 The Owner grants to the NOPs, until Final Completion, a non-exclusive, personal, non-transferable, royalty free licence to Use any Enhancements to the Owner's Existing Intellectual Property Rights which are required by us for the performance of our obligations or the Alliance Works.
- S11.11 Each NOP grants to the Owner a non-exclusive, irrevocable, perpetual, sub-licensable, assignable, royalty free, and fully-paid licence to Use any Enhancements to the NOP's Existing Intellectual Property Rights for the:
- (a) performance of the Alliance Works; or
  - (b) use, operation, support, maintenance, repair, renovation, and enjoyment of the Alliance Works and the Project.
- S11.12 Each NOP grants to the other NOPs a non-exclusive, personal, non-transferable, royalty free licence to Use any Enhancements to the NOPs Existing Intellectual Property Rights for the performance of the Alliance Works.

### **New Intellectual Property Rights**

- S11.13 All New Intellectual Property Rights created by a Participant vest immediately in that Participant.
- S11.14 Each NOP grants to the Owner a non-exclusive, irrevocable, perpetual, sub-licensable, assignable, royalty free, fully-paid licence to Use any Enhancements to the NOP's New Intellectual Property Rights for the:
- (a) performance of the Alliance Works; or
  - (b) use, operation, support, maintenance, repair, renovation, and enjoyment of the Alliance Works and the Project.
- S11.15 The Owner grants to the NOPs a non-exclusive, personal, non-transferable, royalty free licence to Use the Owner's New Intellectual Property Rights for the performance of the Alliance Works.
- S11.16 Each NOP grants to the other NOPs a non-exclusive, personal, non-transferable, royalty free licence to Use the NOP's New Intellectual Property Rights for the performance of the Alliance Works.

### **Third party use of Intellectual Property Rights**

- S11.17 Each NOP acknowledges that notwithstanding Sections 15,16 or 17 of this Agreement the rights granted under Sections S11.5 and S11.11 include the right of the Owner, or a third party on behalf of the Owner, to Use each NOP's Existing Intellectual Property Rights, Enhancements to each NOP's Existing Intellectual Property Rights, and each NOP's New Intellectual Property Rights to do (directly or by engaging a third party or any one or more NOP to do) any of the following matters including:

- (a) perform all or any part of the Alliance Works;
- (b) use, operate, support, maintain, repair, renovate, and enjoy the Alliance Works;
- (c) complete the Alliance Works if this Agreement is suspended or terminated; or
- (d) remedy defects or omissions in the Alliance Works whenever occurring.

## SCHEDULE 12 CONFLICT OF INTEREST DECLARATION

**Name** .....

**Position**

☐ ALT - Role .....

☐ AMT - Role .....

☐ WPT - Role .....

**Employer** .....

**Declaration** I faithfully declare that:

- 1 I have no personal interest in any matter, circumstance or thing or any relationship, arrangement or understanding; and
- 2 I am not aware, after having made the extent of reasonable enquiries available to me in my organisation, of my employer having any interest in any matter, circumstance or thing or any relationship, arrangement or understanding,

that prevents me from performing my role on a Best for Project basis, except for the disclosures, facts, circumstances, relationships, arrangements, understanding or things set out below:

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

**Continuing Disclosure** I acknowledge that I will, until Final Completion, continue to disclose all facts or circumstances that I am aware of, or if I am an ALT representative should reasonably be aware of, that are different from or alter my declaration

☐ Acknowledge

**Signed** .....

**Date** .....

## SCHEDULE 13 INSURANCE CONDITIONS

**[Proponents to Note:** *The Insurance Conditions will be reviewed and agreed during the AD Phase. Insurance coverage for IBC will form part of this review.*]

### Wrap-Up Liability Insurance

- S13.1 The Owner will provide, maintain and pay for Wrap-up Liability Insurance with a limit of no less than \$[Insert Amount] inclusive per occurrence, \$[Insert Amount] general aggregate for bodily injury, death, and damage to property including loss of use thereof.
- S13.2 This insurance will include as named insureds the Owner and the NOPs and anyone employed by them to perform a part or parts of the Alliance Work (includes both construction and design services, but excludes all professional services, under this Agreement) but excluding suppliers whose only function is to supply and/or transport products to the project site or security protection persons or organizations providing site protection on or at the insured project. The insurance does not extend to any activities, works, jobs or undertakings of the insureds other than those directly related to the Alliance Work of this Agreement.
- S13.3 The insurance will preclude subrogation claims by the insurer against anyone insured hereunder, subject to the professional services exclusion in Section S13.2.
- S13.4 The insurance will include coverage for:
- (a) products or completed operations liability (no less than 24 month period, or such longer period as the ALT decides);
  - (b) blanket contractual liability;
  - (c) cross liability/severability of interests;
  - (d) contingent employer's liability;
  - (e) personal injury liability;
  - (f) shoring, blasting, excavating, underpinning, demolition, pile-driving and caisson work, work below ground surface, and grading, subject to report and acceptance of such Alliance Work by insurers;
  - (g) liability with respect to non-owned licensed vehicles (with a sublimit of no less than \$[Insert Amount]);
  - (h) broad form property damage;
  - (i) broad form completed operations;
  - (j) limited pollution liability (sudden and accidental with [Insert Amount] hours) including hostile fire (with a sublimit of no less than \$[Insert Amount]);
  - (k) employees as additional insureds;
  - (l) blanket form tenants legal liability (with a sublimit of no less than \$[Insert Amount]) ;
  - (m) use of attached machinery;

- (n) loading and unloading from automobiles;
- (o) loss of use without damage to property;
- (p) hoist collision liability;
- (q) watercraft (not in excess of 10m);
- (r) medical payments of no less than \$[Insert Amount] per person and \$[Insert Amount] in the aggregate;
- (s) physical damage to non-owned automobile (with a sublimit of no less than \$[Insert Amount]);
- (t) forest fire fighting expenses (with a sublimit of no less than \$[Insert Amount]); and
- (u) employee benefits administrative errors and omissions (with a sublimit of no less than \$[Insert Amount]) .

S13.5 Any applicable deductibles not exceeding \$[Insert Amount] per occurrence except for completed operations a deductible not exceeding \$[Insert Amount] will apply.

S13.6 This insurance will be maintained continuously from commencement of the Alliance Work until Substantial Completion of the Project, plus cover completed operations for a further period of no less than [Insert Amount] months.

*[Proponents to Note: Insurance coverage between SC and FC to be discussed during the AD Phase]*

### **Professional Liability Insurance**

S13.7 **Proponents to Note** – *During the AD Phase the Owner (relying upon advice from Owner appointed insurance brokers and legal advisors) in consultation with each Proponent, will determine prior to the Commencement Date whether the Owner will obtain and maintain, or require the NOPs to obtain and maintain for the purposes of the performance of the Alliance Works:*

- (a) *a Professional Errors and Omissions Liability Insurance policy protecting the Participants as named insureds, together with any other parties (e.g. design consultants or subcontractors) to be named insureds; and*
- (b) *the nature or type of any such Professional Errors and Omissions Liability insurance policy, in particular whether it will be:*
  - (i) *a project based; and/or*
  - (ii) *a first party or third party; and*
  - (iii) *a [Insert Amount] month extended reporting period,*

*Professional Errors and Omissions Liability insurance policy.*

S13.8 *Any such professional indemnity insurance policy will be effected upon terms and with limits of indemnity and deductibles determined by the Owner after consultation with the Proponents.*

## Course of Construction Insurance

- S13.9 The Owner will provide, maintain and pay for Course of Construction coverage, against “All Risks” of direct physical loss or damage including flood and earthquake, and will cover all materials, property, structures and equipment purchased for, entering into, or forming part of the Alliance Work whilst located anywhere on Site during construction, erection, installation and testing, but such coverage will not include coverage for the NOPs’ and the subcontractors’ equipment of any description.
- S13.10 Deductibles, per occurrence, not exceeding the following amounts and if more than one deductible applies, the highest one will apply:
- (a) For floods, \$[Insert Amount].
  - (b) For water damage and sewer back up, \$[Insert Amount].
  - (c) For testing and commissioning, \$[Insert Amount].
  - (d) [Intentionally Deleted]. *[Proponents to Note: The policy is anticipated to include LEG2 wording. If LEG3 or equivalent wording is available at a reasonable cost and the deductible, the Owner may consider purchasing and this (d) will be replaced with “Design Error, LEG3 or equivalent [insert deductible].”]*
  - (e) For earthquakes, the greater of \$[Insert Amount] or [Insert Amount] % of the total insured value of the Alliance Works at the time of loss.
  - (f) For all other insured perils, \$[Insert Amount].
- S13.11 Waiting period deductibles, per occurrence, not exceeding the following amounts to be applied separately from any property damage deductible:
- (a) For soft costs, a one day waiting period for each month of the project duration subject to a minimum waiting period of [Insert Amount] days and a minimum \$[Insert Amount].
- S13.12 The coverage will include as named insureds, the Owner, each of the NOPS and anyone employed by them to perform a part or parts of the Alliance Work on the Project.
- S13.13 The insurance will preclude subrogation claims by the insurer against anyone insured hereunder other than architects or engineers who are not employees of the Owner or a NOP (or otherwise an insured under the policy of insurance) for their liability in the event of loss caused by or resulting from any error in design or any other professional error or omission pertaining to the subject of such insurance.
- S13.14 The Participants will take special precaution to prevent fires occurring in or about the Alliance Work and will observe, and comply with, all insurance policy warranties and all laws and regulations in force respecting fires.
- S13.15 This insurance will be maintained continuously from commencement of the Alliance Work until Substantial Completion of the Project.

## Automobile Liability Insurance

- S13.16 The NOPs will provide, maintain and pay for, and require all subcontractors to provide, maintain and pay for Automobile Liability Insurance in respect of all owned or leased vehicles, subject to limits of no less than \$[Insert Amount] inclusive per occurrence. The insurance will be placed with such company or companies and in such form and deductibles as may be acceptable to Owner.

## **Aircraft and/or Watercraft Liability Insurance**

- S13.17 The NOPs will provide, maintain and pay for liability insurance with respect to owned or non-owned aircraft (including unmanned aerial vehicles) and watercraft if used directly or indirectly in the performance of the Alliance Work, subject to limits of no less than \$[Insert Amount] inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof and including Aircraft Passenger Hazard where applicable. The insurance will name the Owner as an additional insured, include a cross liability clause, be endorsed to provide the Owner with [Insert Amount] days' advance written notice of cancellation and be placed with such company or companies and in such form and deductibles as may be acceptable to Owner.
- S13.18 This insurance will be maintained continuously from commencement of the Alliance Work until Substantial Completion of the Project.

## **Contractors Pollution Liability Insurance**

*[Proponents to Note: Use of Contractors Pollution Liability Insurance to be agreed during AD Phase]*

- S13.19 The NOPs will require all subcontractors of every tier to provide, maintain and pay for Contractors Pollution Liability insurance, where the NOPs' performance (or the NOPs' subcontractor's performance) of the Alliance Work is associated with hazardous materials clean up, removal and or containment, transit, and disposal. This insurance must have a limit of liability no less than \$[Insert Amount] inclusive per occurrence insuring against bodily injury, death and damage to property including loss of use thereof.
- S13.20 The Owner must be included as an additional insured but only with respect to liability arising out of the NOPs' performance of the Alliance Work. Such insurance will not be impaired by any biological contaminants (without limitation, mould and bacteria), asbestos, or lead-based paint exclusions. Such insurance to include sudden and gradual pollution events for third party liability including ongoing and completed operations.
- S13.21 Any insurance required under Section S13.19 must be endorsed to provide the Owner with 30 days' advance written notice of cancellation. If any such insurance is provided on a claims-made basis and that insurance is cancelled or not renewed, such policy must provide an extended reporting period.
- S13.22 The NOPs must cause all subcontractors to provide to the Owner a Certificate of Insurance confirming all policies and endorsements necessary to comply with the insurance requirements outlined herein, or upon request, a certified copy of the required insurance policy.
- S13.23 This insurance will be maintained continuously from commencement of the Alliance Work until Substantial Completion of the Project.

## **[Insert Name of Insurance Program, if applicable] Property Coverage**

- S13.24 "[Insert Name of Insurance Program, if applicable]" refers to the [Insert Name of Insurance Program, if applicable] administered and delivered by the Risk Management Branch (RMB) of the Ministry of Finance in conjunction with the Ministry of [Insert Name of Relevant Ministry].
- S13.25 From the commencement of the Alliance Work until Substantial Completion of the Project, the Owner may take out and maintain in force, or may cause to be taken out and maintained in force, under the [Insert Name of Insurance Program, if applicable], insurance covering medical, diagnostic or imaging equipment purchased for, entering into and forming part of the Alliance Work, that is not otherwise covered by the Course of Construction Insurance, and such policy:
- (a) will be made available to the each of the NOPs by [Insert Name of Insurance Program, if applicable] and [Insert Name of Insurance Program, if applicable] obligations under such policy

will be supported by an indemnity from the Province of British Columbia in favour of [Insert Name of Insurance Program, if applicable];

- (b) will provide insurance coverage comparable to or better than the coverage required for such equipment under the Course of Construction Insurance as described in Sections S13.9 to S13.15;
- (c) will satisfy the requirements set out in Sections S13.26 to S13.30; and
- (d) will be on terms comparable to or better than those offered by insurers licensed in British Columbia

## General

S13.26 The description of the Owner arranged insurance described herein is provided on a summary basis only and is not a statement of the actual policy terms and conditions. The Owner does not represent or warrant that the Owner arranged insurance contains insurance for any and all losses. It is each NOP's responsibility to ascertain the exact nature and extent of coverage provided by the Owner arranged insurance, to review all policies pertaining thereto and to obtain any other insurance that it may be prudent for the NOPs to obtain.

S13.27 The NOPs will also provide and maintain any other insurance that the NOPs are required by law to carry, or which they consider necessary.

S13.28 Unless specified otherwise, the duration of each coverage and insurance policy will be from the date of commencement of the Alliance Work until the Final Completion Date.

S13.29 The Owner will, upon request, provide the NOPs with proof of insurance of those coverages and insurances required to be provided by the Owner prior to commencement of the Alliance Work and subsequent certified copy of policies within a reasonable time period thereafter.

S13.30 The NOPs will provide the Owner with proof of insurance for those insurances required to be provided by the NOPs prior to the commencement of the Alliance Work in the form of a completed Certificate of Insurance and will also provide a certified copy of any required policies upon request.

## SCHEDULE 14 PARENT COMPANY GUARANTEE

THIS GUARANTEE is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_

### BETWEEN:

**[INSERT OWNER NAME],**

(the “**Owner**”)

**AND**

[♦] a corporation incorporated under the laws of [British Columbia]

(the “**Guarantor**”)

### WHEREAS:

- A. The Owner, [Name of relevant NOP] (“**Subsidiary**”) and [Names of other NOPs] have entered into a project alliance agreement dated as of [date] (which agreement, including the schedules thereto, as the same may be amended, modified, restated, supplemented or replaced, from time to time, is hereinafter called the “**Project Alliance Agreement**”).
- B. As an inducement to the Owner to enter the Project Alliance Agreement with Subsidiary, the Guarantor has agreed to absolutely, unconditionally and irrevocably guarantee to the Owner, as a direct obligation, the full and prompt performance and observance by Subsidiary of each and every covenant, agreement, undertaking and obligation of Subsidiary contained in the Project Alliance Agreement, and in furtherance thereof has agreed to enter into this Guarantee.

**NOW THEREFORE IN CONSIDERATION** of the mutual covenants and agreements of the parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

- (a) Unless otherwise defined in this Guarantee, all capitalized terms will have the meanings ascribed to them in the Project Alliance Agreement.
- (b) Unless otherwise expressly provided in this Guarantee, this Guarantee shall be interpreted in accordance with Schedule 1 [Definitions and Interpretation] to the Project Alliance Agreement.
- (c) For the purpose of this Guarantee, the term “**Guaranteed Obligations**” has the meaning given in Section 2.1(a).

## 1.2 Survival

This Guarantee shall survive the termination or other expiry of the Project Alliance Agreement.

## 2. GUARANTEE

### 2.1 Guarantee does

- (a) The Guarantor absolutely, unconditionally and irrevocably guarantees to the Owner, as a direct obligation, the full and prompt performance and observance by Subsidiary of each and every covenant, agreement, undertaking and obligation of Subsidiary contained in the Project Alliance Agreement (collectively, the **"Guaranteed Obligations"**.
- (b) Notwithstanding any other provision of this Guarantee the Guarantor's undertakings and obligations are derivative of and not in excess of the Subsidiary's obligations under the Project Alliance Agreement and the Guarantor retains all rights and limitations of liability possessed by the Subsidiary under the terms of the Project Alliance Agreement or arising from the parties' performance or failure to perform thereunder and shall be entitled to assert any contractual defences that would have been available to the Subsidiary.

### 2.2 General Provisions Relating to the Guarantee

- (a) Each and every default in performance or observance of any of the Guaranteed Obligations by the Subsidiary shall give rise to a separate claim and cause of action under this Guarantee, and separate claims or suits may be made and brought, as the case may be, under this Guarantee as each such default occurs.
- (b) The Guarantee in this Agreement shall be a continuing, absolute and unconditional guarantee of performance and observance of the Guaranteed Obligations and shall remain in full force and effect until each and all of the Guaranteed Obligations has been fully and satisfactorily discharged in accordance with the terms and provisions of the Project Alliance Agreement and the Guarantor has fully and satisfactorily discharged all of its obligations under this Guarantee.
- (c) The liability of the Guarantor under this Guarantee shall remain in full force and effect irrespective of and shall in no way be affected or impaired by (and no notice to the Guarantor shall be required in respect of):
  - (i) the terms of the Project Alliance Agreement;
  - (ii) any compromise, waiver, renewal, extension, indulgence, amendment, addition, deletion, change in, modification of, or release of any security (including any other guarantee, letter of credit or bond) for or in respect of any of the Guaranteed Obligations;
  - (iii) any amalgamation, merger or consolidation of Subsidiary or the Guarantor or any sale, lease or transfer of any of the assets of Subsidiary or the Guarantor;
  - (iv) any Change in Control of Subsidiary or the Guarantor;
  - (v) the termination or other expiry of the Project Alliance Agreement;
  - (vi) any Adjustment Event;
  - (vii) any change in the financial condition of Subsidiary or the Guarantor;

- (viii) any Act of Insolvency relating to the Subsidiary, or any resulting release, stay or discharge of any Guaranteed Obligation;
  - (ix) any lack or limitation of power, incapacity or disability on the part of Subsidiary or any other irregularity, defect or informality on the part of Subsidiary with respect to the Guaranteed Obligations;
  - (x) any provision of any laws, statutes, rules or regulations of general application in relation to suretyship or any other circumstance that might constitute, under law generally applicable to suretyship, a defence available to, or a discharge of, the Guarantor in respect of the Guaranteed Obligations or this Guarantee;
  - (xi) the assignment by the Owner in accordance with the provisions of Section 20.3 of the Project Alliance Agreement; or
  - (xii) any other occurrence or circumstance whatsoever, whether similar or dissimilar to the foregoing that, under law generally applicable to suretyship, might otherwise constitute a legal or equitable defence or discharge of the liabilities of a guarantor or surety that might otherwise limit recourse against the Guarantor.
- (d) The obligations and liabilities of the Guarantor under this Guarantee shall not be impaired, diminished, abated or otherwise affected by the commencement by or against Subsidiary or the Guarantor of any proceedings under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extension or other similar laws.
- (e) The Owner shall not be bound to exhaust its recourse against Subsidiary or others or any securities or other guarantees it may at any time hold before being entitled to performance of the Guaranteed Obligations by the Guarantor and the Guarantor renounces all benefits of discussion and division.
- (f) It is the intent and purpose of this Guarantee that the Guarantor shall not be entitled to and does hereby waive any and all defences which are, under law generally applicable to suretyship, available to a guarantor, sureties and other secondary parties at law or in equity. Without limiting the generality of the foregoing, the Guarantor waives notice of acceptance of this Guarantee and of the non-performance by Subsidiary, diligence, presentment, protest, dishonour, demand for performance from the Owner and notice of non-performance or failure to perform on the part of the Subsidiary and all other notices whatsoever. This Guarantee is a guarantee of performance and compliance. In order to hold the Guarantor liable under this Guarantee there shall be no obligation on the part of the Owner at any time to demand or resort for performance to the Subsidiary, its properties or assets or to any security, property or other rights or remedies whatsoever, nor shall there be any requirement that the Subsidiary be joined as a party to any proceeding for the enforcement of any provision of this Guarantee and the Owner shall have the right to enforce the provisions of this Guarantee irrespective of whether or not legal proceedings or other enforcement efforts against the Subsidiary are pending, seeking resort to or realization upon or from any of the foregoing. Without limiting the foregoing, it is understood that repeated and successive demands may be made and recoveries may be had hereunder as and when from time to time, the Subsidiary shall default under or with respect to any of the Guaranteed Obligations, and that, notwithstanding recovery under this Guarantee for or in respect of any such default, this Guarantee shall remain in full force and effect unamended and shall apply to each and every subsequent default.
- (g) Without prejudice to and without releasing, discharging, limiting or otherwise affecting in whole or in part the obligations and liabilities of the Guarantor under this Guarantee and without in any way requiring the consent of or giving notice to the Guarantor, the Owner may grant time, renewals,

extensions, indulgences, releases and discharges to and accept compositions from or otherwise deal with Subsidiary and/or the Guarantor or others, including any other guarantor, as the Owner may see fit and the Owner may take, abstain from taking or perfecting, vary, exchange, renew, discharge, give up, realize on or otherwise deal with security and guarantees in such manner as the Owner may see fit.

- (h) Neither an action or proceeding brought under this Guarantee regarding the Guaranteed Obligations nor any judgment or recovery in consequence of that action or proceeding operates as a bar or defence action or defence to any further action that may be brought under this Guarantee. The Guarantor acknowledges that, if judgment is granted on an action or proceeding commenced under this Guarantee, the obligations of the Guarantor to the Owner do not merge with or end the Guarantor's obligations under this Guarantee.
- (i) The liability of the Guarantor under this Guarantee shall arise forthwith after demand has been made in writing on the Guarantor.
- (j) The Guarantor agrees to pay to the Owner any and all reasonable and direct out-of-pocket costs and expenses, including reasonable legal fees (on a substantial indemnity basis) incurred by it in connection with enforcing any of its rights under this Guarantee.

### 3. REPRESENTATIONS AND WARRANTIES

#### 3.1 Guarantor Representations and Warranties

- (a) The Guarantor represents and warrants to the Owner that as of the date of this Guarantee:
  - (i) the Guarantor is a corporation incorporated and validly existing under the laws of the jurisdiction of its organization, is in good standing with the [Insert appropriate governmental authority] with respect to the filing of annual returns, and has all the requisite corporate power and authority to own, lease and operate its properties and assets, to carry on its business as it is currently being conducted, to enter into this Guarantee and to perform its obligations hereunder and thereunder;
  - (ii) the Guarantor has the requisite power, authority and capacity to execute and deliver and perform this Guarantee, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Guarantee to be done, executed, delivered or performed;
  - (iii) no steps or proceedings have been taken or are pending to supersede, repeal or amend its constating documents, articles or by-laws or any shareholders agreement in a manner that would materially impair or limit its ability to perform its obligations under this Guarantee and such documents and agreements are in full force and effect as of the date hereof;
  - (iv) this Guarantee (when executed and delivered), have been duly authorized, executed, and delivered by the Guarantor and constitutes legal, valid, and binding obligations of the Guarantor, enforceable against the Guarantor in accordance with their respective terms, subject only to:
    - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and

- (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (v) the authorization, execution, delivery and performance by the Guarantor of this Guarantee do not violate or conflict with, or constitute a default under:
  - (A) its constating or organizational documents or any unanimous shareholders agreement or similar rights agreement binding on the Guarantor;
  - (B) any applicable Laws; or
  - (C) any covenant, contract, instrument, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vi) the Subsidiary is [an indirect wholly owned subsidiary] of the Guarantor; **[NTD: to be updated to reflect Subsidiary structure]**
- (vii) there are, to the knowledge of its senior management, no actions, suits, proceedings, or investigations pending or threatened against the Guarantor, at law or in equity, before any Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of the Guarantor or in any impairment of its ability to perform its obligations under this Guarantee, and the Guarantor has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any Authority or arbitral body that would result in any such material adverse effect or impairment; and
- (viii) the Guarantor is able to meet its obligations as they generally become due.

## 4. NOTICES

### 4.1 Notices

Any notice or communication required or permitted to be given under this Guarantee will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by electronic transmission to the address or electronic mail address of each party set out below:

if to the Owner:

▼

Attention: ▼

E-mail: ▼

if to the Guarantor:

▼

Attention: ▼

E-mail: ▼

or to such other address or electronic mail address as any party may, from time to time, designate in the manner set out above. Any such notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day; and
- (b) if delivered by electronic mail during business hours (and in any event, at or before 3:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day provided that:
  - (i) the receiving party has, by electronic mail or by hand delivery, acknowledged to the notifying party that it has received such notice; or
  - (ii) within 24 hours after sending the notice, the notifying party has also delivered a copy of such notice to the receiving party by hand delivery.

## **5. GENERAL**

### **5.1 Amendments**

This Guarantee may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Guarantee.

### **5.2 Waiver**

- (a) No waiver made or given by a party under or in connection with this Guarantee shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the party giving such waiver, and delivered by such party to the other party. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by either party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

### **5.3 Entire Agreement**

Except where provided otherwise in this Guarantee, this Guarantee, together with the Project Alliance Agreement and the documents ancillary to the Project Alliance Agreement, constitute the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Guarantee.

#### **5.4 Severability**

Each provision of this Guarantee shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Guarantee is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Guarantee. If any such provision of this Guarantee is invalid, unenforceable or illegal, the parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Guarantee as near as possible to its original intent and effect.

#### **5.5 Enurement**

This Guarantee shall enure to the benefit of, and be binding on, the Owner and the Guarantor and their respective permitted successors and assigns. This Guarantee may not be assigned by the Guarantor.

#### **5.6 Governing Law and Jurisdiction**

- (a) This Guarantee shall be governed by and construed in accordance with the laws of British Columbia and the laws of Canada applicable therein and shall be treated in all respects as a British Columbia contract, without regard to conflict of laws principles.
- (b) Both parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of British Columbia and all courts competent to hear appeals therefrom.

#### **5.7 Cumulative Remedies**

Except as otherwise set forth in this Guarantee, the rights, powers and remedies of each party set forth in this Guarantee are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such party under this Guarantee or the Project Alliance Agreement or documents ancillary to the Project Alliance Agreement.

#### **5.8 Further Assurance**

Each party shall do all reasonable things, from time to time, and execute all reasonable further documents necessary to give full effect to this Guarantee.

#### **5.9 Costs**

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Guarantee.

#### **5.10 Proof of Authority**

The Owner and the Guarantor each reserve the right to require any person executing this Guarantee on behalf of the other party to provide proof, in a form acceptable to the Owner or the Guarantor, as applicable, that they have the requisite authority to execute this Guarantee on behalf of and to bind the Owner or the Guarantor, as applicable.

#### **5.11 Counterparts**

This Guarantee may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full, original and binding agreement for all purposes.

**[SIGNATURE PAGES IMMEDIATELY FOLLOW]**

**IN WITNESS WHEREOF** the parties have executed this Guarantee as of the date first above written.

**[INSERT OWNER NAME]**

Per: \_\_\_\_\_

Name:

Title:

**[GUARANTOR]**

Per:

Name: Title

## **SCHEDULE 15**

### **JOINT VENTURE AGREEMENT**

## SCHEDULE 16 FORM OF LETTER OF CREDIT

[Name and address of Issuing Bank in Vancouver, BC]

[Date of issue]

[INSERT OWNER NAME]

[insert appropriate address]

[Attention]

(the “Beneficiary”)

Re: Project Alliance Agreement dated [◆] between the Beneficiary, [Names of the other NOPs], and [Name of NOP] (the “Applicant”) in respect of the [Insert Project Name].

By order of our client, the Applicant, we hereby issue our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ (this “Standby Letter of Credit”) in an amount not to exceed in the aggregate CAN\$[◆] to the Beneficiary, effective immediately and expiring on [Fixed and determinable date] (the “Expiry Date”).

We, [Name of Issuing Bank] (the “Issuing Bank”), at our offices shown above in Vancouver, British Columbia, Canada (the “Offices”), shall immediately pay to you under this Standby Letter of Credit any amount or amounts claimed, not to exceed in the aggregate CAN\$[◆], upon presentation of a sight draft, appropriately completed, in the form of Annex 1 hereto (the “Sight Draft”) being made upon us at our counter during normal business hours accompanied by the original of this Standby Letter of Credit and any amendments hereto.

Partial and multiple drawings are permitted.

If the Holder’s Sight Draft, appropriately completed and the original of this Standby Letter of Credit and any amendments hereto are received by us at the Offices on or before the Expiry Date, we shall honour without enquiring whether you have a legitimate claim between yourself and the Applicant.

After the Expiry Date has elapsed, no draw shall be honoured by us save to any Sight Draft presented by the Holder according to the requirements of this Standby Letter of Credit prior to the Expiry Date.

All banking charges are for the account of the Applicant.

It is a condition of this Standby Letter of Credit that it shall be deemed automatically extended from year to year for successive one year periods from the Expiry Date (each anniversary of the Expiry Date thus becoming the new “Expiry Date”), but not beyond \_\_\_\_\_, unless we notify the Holder in writing at least 60 days prior to the then applicable Expiry Date that we irrevocably elect not to consider this Standby Letter of Credit renewed for such further period. Such notice must be sent by registered mail or courier, each with proof of

delivery, to the Holder at the address set forth above or such other address designated by the Holder from time to time.

IT IS A CONDITION OF THIS STANDBY LETTER OF CREDIT THAT IT IS TRANSFERABLE AND MAY BE TRANSFERRED IN ITS ENTIRETY, BUT NOT IN PART, AND MAY BE SUCCESSIVELY TRANSFERRED BY THE THEN CURRENT HOLDER TO A TRANSFEREE. TRANSFER OF THIS STANDBY LETTER OF CREDIT TO SUCH TRANSFEREE SHALL BE EFFECTED UPON PRESENTATION TO US AT THE OFFICES OF THE ORIGINAL OF THIS STANDBY LETTER OF CREDIT AND ANY AMENDMENTS HERETO ACCOMPANIED BY A REQUEST DESIGNATING THE TRANSFEREE IN THE FORM ATTACHED HERETO AS ANNEX 2 APPROPRIATELY COMPLETED. All future amendments under this Standby Letter of Credit are to be advised directly to the transferee without the consent of, or notice to, any prior Holder and all future correspondence and notifications in respect of this Standby Letter of Credit are to be sent to the transferee and not to any prior Holder.

In this Standby Letter of Credit, "**Holder**" means either (i) if no transfer has occurred, the Beneficiary or (ii) if a transfer has occurred, the last transferee under the above provision.

DOCUMENTS SHALL BE PRESENTED AT OUR ADDRESS MENTIONED ABOVE OR AT THE [NAME AND ADDRESS OF ISSUING BANK] ON OR BEFORE THE EXPIRY DATE.

This Standby Letter of Credit is subject to and governed by International Standby Practices ISP 98 of International Chamber of Commerce publication no. 590.

All matters not covered by ISP 98 shall be interpreted and governed by the laws of British Columbia and the federal laws of Canada applicable therein. To the extent the terms hereof are inconsistent with the provisions of ISP 98, except where expressly stated otherwise, the terms of this Standby Letter of Credit shall govern. The parties irrevocably attorn to the exclusive jurisdiction of the courts of British Columbia. The number of this Standby Letter of Credit must be quoted on all documents required hereby.

[Issuing Bank's Name]

•

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

## Execution