



**VICTORIA ROAD
UPGRADE**

PROJECT ALLIANCE AGREEMENT

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VICTORIA ROAD UPGRADE

THIS AGREEMENT is made on *28 November* 2007

PARTIES

Roads and Traffic Authority of New South Wales ABN 64 480 155 255 of
260 Elizabeth Street, Surry Hills, New South Wales (RTA)

The other parties to this Agreement set out in Part B of **Schedule 1** (each a **Non Owner Participant (NOP)**)

The Participants will generally be referred to as "We", "we", "our" or "us" in this Agreement, unless the context requires otherwise. The rules of interpretation and definitions set out in **Schedule 2** will apply to this Agreement.

RECITALS

- A. RTA intends to upgrade Victoria Road in order to improve bus reliability while maintaining general traffic flow between Gladesville Bridge and The Crescent, Rozelle. This work will involve the duplication of the Iron Cove Bridge and may involve a tidal flow traffic scheme along Victoria Road and construction of bus overtaking bays. For the purpose of this Agreement, the work will be known as the Alliance Works.
- B. Completion of the Alliance Works is scheduled for **30 June 2010**.
- C. We have agreed to form an Alliance for the purpose of carrying out the Alliance Works and to develop innovative solutions which aim to achieve outstanding outcomes and result in a win-win position for all of the Participants in performing the Alliance Works.
- D. We will use our best endeavours to ensure that the Alliance Works are carried out in a co-operative, co-ordinated and efficient manner so as to achieve the Alliance Objectives in compliance with the Alliance Principles.
- E. This Agreement sets out the Alliance Principles by which we are to carry out the Alliance Works so as to achieve the Alliance Objectives and the manner in which we will be reimbursed for that participation in the Alliance.

OPERATIVE PROVISIONS

1. OUR ROLES AND RESPONSIBILITIES

1.1 Our responsibilities

We are committed to:

- (a) adopting all reasonable measures to ensure that the Alliance Objectives are achieved;
- (b) conducting our activities under this Agreement in a way which is consistent with the Alliance Principles;

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- (c) acting in an innovative way for the purpose of:
 - (i) meeting or exceeding the Alliance Objectives and fully complying with the Alliance Principles;
 - (ii) producing outstanding results for the Project;
 - (iii) ensuring that the Alliance Works are carried out in a co-operative, co-ordinated and efficient manner;
 - (iv) creating a win-win position for each of the Participants;
 - (v) ensuring the successful completion of the Alliance Works in accordance with this Agreement;
 - (d) promoting the interests of the Project where possible;
 - (e) encouraging and maintaining honest, open and timely sharing of information; and
 - (f) vigorously encouraging behavioural compliance with the Alliance Principles so as to achieve the Alliance Objectives within an ethical, positive, dynamic and results-oriented culture amongst those associated with carrying out the Alliance Works.

1.2 Commitment to act in good faith

We will, at all times, act in good faith and with trust and mutual respect in relation to the rights of the other Participants under this Agreement as well as our obligations to the other Participants, and this commitment includes, but is not limited to:

- (a) being fair, reasonable and honest;
- (b) doing all things reasonably expected of each other by the others to give effect to the spirit and intent of this Agreement;
- (c) not impeding or restricting the performance of any other Participant's responsibilities under this Agreement; and
- (d) if a Participant believes this Agreement is operating unfairly or unreasonably with respect to any other Participant, using best endeavours to achieve an agreement amongst all Participants on such action as may be necessary to remove the cause or causes of such unfairness or unreasonableness.

1.3 Future addition of Participants

If appropriate to achieve a "best for the project" outcome, we may agree to include additional participants in the Alliance. If we agree on such a course:

- (a) we will cooperate to enter into the necessary documentation; and

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- (b) the ALT will seek to agree with each additional participant on any necessary amendments to the Commercial Framework.

2. ALLIANCE LEADERSHIP TEAM

2.1 Creation of the ALT

The ALT is established on the date of this Agreement in accordance with this clause 2 and comprises the Representatives.

2.2 ALT Representation

- (a) At any one time, membership of the ALT is limited to no more than two Representatives from each Participant.
- (b) The Representatives nominated at the date of this Agreement are set out in **Schedule 6 (Alliance Leadership Team)**.
- (c) We may only nominate Representatives who are in a position to be able to fully participate as a member of the ALT and we must inform each other of the availability times of our Representatives.
- (d) We may, with prior written nomination to each other, be represented by an alternate person to act in place of our Representative during absences caused by normal planned leave and emergencies.
- (e) We may replace our Representatives at any time, or nominate a substitute Representative by giving notice in writing to each other at least 10 Business Days before the change in representation takes place.
- (f) If there is a new Participant which becomes a party to this Agreement, that Participant must nominate no more than two Representatives in writing for acceptance by the ALT.
- (g) Membership of the ALT by a Representative will lapse immediately upon the Participant ceasing to be a party to this Agreement.
- (h) From time to time and as required, the ALT will update the details in **Schedule 6 (Alliance Leadership Team)** to reflect the new members of the ALT.

2.3 ALT Chairperson

- (a) At the date of this Agreement, the chairperson of the ALT is the Representative identified in **Schedule 6 (Alliance Leadership Team)** as the Chairperson.
- (b) The Chairperson will convene the meetings under clause 2.5.

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- (c) The ALT will appoint, in writing, another Representative as Chairperson or reappoint the existing Chairperson every six months and update **Schedule 6** (Alliance Leadership Team) to include the details of any change in the Chairperson.

2.4 **Functions of the ALT**

We authorise the ALT to carry out the functions listed in Part 1 of **Schedule 8** (Functions of ALT, AMT and Alliance Manager).

2.5 **Meetings of the ALT**

- (a) The ALT will:
 - (i) hold a meeting as soon as practicable after the date of this Agreement;
 - (ii) hold meetings at least once every calendar month and otherwise when considered necessary by any of us;
 - (iii) not hold a meeting unless at least one Representative of each Participant is present at that meeting; and
 - (iv) determine the procedures and rules for those meetings.
- (b) Each Representative must fully disclose any relevant interest or duty before participating in a discussion or determination of the ALT on an issue. Provided that the Representative has made such a full disclosure and complies with clause 1.1(d), the Representative will be entitled to fully participate in any such discussion or determination if a majority of the other Representatives (without the presence of that Representative) agrees that the Representative can fully participate, even though that Representative has, or may have, a conflicting interest or duty.
- (c) Unless a Representative:
 - (i) has made full disclosure under clause 2.5(b); and
 - (ii) at all times acts in a manner consistent with clause 1.1(d),the Representative is not entitled to participate in any discussion of the ALT.
- (d) Each Representative will have equal rights at meetings of the ALT.
- (e) The ALT may:
 - (i) conduct a meeting even though the Representatives are not at the same location, provided that all Representatives who wish to participate in that meeting are linked by an agreed method of instant voice recognition;
 - (ii) use independent experts to assist the ALT with any decision in connection with this Agreement; and

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- (iii) establish subcommittees to advise the ALT in connection with the Alliance. Any such committee will be given written terms of reference from the ALT and will be subject to procedures and rules determined by the ALT.

2.6 Decisions of the ALT

- (a) To be effective, a decision of the ALT must be an unanimous decision of all Representatives entitled to participate in that decision. No decision will be deemed to have been made by the ALT unless it is unanimous.
- (b) We will comply with all effective decisions of the ALT made in accordance with this Agreement.

2.7 Minutes of ALT meetings

- (a) The ALT will nominate a secretary to attend all ALT meetings and record the resolutions and actions of the ALT arising out of the meetings.
- (b) The secretary will issue a copy of the minutes of the meeting to each Representative within 7 Business Days after the relevant meeting.
- (c) Each Representative will, as soon as practicable and if he or she accepts the minutes as accurate, notify the secretary of acceptance of the minutes. If a Representative does not accept the minutes as accurate, the Representative must promptly provide any amendments to the minutes to the secretary and the secretary must promptly issue amended minutes to each Representative for approval. The procedures set out in this clause 2.7 will apply to the amended minutes.
- (d) Following acceptance of the minutes by each of the Representatives, the minutes will be deemed to be the official record of the relevant meeting.

3. ALLIANCE MANAGEMENT TEAM AND ALLIANCE MANAGER

3.1 Appointment of Alliance Manager

- (a) The Alliance Manager will:
 - (i) be appointed by the ALT as soon as practicable after the date of this Agreement;
 - (ii) be subject to the control and direction of the ALT; and
 - (iii) assist us in fulfilling our obligations under this Agreement.
- (b) The ALT must, as soon as practicable after the date of this Agreement and in consultation with the Alliance Manager, arrange for the establishment of the AMT including the appointment of the members of the AMT.

3.2 Functions of the Alliance Manager

We authorise the Alliance Manager to carry out the functions listed in Part 3 of **Schedule 8** (Functions of ALT, AMT and Alliance Manager).

3.3 Functions of the AMT

We authorise the AMT to carry out, under the direction of the Alliance Manager, the functions listed in Part 2 of **Schedule 8** (Functions of ALT, AMT and Alliance Manager).

4. WIDER ALLIANCE TEAM

4.1 Creation of the Wider Alliance Team

The Wider Alliance Team is created upon the establishment of the AMT and comprises the members of the AMT and those people who the AMT appoints, from time to time, to the Wider Alliance Team.

4.2 Functions of the Wider Alliance Team

The Wider Alliance Team will:

- (a) act as a fully integrated team to function effectively and efficiently in accordance with the Alliance Objectives;
- (b) carry out the Alliance Works under the leadership and management of the Alliance Manager; and
- (c) comply with the requirements of the ALT, AMT, Alliance Manager and this Agreement at all times.

4.3 Members of the Wider Alliance Team

- (a) The Wider Alliance Team will consist of the best available resources of each of us or other resources we agree to engage to ensure the successful completion of the Alliance Works.
- (b) We will use our best endeavours to ensure that our personnel who are members of the Wider Alliance Team remain (subject to satisfactory performance by the personnel) members of the Wider Alliance Team until the AMT decides that those personnel are no longer required.

5. INVESTIGATION AND DESIGN

5.1 Development and approval of scope of work

- (a) We will carry out investigations to enable us to recommend to RTA a scope of work for the Alliance Works as contemplated under clause 5.1(b).

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- (b) The scope of work referred to in clause 5.1(a) must:
 - (i) be delivered by us to RTA within 18 weeks after the date of this Agreement or such other period agreed in writing by RTA;
 - (ii) include the concept design for the Alliance Works;
 - (iii) set out a draft cash flow schedule; and
 - (iv) set out a budget estimate of the cost of the scope of work.
 - (c) Following receipt by RTA of the scope of work referred to in clauses 5.1(a) and (b), RTA may, in its discretion, elect to:
 - (i) approve the scope of work by notice in writing to the NOPs, in which case, clause 5.2 will apply on and from the date of that notice;
 - (ii) request the Participants to:
 - (A) carry out further investigations in relation to the proposed scope of work;
 - (B) amend the proposed scope of work to take into consideration the findings derived from the further investigations carried out by the Participants or any other amendments as otherwise required by RTA; and
 - (C) re-submit the amended scope of work to RTA for approval in accordance with this clause 5.1(c); or
 - (iii) give the ALT a notice in writing informing the ALT that the Alliance Works will not proceed under this Agreement, in which case, clause 11.1 will apply on and from the date of that notice.

5.2 Development and approval of a TOC and construction program

- (a) If RTA approves the scope of work under clause 5.1(c)(i), we will prepare a proposed target outturn estimate and a construction program in respect of the Alliance Works and deliver the proposed target outturn estimate and construction program to RTA within 10 weeks after the date on which RTA notifies us in writing that it has approved the scope of work under clause 5.1(c)(i) or such other period agreed in writing by RTA.
- (b) Following receipt of the items referred to in clause 5.2(a), RTA may, in its discretion, elect to:
 - (i) approve the proposed target outturn estimate and the construction program by notice in writing to the NOPs;

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- (ii) request the Participants to amend the proposed target outturn estimate and/or the construction program and re-submit those items to RTA for approval in accordance with this clause 5.2(b); or
 - (iii) give the ALT a notice in writing informing the ALT that the Alliance Works will not proceed under this Agreement, in which case, clause 11.1 will apply on and from the date of that notice.

5.3 Separable Portions

RTA may, as part of the process contemplated under clause 5.2, require the Participants to develop and submit to RTA a proposed target outturn estimate and a construction program for each Separable Portion of the Alliance Works (if applicable).

6. ALLIANCE WORKS

6.1 Commencement and duration of Alliance Works

- (a) We will not commence construction of the Alliance Works unless and until RTA provides its approval in writing to the proposed target outturn estimate and the construction program pursuant to clauses 5.2(a) and (b) or as otherwise agreed by RTA in writing.
- (b) We will carry out the Alliance Works in accordance with the construction program approved under clauses 5.2(a) and (b).
- (c) We may extend the Date for Completion only by written agreement of the ALT.

6.2 Compensation for Alliance Works

- (a) RTA will pay the NOPs for carrying out the work under this Agreement in accordance with the Commercial Framework.
- (b) Payment to the NOPs pursuant to clause 6.2(a) will be the sole compensation to the NOPs for the fulfilment of their obligations under this Agreement.
- (c) Despite any other provision of this Agreement, RTA will be under no obligation to pay a NOP unless the NOP is in compliance with clause 8.2 and 8.3.
- (d) The terms of compensation under the Commercial Framework may be modified as determined by the ALT, but only:
 - (i) where there is a Scope Change; or
 - (ii) in accordance with clause 1.3 if an additional participant is added to the Alliance.

6.3 Mutual Debts

If two Participants owe each other money under this Agreement then:

- (a) either Participant may reduce what it pays the other Participant by what is owed to it by that other Participant; and
- (b) the other Participant will be taken to have paid the amount of the reduction.

6.4 Date for Completion

We agree that the Alliance Works must be executed to achieve Completion by the Date for Completion.

6.5 Certificate of Completion

- (a) If the Alliance Manager considers that we have not achieved Completion by the Date for Completion, the Alliance Manager may issue a list of Defects which the Alliance Manager determines must be rectified by us prior to the issue of the Certificate of Completion.
- (b) When the Alliance Manager considers that we have achieved Completion, the Alliance Manager will submit a draft Certificate of Completion to the ALT for its approval. The draft Certificate of Completion must include a statement by the Alliance Manager to the effect that:
 - (i) the Alliance Manager is not aware of any Defects; and
 - (ii) to the best knowledge of the Alliance Manager, having made reasonable enquiry, the Alliance Works have reached Completion.
- (c) If the ALT approves the draft Certificate of Completion, the Alliance Manager will sign and date the certificate and issue it to the Participants.
- (d) If the ALT does not consider the Alliance Works to have reached Completion:
 - (i) the ALT will provide details to the Alliance Manager of work the ALT considers to be outstanding to achieve Completion; and
 - (ii) the Alliance Manager will promptly inform the Participants that Completion has not been achieved and the details of the outstanding work required to achieve Completion.
- (e) Once the Alliance Manager is satisfied that the outstanding work has been completed in accordance with this Agreement, the Alliance Manager will again initiate the approval process under this clause 6.5.
- (f) The Certificate of Completion must also refer to the date which the ALT determines is the Date of Completion.

6.6 Certificate of Final Completion

- (a) After expiry of the Defects Correction Period, and provided the Alliance Manager is not aware of any outstanding Defects, the Alliance Manager will submit a draft Certificate of Final Completion to the ALT for its approval.
- (b) If the ALT approves the draft Certificate of Final Completion, the Alliance Manager will sign and date the certificate and issue it to the Participants.
- (c) If the ALT does not consider the Alliance Works to have reached Completion or considers that there is some other obligation under this Agreement which has not been performed or observed:
 - (i) the ALT will inform the Alliance Manager as to what the ALT considers to be outstanding to achieve Completion or to perform or observe the relevant obligation under this Agreement; and
 - (ii) the Alliance Manager will promptly inform the Participants that Completion has not been achieved and any details of the outstanding work or the failure to perform or observe some other obligation under this Agreement.
- (d) Once the Alliance Manager is satisfied that the outstanding work or obligation has been completed, performed or observed in accordance with this Agreement, the Alliance Manager will again initiate the approval process under this clause 6.6.
- (e) The Certificate of Final Completion must also refer to the date which the ALT determines is the Date of Final Completion.

6.7 Separable Portions

The ALT may determine that any part of the Alliance Works will be a Separable Portion (in addition to the Separable Portions at the date of this Agreement). The interpretations of:

- (a) Certificate of Completion;
- (b) Completion;
- (c) Date for Completion;
- (d) Date of Completion; and
- (e) Alliance Works,

and clauses 6.5 and 6.6 will apply separately to each Separable Portion whether existing at the date of the Contract or created by the ALT and references therein to the Alliance Works shall mean so much of the Alliance Works as is comprised in the relevant Separable Portion.

6.8 Supply of Design and other documents by RTA

- (a) RTA may provide the NOPs with Design and other documentation from time to time.
- (b) The NOPs will not use, copy or reproduce the Design or other documentation provided by RTA for any purpose other than for the Alliance Works.
- (c) The Design and other documentation provided by RTA will remain the property of RTA and will be returned by the NOPs to RTA if requested in writing by RTA.

6.9 Supply of Design and other documents by NOPs

We will:

- (a) prepare Design and other documentation referred to in this clause 6.9 as is necessary to enable us to construct the Alliance Works;
- (b) ensure that RTA is provided with copies of all such Design and other documentation as RTA may require from time to time; and
- (c) ensure that RTA is provided with a complete set of "as-built" drawings and, where appropriate, maintenance manuals, in relation to the completed Alliance Works.

6.10 Site access

We recognise the importance of the efficient and effective use of the Site, and to that end:

- (a) RTA will give the NOPs such access to and use and control of the Site or any part of the Site, as is appropriate, to enable the Alliance to execute the Alliance Works to achieve Completion. Any delay by RTA in giving the Alliance access to and use and control of the Site will not be a breach of this Agreement, but may be an Excusable Delay and, consequently, may be grounds for a Scope Change;
- (b) subject to any access protocols determined by the ALT, RTA, its officers, employees and agents and any other person (for example, a contractor carrying out work or services for RTA) nominated by RTA may at any reasonable time (and, where appropriate, with reasonable notice) have access to any part of the Site, the Alliance Works or at any other place where the work under this Agreement is being carried out or materials are being prepared or stored for the purpose of performing the work under this Agreement;
- (c) the NOPs will comply with all reasonable directions of RTA in relation to access to and use and control of the Site or any part of the Site by any of the NOPs, Subcontractors and other persons;
- (d) we will maintain the Site and any other lands and places required to complete the Alliance Works in a safe, clean and tidy condition and regularly remove surplus materials and rubbish from the Site; and

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- (e) on completing work at the Site and as a condition precedent to Completion, we will:
 - (i) remove all Construction Plant, Temporary Works and all surplus materials and rubbish from the Site; and
 - (ii) leave the whole of the Site in a safe, clean and tidy condition.

6.11 Rectification of defective work

- (a) RTA may, at any time prior to the expiration of the Defects Correction Period, issue a Rectification Notice directing the Alliance to carry out Rectification Work in relation to a Defect.
- (b) On receipt of a Rectification Notice, the Alliance will carry out the Rectification Work within the period stated in the Rectification Notice and in accordance with any other requirement stated in the Rectification Notice.
- (c) RTA will be entitled to rectify a Defect itself or engage others to do the Rectification Work if RTA considers that:
 - (i) the Rectification Work must be carried out urgently for safety reasons or other reasons of urgency; or
 - (ii) the Alliance will not be able to undertake the Rectification Work in the time and/or manner specified in a Rectification Notice.
- (d) The ALT must, within a reasonable time after Completion, determine any amount which should be either:
 - (i) withheld until the Date of Final Completion from a Participant's payment of the Fee and/or initial distribution of Gainshare determined in accordance with the Commercial Framework; or
 - (ii) deducted from any final payment of the Fee or Gainshare payable to that Participant in accordance with the Commercial Framework,

in order to ensure that the obligations of the NOPs in relation to Rectification Work are completed or that RTA is compensated in accordance with the Commercial Framework.

6.12 Long Service Levy

Before commencing Design or construction work under this Agreement, we must:

- (a) pay to the Building and Construction Industry Long Service Payments Corporation or the Corporation's agent the amount of the long service levy payable in respect of the building and/or construction work under the *Building and Construction Industry Long Service Payments Act 1986* (NSW); and

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- (b) ensure that RTA is provided with the documentary evidence of payment of the levy.

7. PERFORMANCE OF ALLIANCE WORKS

7.1 Primary performance obligation

Subject to this Agreement, we will collectively undertake and complete the Alliance Works (to permit them to be certified under clauses 6.5 and 6.6):

- (a) in a careful, diligent, skilful and workmanlike manner so that the Alliance Works are of the required quality and fit for intended purposes stated in this Agreement;
- (b) with the equal aim, at all times, of minimising cost expenditure and satisfying all non-cost objectives of this Agreement; and
- (c) with the skill, experience, capacity and resources necessary to perform the work under this Agreement.

7.2 Primary performance obligations of RTA

RTA will pay each NOP and grant access to the Site in accordance with the terms of this Agreement.

7.3 Subcontracts

- (a) We will ensure that:
 - (i) all Subcontracts are entered into in accordance with the authorisation protocols set by the ALT from time to time;
 - (ii) a NOP enters into a Subcontract in its own right and not as our agent or as an agent of RTA; and
 - (iii) where possible, all Subcontractors are pre-qualified by RTA pursuant to RTA's usual qualification procedures for contractors from time to time.
- (b) The terms of any Subcontract must:
 - (i) contain a requirement that the relevant Subcontractor execute a deed (in such form as RTA may from time to time require) with RTA creating a duty of care in favour of RTA in relation to the works or services to be conducted under the Subcontract, unless RTA decides in its discretion that a deed is not necessary;
 - (ii) be approved by the Alliance Manager;

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- (iii) contain an assignment of Intellectual Property Rights by the Subcontractor to the NOP on terms identical to clause 16.1(a) (except for substituting the relevant Subcontractor for the NOP); and
 - (iv) contain confidentiality obligations substantially the same as those in clause 16.5.
- (c) If any of us engage a Subcontractor we must, where required in writing by either the ALT or RTA, enforce or defend the relevant Subcontract for the benefit of the Alliance and any:
- (i) such enforcement or defence actions, settlement or proceedings must be conducted under the written direction of either the ALT or RTA; and
 - (ii) costs of such enforcement actions or proceedings will be dealt with in accordance with the Commercial Framework.

7.4 Compliance with Statutory Requirements

We will satisfy and comply with the requirements of all Statutory Requirements in relation to the Alliance, the Alliance Works or this Agreement.

7.5 Subcontractor warranties

We will obtain written warranties in favour of RTA from Subcontractors, to the extent such warranties are relevant, that any:

- (a) materials incorporated into the Alliance Works are correctly designed, fabricated and installed to the standards set out in this Agreement or, if not set out, then to good industry standards and codes of practice; and
- (b) design and any materials incorporated into the Alliance Works are of the required quality and fit for the intended uses stated in this Agreement.

7.6 Quality assurance

We are committed to ensuring that the Alliance Works are consistent with a "best for project" approach. For the achievement of this objective, we will establish, implement and maintain a quality assurance system to a standard equivalent to or better than RTA's *QA Specification DCM Q6*.

7.7 Health and safety

- (a) We are committed to achieving outstanding performance in relation to health and safety and making every effort to maintain a workplace free of accidents and injuries.
- (b) In this clause 7.7, the terms "principal contractor" and "place of work" have the same meanings assigned to those terms under the *Occupational Health and Safety*

Act 2000 (in this clause, **the Act**) and the *Occupational Health and Safety Regulation 2001* (in this clause, **the Regulation**).

- (c) Without limiting our obligations under any other provision of this Agreement, we agree as follows:
- (i) to the extent that RTA is able to validly appoint Baulderstone Hornibrook Pty Ltd as the principal contractor under clause 210 of the Regulation then:
 - (A) Baulderstone Hornibrook Pty Ltd is appointed as principal contractor under clause 210 of the Regulation; and
 - (B) RTA and the NOPs give all necessary authority to Baulderstone Hornibrook Pty Ltd to allow it to fulfil and exercise the obligations and functions of the principal contractor under the Regulation;
 - (ii) Baulderstone Hornibrook Pty Ltd must:
 - (A) where clause 7.7(c)(i) applies, exercise and fulfil the functions and obligations of the principal contractor under the Regulation;
 - (B) where clause 7.7(c)(i) does not apply, exercise and fulfil the functions and obligations of the principal contractor under the Regulation as if Baulderstone Hornibrook Pty Ltd had been validly appointed as the principal contractor under clause 210 of the Regulation;
 - (C) ensure that all Subcontractors comply with their respective obligations under the Act and the Regulation;
 - (D) at all reasonable times provide the other Participants with access to such records as may be necessary to establish Baulderstone Hornibrook Pty Ltd compliance with its obligations under this clause;
 - (E) ensure that the Participants execute the Alliance Works in a manner which ensures that the Participants satisfy their obligations under the Act and the Regulations; and
 - (F) immediately inform the other Participants in writing of all incidents involving injury to any person arising during the execution of the Alliance Works; and
 - (iii) in carrying out the Alliance Works or in exercising our rights under this Agreement, we will ensure that we (and our respective officers, employees, Subcontractors and agents) comply with:
 - (A) the latest OH&S Plan;

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- (B) all applicable Statutory Requirements; and
 - (C) all reasonable safety directives, procedures and work instructions issued by the Alliance Manager or personnel authorised by the ALT to issue such directives, procedures and instructions.

7.8 Occupational health and safety management plan

The ALT will ensure that the Alliance Manager:

- (a) after this Agreement is executed and prior to accessing any part of the Site, promptly:
 - (i) develops an OH&S Plan in accordance with the New South Wales *OHS Management Systems Guidelines* and which is equivalent to or better than the standards set out in RTA's *DCM G22 Specification for Occupational Health and Safety (Major Works)*; and
 - (ii) submits the OH&S Plan to ALT and obtains the ALT's approval to the OH&S Plan; and
- (b) oversees strict compliance with the requirements of the OH&S Plan.

7.9 Protection of people, the environment and property

- (a) We are dedicated to protecting both people, the environment and property in executing the Alliance Works and we will:
 - (i) provide all things and take all measures necessary to protect people and property;
 - (ii) avoid unnecessary interference with the passage of people and vehicles;
 - (iii) prevent damage, obstruction or other interference with services;
 - (iv) prevent nuisance and unnecessary noise and disturbance;
 - (v) prevent environmental damage or pollution; and
 - (vi) ensure that the Alliance Works do not have any adverse impact on RTA infrastructure and operations to a greater extent than is inherently necessary for the performance of the work under this Agreement,

provided that this clause will not be taken to mean that RTA authorises any action constituting a breach of any Statutory Requirements.

- (b) Our obligations include the provision of barricades, guards, fencing, temporary roads, footpaths, warning signs, lighting, watching, traffic flagging, safety helmets and clothing, removal of obstructions and protection of services.

7.10 Care of the Alliance Works

- (a) From the date of commencement of the Alliance Works until the Date of Completion, we will be responsible for the care of the Alliance Works.
- (b) After the Date of Completion, we will remain responsible for the care of such parts of the Alliance Works as are necessary to carry out our obligations under clause 6.11 until the date on which the Certificate of Final Completion is issued by the Alliance Manager under clause 6.6.

7.11 Reinstatement

We will promptly make good any loss or damage to the Alliance Works that occurs during any period in which we are responsible for the care of the Alliance Works under clause 7.10.

7.12 Industrial relations

- (a) We must comply with the *NSW Government Industrial Relations Management Guidelines* and acknowledge that the Project constitutes a Category 1 Project as defined in those guidelines.
- (b) Before starting the Alliance Works, the ALT must ensure that the Alliance Manager prepares and submits to the ALT:
 - (i) evidence of compliance by each of the NOPs with all employment and legal obligations in the preceding twelve months (and the NOPs must provide this evidence when requested by the Alliance Manager);
 - (ii) the location of time and wage records and other documents that are required to be kept to verify ongoing compliance with all employment and legal obligations;
 - (iii) the names of Federal or New South Wales awards that are likely to cover Subcontractors and other contractors on the Project;
 - (iv) the names of those responsible for co-ordinating industrial relations in relation to any part of the Project;
 - (v) an outline of:
 - (A) consultation and communications mechanisms;
 - (B) measures to coordinate the interface with Subcontractors, other contractors and unions;
 - (C) measures for assessing Subcontractors; and
 - (D) measures to monitor and verify ongoing compliance; and

(vi) a project industrial relations plan.

7.13 Environment

We are committed to achieving the highest possible performance in all aspects of the Project in regard to environmental practices. For the achievement of this objective, we will establish, implement and maintain an environmental management system to a standard equivalent to or better than RTA's *Specification DCM G36*.

7.14 Community and social issues

We are committed to practices and procedures which are rated as world class with genuine sensitivity and responsiveness being shown at all times to community members and groups. RTA may direct the Alliance and the ALT in relation to any matters dealing with the community or other stakeholders, and the Alliance and the ALT must comply with RTA's directions.

7.15 Regulatory approvals

- (a) We appreciate that RTA may be subject to the Works Approvals and those Works Approvals may create various rights, obligations and requirements in connection with the Alliance Works.
- (b) We, in executing the Alliance Works, will observe the requirements of the Works Approvals as if we were RTA, and will not, and will ensure that our officers, employees, Subcontractors and agents do not, proceed with any course of action during the execution of the Alliance Works which may prejudice or in any way affect any of RTA's rights or obligations under the Works Approvals.
- (c) Nothing in this Agreement will operate to fetter the statutory functions of RTA.

7.16 RTA Statement of Business Ethics

We agree that we must comply, in the performance of this Agreement, with the RTA Statement of Business Ethics. Copies of the statement are available at http://www.rta.nsw.gov.au/doingbusinesswithus/downloads/rta_businessethics_d11.html.

7.17 Protection of Aboriginal heritage and Aboriginal rights

We are committed to the protection of Aboriginal heritage and Aboriginal rights and, without limitation, we will ensure that Subcontractors and other contractors and their officers, employees and agents similarly:

- (a) do not enter Aboriginal sites or disturb, interfere with or remove anything from such Aboriginal sites or their vicinity, except with the prior written approval of RTA;
- (b) should any Aboriginal sites be identified in or in the vicinity of the Site, immediately cease all activities which could impact on such Aboriginal site; and

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- (c) comply with RTA's instructions reasonably required to enable RTA to comply with any obligations arising as a result of the operation of Statutory Requirements in relation to native title.

7.18 Aboriginal participation in construction

We must ensure that the Alliance Manager prepares a Project Aboriginal Participation Plan as defined in, and in accordance with, the *NSW Government Aboriginal Participation in Construction Implementation Guidelines*, as soon as practicable after the commencement of the Alliance Works, and obtains the approval of that plan by the ALT.

7.19 Training management

As soon as practicable after the commencement of the Alliance Works, we must ensure that the Alliance Manager:

- (a) prepares a Project Training Management Plan based on the project training management targets for Civil Construction Projects in accordance with the *NSW Government Training Management Guidelines*, and obtains the approval of that plan by the ALT;
- (b) makes available on request, all relevant training management records, including those relating to Subcontractors, for the purpose of reviews; and
- (c) provides all reasonable assistance to the reviewer during the review process, including attending the review and promptly implementing any corrective action required by the ALT.

7.20 Suspension of Alliance Works

- (a) Except to the extent necessary to avoid an event having an adverse, or being likely to have an adverse, impact on the environment, public health or safety or to avoid a breach of a statutory requirement, we will not suspend the whole or any part of the work under this Agreement without a written direction from RTA.
- (b) If RTA considers that suspension of the whole or part of the work under this Agreement is necessary or appropriate for any reason, RTA may direct that we suspend the progress of the whole or part of the work under this Agreement for such time as RTA decides and we will promptly suspend that part of the work under this Agreement.
- (c) RTA may direct that we are to recommence the whole or the relevant part of the work under this Agreement at any time.
- (d) If RTA requires a suspension under this clause 7.20, the ALT must determine whether the compensation set out in the Commercial Framework payable to the NOPs should be amended to take into account the effect of the suspension.

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- (e) We must use all reasonable endeavours to mitigate costs during the period of any suspension.

7.21 RTA may direct changes to the Alliance Works

- (a) RTA may direct us (**Direction**), through its authorised representative appointed under clause 7.21(g) to:
 - (i) change the design or specification of the whole or any part of the Alliance Works;
 - (ii) change the Alliance Works or any part of the Alliance Works;
 - (iii) change the conduct, order or program of the Alliance Works;
 - (iv) increase, decrease or omit any part of the Alliance Works;
 - (v) change the character or quality of any part of the Alliance Works;
 - (vi) change the levels, lines, positions or dimensions of all or any part of the Alliance Works;
 - (vii) change the means, methods or techniques in relation to the performance of all or any part of the work under this Agreement;
 - (viii) execute additional work or perform additional services under this Agreement; or
 - (ix) demolish or remove material or infrastructure no longer required by RTA,and we must promptly comply with that Direction, whether or not RTA issues an Estimation Request or the ALT issues a notice under clause 7.21(d).
- (b) No Direction will invalidate this Agreement.
- (c) RTA may, in respect of a Direction or a proposed Direction, issue to the ALT an Estimation Request.
- (d) If RTA issues an Estimation Request or if the ALT determines that RTA has issued a Direction that may give rise to a Scope Change, but has not issued an Estimation Request, the ALT must promptly determine:
 - (i) whether the matters contained in the Estimation Request or the subject of the Direction would constitute a Scope Change; and
 - (ii) if the matters contained in the Estimation Request or the subject of the Direction would constitute a Scope Change, the change in the terms of compensation set out in the Commercial Framework to the NOPs which will result from the conduct of those matters,

and provide written notice as to its determination to RTA.

- (e) Following RTA's receipt of a notice under clause 7.21(d) or upon the ALT determining that unless a Direction referred to in clause 7.21(d) is withdrawn, a Scope Change will arise and RTA must notify the ALT in writing whether it wishes to:
 - (i) not proceed with the Direction;
 - (ii) revise the Estimation Request, in which case the provisions of this clause 7.21 will apply to the revised Estimation Request; or
 - (iii) confirm the Direction or issue a Direction for the matters contained in the Estimation Request, in which case the terms of the compensation payable to the NOPs under this Agreement (including any change to the TOC) will be altered in the manner set out in the ALT's notice under clause 7.21(d).
- (f) No Direction will result in a change in the terms of the compensation payable pursuant to this Agreement unless the Direction is determined by the ALT to give rise to a Scope Change and provided that all other requirements concerning compensation under this Agreement are satisfied.
- (g) The person authorised at the date of this Agreement by RTA under this clause 7.21 is the person from time to time occupying the position of "Director, Major Infrastructure". RTA will give written notice to the NOPs of any change in the person appointed by it as its authorised representative for the purpose of this clause 7.21.
- (h) RTA must use its reasonable endeavours to minimise any delays in the Alliance Works arising from the processes contemplated in this clause 7.21.

7.22 ALT may recommend changes to the Alliance Works

- (a) The ALT may, at any time during the period of the Alliance Works, recommend to RTA through its authorised representative appointed under clause 7.21(g):
 - (i) a change to the design or specification of the whole or any part of the Alliance Works;
 - (ii) a change in the Alliance Works or any part of the Alliance Works;
 - (iii) a change in the conduct, order or program of the Alliance Works;
 - (iv) an increase, decrease or omission of any part of the Alliance Works;
 - (v) a change in the character or quality of any part of the Alliance Works;
 - (vi) a change in the levels, lines, positions or dimensions of all or any part of the Alliance Works;

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- (vii) a change in the means, methods or techniques in relation to the performance of all or any part of the work under this Agreement;
 - (viii) to execute additional work or perform additional services under this Agreement; or
 - (ix) demolish or remove material or infrastructure no longer required by RTA.
- (b) Any recommendation given under this clause 7.22 must:
- (i) include details of the effect, if any, of the change to the Alliance Works on the Commercial Framework;
 - (ii) confirm the fitness of the Alliance Works for the purpose of satisfying the performance requirements nominated by RTA; and
 - (iii) clearly indicate that it is a recommendation given by the ALT to RTA's authorised representative under clause 7.22 of this Agreement.
- (c) The NOPs acknowledge and accept that RTA's authorised representative may consider the ALT's recommendation in its discretion.
- (d) If RTA's authorised representative accepts the ALT's recommendation, RTA's authorised representative will issue a notice to proceed with the recommendation and the ALT will ensure that the notice is immediately complied with.
- (e) The NOPs acknowledge and accept that RTA's authorised representative may place conditions, in its discretion, on any acceptance of the ALT's recommendation.
- (f) If RTA does not accept the ALT's recommendation, that recommendation must be withdrawn by the ALT and the Alliance shall continue to perform the work under this Agreement as if the recommendation had not been made by the ALT.

7.23 Benchmarking of Alliance performance

- (a) The Participants agree that it is a fundamental obligation of the Alliance to demonstrate, ensure and deliver value for money to RTA.
- (b) The NOPs will provide every opportunity to enable the ALT to effectively demonstrate that these value for money outcomes are and/or will be achieved and have agreed to benchmark the performance of the Alliance against the performance of other alliance participants delivering other works or projects similar to the Alliance Works.
- (c) The NOPs agree that for the purposes of benchmarking the performance of the Participants they will, in a manner consistent with our Alliance Principles, fully, frankly and honestly disclose all information relating to the:
 - (i) actual outturn performance of all aspects of the Alliance; and

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- (ii) work under this Agreement or the Alliance Works other than that which the ALT determines is genuinely commercial in confidence.
 - (d) Where the ALT determines that information is genuinely commercial in confidence, the ALT must determine an acceptable and appropriate manner to protect the confidential nature of the information but will share the information for the purposes of benchmarking the actual outturn performance of all aspects of the Alliance.
 - (e) For the purposes of this Agreement, the expression "commercial in confidence" will have the interpretation that the term has under the operation of the *Freedom of Information Act 1989* (NSW).

7.24 Conference of Alliances

- (a) The RTA's authorised representative may, at any time prior to the Date of Final Completion, direct the ALT to attend a conference which will also be attended by:
 - (i) the representatives of RTA's other alliances; and
 - (ii) nominated invitees of RTA's authorised representative (which may specifically include alliance leadership team representatives from alliances sponsored by parties other than RTA).
- (b) RTA's expectation of this conference is to enable:
 - (i) alliance contracting best practice methodologies to be identified, shared and understood;
 - (ii) RTA to be satisfied that the behaviours, standards and governance of its alliances are equal to other alliances developed or being developed across Australasia; and
 - (iii) development of a benchmark for the performance of RTA's alliances against each other and/or against other alliances developed or being developed across Australasia to the extent that it is practicable to do so.
- (c) The NOPs agree that they will attend the conference and participate in a manner consistent with our Alliance Principles so as to fully, frankly and honestly disclose all information or lessons learned relating to the Alliance, the work under this Agreement or the Alliance Works, other than that which the ALT determines is genuinely commercial in confidence.

8. PAYMENTS

8.1 Invoices and payments

- (a) Payment claims may be submitted to RTA as follows:

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- (i) prior to the Date of Final Completion, the Alliance Manager may, with input from the NOPs, prepare and submit to RTA a single Payment Claim at the end of each calendar month in relation to the work done by the NOPs during the relevant period; and
 - (ii) after the Date of Final Completion, any NOP may submit a Payment Claim in relation to any payment of Direct Cost it becomes entitled to under the Commercial Framework in respect of legal and litigation expenses, including judgments and awards.
 - (b) The amounts to be included in a Payment Claim submitted under this Agreement will be calculated in accordance with the terms of compensation set out in the Commercial Framework.
 - (c) RTA must issue a Payment Schedule within 10 Business Days after receipt of a Payment Claim. The Payment Schedule must identify the Payment Claim to which it relates and must be based on the terms of compensation set out in the Commercial Framework. If the Payment Schedule shows an amount less than the claimed amount (excluding payments already made), the Payment Schedule must state why the amount is less.
 - (d) Subject to clause 8.1(c), RTA may issue a Payment Schedule at any time even if the Alliance Manager has not lodged a Payment Claim.
 - (e) The following conditions must be satisfied before RTA is obliged to make any payment to the NOPs:
 - (i) if required under clause 9, a Payment Claim must be accompanied by a Tax Invoice from a relevant NOP;
 - (ii) all relevant sections of the Payment Claim must be properly completed;
 - (iii) except in the case of Payment Claims made more than 12 months after the date of Final Completion, a Payment Claim must be accompanied by a statement by the Alliance Manager that the amounts shown in the Payment Claim are in accordance with the terms of this Agreement and are in order for payment by RTA;
 - (iv) a Payment Claim must be accompanied by a statutory declaration from each of the relevant NOPs:
 - (A) in the form set out in **Schedule 11** (Statutory Declaration);
 - (B) including the details required in **Schedule 11** (Statutory Declaration);
 - (C) made by a person who is in a position to know the facts attested to; and

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- (D) be properly sworn or affirmed according to the *Oaths Act 1900* (NSW) or the equivalent legislation applicable in the place where the declaration is made; and
 - (v) the final Payment Claim must be accompanied by a statement by the Financial Auditor in a form approved by RTA confirming that the amounts shown in the Payment Claim are in accordance with the terms of this Agreement.
 - (f) Subject to the conditions contained in clause 8.1(e) being met, RTA will pay the NOPs (or the NOPs will pay RTA as the case may be) the amounts stated in a Payment Schedule in accordance with clause 8.1(g).
 - (g) RTA will pay each NOP under clause 8.1(f) no later than 10 Business Days after the Payment Schedule is issued or satisfaction of the conditions set out in clause 8.1(e) (whichever is the later). The NOPS will pay RTA under clause 8.1(f) no later than 10 Business Days after RTA supplies similar documents to those required in clause 8.1(e)
 - (h) No payment by RTA will be evidence of the value of work, an admission of liability or that the work has been executed satisfactorily, but will be deemed to be a provisional payment on account and subject to a final verification audit by the Financial Auditor and RTA.
 - (i) The Financial Auditor may undertake an audit of a Payment Claim (whether it has been paid or not) to confirm that the amounts shown in the Payment Claim are in accordance with the terms of this Agreement. If the Financial Auditor demonstrates to the ALT that any amount shown in the Payment Claim is not in accordance with the terms of this Agreement, then any adjustment necessary must be made in the Payment Claim following that demonstration.
 - (j) Nothing in this clause 8.1 limits or otherwise affects RTA's rights under section 175B(7) of the *Workers Compensation Act 1987* (NSW), section 31H(6) of the *Pay Roll Tax Act 1971* (NSW) or section 127 of the *Industrial Relations Act 1996* (NSW).
 - (k) In relation to Direct Costs incurred by RTA, RTA will submit to the Alliance Manager, at the times or periods required by the ALT:
 - (i) a statement of its Direct Costs for the relevant period; and
 - (ii) a statement by the Financial Auditor confirming that the amounts shown in the statement are in accordance with the terms of this Agreement.

These costs will be included in the AOC.

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- (l) Statutory declarations as required by clause 8.1(e)(iv) must also be provided to RTA by a NOP at other times as requested by the Alliance Manager or, after the Date of Final Completion, by RTA

8.2 Payment for materials not incorporated

- (a) If the NOPs wish to be paid for materials not incorporated into the Alliance Works then, where the value of the materials is more than \$100,000 or if otherwise requested by RTA, the Payment Claim under clause 8.1(a) must include evidence and documentation to establish to the satisfaction of RTA that:
 - (i) the materials exist;
 - (ii) unencumbered ownership will pass to RTA on or before payment by RTA; and
 - (iii) the materials are properly stored at the Site, labelled as the property of RTA and insured in the name of RTA and the relevant NOP supplying it.
- (b) The amount to be paid will be the value of the materials as determined by RTA in accordance with the principles set out in the Commercial Framework.

8.3 Payment for materials not delivered

If a NOP wishes to be paid for materials that are not stored on the Site, then prior approval must be obtained from the ALT.

8.4 RTA may make direct payments on request

At a NOP's written request and out of money due and payable to that NOP, RTA may pay money on that NOP's behalf to workers or Subcontractors of that NOP.

8.5 RTA may pay on court order

RTA may pay money direct to a worker or Subcontractor of a NOP and recover the amount paid from the NOP as a debt due if RTA is presented with:

- (a) a court order in respect of money payable to the worker or Subcontractor under an award, enterprise agreement or Subcontract for work, services, materials, plant, equipment or advice supplied for the Alliance Works; and
- (b) a statutory declaration that no money has been paid under the court order.

9. GST

- (a) In this clause 9:
 - (i) the expressions "adjustment note", "consideration", "Goods and Services Tax", "GST", "supply", "tax invoice", "recipient" and "taxable supply"

have the meaning given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999*;

- (ii) a reference to a payment being made or received includes a reference to consideration other than money being given or received.
- (b) Unless otherwise expressly stated, all prices or other sums payable or payment to be made under or in accordance with this Agreement, do not include any amount for GST.
- (c) If GST is payable on any supply made under this Agreement, the consideration for the supply must be increased by, and the recipient of the supply must pay to the supplier, an additional amount equal to the GST payable on the supply.
- (d) Any contract entered into us with a third party which involves supplies being made, the cost of which will affect the cost of any supplies made under this Agreement, must include a clause including equivalent terms to this clause 9.
- (e) If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled on the acquisition of the relevant supply.
- (f) If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment must be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of any GST component.
- (g) RTA will issue a Tax Invoice for each taxable supply it makes to the NOPs.
- (h) RTA will issue to the NOPs a recipient created Tax Invoice (**RCTI**) for each taxable supply (other than an excluded supply) made by the NOPs to RTA under this Agreement, and will issue an adjustment note for any adjustment event. We may agree in writing from time to time which supplies are excluded supplies.
- (i) NOPs must not issue a Tax Invoice in respect of any supply made to RTA, other than for an excluded supply. NOPs must give RTA a Tax Invoice for an excluded supply as part of, or before, the making of a Payment Claim which includes the relevant supply.
- (j) We must notify each other if we cease to be registered for GST or cease to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.
- (k) We acknowledge that, at the time of entering into this Agreement, we are registered for GST.

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- (l) RTA will not issue a document that will otherwise be a RCTI, on or after the date when the NOPs fail to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.

10. INSURANCES

10.1 Insurances provided by RTA

- (a) RTA has arranged the PPL Insurances referred to as being the responsibility of RTA in **Schedule 10** (Insurances) which:
 - (i) covers the NOPs' liabilities to RTA and to third parties for the limits of liability identified in **Schedule 10** (Insurances); and
 - (ii) is in the names of the Participants and the Subcontractors for their respective rights and interests.
- (b) The NOPs acknowledge and agree that:
 - (i) before entering into this Agreement, they were given a copy of or access to, and satisfied themselves as to the provisions, terms, conditions, exclusions and excesses of the PPL Insurance; and
 - (ii) they accept the PPL Insurance as full satisfaction of RTA's obligation to insure for public and products liability insurance under this Agreement.
- (c) RTA will maintain the PPL Insurance until Final Completion.
- (d) Before commencing any of the Alliance Works, the NOPs must contact RTA's insurance broker, Aon Risk Services Australia Limited, to provide contract, Subcontractor and insurance details necessary for the PPL Insurance.
- (e) The NOPs must provide any further details necessary for the PPL Insurance to RTA whenever directed by RTA to do so.
- (f) RTA will before the CW Insurance Date use its best endeavours to arrange the CW Insurance referred to as being the responsibility of RTA in **Schedule 10** (Insurances) which:
 - (i) is intended to cover the NOPs' liabilities to RTA and to third parties for the limits of liability identified in **Schedule 10** (Insurances); and
 - (ii) will be in the names of the Participants and the Subcontractors for their respective rights and interests.
- (g) The NOPs acknowledge and agree that:
 - (i) no work will be carried out as part of the Alliance Works before the CW Insurance Date that could result in an event which could give rise to a claim

under the CW Insurance and as a consequence, the NOPs accept that there is no need for any Participant to have CW Insurance type cover at least before that date;

- (ii) if RTA is unable to obtain CW Insurance by the CW Insurance Date, or it obtains CW Insurance by that date but on provisions, terms, conditions, exclusions or excesses materially and detrimentally different to those indicated in **Schedule 12** (Likely Indicative Terms of Construction Material Damage Insurance Policy), the NOPs may effect such CW Insurance type cover or top up cover as determined by the ALT and the cost of such cover will form part of the Direct Costs and the need for such cover will qualify as a Scope Change; and
- (iii) if the NOPs effect such CW Insurance type cover under paragraph (ii), the insurance will be deemed to be insurance which was the responsibility of the NOPs to arrange under **Schedule 10** (Insurances).
- (h) RTA will give the NOPs a copy of or access to the provisions, terms, conditions, exclusions and excesses of the CW Insurance promptly after RTA has obtained those details.
- (i) RTA will maintain the CW Insurance from the date it is obtained by RTA until Final Completion.
- (j) As soon as practicable after the Date of this Agreement, the NOPs must contact RTA's insurance broker, Aon Risk Services Australia Limited, to provide contract, Subcontractor and insurance details necessary for the CW Insurance or CW Insurance type cover, as appropriate.
- (k) The NOPs must provide any further details, necessary for the CW Insurance, if any, to RTA whenever directed by RTA to do so.
- (l) Subject to clause 10.1(g), we must ensure that all Direct Costs and the Target Outturn Cost exclude any allowance for the cost of the Principal Arranged Insurances.
- (m) We will comply with the exclusions and conditions of the Principal Arranged Insurances.

10.2 Insurances to be provided by NOPs

- (a) Before commencing the Alliance Works, the NOPs must effect and maintain with an insurer on terms approved in writing by RTA (which approval will not be unreasonably withheld or delayed), the insurance policies referred to in **Schedule 10** (Insurances) as being the responsibility of the NOPs and all other insurances required by Statutory Requirements.

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- (b) All insurances under clause 10.2(a) must be effected before commencing work and must be maintained until expiry of the Defects Correction Period.
 - (c) The NOPs must ensure that the Subcontractors have similar workers compensation insurance to that referred to in **Schedule 10 (Insurances)** in respect of their employees.
 - (d) If pursuant to **Schedule 10** we are required to effect insurance under a marine liability policy and a marine protection and indemnity policy:
 - (i) these policies must be in the name of the NOPs with RTA as an additional named insured and must cover the NOPs, RTA and all Subcontractors, employed from time to time for or in relation to the Agreement and the Alliance Works for their respective rights and interests and cover their liabilities to third parties; and
 - (ii) comply with clause 10.3(c).

10.3 Other insurance requirements

- (a) We will take out all other insurances as required by the ALT.
- (b) The effecting or approval of any or all insurance as required under this Agreement will not in any way limit the liabilities or obligations of the Participants under other provisions of this Agreement.
- (c) If the NOPs are required to comply with this clause 10.3(c), the NOPs must:
 - (i) ensure that in respect of each insurance required to be effected or taken out as required by **Schedule 10** they:
 - (A) do not do anything which prejudices any insurance;
 - (B) if necessary, rectify anything which might prejudice any insurance;
 - (C) reinstate an insurance policy if it lapses;
 - (D) do not cancel, vary or allow an insurance policy to lapse without the prior written consent of RTA;
 - (E) immediately notify RTA of any event which may result in an insurance policy lapsing or being cancelled; and
 - (F) give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance;

-
- (ii) ensure that any insurance required to provide coverage to Subcontractors acknowledges that the same coverage applies to suppliers and consultants;
 - (iii) ensure that any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
 - (iv) ensure that a notice to the insurer by one insured will be deemed to be notice by all insured parties.

10.4 Proof of insurance

- (a) Before commencing the Alliance Works, we must provide to RTA evidence (including for non-statutory insurances, a copy of the policy) of each of the policies required to be effected by the NOPs under this Agreement, except in the case of CW Insurance type cover when the evidence is required upon the cover being obtained, and such further proof of the currency of such insurances as may be required from time to time by the ALT or RTA.
- (b) Nothing in this clause 10.4, nor any act or omission or failure by RTA will derogate from our liability to effect and maintain insurances under this Agreement.

10.5 Notices from or to the insurer

The NOPs must, as soon as practicable after receiving any notice from the insurer, which is a notice of cancellation relevant to this Agreement or any other notice relevant to this Agreement under or in relation to the policy, inform RTA in writing that the notice has been given to or served on that NOP.

10.6 Cross liabilities

- (a) Wherever under this Agreement insurance is effected by the NOPs in more than one name, the policy of insurance must provide that, to the extent that the policy may cover more than one insured, all insuring agreements and endorsements must operate in the same manner as if there were a separate policy of insurance covering each party comprising the insured and that the insurer agrees not to impute any acts, omissions or nondisclosures before or after the policy was effected by one insured to any other insured.
- (b) Such policy must provide that the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties constituting the insured and that failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured party.

10.7 Insurance claims procedures

- (a) We must, as relevant to this Agreement:

-
- (i) provide notice with full particulars of any occurrence likely to give rise to a claim under any insurance policy or on receipt of notice of any claim or subsequent proceeding as soon as practicable after becoming aware of any such event to:
 - (A) the relevant insurer or insurance broker; and
 - (B) each other (other than a potential claim by one party against another);
 - (ii) not, without the consent of the insurer, or each other, make any admission, offer, promise or payment in connection with any occurrence or claim;
 - (iii) give all information and reasonable assistance as the insurer may require in the prosecution, defence or settlement of any claim; and
 - (iv) give notice to each other as soon as practicable after discovery that a term, condition or clause of any insurance policy has been unintentionally or inadvertently breached.
- (b) Notwithstanding the provisions of this clause, we may take immediate action to avoid loss of life or damage to property where that is reasonably necessary in the circumstances and any such action will not prejudice the position of us under the policies of insurance in respect of any loss, destruction or damage.

10.8 Pass through of insurance payouts

To the extent that any Participant receives payment under any insurance policy maintained pursuant to this clause 10 that reimburses any cost, loss or expense that was reimbursed or is reimbursable under this Agreement, then the relevant NOP (if applicable) will pass on that payment to RTA in full and RTA will:

- (a) arrange for the Alliance Manager to issue a further statement under clause 8.1(e)(iii) to take into account the payment received under the policy; and
- (b) issue further payments to the NOPs so that the total amounts paid to the NOPs under this Agreement are in accordance with the recalculated final Payment Schedule.

The provisions of this clause 10.8 will continue to apply in respect of any costs, expenses or losses that RTA reimburses or which are reimbursable under this Agreement, either after the Date of Final Completion or the date the Agreement is terminated under either clause 11.1 or 13.3(d).

11. WITHDRAWAL AND TERMINATION

11.1 Notice of termination

Notwithstanding any express or implied term of this Agreement and without prejudice to any of RTA's other rights under this Agreement, RTA may at any time in its discretion, for its sole convenience and for any reason, by written notice to the NOPs:

- (a) terminate this Agreement; and
- (b) in its discretion, complete the uncompleted part of the Alliance Works either itself or by engaging any other person, including any one or more of the NOPs.

11.2 Effect of termination

- (a) If this Agreement is terminated under clauses 11.1 or 13.3(d), RTA may take and use, in any way, the whole or any part of the Alliance Works.
- (b) The NOPs will not be liable in any way for that portion of the Alliance Works that is not completed as a result of termination of this Agreement under clauses 11.1 or 13.3(d).

11.3 Our actions

If this Agreement is terminated under either clause 11.1 or 13.3(d), we will immediately:

- (a) cease work under this Agreement;
- (b) protect property in our possession in which RTA has or may acquire an interest;
- (c) demobilise from the Site all persons, Construction Plant, Temporary Works, vehicles, equipment and other things owned by or under the control of the NOPs;
- (d) assign to RTA all rights and benefits under Subcontracts;
- (e) provide RTA with possession of all materials and other things on the Site or off-Site and deliver to RTA all necessary documents, which are required for the Alliance Works; and
- (f) comply with any directions of RTA, including any directions to carry out the activities or do the things referred to in clauses 11.3(a) to (e) (inclusive).

11.4 Termination payments

Subject to RTA's rights under or in connection with this Agreement, including the rights to withhold or set-off payment and recover damages, if this Agreement is terminated under clause 11.1, RTA will pay the NOPs or the NOPs will pay RTA, as the case may be, the difference between:

-
- (a) the sum of:
- (i) the amounts payable for the work executed prior to the date of termination which will in respect of the Gainshare regime be determined on a just and equitable basis by the ALT;
 - (ii) the cost of materials reasonably ordered by the NOPs for the Alliance Works, which they are legally liable to accept, but only if the materials become the property of RTA after payment;
 - (iii) costs reasonably incurred by the NOPs in the expectation of completing the whole of the Alliance Works and not included in any payment by RTA;
 - (iv) reasonable costs of demobilisation; and
 - (v) the reasonable costs of complying with any directions given by RTA on or after termination; and
- (b) an amount equal to any amounts which RTA previously paid to the NOPs,

and RTA will not otherwise be liable to the NOPs for any cost, loss, expense or damage incurred by the NOPs as a consequence of, or in connection with the Alliance Works, this Agreement or the termination of this Agreement (except any Direct Costs incurred by a NOP in connection with any third party claims against a NOP in relation to the Alliance Works or the Project after the termination date).

12. NO ARBITRATION OR LITIGATION

Except to the extent required by any law:

- (a) the ALT will attempt to determine, resolve or settle any dispute between us, other than a dispute arising out of or in connection with a Material Default; and
- (b) except as provided in this Agreement, there will be no arbitration or litigation between us in relation to any dispute, other than a dispute arising out of or in connection with a Material Default.

13. DEFAULT BY PARTICIPANT

13.1 Default by us

This clause 13 applies if any of us commits a default that amounts to a Material Default (**Defaulting Participant**).

13.2 Notice of default

The Non-Defaulting Participants may give a joint written notice to the Defaulting Participant of:

-
- (a) the default and the Non-Defaulting Participants' intention to exercise the Non-Defaulting Participants' rights under clause 13.4 on the expiry of 7 Business Days if the default is capable of being rectified but is not rectified within the 7 Business Day period; or
 - (b) the Non-Defaulting Participants' intention to exercise the Non-Defaulting Participants' rights under clause 13.3 if the default is not capable of being rectified.

Any such notice must specify that it is a notice under this clause.

13.3 Failure to remedy

If:

- (a) the Defaulting Participant fails within 7 Business Days after receiving a notice given under clause 13.2 to rectify a default; or
- (b) the Non-Defaulting Participants give notice under clause 13.2(b),
the Non-Defaulting Participants may, as the Non-Defaulting Participants' sole remedy,
 - (c) where the Defaulting Participant is a NOP:
 - (i) wholly or partly suspend any payment due to the Defaulting Participant under this Agreement until the default has been remedied; and
 - (ii) by joint notice exclude the Defaulting Participant from further participation in the performance of this Agreement under clause 13.4; or
 - (d) where the Defaulting Participant is RTA, wholly or partly suspend the Alliance Works until the default has been remedied. If RTA fails to remedy the default within a further 20 Business Days after receiving a notice given under clause 13.2 to rectify a default, then the NOPs may give notice in writing to RTA terminating this Agreement.

13.4 Exclusion from further participation in this Agreement

If the Non-Defaulting Participants exclude the Defaulting Participant from further participation in the performance of this Agreement by notice under clause 13.3(c)(ii):

- (a) the Non-Defaulting Participants may employ and pay other persons to replace the Defaulting Participant in the performance of the Alliance Works and may use all Design Documentation, Temporary Works and Construction Plant provided by the Defaulting Participant and necessary to perform the Alliance Works;
- (b) the Defaulting Participant will promptly, if required by the Non-Defaulting Participants, assign to RTA without payment the benefit of any agreements for the performance of any part of the Alliance Works;

-
- (c) as and when required by the ALT (and not before), the Defaulting Participant will remove from the Site any Temporary Works, Construction Plant and other property provided by the Defaulting Participant and if it fails to do so, not less than 10 Business Days after written notice of the Non-Defaulting Participants' intention to do so (but without being responsible for any loss or damage), the Non-Defaulting Participants may remove and/or sell any such Temporary Works, Construction Plant or other property;
 - (d) the Defaulting Participant and its Representatives will no longer be entitled to be represented on the ALT or otherwise participate in the Project; and
 - (e) the Non-Defaulting Participants may execute all deeds and documents and do all such things on behalf of the Defaulting Participant as is necessary for the performance of the Alliance Works and the Defaulting Participant irrevocably authorises any directors or managers of the Non-Defaulting Participants to act as its attorneys for the purpose of executing such deeds and documents and doing those things.

14. REMEDIES AND LIABILITY

14.1 Rights and remedies

- (a) Subject to any requirement of law, the respective rights, obligations and liabilities of each of us as set out in this Agreement exclusively govern our rights in relation to this Agreement and the Alliance Works and we do not have any other rights or remedies arising out of or in connection with this Agreement and the Alliance Works, at law (including negligence) or equity, other than as set out in this Agreement.
- (b) Subject to clause 14.3(b), this Agreement creates legally enforceable rights:
 - (i) despite the fact that certain matters are to be settled, resolved, determined or agreed by the ALT; and
 - (ii) irrespective of how or whether any matters to be settled, resolved, determined or agreed by the ALT are resolved, determined or agreed.
- (c) Interpretation of this Agreement which is consistent with the principles in clauses 14.1(a) and (b) is to be adopted.

14.2 Civil Liability Act

- (a) The operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any rights, obligations and liabilities arising under or in relation to this Agreement regardless of how such rights, obligations or liabilities are sought to be enforced.
- (b) We will ensure that a clause equivalent to clause 14.2(a) is included in:

-
- (i) each Subcontract; and
 - (ii) any further contract that any Subcontractor enters into with others for the carrying out of works.

14.3 Liability under this Agreement

(a) Subject to:

- (i) RTA's obligation to pay the NOPs under clause 8.1;
- (ii) the indemnities in clauses 14.3(b), 16.1 and 16.3; and
- (iii) the provisions of clause 14.5,

none of us will be liable to each other under or in connection with this Agreement, at law (including negligence), equity or under statute for any claim, action, demand or any other right for costs, expenses, damages, losses or other amounts, arising from or in connection with this Agreement, the performance (or non-performance) of our obligations under this Agreement or the termination of this Agreement. This clause survives termination, completion or expiration of this Agreement.

- (b) Each Participant is liable for and indemnifies the other Participants for all costs, expenses, damages, losses or other amounts arising from:
 - (i) that Participant's Material Default;
 - (ii) exercise of the right of suspension or exclusion under clauses 13.3 or 13.4; or
 - (iii) termination of this Agreement arising from that Participant's Material Default.
- (c) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations under this Agreement and survives termination, completion or expiration of this Agreement.
- (d) It is not necessary for us to incur expense or to make any payment before enforcing a right of indemnity conferred by this Agreement.

14.4 Limitations and exclusions of rights and liabilities

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.

14.5 Preservation of insurance rights

The provisions of this clause 14 operate to release a party to this Agreement from liability to another party to this Agreement to the extent only that either:

-
- (a) the party is not indemnified against such liability by an insurer of any policy of insurance forming part of the insurance regime agreed by the ALT or contemplated under this Agreement (excluding any professional indemnity policy held by an NOP not directly in connection with the Project); or
 - (b) while the party is entitled to be indemnified under such an insurance policy, the party is not in fact indemnified against such loss due to the insolvency of the insurer.

15. DOCUMENT MAINTENANCE AND AUDITING

15.1 Maintenance of accounts, records and documentation

- (a) Due to the "open book" nature of this Agreement, we will maintain in Australia for a period of at least seven years after the Completion or termination of this Agreement (as the case may be), a complete set of:
 - (i) invoices, accounts and records in accordance with good and accepted accounting principles showing all costs and expenses incurred in the performance of the Alliance Works; and
 - (ii) Records associated with the Alliance Works.
- (b) This clause 15.1 survives termination of this Agreement.

15.2 Access to accounts, records and documentation

We will give every assistance to RTA and make available to RTA on request all invoices, accounts, Records and documentation which we are required to maintain pursuant to clause 15.1.

15.3 Audit

- (a) At all reasonable times and with reasonable notice to the Alliance Manager, RTA and/or the Financial Auditor may undertake an inspection, audit or copying of Records in relation to the Alliance Works.
- (b) We will provide RTA and the Financial Auditor with such access and facilities as is necessary to enable RTA and the Financial Auditor to undertake any such inspection and audit or to take such copies of any Records.
- (c) RTA and the Financial Auditor will have the right to reproduce any Records obtained under clause 15.3(a).

16. CARE OF INFORMATION

16.1 Intellectual Property

- (a) Unless agreed otherwise, all Intellectual Property Rights created in any document, matter or thing created or written in the course of performance of this Agreement will vest in RTA on creation and, by this Agreement, each NOP assigns to the RTA absolutely all such Intellectual Property Rights immediately upon creation.
- (b) RTA grants the NOPs a non-exclusive, royalty-free licence to use RTA's Intellectual Property Rights vested under clause 16.1(a) and any other Intellectual Property Rights of or licensed to RTA that are necessary for undertaking the Alliance Works in Australia, solely for the purposes of the conduct of the Alliance Works. The licence created by this clause 16.1(b) continues subject to the exercise of any rights of RTA under clause 13 and until termination under clauses 11.1 or 13.3(d).
- (c) Nothing in this clause 16.1 is intended to vest in RTA any Intellectual Property Rights in the pricing information or pre-existing business methodologies of any NOP.
- (d) We must ensure that, in providing the Alliance Works, we will not infringe the Intellectual Property Rights of any person or company, and each NOP must ensure that Intellectual Property Rights sufficient to permit RTA's use, maintenance and future modification of the Alliance Works are available to RTA as part of the Alliance Works.
- (e) Records relating to Intellectual Property Rights created by us for the purposes of undertaking the Alliance Works are and will remain the sole property of RTA.
- (f) Records relating to Intellectual Property Rights must be provided to RTA (in such form as RTA may reasonably require) on completion of the Alliance Works and/or within 7 Business Days of being requested to do so by RTA.
- (g) Each of us will indemnify each other against all costs, losses, damages and claims to the extent arising from our breach of clause 16.1(d).

16.2 Moral rights

Each NOP must use its best endeavours to:

- (a) obtain in writing from its officers, employees, Subcontractors, agents and licensees all necessary, unconditional and irrevocable:
 - (i) consents permitted by applicable law, to any alterations to, or use of the Material that would otherwise infringe their respective moral rights in the Material, whether occurring before or after the consent is given; or

-
- (ii) to the extent a consent is not permitted by applicable law, waivers permitted by applicable law of their respective moral rights in the Material,

for the benefit of RTA;

- (b) provide RTA with copies of each written consent and waiver obtained under this clause 16.2, at RTA's request; and
- (c) use its best endeavours to ensure that none of its officers, employees, Subcontractors, agents or licensees institutes, maintains or supports any claim or proceeding for infringement by RTA of any of the NOP's employees', Subcontractors', or licensees' moral rights in the Material.

16.3 Claims

Each NOP must:

- (a) provide, at no cost to RTA, all reasonable assistance required by RTA to defend a claim or any proceedings arising from defending any claim for the infringement of Intellectual Property Rights vested in RTA under clause 16.1 or moral rights of third parties;
- (b) keep RTA fully informed of all suspected or actual infringements and claims by any person that the Materials, or their use, infringe the Intellectual Property rights or moral rights of any person;
- (c) indemnify RTA against all cost, loss, expense or damage (including without limitation legal costs on a solicitor and own client basis and whether incurred by or awarded against RTA) any claim or proceedings, that RTA may sustain or incur as a result of a breach of clause 16.1 or clause 16.2 by that NOP; and
- (d) satisfy any settlement of, or judgement given, in any claim or proceedings to be made by or against RTA to the extent of the indemnity contained in this clause 16.3.

16.4 Conflict of interest

We must:

- (a) disclose the full particulars of any actual, potential or possible conflict of interest which arises or may arise in connection with this Agreement, whether that conflict concerns us or any person employed or retained by us for or in connection with the provision of the Alliance Works;
- (b) not allow ourselves to be placed in a position of conflict of interest or duty in regard to any of our rights or obligations under this Agreement (without the prior consent of each other) before we participate in any decision in respect of that matter; and

-
- (c) ensure that our Representatives and our other officers, agents and employees also comply with the requirements of paragraphs (a) and (b) when acting in connection with this Agreement.

16.5 Confidentiality

- (a) Except for the efficient performance of the Alliance Works, the NOPs will not, and will ensure that those for whom they are responsible for do not:
 - (i) disclose to any person any information; or
 - (ii) publish any photographs, texts, documents, articles, advertisements or other information,

relating to this Agreement, the Alliance Works or the Project, without obtaining RTA's prior written consent (which consent can be withheld in the discretion of RTA).
- (b) If requested by RTA, the NOPs will execute a confidentiality agreement, on terms reasonably required by RTA, in relation to any information obtained by us for the purposes of this Agreement, the Alliance Works or the Project.
- (c) Subject to this clause 16.5, we must take all reasonable steps to protect the confidentiality of all information relating to the Agreement, the Alliance Works and the Project.
- (d) Clause 16.5(a) does not apply to any information that is:
 - (i) in or enters the public domain, except through disclosure contrary to this Agreement; or
 - (ii) or was made available to the NOP by a person who is or was not under any obligation of confidence in relation to that information.
- (e) The obligations of confidentiality set out in this clause 16.5 do not apply to the extent that a Participant is required by any applicable law, the requirement of any Authority or the rules of any stock exchange to disclose any information, provided the Participant:
 - (i) promptly gives notice to the other Participants of that requirement;
 - (ii) takes all lawful measures available, and allows the other Participants to take all lawful measures available, to restrict disclosure of information; and
 - (iii) discloses only that portion of information which it is legally required to disclose.

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- (f) RTA may make information concerning the NOPs available to other NSW Government authorities and ministries, including information provided by a NOP to RTA and information relating to a NOP's performance under this Agreement.
 - (g) Each NOP:
 - (i) acknowledges that RTA will disclose information on this Agreement under section 15A(2) of the *Freedom of Information Act 1989* (NSW);
 - (ii) must provide RTA with details of any Related Body Corporate, or any other private sector entity in which the NOP has an interest, that will be involved in performing any of the NOP's obligations under this Agreement or that will receive a benefit under this Agreement; and
 - (iii) agrees that the obligation in clause 16.5(g)(ii) is a continuing obligation under this Agreement.

17. MISCELLANEOUS PROVISIONS

17.1 Service of notices

- (a) Any notice or other communication given by one Participant to the other, unless the contrary intention appears, will only be effective if it is in writing and signed on behalf of the Participant giving the notice.
- (b) To be valid, a written notice under this Agreement must be delivered by hand, registered mail or facsimile, addressed in accordance with the contact details for the receiving Participant stated in **Schedule 5** (Contact Details).
- (c) A notice, consent or other communication that complies with this clause is regarded as given and received:
 - (i) if it is delivered or sent by fax:
 - (A) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - (B) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day; and
 - (ii) if it is sent by mail:
 - (A) within Australia - 3 Business Days after posting; or
 - (B) to or from a place outside Australia - 7 Business Days after posting.

-
- (d) Electronic communication by email will not constitute a valid notice under this Agreement, but a hard copy of an email may be issued as a valid notice using any of the means listed in clause 17.1(b).
 - (e) We may change our address to which notices can be sent to us by giving each other notice of the change in accordance with this clause.

17.2 Right to assign or Subcontract

We must not:

- (a) assign our rights under this Agreement; or
- (b) subcontract the performance of any of our obligations under this Agreement (except pursuant to clause 7.3),

without the prior written approval of each other, which must not be unreasonably withheld.

17.3 Governing law

This Agreement is governed by the laws of New South Wales.

17.4 Status of Agreement

This Agreement:

- (a) is a contract for services, not a contract of service; and
- (b) does not give rise to any legally binding obligation between any of our officers or employees and each other one of us.

17.5 Tariff concessions

Where goods are to be imported into Australia in connection with the Alliance Works, the NOPs will do all that is reasonably necessary to assist RTA in obtaining the full benefit of any tariff concession in respect of the same.

17.6 Australian currency

Except where expressed to the contrary, all prices and sums of money and all payments made under this Agreement are in Australian currency.

17.7 Relationship of the Participants

- (a) Except as expressly provided in this clause, this Agreement is not intended to create and should not be construed as creating, any partnership, joint venture or fiduciary relationship between any one or more of us or confer a right in favour of any of us to enter into any commitment on behalf of each other or otherwise to act as its agent.

-
- (b) Each of us is an independent entity, and for the purposes of this Agreement, the officers, employees, agents or Subcontractors of us will not be deemed to be officers, employees, agents or Subcontractors of each other, unless deemed otherwise by law and without limiting the generality of this clause we will pay all costs associated with our own officers and employees including any fringe benefits tax liability attaching to the grant of any fringe benefit to our officers and employees in respect of their employment.
 - (c) As between RTA on the one part and the NOPs on the other part:
 - (i) except in relation to clause 14.3(b), a liability of the NOPs under this Agreement is a joint liability of all of them and a several liability of each of them;
 - (ii) a right given to the NOPs under this Agreement is a right given severally to each of them; and
 - (iii) a representation or acknowledgement made by the NOPs is made by each of them.

17.8 Entire agreement

This Agreement as amended from time to time contains the entire agreement between us and supersedes all prior arrangements whether written or oral and any heads of agreement, letters of intent, representations and other documents in relation to the Alliance Works issued or entered into prior to the date of this Agreement.

17.9 Non-waiver

Waiver or relaxation partly or wholly of any of the terms of this Agreement will:

- (a) be effective only if in writing and signed by each of us;
- (b) apply only to a particular occasion unless expressed to be continuing; and
- (c) not constitute a waiver or relaxation of any other term of this Agreement.

17.10 Corporate power and authority

We represent to each other and must ensure that we have full power to enter into and perform our obligations under this Agreement and that when executed it will constitute legal, valid and binding obligations in accordance with its terms.

17.11 No representation or reliance

We each acknowledge that we:

-
- (a) (or any person acting on our behalf) have not made any representation or other inducement to enter into this Agreement, except for representations or inducements expressly set out in this Agreement; and
 - (b) do not enter into this Agreement in reliance on any representation or other inducement by or on behalf of each other, except for any representation or inducement expressly set out in this Agreement.

17.12 Severability

If any provision of this Agreement, or its application to any of us, is or becomes invalid, void, voidable or otherwise unenforceable for any reason:

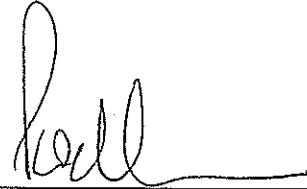
- (a) that provision or its application to any of us will be severed from this Agreement; and
- (b) the remainder of this Agreement or the application of its provisions to any of us will not be affected.

17.13 Financial Auditor

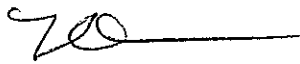
- (a) RTA will engage and pay the Financial Auditor under a separate agreement. Costs associated with the engagement of the Financial Auditor will not form part of the AOC or TOC or otherwise be costs of the Alliance.
- (b) RTA must ensure that the Financial Auditor acts independently of the Participants and in a timely manner.

EXECUTED by the parties

SIGNED for ROADS AND TRAFFIC
AUTHORITY OF NEW SOUTH WALES,
by its duly authorised delegate, in the presence
of:



Signature of delegate



Signature of witness



Name

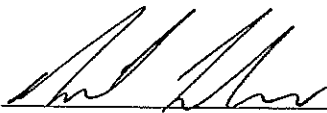
HELENA MANTAKOUN

Name



Title

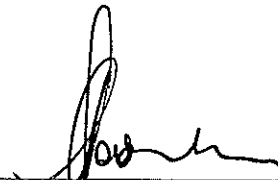
SIGNED for BAULDERSTONE
HORNIBROOK PTY LTD, by its duly
authorised Directors, in the presence of:



Signature of witness Director



Name

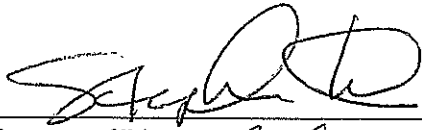


Signature of Director

A. G. TOOMBES
DIRECTOR

Name of Director in full

SIGNED for HYDER CONSULTING PTY LTD, by its duly authorised Directors, in the presence of:



Signature of Director *CO Sec*

STEPHEN UTR

Name of Director in full

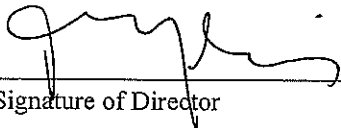


Signature of other Director

J Phelan

Name of other Director in full

SIGNED for MANIDIS ROBERTS PTY LTD, by its duly authorised Directors, in the presence of:



Signature of Director

PHILIP STEPHEN MANIDIS

Name of Director in full



Signature of other Director

PETER DEVINE

Name of other Director in full

SCHEDULE 1
ALLIANCE PARTICIPANTS

PART A

RTA

Roads and Traffic Authority (ABN 64 480 155 255)

Address for notices, etc: 260 Elizabeth Street, Surry Hills, New South Wales

RTA Interface Manager:

Walter Prolov RTA Pyrmont Project Office, PO Box 609,
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PART B

NOPs

Boulderstone Hornibrook Pty. Ltd. (ABN 52 002 625 130)

Address for notices, etc: Level 10, 40 Miller Street, North Sydney, New South
Wales, 2060

Hyder Consulting Pty. Ltd. (ABN 76 104 485 289)

Address for notices, etc: Level 5, 141 Walker Street, North Sydney, New South
Wales, 2060

Manidis Roberts Pty. Ltd. (ABN 42 003 550 972)

Address for notices, etc: GPO Box 91, Sydney NSW 2001

SCHEDULE 2

DICTIONARY

1. INTERPRETATION

1.1 Definitions

Defined terms set out in the Commercial Framework apply in this Agreement and the following definitions apply in this Agreement:

Actual Outturn Cost or **AOC** means the sum of all Direct Costs actually incurred by the Alliance Participants in performing the work under this Agreement plus the Fee paid or payable by RTA to the NOPs.

Agreement means this document and includes its schedules, annexures and attachments.

Alliance has the meaning given to it in **Recital C**.

Alliance Brief means the document set out in **Schedule 9** (Alliance Brief) as may be updated by RTA.

Alliance Leadership Team or **ALT** means the alliance leadership team established under clause 2.1.

Alliance Management Team or **AMT** means the alliance management team established by the ALT under clause 3.1(b).

Alliance Manager or **AM** means the person appointed by the ALT under clause 3.1(a).

Alliance Objectives means the matters set out in **Schedule 4** (Alliance Objectives) or any other objectives determined by the ALT from time to time.

Alliance Principles means the matters set out in **Schedule 3** (Alliance Principles) or any other principles determined by the ALT from time to time.

Alliance Works means the whole of the work to be carried out by us in accordance with this Agreement, as varied in accordance with this Agreement, which is to be handed over to RTA, but excluding Construction Plant and Temporary Works.

AMT Member has the meaning given to it in clause 3.1(b).

Approval Process means any process required to obtain the approval or consent of an Authority or under any Statutory Requirement, including but not limited to any approval process under the *Environmental Planning and Assessment Act 1979* (NSW).

Authority means:

- (a) any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality; or

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- (b) any other person having a right to impose a requirement, or whose consent is required, with respect to any part of the Alliance Works.

Business Day means a day that is not a Saturday, Sunday or public holiday in Sydney or 27, 28, 29, 30 or 31 December in any year.

Certificate of Completion means the certificate referred to in clause 6.5(c).

Certificate of Final Completion means the certificate referred to in clause 6.6(b) in which the Alliance Manager states that the Defects Correction Period has expired and the date of such expiry and that the Alliance Manager is not aware of any outstanding Defects.

Chairperson means the chairperson of the ALT as referred to in clause 2.3(a) and appointed from time to time under clause 2.3(c).

Commercial Framework means the commercial framework contained in **Schedule 7** (Commercial Framework), as amended or modified by the ALT in writing from time to time, but only where there is a Scope Change.

Completion is that stage when:

- (a) the Alliance Works are 100% complete and free from any known Defects;
- (b) the requirements of all relevant certifying Authorities and insurance surveyors have been met and all certificates, authorisations, approvals and consents from Authorities and service providers required for the occupation, use and maintenance of the Alliance Works have been issued;
- (c) those tests that are required to be carried out before the Alliance Works reach Completion have been carried out and passed;
- (d) all testing, training, documents and other information associated with the Alliance Works and essential for the use, operation and maintenance of the Alliance Works have been supplied to RTA including but not limited to all Subcontractors' warranties, operating manuals, licences, access codes, as-built drawings or work-as-executed drawings; and
- (e) any other things required to be done under this Agreement as part of the Alliance Works have been done.

Construction Plant means appliances, vehicles and other things (including devices, equipment, instruments and tools) used in connection with the Alliance Works, but not forming part of the Alliance Works.

CW Insurance means contract works (construction material damage) insurance.

CW Insurance Date means the date on which CW Insurance is to commence, as determined by the ALT.

Date for Completion means:

- (a) in respect of Milestone 1, 30 June 2009; and
- (b) in respect of Milestone 2, 30 June 2010.

Date of Completion means the date stated in a Certificate of Completion issued in accordance with clause 6.5.

Date of Final Completion means the date stated in the Certificate of Final Completion.

Defaulting Participant has the meaning given to it in clause 13.

Defect means a defect or omission in the Alliance Works and includes any damage caused to the Alliance Works by any one of us in the course of performing the Alliance Works or any non compliance with the Alliance Brief.

Defects Correction Period means the period expiring on the later of the date:

- (a) which is 12 months after the Date of Completion of the Alliance Works; and
- (b) on which all Defects notified under clause 6.11(a) during the period in paragraph (a) have been rectified in accordance with clause 6.11.

Design means such design, conceptual design, design development and Design Documentation provided in accordance with this Agreement.

Design Documentation means all:

- (a) design documentation (including design standards, design reports, durability reports, specifications, models, samples, calculations, drawings, digital records and all other relevant data) in computer readable and written forms, or stored by any other means, which are required for the performance of the Alliance Works or which a Participant or any other person creates in performing the Alliance Works (including the design of Temporary Works);
- (b) computer software (including both source code and object code versions) specifically created or modified for the purposes of the Alliance Works; and
- (c) reports and submissions to Authorities.

Direct Cost has the meaning given to that term in **Schedule 7** (Commercial Framework).

Direction means a direction under clause 7.21.

Estimation Request means a notice from RTA to the ALT, requesting the ALT to make a determination under clause 7.21(d).

Excusable Delay means:

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- (a) war, revolution, act of public enemies, terrorism, epidemic, tidal wave, earthquake, lightning or explosion;
 - (b) action or inaction by, or orders, judgements, rulings, decisions or enforcement actions of any State or Federal court, government, tribunal or Authority (including denial, refusal or failure to grant any permit, authorisation, licence, approval or acknowledgment despite the use of timely best endeavours by the Alliance to obtain same) or a change in laws, such change not being foreseeable at the time of entering into this Agreement;
 - (c) suspension by RTA of all or part of the Alliance Works pursuant to clause 7.20; or
 - (d) any other reasonable cause that the ALT decides.

Fee means the fee calculated in accordance with **Schedule 7** (Commercial Framework).

Final Completion means the stage when all obligations in relation to the Alliance Works have been completed and a Certificate of Final Completion has been issued.

Financial Auditor means the person or persons named in **Schedule 5** (Contact Details).

Gainshare means the payments made by RTA to the NOPs calculated in accordance with **Schedule 7** (Commercial Framework).

Gainshare Modifiers has the meaning described in **Schedule 7** (Commercial Framework).

Gainshare Regime is the regime of risk and reward payments paid by the NOPs or RTA, as the case may be, as calculated in accordance with **Schedule 7** (Commercial Framework).

GST means the tax payable on taxable supplies (as that term is defined in the GST Legislation) under the GST Legislation.

GST Legislation means the *New Tax System (Goods and Services Tax) Act 1999* and any related legislation imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trade marks, patents, designs, circuit layouts, plant varieties, business and domain names, inventions and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable. These rights include:

- (a) all rights in all applications to register these rights;
- (b) all renewals and extensions of these rights; and
- (c) all rights in the nature of these rights, such as moral rights.

Key Performance Indicators or KPIs means the performance indicators identified in **Schedule 7 (Commercial Framework)** as components of the KRAs which determine Performance Gainshare.

Key Result Areas or KRAs means the performance indicators determined by the AMT and agreed by the ALT against which our performance in achieving Outstanding Performance in our Alliance Objectives will be measured for the purposes of this Agreement.

Material means in respect of the Alliance Works, any idea, document, work, process, product, result or solution introduced to the Alliance by a NOP or created by or on behalf of a NOP as part of the Alliance.

Material Default means in relation to a Participant:

- (a) any act or omission of the Participant which is fraudulent, intentionally illegal or an intentional breach of this Agreement;
- (b) any wanton or reckless act or omission of the Participant without regard to the possible harmful consequences arising from that act or omission but shall not include a merely negligent act or omission;
- (c) the Participant informing another Participant in writing or creditors generally that the informer is insolvent;
- (d) the Participant committing an act of bankruptcy;
- (e) the Participant having a bankruptcy petition presented against it;
- (f) the Participant being made bankrupt;
- (g) the Participant having a meeting of its creditors called with a view to:
 - (i) entering a scheme of arrangement or composition with creditors; or
 - (ii) entering a deed of company arrangement;
- (h) the Participant having a deed of assignment or deed of arrangement made, or accepting a composition, or being required to present a debtor's petition, or having a sequestration order made, under Part X of the *Bankruptcy Act 1996* (Cwlth);
- (i) the Participant entering into a deed of company arrangement with creditors;
- (j) the Participant being subject to a resolution passed at a meeting of its creditors to place it under official management;
- (k) the Participant having a controller or administrator appointed or a receiver of its property or any part of its property appointed or a mortgagee take possession of any of its property;

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- (l) the Participant being the subject of an application to a court for its winding up, which application is not stayed within 14 days;
 - (m) a winding up order being made in respect of the Participant;
 - (n) the Participant resolving by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up);
 - (o) an execution is levied against the Participant by a creditor;
 - (p) a failure by the Participant to comply with clauses 14.3(b), 16.1, 16.2 or 16.3;
 - (q) a failure by the Participant to account for or recover insurance proceeds under insurance policies required under this Agreement or a failure by the Participant to comply with any such policy;
 - (r) a Participant:
 - (i) accessing the Site for the purpose of performing the Alliance Works prior to the approval by the ALT of the OH&S Plan; or
 - (ii) failing to comply with the requirements of the OH&S Plan by heedless, careless, intentional or systemic conduct where the Participant can foresee some probable or possible harmful consequence but nevertheless decides to continue with that conduct with an indifference to, or disregard of, that consequence;
 - (s) a Participant failing to pay another Participant money within 20 Business Days of a written demand which specifies that it is being made for the purposes of this paragraph (s) where that money is due and payable under this Agreement and has not been paid to the Participant within the time required by this Agreement;
 - (t) a Participant repudiating this Agreement; or
 - (u) a failure by a Participant to effect and maintain an insurance policy that it is required to effect and maintain under this Agreement.

Milestone 1 means all aspects of the Alliance Works on the section of Victoria Road from the Iron Cove Bridge to The Crescent, Rozelle, including the implementation of the tidal flow system, traffic signal improvements and all other road improvements required to achieve the tidal flow implementation in that section of Victoria Road.

Milestone 2 means all Alliance Works not included in Milestone 1.

Minimum Conditions of Satisfaction or **MCOS** means the minimum level of performance for each Key Result Area nominated by RTA.

Non-Defaulting Participant means, in relation to a Material Default committed by a Defaulting Participant, the Participants other than that Defaulting Participant.

NOP means a Participant with the exception of RTA and where the plural is used means all of the Participants with the exception of RTA.

OH&S Plan means the occupational health and safety management plan prepared in accordance with clause 7.8.

Outstanding Performance means the levels of outstanding performance in the KPIs described in the Commercial Framework.

Painshare means the payments made by the NOPs to RTA calculated in accordance with **Schedule 7** (Commercial Framework).

Participant means a party as identified in **Schedule 1** (Alliance Participants) and any other person who becomes a party to this Agreement.

Payment Claim means a claim in such form as the ALT determines.

Payment Schedule means a payment schedule issued by RTA under clause 8.1(c) or clause 8.1(d).

Performance Gainshare has the meaning described in **Schedule 7** (Commercial Framework).

Performance Pool has the meaning described in **Schedule 7** (Commercial Framework).

PPL Insurance means public and products liability insurance.

Principal Arranged Insurances means:

- (a) the PPL Insurance referred to in clause 10.1 which has been effected by RTA under clause 10.1, details of which are contained in **Schedule 13** (Third Party Public and Products Liability Insurance Summary); and
- (b) the CW Insurance which is intended to be effected by RTA under clause 10.1, likely indicative details of which are contained in **Schedule 12** (Likely Indicative Terms of Construction Material Damage Insurance Policy).

Program Gainshare has the meaning described in **Schedule 7** (Commercial Framework).

Program Pool has the meaning described in **Schedule 7** (Commercial Framework).

Project means the project the subject of this Agreement as described in **Recital A**.

Records include, but are not limited to, both electronic and physical versions of records, accounts, ledgers, payroll, correspondence, tenders, minutes of meetings, notes, reports, instructions, plans, drawings, invoices, dockets, receipts, vouchers, computer programs. In relation to Intellectual Property Rights, it includes all plans, designs, drawings, specifications, records excluding normal internal business records, data reports and other technical information, both electronic and physical versions but does not include any

electronic or physical record, including but not limited to correspondence or instruction, that is subject to legal professional privilege.

Rectification Notice means the rectification notice referred to in clause 6.11(a).

Rectification Work means the rectification of Defects as referred to in clause 6.11(a).

Related Body Corporate has the meaning defined in section 50 of the *Corporations Act 2001* (Cwlth).

Representative means the persons appointed to the ALT or nominated, replaced or substituted in accordance with clause 2.2.

Scope Change means:

- (a) any delay in the Alliance Works achieving Completion as a result of an Excusable Delay; or
- (b) any other event or circumstance which the ALT agrees justifies a modification to the terms of compensation to the NOPs as determined by the ALT in accordance with this Agreement.

Separable Portion means Milestone 1 and Milestone 2 and any other part of the Alliance Works which the ALT determines is a separable portion.

Site means the land and other places (including any existing buildings, other structures, services or anything else specified in this Agreement) and airspace through or on which the Alliance Works are to be constructed.

Statutory Requirements means:

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the Alliance Works are being carried out;
- (b) certificates, licences, consents, permits, approvals, and requirements of organisations having jurisdiction in connection with the carrying out of the Alliance Works; and
- (c) fees and charges payable in connection with the matters referred to in paragraphs (a) and (b).

Subcontract means any contract or purchase order between a NOP and a Subcontractor in relation to any part of the Alliance Works.

Subcontractor means any person engaged by a NOP (including a supplier or hirer of materials, plant, equipment or testing services) to perform any part of the Alliance Works and includes, where it is not inconsistent with the context, the Subcontractor's officers, employees, agents, consultants and invitees.

Target Outturn Cost or **TOC** means the out-turn estimate determined by the AMT and approved by the ALT of the costs to achieve the Minimum Conditions of Satisfaction and Final Completion including all Direct Costs, the Fee and the necessary contingencies required to perform the work under this Agreement.

Tax Invoice has the meaning given to it by GST Legislation.

Temporary Areas means the areas detailed as such in the Alliance Brief.

Temporary Works means works (including Construction Plant, processes and other things) used for the purpose of carrying out the Alliance Works, but which does not form part of the Alliance Works.

TOC Gainshare has the meaning described in **Schedule 7** (Commercial Framework).

Variation means an alteration authorised in writing by the ALT or RTA to any:

- (a) part of the Alliance Works; or
- (b) service or work that the Participants must perform under this Agreement; or
- (c) date, milestone or program in connection with the Alliance.

Wider Alliance Team means the wider alliance team established under clause 4.1.

work under this Agreement means the work or service that any Participant is or may be required to carry out in accordance with this Agreement and includes Variations, Rectification Work, Construction Plant and Temporary Works.

Works Approvals means any approvals arising from Statutory Requirements in connection with the Alliance Works or the Site.

1.2 Interpreting this Agreement

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Agreement, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;

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- (iii) a Participant includes a permitted substitute or a permitted assign of that Participant;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
 - (v) a discretion means an absolute and unfettered discretion, not limited by implication; and
 - (vi) anything (including a right, obligation or concept) includes each part of it.
- (b) Any reference to currency is a reference to Australian dollars, unless stated otherwise.
 - (c) No rule of construction applies to the interpretation of this Agreement to the disadvantage of one Participant on the basis that the Participant prepared it.
 - (d) A decision of the ALT includes a direction, determination, approval, authorisation, consent, agreement, recommendation or requirement of the ALT.

SCHEDULE 3
ALLIANCE PRINCIPLES

ALLIANCE PRINCIPLES

These principles provide the framework to deliver an outstanding project which we will abide by exhibiting behaviour consistent with the behavioural principles in the table following.

- One team one goal
- Primary focus on satisfying the Alliance Objectives and delivering the desired outcomes
- All participants win or all participants lose based on the project outcomes
- A peer relationship where all participants have an equal say in decisions for the project
- Collective responsibility for performance with an equitable sharing of risk and reward
- Decisions are made on a best for project basis
- Full access to best-in-class resources from all alliance participants
- Participants are committed to developing a culture that promotes and drives innovation and outstanding performance
- Clear accountability within a no blame culture
- Open, straight and honest communication
- All transactions are fully open-book complete transparency in all arrangements
- All decisions are made on the basis of the interests of the alliance and not on the basis of organisational positions
- Each participant will provide unconditional support to the alliance
- Each participant will promote the alliance to their respective organisations and stakeholders
- Promote a healthy work life balance

BEHAVIOURAL PRINCIPLES

These principles provide the framework to deliver an outstanding project

- Respect and trust each other
- Be fair, reasonable and honest
- Be considerate and courteous
- Accept differences and limitations
- Listen and share your views
- Be proactive
- Promote a healthy work life balance
- Look out for and support each other
- Enhance our skills and abilities
- Recognise, celebrate and reward success
- Foster a sense of ownership
- Create an enjoyable environment
- Be an inspiration to others
- Challenge assumptions and constraints

SCHEDULE 4
ALLIANCE OBJECTIVES

Key Result Area (KRA)	Alliance objective
Safety	<p>No-one is injured during or because of project delivery.</p> <p>A safe thoroughfare for all road users is maintained at all times during construction.</p> <p>The project delivers acceptable road safety outcomes.</p> <p>The design addresses safety in operation.</p>
Cost	<p>Target Outturn Cost is accepted by stakeholders as value for money.</p> <p>The Actual Outturn Cost is less than or equal to the Target Outturn Cost.</p>
Schedule	<p>The target completion date (program) is not exceeded.</p>
Operation and Maintenance	<p>Intelligent transport system (ITS), if it forms part of the project, to be a robust, sustainable, maintainable solution that integrates with RTA transport management centre systems.</p>
Traffic	<p>The project improves the reliability and efficiency of Victoria Road bus services.</p> <p>The project maintains current peak traffic capacity and flow.</p> <p>Traffic (pedestrian, cyclist and vehicular) disruption and delays are minimised during construction.</p> <p>The project maintains pedestrian and cycle access.</p>
Community	<p>Community stakeholders are effectively engaged and informed during development, delivery and transition to operation.</p>
Environmental & Social	<p>Design to minimise environmental impacts.</p> <p>Prepare environmental assessment and obtain required approvals.</p> <p>Establish, implement and maintain an environmental management system equal to or better than RTA Specification G36.</p>
Quality	<p>Achieve full compliance with RTA specifications.</p> <p>Achieve a fully functioning quality management system complying with RTA Q6.</p> <p>Consistent high quality product.</p>

SCHEDULE 5
CONTACT DETAILS

Financial Auditor:

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Sydney NSW 2001
Tel: 9233 8933
Fax: 9233 8521

RTA:

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Fax:

NOPs:

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David Lougher - General Manager NSW &
ACT

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Syd Gamble - Director Infrastructure
Manidis Roberts Pty Ltd
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Surry Hills NSW 2010
Fax: (02) 9248 9810
Peter Devine - Managing Director

SCHEDULE 6
ALLIANCE LEADERSHIP TEAM

Name of Representative	Telephone Number	e-mail	Representative of
Steve Cowdery	9935 7183 0409 940 702	scowdery@bh.com.au	Boulderstone Hornibrook Pty Ltd
Vince Newton	9935 7059 0404 801 300	vnewton@bh.com.au	Boulderstone Hornibrook Pty Ltd
Syd Gamble	8907 9106 0414 496 317	syd.gamble@hyderconsulting.com	Hyder Consulting Pty Ltd
Philip Manidis	92815199 0407 893 167	phillipm@manidisroberts.com.au	Manidis Roberts Pty Ltd
Peter Stewart	9880 9552 0419 780 335	peter@peterstewartconsulting.com.au	Peter Stewart Consulting Pty Ltd
Geoff Fogarty	8849 2069 0412 245 842	geoff_fogarty@rta.nsw.gov.au	Roads and Traffic Authority
Craig Moran	8837 0901 0411 258 829	craig_moran@rta.nsw.gov.au	Roads and Traffic Authority

SCHEDULE 8

FUNCTIONS OF ALT, AMT AND THE ALLIANCE MANAGER

1. PART 1 – ALT

The role of the ALT is to provide leadership, governance and oversight. In this regard the function may be described as:

- a) Be accountable to the project and project sponsor
- b) Commit the resources of own organisation
- c) Facilitate the development of an inspirational vision that is owned by all participants
- d) Facilitate the development of a set of values that reflect the desired culture of the alliance, champion the values and in the absence of policy make decisions based on the values.
- e) Set policy and provide strategic direction.
- f) Set challenging goals that represent outstanding performance in each of the objectives of the project (KRAs) and champion the objectives and goals.
- g) Challenge the Alliance Manager and AMT
- h) Make timely decisions, informed by alliance values, commercial principals and characteristics.
- i) Support, coach and mentor the AM and AMT
- j) Provide high level support and stakeholder interface as requested by the AM
- k) Appoint the AM and provide empowerment
- l) Ratify the AM's recommendation for AMT and organisation structure
- m) Set review and revise limits of delegation to Alliance Manager
- n) Review and approve an alliance management plan and ensure adherence to the plan
- o) Monitor the performance of the alliance against objectives and take corrective action as required
- p) Monitor the cultural health of the Alliance, the performance of the team and take corrective action
- q) Conduct periodic performance and development reviews of the Alliance Manager
- r) Determine Alliance Manager and AMT performance incentive for outstanding performance against the project objectives.
- s) Issue directions, approvals and decisions as required by this Agreement
- t) Set reporting requirements for Alliance Manager and AMT to the ALT
- u) Agree and sign off on KPIs

2. PART 2 – AMT

The role of the AMT is to deliver outcomes to meet or exceed alliance objectives. The function may be described as:

- a) Appoint the Wider Alliance Team on a best for project basis
- b) Provide effective leadership to the Wider Alliance Team, provide clear accountabilities and mentoring
- c) Be accountable for objectives and outstanding performance goals.
- d) Drive innovation and deliver outstanding results and be accountable for the solution.
- e) Work collaboratively
- f) Provide day to day management of the project
- g) Measure forecast and report performance to the ALT
- h) Take appropriate corrective action
- i) Meet fortnightly (formally)
- j) Provide the Alliance Manager items requiring the decision of the ALT and with the Alliance Manager produce supporting papers for any item on the ALT meeting agenda no later than 14 days prior to the ALT meeting
- k) Conduct periodic performance and development reviews of the Wider Alliance Team
- l) Make timely decisions on a best for project basis informed by alliance values
- m) Communicate with the Wider Alliance Team
- n) Maintain an alliance culture
- o) Implement best for project systems
- p) Resolve issues and elevate as required.

3. PART 3 – ALLIANCE MANAGER

The role of the Alliance Manager is to lead the AMT to ensure that the alliance objectives are exceeded. The function may be described as:

- a) Deliver outcomes that exceed the MCOS for each objective
- b) Recommend a structure and AMT for ratification by ALT
- c) Be accountable to the Alliance for delivery of the project
- d) Lead and empower the AMT to exceed the MCOS for each objective
- e) Mentor the AMT
- f) Provide leadership to the Wider Alliance Team
- g) Be an advocate for the alliance team to the ALT
- h) Make timely decisions on a best for project basis informed by alliance values, commercial principals and characteristics.

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- i) Set clear roles and responsibilities for AMT
 - j) Meet fortnightly (formally) with the AMT
 - k) Communicate with the Wider Alliance Team and stakeholders
 - l) Be the public face of the Alliance
 - m) Develop and maintain an alliance culture
 - n) Develop and implement best for project systems
 - o) Develop an alliance management plan for endorsement by the ALT
 - p) Report on performance of the alliance against agreed objectives
 - q) Following consultation with the AMT provide the ALT with an agenda and supporting papers for any item on the agenda no later than 14 days prior to the ALT meeting
 - r) Conduct periodic performance and development reviews of the AMT
 - s) Recommend for endorsement by the ALT any AMT performance incentive for outstanding performance against the project objectives.

The AM's delegated authority is:

- a) Commit the Alliance participants to expenditure up to the limits nominated by the ALT, either as a single or continuous commitment, provided the commitment is within the budget line item for that expenditure within the TOC
- b) Delegate to any member of the AMT authorisation to commit the alliance participants to expenditure up to the limit nominated by the ALT provided the commitment is within the budget line item for that expenditure within the TOC
- c) Delegate to any other member of the Wider Alliance Team authorisation to commit the alliance participants to expenditure up to the limit provided the commitment is within the budget line item for that expenditure within the TOC
- d) Any procurement is to be conducted in accordance with the approved procedure

SCHEDULE 9
ALLIANCE BRIEF

Victoria Road Upgrade Alliance Brief

8 November 2007

Revision B

1. Introduction

The project objective is the overall intention or reason for the project. It has been defined as, *to improve the efficiency and reliability of bus services and assist general traffic flows along Victoria Road through Drummoyne and Rozelle*. All design decisions should be made with the project objective in mind.

This Alliance Brief applies to the following elements;

- a) Tidal Flow Traffic Scheme along Victoria Road
- b) Intelligent Traffic System (ITS)
- c) Duplication of Iron Cove Bridge
- d) Review of Existing Bridge

Each of the above elements has been assigned individual specific objectives designed to ensure that the project objectives are met.

This document is to be used as a basis to develop and evaluate the design solutions. Each section of the report is broken in the following sections:

- a) Project objective,
- b) Design criteria, and
- c) Design constraints.

The design criteria are the critical technical design inputs to be achieved in the final solution. The design constraints are issues that need to be considered during the development of designs.

Elements of this Brief will need to be updated as the project develops. It is intended that the Brief apply through all stages of the design so that project objectives are achieved.

It is recognised that more detailed design criteria reports will need to be developed for the various elements of the Alliance as the work proceeds. These will be initiated as the design concepts are further developed.

2. TIDAL FLOW TRAFFIC SCHEME ALONG VICTORIA ROAD

2.1 Objective

The objective of the tidal flow traffic scheme is to facilitate the provision of a city bound bus lane from approximately Westbourne Street, Drummoyne to The Crescent, Rozelle while maintaining three (3) general traffic lanes.

2.2 Design criteria

The following design criteria form the basis for the tidal flow design:

- a) In pavement devices to not impact the structural integrity of the pavement
- b) Bus lane widths to be maximised
- c) Contra Flow lane widths to be maximised
- d) Provision to be made for communications facilities and both speed and lane usage enforcement technology
- e) Signage and delineation to be clear and fit for purpose (on Victoria Road and side streets)
- f) Sight distance (vertical and horizontal) to any new traffic management devices to be designed for 60km/h
- g) Appropriate clear zones to be provided for new structures
- h) New work shall not affect the skid resistance of the existing pavement
- i) Safe and efficient access to all assets for maintenance and operation is to be ensured
- j) All works to be in accordance and consistent with appropriate specifications and standards
- k) To incorporate fail safe mechanisms
- l) Wheel paths to remain at least 200mm from slab joints as far as practical
- m) If coring of pavement is unavoidable then drilling is to be located min. 200mm from any joints as far as practical
- n) Time to carry out mode changeover to be minimised
- o) Road design to comply with the RTA Road Design Guide

2.3 Constraints

The following constraints need to be considered in developing the design of the tidal flow traffic scheme:

- a) The limit of work is between The intersection of Westbourne St and Victoria Road and the intersection of The Crescent and City West Link including necessary works in intersection roads.
- b) The tidal flow traffic scheme shall not adversely impact the heritage aspects of Iron Cove Bridge.
- c) Design and installation of the tidal flow traffic scheme shall minimise impact on traffic flow including vehicle, pedestrian, cyclist and water traffic, and shall endeavour to satisfy each of the respective stakeholder requirements.
- d) Design and installation of the tidal flow traffic scheme shall make provision for but not be limited to the following;
 - Heritage aspects of Iron Cove Bridge,
 - The environment and community,

- The requirements of RTA Road Safety Branch,
 - The requirements of RTA Sydney Asset Management Section,
 - NSW Maritime operations,
 - Special events using Victoria Road,
 - Co-ordination between manual and electronic components.
- e) The design shall provide for safe installation.
- f) The design shall facilitate the inspection, monitoring and maintenance of the tidal flow traffic scheme.
- g) Must be integrated into existing TMC systems.
- h) The design shall provide a value for money solution.
- i) Mode changeover must be able to be carried out with a maximum of one lane closure on each carriageway.
- j) Coring, trenching or other structural impacts on the concrete slabs should be avoided where possible
- k) Installation of in-pavement lighting and associated wiring should be minimised
- l) Overhead lane delineation is preferable to in-pavement devices
- m) Any necessary joint repairs, slab jacking and asphalt resurfacing should be co-ordinated to be done in association with implementation of the tidal flow scheme to maximise period before maintenance intervention is required
- n) Removal of candy bar sockets should not be a prerequisite for future maintenance resurfacing works

3. INTELLIGENT TRANSPORT SYSTEMS (ITS)

3.1 Objective

The objective of the Intelligent Transport Systems (ITS) is to inform motorists of real time road and traffic conditions, to safely and efficiently guide and delineate motorists on approach to and through the tidal flow, provide real time monitoring of the tidal flow, the approaches and wider traffic conditions, and facilitate incident management within the corridor.

3.2 Design criteria

The following design criteria form the basis for the design:

- a) To incorporate fail safe mechanisms
- b) Safe and efficient access to all assets for maintenance and operation is to be ensured
- c) ITS is robust, sustainable, maintainable and its life cycle cost is optimised
- d) Signage and delineation to be clear and fit for purpose (on Victoria Road and side streets), particularly with regard to lane designation / adjusting infrastructure (moveable medians, candy bars, in-pavement lighting)
- e) Over head lane delineation for transitions and changes in lane designation
- f) Fibre optic communications facilities to operate and integrate ITS into the TMC
- g) Fibre optic communications interface to Traffic Control Signals (TCS) located on approach to and through the tidal flow
- h) Dedicated Closed Circuit Television monitoring at all TCS and lane designation / adjusting infrastructure.
- i) Full Closed Circuit Television monitoring of the entire length of the tidal flow, the immediate approaches and bridges
- j) An automated incident detection system is installed on the bridges and their immediate approaches.

3.3 Constraints

The following constraints need to be considered in developing the design:

- a) All works to be in accordance and consistent with appropriate specifications, standards and RTA guidelines
- b) All ITS infrastructure including the operation of an automated tidal flow must be integrated into existing TMC systems
- c) Co-ordination / interlocking between manual and electronic components of the tidal flow
- d) Design and installation of ITS shall endeavour to satisfy each of the respective stakeholder requirements.

4. DUPLICATION OF IRON COVE BRIDGE.

4.1 Objective

The objective for the duplication of the Iron Cove Bridge is to provide a new four lane structure either upstream or downstream of the existing Iron Cove Bridge.

4.2 Design criteria

The following design criteria form the basis for the design of the new bridge:

- a) Minimum design life, 100 years.
- b) Bridge drainage to be directed to the abutments for treatment prior to discharge (gross pollutants and spill containment).
- c) The new bridge shall be able to be easily and safely inspected and maintained in the future.
- d) Consider how maintenance of the existing bridge shall impact the new bridge.
- e) The existing navigation clearances shall be maintained.
- f) Shared pedestrian/cyclist path shall be provided across Iron Cove with connections to Henley Marine Drive and King George Park.
- g) Maintain existing traffic clearances under the new bridge at Henley Marine Drive.
- h) Design and drawings to comply with RTA Bridge Design Manual and RTA requirements.
- i) Ensure pedestrian and cyclist security using the shared path.
- j) All works to be in accordance with appropriate specifications, standards and RTA guidelines.

4.3 Constraints

The following constraints need to be considered in developing the design for the new bridge:

- a) Geometry of the structure to best suit the geometry of the approach roadworks.
- b) Design and construction of the new bridge shall minimise impact on traffic flow including vehicles, buses, pedestrian, cyclists and waterborne traffic, and shall satisfy each of the respective stakeholder requirements.
- c) Design and construction of the new bridge shall make provision for but not be limited to the following;
 - i) Heritage aspects of the existing bridge,
 - ii) The environment,
 - iii) The requirements of the RTA Road Safety Branch,
 - iv) The requirements of RTA Sydney Asset Management Section,
 - v) The requirements of RTA Infrastructure Protection Group,
 - vi) Rowing regatta operations,
 - vii) Sydney ferries operations,
 - viii) Marine traffic,
 - ix) Requirements of the RTA Motorways Branch,
 - x) Pedestrian and cyclist operations,
 - xi) Stakeholder requirements.
- d) Avoid impacts on existing properties.

- e) New and existing bridges connect to the 4/2 and 3/3 tidal flow traffic arrangements on the Drummoyne side and an eight lane fixed traffic arrangements on the Rozelle side.
- f) The design shall provide a value for money solution.
- g) The design shall not preclude the possible future construction of tunnel portals to connect to the future motorway. Allow for ramps to be two lane ramps.
- h) No direct discharge of deck drainage into Iron Cove.

5. REVIEW OF THE EXISTING BRIDGE.

5.1 Objective

The objective for the review of the existing bridge is to consider what work has to be carried out by the RTA in the future on the existing bridge and how this work will affect the operations of the Victoria Road Upgrade.

5.2 Design criteria

The following design criteria form the basis for this work:

- a) Review all reports and other information relating to the existing bridge.
- b) Consider the appropriateness of the rectification/rehabilitation and other work proposed.
- c) Carry out any additional inspections to confirm the bridge condition.
- d) Consider how the future rectification/rehabilitation works will affect the operation of Victoria Road.
- e) Consider any works required on the existing bridge as a result of the Victoria Road Upgrade.
- f) The design of the Victoria Road Upgrade shall include the requirements of the existing bridge rectification/rehabilitation and other work to ensure that it is reasonably practicable and is not precluded by the lack of capacity in the Victoria Road Upgrade.

5.3 Constraints

The following constraints need to be considered in developing the design:

- a) New and existing bridges connect to the 4/2 and 3/3 tidal flow traffic arrangements on the Drummoyne side and an eight lane fixed traffic arrangements on the Rozelle side.
- b) Avoid property impacts.
- c) Geometry of the structure.
- d) Allowance for maintenance of the existing bridge.
- e) Consider pedestrian and cycle traffic on the existing bridge during this work.
- f) The review of the existing bridge shall make provision for but not limited to the following:
 - The requirements of the RTA Road Safety Branch,
 - The requirements of the RTA Sydney Asset Management Section,
 - The requirements of the RTA Infrastructure Protection Group,
 - Heritage impacts of Iron Cove Bridge.

6. OTHER PROJECT REQUIREMENTS.

The following requirements form part of the Alliance Brief.

6.1 Site Boundaries

The Victoria Road Upgrade will be designed and constructed to lie within the existing property boundaries. If a minor property acquisition is required to some properties and that has been approved by the RTA, then the RTA will be responsible for the property acquisition.

6.2 Communication

Communication and consultation objectives:

1. All stakeholders are effectively identified, engaged during development, construction and transition to operation of the Victoria Road project.
2. Prepare the communications and consultation strategies for the proposal announcement, the environmental assessment, design, the construction and implementation of operation of the Victoria Road project and undertake in partnership with the RTA.
3. Ensure that in implementing the communications and consultation strategy high quality communications are produced in accordance with RTA guidelines.

Things to note re RTA communications guidelines.

Contractors must not issue any advertising, letterbox notifications, alerts or public material regarding the construction project to any organisation or person without the prior approval of RTA.

All public documents must be produced in accordance with the RTA's visual identity guidelines. The preparation of all materials for public exhibition is to be through a member of the RTA's design services panel.

Reports should be produced in accordance with the RTA's style and grammar guide.

A contractor may supply text for relevant advertisements to the RTA. The RTA manages the advertising process in accordance with the Premier's Memorandum on NSW advertising.

Specify appropriate hold points to enable approval, production and distribution of public materials prior to construction activities.

All media inquiries (including industry magazines) must be referred to the RTA's media unit (telephone 02 9218 6140).

All enquiries from Federal, State and/or Local Government representatives must be referred to the RTA. Any briefings for the above representatives will be arranged by the RTA.

The RTA will manage and arrange all official media events and will be responsible for coordinating community, media and political participation in such events. These arrangements will be undertaken in consultation with a contractor.

The contractor must comply with the requirements of the Privacy and Personal Information Protection Act 1998 (NSW). Information held in project databases can only be used for the purposes for which it was gathered (and permitted).

6.3 Environmental Approvals

- Undertake environmental impact assessment and associated tasks, and prepare relevant high quality documentation to obtain approvals for all required works in accordance with the EP&A Act.
- Ensure that the requirements of all approvals are complied with.
- Ensure that all relevant licences and permits required for the project are obtained and their conditions are complied with

6.4 Durability

The Alliance will ensure the durability of all Assets. Durability will be addressed throughout the design and construction. The durability portion of the Project Plans will demonstrate how the design, materials and construction will achieve the durability objectives of each Asset in conjunction with the specific Design Life for that Asset as defined below:

Number	Asset	Minimum Design Life
1	Inaccessible drainage elements	100 years
2	Drainage elements that are accessible for refurbishment including sedimentation and detention ponds and basins	20 years
3	Sign faces	10 years
4	Sign support structures and roadside furniture	40 years
5	Fences	20 years
6	Lighting and electrical equipment	20 years
7	Bridge structures, including underpasses overpasses and pedestrian structures	100 years
8	Retaining walls including reinforced soil walls	100 years
9	Noise barriers (noise attenuation devices)	50 years
10	Pavements	40 years

11	Other assets not detailed	Typical industry values for similar Assets of a high standard and quality.
----	---------------------------	--

The durability requirements will be applied diligently and continuously throughout the process of design, including design review and design amendments, and during construction of the Project Works.

6.5 Effects of Alliance Work

- a) The Alliance will ensure that the Project Works have no adverse impacts on the performance of any infrastructure (including roads, services, buildings and other structures) and will carry out a detailed and rigorous engineering analysis to predict the effects.
- b) Throughout the Alliance Works the alliance shall monitor the actual effects against both the Predicted Effects and the Acceptable Effects.

6.6 Traffic and Transport Management and Safety

The Alliance will manage and minimise the impacts of the Alliance Works on the capacity and performance of the traffic and transport network and will develop and implement a Traffic Management and Safety Plan in accordance with the requirements of the RTA Traffic Management Centre (TMC).

6.7 Quality Assurance

The Alliance will provide a Quality Manager who is directly responsible to the ALT and has the responsibility for ensuring that the requirements of the Quality Plan are implemented and maintained throughout the Alliance Works. The Alliance will implement and maintain a quality system in accordance with RTA Specification Q6 for the duration of the Alliance Works and will comply with the quality system and Quality Plan.

6.8 Safety in Design

The Alliance will consider and address all safety issues and requirements in the development and production of the Design Documentation, including:

- a) Identification of all hazards;
- b) Identification and management of occupational health and safety (OHS) legislative requirements, OHS goals and objectives and generic hazards;
- c) Detailing the principles of the design, the identification of hazards which cannot be managed or mitigated by the design and the measures to be adopted in the construction phase to manage the hazards;

- d) Identification and specification of hazards that require the development of specific procedures in the construction phase;
- e) Issues relating to working adjacent to or with live Services, including high voltages, overhead clearances, dangerous excavations and asbestos materials;
- f) OHS implications of the site layout for Alliance Works including;
 - Position of site access and egress points;
 - Location of site accommodation;
 - Safe height work over water for bridge construction;
 - Location of traffic/pedestrian routes;
 - Proximity of traffic during the performance of the Alliance Works.

These safety issues will be addressed in the Alliance Site Safety Plan and Design Plan.

6.9 Urban Design

The Alliance will design, construct, develop and establish urban and landscape design solutions through good design practice and will be integrated into a cohesive urban and landscape design plan for all components of the Alliance Works. The urban and landscape design plan shall make provision for the requirements of the RTA Major Infrastructure Urban Design Group.

6.10 Environmental Design

The Alliance will develop a high standard environmental design including;

- a) Erosion, sedimentation, water quality and spill containment infrastructure;
- b) Management and mitigation measures for environmentally sensitive areas, including marine environment, heritage sites;
- c) Construction and operation of noise measures;

The environmental design will be developed in consultation with appropriate agencies and Authorities and in accordance with the requirements of RTA Specification G36.

6.11 Authorities and Emergency Services

The Alliance will satisfy the reasonable requirements of all relevant Authorities including emergency service providers in accordance with RTA policy. The Alliance

Works will include the necessary infrastructure to provide access for operation and maintenance purposes, including incident responses.

SCHEDULE 10

INSURANCES

INSURANCES – ALL STAGES			
Type of policy	Responsible Participant	Insurance limits	Excess
Contract works (construction material damage) insurance policy - project specific	RTA	Likely to be as set out in Schedule 12.	Likely to be as set out in Schedule 12
Public and products liability insurance policy	RTA	As set out in Schedule 13.	As set out in Schedule 13
Workers compensation insurance as required by law and where common law claims are possible outside of the relevant statutory scheme, cover for common law claims	Each Participant	Statutory cover – as required by statute Common law cover - \$50m each occurrence Where permitted by law the policies must indemnify RTA for statutory liability to employees of NOPs	
Plant and equipment belonging to, leased, hired or otherwise in the care, custody or control of any NOP or its employees, agents or Subcontractors at places where the Alliance Works are being carried out	Relevant NOPs	Not less than market value against all usually insured risks	
Comprehensive motor vehicle insurance for all motor vehicles used by NOPs at any time in connection with the Alliance Works (including for cover for third party property damage and, in relation to unregistered vehicles, personal injury) and Compulsory Third Party insurance for all registered vehicles	Relevant NOPs	An amount to cover amounts not less than \$20 million for any one event which the NOP or its employees or agents might become legally liable to pay	
If any of the work under this Agreement includes the use of waterborne craft of 8 or more metres in length, the NOPs must insure under a marine liability policy and a marine protection and indemnity policy to cover the use of such craft.	Relevant NOPs	To be agreed by the ALT before the target outturn estimate is approved by RTA under clause 5.2(b).	

SCHEDULE 11

STATUTORY DECLARATION ABOUT PAYMENT OF WORKERS, SUBCONTRACTORS, WORKERS COMPENSATION AND PAY-ROLL TAX

RTA Form No 592 (Modified)

Schedule

Statutory Declaration

I, _____ of

Insert name of Declarant

_____ do solemnly and sincerely
declare that:

Insert address

1. I am a representative of _____
("NOP") in the Office Bearer capacity of _____
2. The NOP is a party to an alliance agreement with the Roads & Traffic Authority in respect of the upgrade of Victoria Road ("Contract").
3. Attached to and forming part of this declaration is a Subcontractor's Statement given by the NOP in its capacity as 'Subcontractor' (as that term is defined in the Workers Compensation Act 1987, Pay-roll Tax Act 1971 and Industrial Relations Act 1996) which is a written statement:
 - a. under the Workers Compensation Act 1987, section 175B, in the form and providing the detail required by that legislation;
 - b. under the Pay-roll Tax Act 1971, section 31H, in the form and providing the detail required by that legislation; and
 - c. under the Industrial Relations Act 1996, section 127, in the form and providing the detail required by that legislation.
4. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.
5. All Subcontractors have been paid all amounts payable to them by the NOP for work or services done or goods or materials supplied in connection with the Contract during the period noted in clause 9.
6. If the NOP has Subcontractors and the subcontract price exceeds \$25,000 at commencement, the NOP has received from each of those Subcontractors a statutory declaration and Subcontractor's Statement in equivalent terms to this declaration (made no earlier than 14 days before the date of this declaration).
7. All statutory declarations and Subcontractor's Statements received by the NOP from Subcontractors referred to in clause 6 were:
 - (a) given to the NOP in its capacity as 'Principal Contractor' as defined in the Workers Compensation Act 1987, the Pay-roll Tax Act 1971 and the Industrial Relations Act 1996 ('Acts'); and
 - (b) given by the Subcontractors in their capacity as 'Subcontractors' as defined in the Acts.
8. I am not aware of anything that would contradict the statements made in the statutory declarations and Subcontractor's Statements provided to the NOP by its Subcontractors.

Insert name of Contractor and ABN if applicable

Insert position title of Declarant

Insert name of Contract

9. The period of the Contract covered by this declaration and the attached Subcontractor's Statement is from _____ to _____.
10. The NOP is not, under any law, insolvent or unable to pay its debts as and when they fall due.
11. All Subcontractor security held in the form of cash and all cash retentions from payments to Subcontractors are held in trust by the NOP. The cash security and retentions are held in trust for whichever party is entitled to receive them, until it is paid in favour of that party.
12. The NOP is maintaining complete records to account for the cash security and cash retentions referred to in clause 11. The records are available to the relevant Subcontractors and to the RTA on request.

Insert the relevant payment period

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 (NSW). I am aware that I may be subject to punishment by law if I wilfully make a false statement in this declaration.

Declared at _____ (place where declaration made)
 on _____ (date of declaration) by

 Signature of person making the declaration

Before me: _____

Justice of the Peace/Solicitor of the Supreme Court of New South Wales

[or other person legally authorised to administer an oath under the Oaths Act 1900 (NSW) or where the declaration is sworn outside the State of New South Wales, any person having authority to administer an oath in that place]

SUBCONTRACTOR'S STATEMENT

REGARDING WORKERS COMPENSATION, PAY-ROLL TAX AND REMUNERATION (Note 1)

Workers Compensation

Pay-roll tax

Remuneration

s175B *Workers Compensation Act 1987* Part 5B s31G-31J *Pay-roll Tax Act 1971* ss127, 127A
Industrial Relations Act 1996

Sub Contractor: _____ ABN: _____

(Business name)

of _____
(Address of subcontractor)

has entered into a contract with _____ (Note 2)

(Business name of principal contractor)

ABN: _____ For work between: ____/____/____ and ____/____/____ (Note 3)

Date

Date

and/or Payment Claim Details: _____ (Note 4)

Nature of contract work: _____ (Note 5)

DECLARATION

I, _____ a Director of / a person authorised by the subcontractor on whose behalf
this

(Name as appearing on ABN)

declaration is made, hereby state that the abovementioned subcontractor:

Is either

A sole trader or partnership without workers or subcontractors (Note 6).

OR

Has and will maintain in force valid workers compensation insurance,
policy _____

held with _____ as indicated on the attached
Insurance Certificate

Certificate of Currency dated _____, in respect of work done in connection with the contract, during any period of the contract and has paid all workers compensation insurance premiums payable in connection with the contract (*Note 7*).

Is Is not also a principal contractor in connection with the work under contract (*Note 8*).

Has Has not been given a written statement by subcontractors in connection with the work.

Is Is not required to be registered as an employer under the *Pay-roll Tax Act 1971* _____

Pay-roll tax (2000-2001)

Has paid all pay-roll tax due in respect of employees who performed the work for the principal contractor, as required at the date of this statement (*Note 9*).

Has paid all remuneration payable to relevant employees, for work done under the contract during the period outlined above (*Note 10*).

Signature _____ Full Name _____
Principal Contractor

Position/Title _____ Dated _____

WARNING

- Any subcontractor, who knowingly provides a principal contractor with a written statement that is false, is guilty of an offence (Maximum penalty 100 units or \$11,000).
- Any written statement will not relieve the principal contractor of liability if, at the time the written statement was provided, the principal contractor believed the written statement to be false.
- The principal contractor must retain a copy of any written statement for a period of not less than five years (Pay-roll tax), six years (Remuneration) or seven years (Workers compensation).
- This statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987*.

NOTES

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Part 5B section 31G-31J of the *Pay-roll Tax Act 1971* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, pay-roll tax and remuneration payable by the subcontractor.
2. For the purpose of this statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity), referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal.
3. In order to meet the requirements of s127 Industrial Relations Act 1996, a statement in relation to remuneration must state the period to which the statement relates.

Section 127(6) Industrial Relations Act 1996 defines remuneration as 'remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the Industrial Relations Act 1996 states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'

4. Payment claim details – Where a subcontractor has entered into a payment schedule with a principal contractor they must identify the period or payment to which the statement applies.
5. An accurate description of the work covered by the contract must be included.
6. In completing the statement, a subcontractor declares that they are a sole trader or partnership without workers or subcontractors and is not required to hold workers compensation insurance.
7. In completing the statement, a subcontractor declares that workers compensation premiums payable up to and including the date(s) on the statement have been paid, and all premiums owing during the term of the contract will be paid.
8. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out work. If your business falls within this category you should also obtain statements from your subcontractors.
9. In completing the statement, a subcontractor declares that all pay-roll tax payable relating to work undertaken as part of the contract has been paid.
10. In completing the statement, a subcontractor declares that all remuneration payable has been paid.

It is noted that definitions of employer, employee, remuneration, and specific provisions for employers of outworkers in the clothing trades are as defined in s127A of the Industrial Relations Act 1996.

11. Failure to complete this statement may result in the principal contractor withholding any payment due to the subcontractor. Any penalty for late payment under the contract does not apply to any payment withheld under this subsection. Subcontractors may wish to keep a copy of the statement for their own records.

For more information, please visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the Workers Compensation Act 1987, the Pay-roll Tax Act 1971 and the Industrial Relations Act 1996 can be found at www.legislation.nsw.gov.au.

SCHEDULE 12

**LIKELY INDICATIVE TERMS OF CONSTRUCTION MATERIAL DAMAGE
INSURANCE POLICY**

VICTORIA ROAD UPGRADE PROJECT

The Roads and Traffic Authority of NSW

Victoria Road Upgrade Project

Construction Risks - Material Damage Project Insurance Policy

Period: / / to / /

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Introduction

In consideration of the Named Insured's having paid or agreed to pay the Premium, the Insurers agree to indemnify the Insured in the manner and to the extent provided herein, subject always to the Limits and Sub-limits of Liability, Conditions, Exclusions and other terms of this Policy.

The liability of all of the Insurers collectively will in no case exceed the Limits of Liability and Sub-limits stated in the Schedule or elsewhere in this Policy. Furthermore, the liability of each of the Insurers individually will in no case exceed the proportion set against each Insurer's name.

Signed for and on behalf of the Insurers:

<u>Insurers</u>	<u>Policy No.</u>	<u>Proportion %</u>	<u>Signature</u>	<u>Place</u>	<u>Date</u>
		100%			

Schedule

Named Insured: The Roads and Traffic Authority of New South Wales (RTA) as Principal
(Insert name of Contractor)

This Policy also insures other parties as specified in the definition of the Insured herein.

Project: Contracts relating to
[Insert project title/description][Insert project title/description]

as more particularly defined in the scope of works in the [Insert contract agreement] including variations thereto.

Period of Insurance:

From: _____ 200_ (Local Time)

To: As more particularly defined in this Policy, but estimated at:

(a) _____ 200_ Construction Period - ending

(b) _____ plus the Defects Liability Period as more particularly defined herein.

Maximum Defects Liability Period:

24 months (RTA to advise) any one Contract in respect of the original Defects Liability Period.

Project Site:

To be advised

Specified Overseas Locations (if applicable):

None

Territorial Limits:

Anywhere in Australia, including cover for Insured Property whilst in storage and in transit.

Limits of Liability:

(Condition 4.3)

Limit of Liability any one Event at any one situation:

Contract Works	\$	to be inserted
Existing Structures	\$	to be inserted
Construction Plant and Equipment	\$	Not insured

Sub-limits of Liability:

The liability of Insurers will be further limited in respect of any one Event at any one situation as set out in the Sub-limits below. These Sub-limits will apply in addition to the above Limits of Liability.

Extensions:	\$	to be inserted
		combined limit in respect of items 2.1(a) to (i).
2.1(a) Removal of Debris and Other Costs	\$	to be inserted
2.1(b) Expediting Expenses	\$	to be inserted
2.1(c) Search and Locate Costs	\$	to be inserted
2.1(d) Professionals' Fees	\$	to be inserted
2.1(e) Mitigation Expenses	\$	to be inserted
2.1(f) Plant Hire Charges	\$	to be inserted
2.1(g) Claim Preparation Costs	\$	to be inserted
2.1(h) Government and other Fees	\$	to be inserted
2.1(i) Inflation Protection	\$	to be inserted
Offsite Storage	\$	to be inserted
Insured Property whilst in transit	\$	to be inserted

Basis of Settlement

(Insuring Clause 1.3(a)(ii))

In respect of Construction Plant and Equipment:

- Indemnity Value

Nominee for Insurers' Notices: To be inserted

(Condition 4.8(d))

Nominee for Legal Service: To be inserted

(Condition 4.13(c))

Agreed Loss Adjuster(s):

(Condition 4.17)

Claims under this Policy shall be adjusted with the following company(ies) or as otherwise agreed by the Insured and the Insurers:

RTA to advise

Loss Payee:
(Condition 4.18)

The Named Insured

Underlying Insurance:
(Condition 4.20)

Underlying Insurance includes, but is not limited to, those policies and types of policies described below or their substitute policies:

Policy Type	Policy No.	Insurer	Underlying Limit
None			\$

Excess:
(Condition 4.4)

Damage to Insured Property arising from Tunnelling \$250,000

Damage to Insured property from any other cause: \$100,000

Premium:
(Condition 4.9)

As agreed

Definitions / Interpretations

The following Definitions/Interpretations will apply to this Policy.

Aircraft means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

Computer Virus means a set of corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature.

Contract means all works, contracts or agreements undertaken by or on behalf of the Insured in connection with the Project.

Damage means physical loss, destruction or damage with the word Damaged having a corresponding meaning.

Defined Peril means, for the purposes of Exclusion 3.8, fire, lightning, explosion, earthquake, aircraft or other aerial devices or articles dropped there from riot, commotion, strikes, locked-out workers, persons taking part in labour disturbances, malicious persons, storm, flood, escape of water from any tank apparatus or pipe, impact by any road vehicle or animal, theft, accidental escape of water from any automatic sprinkler installation, subsidence, ground heave or landslip.

Electronic Data means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

Event means an occurrence or series of occurrences consequent upon or attributable to one source or original cause.

Indemnity Value means:

- i. where the Damage to Insured Property can be repaired, the Insurers will pay the cost necessarily incurred to restore the property to its former state of serviceability, plus the cost of dismantling and re-erection incurred for the purpose of effecting the repairs. Deductions will not be made for depreciation in respect of parts replaced, but the salvage value of such parts shall be taken into account;
- ii. where the Insured Property is totally destroyed or cannot be satisfactorily repaired at a cost not exceeding the market value immediately before the Damage, the Insurers will pay the market value of the item at the time of the Event. If due to the nature of the Insured Property, it is not possible to readily ascertain a market value, the basis of settlement shall be the replacement cost of the damaged property less due allowance for depreciation taking into consideration the anticipated useful life of the property and the nature of its usage;
- iii. if the Insured Property is reasonably abandoned because the cost of recovery would exceed the amount payable under this Policy in respect of such property, it shall be deemed to be a constructive total loss and settlement shall be made in accordance with clause i.

Insured means:

- i. the Named Insured;
- ii. any subsidiary company (including subsidiaries thereof) of the Named Insured and any other organisation under the control of the Named Insured and over which it is exercising active management, whether now or hereafter incorporated;
- iii. any of the following persons or entities for whom or for which the insured parties under clauses i and ii above are obliged to arrange insurance by virtue of a contract or assumption of responsibility, but only to the extent required by such contract or assumed responsibility and in any event only for such coverage and Limits of Liability as provided in this Policy:
 - a. any principal or owner or agent of the Principal; or joint venture partner;
 - b. any construction manager or project manager;
 - c. any contractor or sub-contractor of any tier;
 - d. any architect, engineer or other consultant for their onsite activities only;
 - e. any lessor, financier, mortgagee or trustee;
 - f. any government body;
 - g. any other party with an Insurable interest in the Project;

The architect, engineer or other consultant referred to in d. above shall not be construed as any other Insured.

- iv. any director, executive officer, employee, contract staff or partner of any of the insureds under clauses i, ii or iii whilst acting as such;
 - v. any office bearer or member of any social, sporting, safety, security, medical or welfare facility of any of the insureds under clauses i, ii, iii(a) iii(b) or iii(c) whilst acting as such; and
- all for their respective rights and interests.

Insured Property means:

- i. **Contract Works:**

being property of every description used or to be used in part of or incidental to or having any connection whatsoever with the Project. It shall include but not be limited to:

 - a. the whole of the works, whether permanent or temporary works, structures, materials and supplies including free supplied materials;
 - b. temporary buildings, camp buildings and all other project buildings and their contents;
 - c. formwork, falsework, scaffolding, access platforms, hoardings, mouldings, and the like, whether the foregoing be consumable or reusable;
 - d. consumables, drawings and other documents, plant and improvements;

but excluding Construction Plant and Equipment not specified above.
- ii. **Existing Structures** being existing structures, plant and real property of every description. Existing Structures are specifically excluded under this Policy unless an amount is specified against this item in the Schedule.
- iii. **Construction Plant and Equipment** being:
 - a. all construction plant, tools and equipment of every description including spare parts;
 - b. employees' tools and equipment;

Construction Plant and Equipment is specifically excluded under this Policy unless an amount is specified against this item in the Schedule.

- iv. Property described in clauses i and iii above shall refer to property owned by the Insured or for which they are responsible or have assumed responsibility prior to any Event for which a claim may be made hereunder, or for which the Insured has agreed to insure, or in which the Insured otherwise has an insurable interest.

Major Perils means earthquake, fire, subterranean fire or volcanic eruption, subsidence, collapse, storm and/or tempest and/or rainwater and/or flood and/or tsunami and/or named cyclone.

Offsite Storage means locations where the Insured stores Insured Property away from where the works are being undertaken.

Period of Insurance means from the commencement date of this Policy and during the Construction Period and Defects Liability Period.

- i. **Construction Period** means the period of construction of any Contract until the earlier of:
- a. The date the Project has been formally accepted by the principal/owner as having achieved practical completion (as defined in the Contract(s));
 - b. with respect to each separable portion of the Project, until the date it is taken over or put into use (whichever is the earlier) by the principal/owner;
 - c. the date specified in item (a) of the Period of Insurance stated in the Schedule, or if such date is extended pursuant to Condition 4.10, that extended date.
- ii. **Defects Liability Period** means the period described in any Contract during which an Insured is obliged or legally liable to rectify defects, shrinkages, errors, omissions or other faults and/or to complete the obligations under such Contract (the original Defects Liability Period), which may include the granting of a further period, following rectification of defects under the original period.

The original Defects Liability Period shall not exceed the Maximum Defects Liability Period stated in the Schedule in respect of any one Contract.

- iii. **Local Time**, which appears in the Schedule means the time at the principal Project Site.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, chemicals or waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Project Site means the situation(s) stated in the Schedule against this item and any other situation where the Insured is performing the works or has property stored or being processed together with all surrounding areas in connection with the Project. Project Site shall extend to include overseas situations stated in the Schedule or subsequently endorsed onto this Policy.

Project Value means the total value of work and construction costs incurred by or on behalf of the Insured in respect of the Project and includes the value of principal supplied and other materials (if required to be insured under this Policy).

Reinstatement Value means:

- i. where the Insured Property is lost or destroyed, the replacement thereof by similar property in a condition equal to, but not better nor more extensive than, its condition when new;
- ii. where the Insured Property is Damaged and can be repaired, the Insurers will pay the cost necessarily incurred to restore the property to a condition substantially the same as, but not better nor more extensive than its condition when new, plus the cost of dismantling and re-erection incurred for the purpose of effecting the repairs;
- iii. the work of rebuilding, replacing, repairing or restoring as the case may be (which may be carried out upon any other site(s) and in any manner suitable to the requirements of the Named Insured, but subject to the liability of the Insurers not being thereby increased), must be commenced and carried out with reasonable dispatch;

- iv. where Insured Property has been Damaged and where the Named Insured elects not to reinstate such Insured Property, the Insurers will pay to the Named Insured an amount equal to the cost necessary to replace, repair or rebuild the Insured Property to a condition substantially the same as but not better nor more extensive than its condition at the time the Damage occurred;
- v. if the Insured Property is reasonably abandoned because the cost of recovery would exceed the amount payable under this Policy in respect of such property, it shall be deemed to be a constructive total loss and settlement shall be made in accordance with the above provisions (as applicable).

Tunnelling shall mean any work involving the excavation of any artificial subterranean passage. This definition shall not apply to open excavation work (e.g. trenches, foundation work pits, cuttings or cut and cover tunnels)

Underlying Insurance means a policy of insurance arranged by or on behalf of an Insured either voluntarily or pursuant to a contract (which may include a policy(ies) arranged by joint venture partners, principals, contractors, etc) that provides cover to the Insured for a risk, which save for the Underlying Insurance, would be covered by this Policy. Underlying Insurance includes those policies identified in the Schedule.

Singular/Plural

In this Policy, where the context admits, words denoting the singular shall include the plural and vice versa.

Headings

Headings have been included for ease of reference. The terms and conditions of this Policy are not to be construed or interpreted by reference to such headings.

Material Loss or Damage

The Insurers will indemnify the Insured as follows.

Insuring Clauses

1. Insured Property

The Insurers will indemnify the Insured in accordance with the Basis of Settlement, against Damage to the Insured Property other than from a cause specifically excluded, occurring at the Project Site or in transit within the Territorial Limits during the Construction Period.

2. Defects Liability

The Insurers will indemnify the Insured in accordance with the Basis of Settlement, against Damage to the Insured Property other than from a cause specifically excluded occurring at the Project Site, provided such Damage:

- 2.1 manifests itself during the Defects Liability Period; and
- 2.2 originates from
 - (a) a cause arising during the Construction Period and at the Project Site; or
 - (b) an act or omission of any of the Insured parties in the course of complying with the requirements of the Defects Liability Period provisions of the Contract.

3. Basis of Settlement

- 3.1 In the event of Damage to Insured Property the amount payable by the Insurers will be as follows and the provisions of clauses 1.3 (b) and 1.4 to 1.6 will also apply.
 - (a) for employees' tools and personal property, the basis of settlement shall be Reinstatement Value;
 - (b) in respect of Construction Plant and Equipment (other than as provided in (i) above), the amount payable shall be the Basis of Settlement stated in the Schedule, except:
 - A. where the item is financed and in the event of its total loss or constructive total loss, the amount settled shall be the greater of the cost of discharging the lease or the stated Basis of Settlement;
 - B. in respect of items leased, hired or rented, the basis of settlement shall be in accordance with the rectification provisions of the lease, hire or rental agreement but not exceeding the Reinstatement Value;
 - (c) for all other Insured Property, the basis of settlement shall be Reinstatement Value.

Notwithstanding the foregoing, in the event of Damage to Tunnelling, the maximum amount payable shall be limited to the costs incurred to reinstate the property insured to the standard or condition technically equivalent to that which existed immediately before the occurrence of the loss or damage but not in excess of 150% of the original average per-metre construction cost of the immediate damaged area.

Local Authorities Clause

The indemnity provided by this clause 1.3(b) shall, subject to a maximum of 10% of Project Value, extend to include the extra costs (including demolition or dismantling) of

Damaged Insured Property necessarily incurred to comply with the requirements of any Act of Parliament or regulation made thereunder or any by-law or regulation of any municipal or other statutory authority other than the Named Insured, other than such extra costs as aforesaid with which the Insured had been required to comply prior to the Damage occurring.

4. Undamaged Foundations

Where the Insured Property is destroyed but the foundations are not destroyed and due to the exercising of statutory powers and/or delegated legislation and/or authority by the government or any other statutory authority reinstatement of the Insured Property has to be carried out upon another site, then the abandoned foundations will be considered as being destroyed. The term "foundations" is deemed to include services such as, but not limited to, conduits, pipes, cables and wiring built into the footings and foundations (including concrete floor slabs).

5. Output Replacement

If any item(s) of the Insured Property having a measurable output is Damaged (in whole or in part) and which is capable of replacement with a new item(s) which performs a similar function, then the amount payable by the Insurers in respect of such property shall be on the following basis:

- 5.1 If any lost or destroyed Insured Property is to be replaced by an item(s) which has the same or a lesser total output, then the amount payable thereof is the new installed cost of such replacement item(s) as would give the same total output as the Damaged item(s);
- 5.2 If any Damaged Insured Property is to be replaced by an item(s) which has a greater total output and the replacement value is no greater than the value of the Damaged item(s) then the amount payable shall be the cost of the replacement item(s) and no deduction shall be made due to improved output;
- 5.3 If any Damaged Insured Property is to be replaced by an item(s) which has a greater total output and the replacement value is greater than the value of the Damaged item(s) then the insurable value thereof is that proportion of the new installed cost of the replacement item(s) as the output of the Damaged item(s) bears to the output of the replacement item(s). The difference between the insurable value as defined and the new installed cost of the replacement item(s) shall be borne by the Insured.

6. Reasonable Margin for Profit

In all cases, the cost of reinstatement shall refer to the final cost to the Insured after completion of the repair, reinstatement or replacement work (including materials and wages incurred for the purpose of repairs and a reasonable margin for profit, administration costs and overheads).

Extensions applying to this Policy

The following Extensions apply to this Policy

1. Additional Costs and Expenses

The Insurers shall, in addition to the Limits of Liability, pay the following extra costs and expenses necessarily and reasonably incurred by or on behalf of the Insured (over and above those already included in the Project Value), subject to the Sub-limits of Liability stated in the Schedule (if any):

1.1 Removal of Debris and Other Costs

(a) Debris

Costs and expenses necessarily incurred in respect of the demolition, removal, storage and/or disposal of debris, Insured Property (including Insured Property which is no longer useful for the purpose it was intended) and any other property or substances including ponded water affecting the Project arising out of Damage.

(b) Temporary Protection

Costs and expenses incurred by or on behalf of the Insured:

- (i) for the removal of and/or the temporary protection and safety of Insured Property;
- (ii) in the purchasing and/or hiring and in the erection and dismantling of hoardings, barriers, fences and any other forms of protection which the Insured must provide in order to comply with the requirements of any government, municipal or other statutory authority.

Provided that the indemnity afforded shall only apply where the costs and expenses are incurred as a result of Damage.

(c) Shoring, Propping and Other Costs

Costs and expenses necessarily incurred in respect of shoring up, propping, underpinning, temporary repairs, recovery and retrieval of Insured Property as a consequence of actual or imminent Damage.

1.2 Expediting Expenses

Costs and expenses incurred in connection with or incidental to expediting the commencement, carrying out or completion of the repair, reinstatement or replacement of the Insured Property consequent upon Damage. Such costs and expenses shall include but not be limited to:

- (a) express or chartered carriage or delivery (including by sea or air);
- (b) travel (including by sea or air) of the Insured's employees, agents, sub-contractors, consultants or representatives;
- (c) overtime or penalty rates of wages and other related allowances and payments;
- (d) hire of additional labour, plant, equipment, materials, expertise or services;
- (e) reasonable and necessary cost of earlier than usual delivery or manufacture and/or costs of purchasing resources;
- (f) accommodation and boarding costs (including meals and other costs associated therewith);
- (g) additional administrative and/or overhead expenses.

1.3 Search and Locate Costs

Leak search and other costs incurred following irregularities discovered in the results of a hydrostatic or other testing procedure up to a maximum of \$100,000 any one Event. Such costs will include but not be limited to:

- (a) the cost of hiring, operating and transporting apparatus, the cost of operation;

- (b) the cost of all associated earthworks;

and are payable notwithstanding that physical damage may not have occurred to the affected item.

1.4 Professionals' Fees

The fees of project managers, architects, surveyors, quantity surveyors, engineers, legal and other consultants and clerks of works' salaries for estimates, plans, specifications, quantities, tenders and supervision necessarily incurred in reinstatement consequent upon Damage to the Insured Property, but not for preparing any claim.

1.5 Mitigation Expenses

Reasonable costs and expenses incurred by or on behalf of the Insured in connection with or incidental to mitigating, containing, eliminating or suppressing actual Damage occurring at or adjacent to or immediately threatening the Insured Property.

Such costs and expenses shall include but not be limited to:

- (a) the payment for additional labour (including the Insured's employees), services or resources;
- (b) the cost of replenishing fire fighting appliances or systems and costs and charges incurred for the purpose of shutting off the supply of water or any other substance following the accidental discharge or escape from intended confines of any such substance, whether from fire protection equipment or otherwise.

1.6 Government and other Fees

- (a) Any fee, contribution or other impost (excluding fines and/or penalties) payable to any government, municipal or other statutory authority other than the Named Insured, where payment of such fee, contribution or impost is a condition precedent to the obtaining of consent to reinstate Insured Property.
- (b) Any fee contribution or other impost (excluding fines and/or penalties) payable to any government, municipal or other statutory authority other than the Named Insured for services rendered or equipment supplied for the purpose of helping to prevent, mitigate or confine further actual Damage at or in the vicinity of the Project Site.

2. Civil Authority

This Policy is extended to include loss resulting from Damage by civil authority during a conflagration or other catastrophe incurred for the purpose of retarding the same.

Exclusions applying to this Policy

This Policy does not provide indemnity in respect of:

1. Consequential Loss

liquidated damages or penalties for non-completion of or delay in completion of the Contract or non-compliance with contract conditions or consequential loss, other than as specifically provided under this Policy.

2. **Wear and Tear**

Damage directly caused by:

2.1 normal wear and tear;

2.2 rust, oxidation, corrosion or gradual deterioration, in each case when due to atmospheric conditions or other gradual causes;

but this Exclusion 3.2, shall be limited to that part of the Insured Property which is immediately affected and shall not apply to any other parts lost or Damaged in consequence thereof.

3. **Defects (LEG 2/06)**

All costs rendered necessary by defects of material workmanship design plan or specification and should damage occur to any portion of the Insured Property containing any of the said defects the cost of replacement or rectification which is hereby excluded is that cost which would have been incurred if replacement or rectification of the Insured Property had been put in hand immediately prior to the said damage.

For the purpose of this Policy, and not merely this Exclusion 3.3, it is understood and agreed that any portion of the Insured Property shall not be regarded as Damaged solely by virtue of the existence of any defect of material, workmanship, design, plan or specification.

4. **Aircraft or waterborne craft**

Aircraft or waterborne craft or plant and equipment permanently mounted thereon.

5. **Disappearance or Shortage**

loss due to disappearance or revealed by inventory shortage alone, unless the shortage can be reasonably attributed to burglary, theft, pilferage or like dishonesty of persons other than the Insured.

6. **Money**

Damage to cash, bank notes, treasury notes, cheques, postal orders and money orders, stamps or securities.

7. **Transits Outside of Australia**

Damage to Insured Property in the course of ocean marine shipment.

8. **Electronic Data Exclusion**

loss, damage, destruction, distortion, erasure, corruption or alteration of Electronic Data from any cause whatsoever (including but not limited to Computer Virus) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting there from, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

However, Exclusion 3.8 will not apply to physical damage occurring during the Period of Insurance to Insured Property directly caused by a Defined Peril.

9. **Breakdown of Construction Plant and Equipment**

Damage to Construction Plant and Equipment other than that owned or the responsibility of RTA.

10. **Nuclear Risks**

loss, damage or liability directly or indirectly caused by or contributed to by or arising from:

- 10.1 ionising, radiations or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel;

for the purpose of this Exclusion 3.10 (a) only, combustion shall include any self-sustaining process of nuclear fission;

- 10.2 nuclear weapons materials.

This Exclusion 3.10 shall not apply to liability resulting from the use of commercial radioactive isotopes.

11. **War and Terrorism**

notwithstanding any provision to the contrary within this Policy or any endorsement thereto, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power. Notwithstanding this clause 3.11(a), this Policy shall cover loss, damage or liability caused by missiles and/or mines and/or bombs and/or other explosives not discovered at the moment of commencement of this Policy as long as no state of war exists in the country where the loss occurs; or
- (b) any act of terrorism

For the purpose of this clause an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This clause also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 3.11(a) and/or 3.11 (b) above.

In the event any portion of this General Exclusion clause 3.11 is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

12. **Vegetation**

Damage to vegetation which forms part of the Insured Property and which rises directly or indirectly from:

- (a) disease
(b) lack of water
(c) excess water
(d) moths, termites, or other insects, vermin, mildew, mould or wet or dry rot
(e) replanting operations
(f) transportation operations

13. Piling

Any costs in respect of:

- (a) foundation piles and/or casings and/or sheet pile constructions which are
 - (i) misplaced or misaligned or jammed; or
 - (ii) Damaged during driving and/or extraction; or
 - (iii) the subject of individual or block disconnection or declutchingfor the purpose of this Exclusion Damage to foundation piles and/or casings and/or sheet pile constructions shall be deemed to have occurred during driving unless the Insured can produce satisfactory evidence to demonstrate otherwise;
- (b) leakage or infiltration of liquid or material at seams joints connections and/or beneath sheet pile constructions or into casings;
- (c) abandoned piling work unless such abandonment is a direct consequence of Damage for which indemnity is provided by this Policy;
- (d) piles which have failed to pass a load bearing test or otherwise not having reached their designed load bearing capacity unless such failure is a direct consequence of Damage for which indemnity is provided by this Policy;
- (e) dependence on known sub-standard work unless the design has been appropriately re-worked to suit;
- (f) Costs in excess of the original pile value. The original pile value shall be calculated by dividing the total contract value for each particular section of the piling work by the total number of piles in each such section.

14. Graded Areas

Costs incurred for the repair of eroded slopes / batters or other graded areas from any cause whatsoever if you failed to take reasonable protective measures against erosion occurring.

15. Transmission & Distribution Lines

Damage to transmission & distribution lines including but not limited to transformers, poles, towers, wiring and equipment connected therewith.

16. Cessation of Work

Damage from cessation of work for any reason whether total or partial.

Conditions applying to this Policy

The following Conditions apply to this Policy.

1. Escalation

If during the Period of Insurance, the anticipated actual Project Value is estimated to exceed the estimated Project Value, then the Limits of Liability and Sub-limits of Liability shall be increased by the percentage that represents the amount the anticipated actual Project Value exceeds the estimated Project Value at commencement of the Project, but the total amount of all such increases shall not exceed 25% of the amount set against each item in the Limits of Liability and Sub-limits of Liability.

2. Claims Procedure

For estimated Damage up to \$50,000 the Insured is at liberty to immediately proceed with repairs or replacement and shall provide to the Insurers full details of the cause and circumstances of the Damage, followed by written notification of the claim, supported by the necessary invoices and other details.

For estimated Damage exceeding \$50,000 the Insured is to defer proceeding with repairs or replacement until the Insurers or their representatives have made a preliminary survey or have agreed to the Insured proceeding with repairs or replacement.

The amounts stated in this Condition 4.2 refer to estimates made by the Insured of amounts payable by Insurers after application of any relevant Excess.

3. Limits of Liability

3.1 No liability shall attach to the Insurers until the Damage in respect of each Event exceeds the amount of any relevant Excess stated in the Schedule.

3.2 The liability of the Insurers for any one Event at any one situation shall not exceed the Limits of Liability and the accumulative amounts of the Sub-limits of Liability stated in the Schedule.

3.3 The Limits of Liability and Sub-limits of Liability shall apply in excess of the amount of any relevant Excess.

4. Application of Excess

4.1 The Insured shall be liable to pay the amount of the Excess in respect of each Event. If a series of claims are made under this Policy arising out of the one Event then only one Excess shall apply.

4.2 Non-aggregation of Excesses

Should more than one Excess apply for any claim or series of claims arising from the one Event, such Excesses shall not be aggregated and only the highest single Excess amount shall apply.

4.3 72 Hour Clause

For the purpose of the application of any Excess, all Damage resulting from fire, earthquake, cyclone, flood, hail, storm and/or tempest, occurring during each period of 72 consecutive hours shall be considered as one Event where such peril is sporadic in its sweep and scope. The Insured shall select the time from which any such period shall commence but no two selected periods shall overlap.

4.4 Inland Transit

In respect of the transit Excess (if any), such Excess shall apply to Insured Property in the course of loading of the Insured Property, whilst in transit, including incidental storage until unloading at the point of discharge at the final destination.

5. Insurers' Rights

The Insured shall, at the request and the expense of the Insurers, do and concur in doing all such acts and things as the Insurers may reasonably require with a view to recovery of Damaged Insured Property or to preserve and enforce any rights the Insured may have against anyone in respect of Damage to Insured Property.

6. Subrogation and Settlement of Claims

6.1 The Insured shall inform the Insurers as soon as reasonably practicable of the happening of any Damage which may give rise to a claim under this Policy.

6.2 Upon the payment of any claim under this Policy, subject to any restrictions imposed by the Commonwealth Insurance Contracts Act 1984, the Insurers shall be subrogated to all the rights and remedies of the Insured arising out of such claim against any person or corporation whatsoever.

7. Multiple Insureds Clause

7.1 If the Insured comprises more than one insured party each operating as a separate and distinct entity then (save as provided in this clause 4.7), cover hereunder shall apply in the same manner and to the same extent as if individual policies had been issued to each such insured party provided that the total liability of the Insurers to all of the insured parties collectively shall not exceed the Limits of Liability or Sub-limits in this Policy.

7.2 The insured parties will, to the extent allowed under contract, at all times preserve the various contractual rights and agreements entered into by the insured parties and contractual remedies of such parties in the event of loss or damage.

7.3 The Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from an insured party in circumstances of such insured party committing fraud, misrepresentation, material non-disclosure or breach of any warranty or Condition of this Policy referred to in this Condition 4.7 as a "Vitiating Act".

7.4 However a Vitiating Act or any other act or neglect committed by one insured party, either at the time of entering this contract or during the Period of Insurance, shall not prejudice the right to indemnity of any other insured party who has an insurable interest and who has not committed a Vitiating Act.

7.5 The Insurers agree to waive all rights of subrogation that they may have or acquire against:

- (a) any Insured other than those defined in the Insured definition iii.d. in circumstances where indemnity is not provided to that Insured under this Policy;
- (b) at the option of the Insured, any other parties or persons, subject to the Insured, waiving rights of subrogation prior to the loss, but only when required to do so under contract;

except where the rights of subrogation or recourse are acquired in consequence or otherwise following a Vitiating Act, in which circumstances the Insurers may enforce such rights against the party committing the Vitiating Act.

8. Notices

- 8.1 Any notice(s) required by the Conditions of this Policy to be given to the Insurers shall be given by the Insured through any office of their insurance broker, Aon Risk Services Australia Limited (Aon) or direct to the Insurers. Any notice(s) given to any office of the appointed broker constitutes notice upon Insurers.
- 8.2 Any notice(s) given by the Insurers to any party insured under this Policy shall also be given to all other named parties.
- 8.3 Any notice of claim given to the Insurers by any party insured under this Policy shall be accepted by the Insurers as a notice of claim given on behalf of all other parties insured under this Policy.
- 8.4 If a Nominee for Insurers' Notices is shown in the Schedule, the Insurers agree to give the nominated organisation 30 business days prior notice in the event of:
 - (a) the cancellation or expiry of this Policy before completion of the Construction Period and Defects Liability Period due to non payment of premium or for any other cause;
 - (b) the Insurers giving any notice under this Policy.

9. Declarations and Premium Payment

If the Premium with regard to an item of this Policy is shown in the Schedule as being adjustable, then such Premium is provisional and will be adjusted as follows.

- 9.1 Within 30 days of the expiry of the Construction Period, the Named Insured will declare to the Insurers the actual value of the Adjustment Factor for each relevant item shown in the Schedule.
- 9.2 The Premium will be adjusted (subject to any minimum Premium applicable) by payment to the Insurers of an additional Premium or by allowance to the Insured of a return Premium, as the case may be, calculated at the agreed rate on the difference between the estimated and actual value of the Adjustment Factor.
- 9.3 In the event of any dispute or difference between the Insurers and the Named Insured as to the actual declared values, then for the purposes of this clause and clause 4.1, at the request of either party, such values shall be determined by the President for the time being of the Australian Institute of Quantity Surveyors, or his nominee, acting as an expert and not as an arbitrator. The cost of any such determination shall be borne equally by the Insurers and the Named Insured.

10. Extension to Period of Insurance

The Insurers agree to automatically grant any required alteration/extensions to the Period of Insurance up to a maximum of 90 days at additional premium not exceeding pro-rata. The Named Insured shall notify the Insurers as soon as possible (but no later than the estimated end date of the Construction Period shown in the Schedule or endorsement of this Policy) of becoming aware that the completion date last notified to the Insurers will be exceeded and the revised estimated completion date.

Extensions to the estimated Period of Insurance of greater than 90 days will only be covered subject to the prior approval of the Insurers.

11. Insolvency or Bankruptcy

The insolvency or bankruptcy of any party comprising the Insured shall not release the Insurers from any of their obligations assumed hereunder.

12. Jurisdiction and Service of Proceedings

The Insurers agree that:

12.1 this Policy is governed by the laws of Australia;

12.2 in the event of a dispute arising under this Policy, Insurers at the request of the Insured will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court;

12.3 any summons notice or process to be served upon the Insurers may be served upon the Nominee For Legal Service stated in the Schedule. Such Nominee has authority to accept service and to enter an appearance on the Insurers' behalf. If directed by the Insured the Nominee shall give a written undertaking that the Nominee will enter an appearance on the Insurers' behalf;

12.4 if proceedings are instituted against any one of the Insurers, all Insurers hereon will abide by the decision of such Court or any competent Appellate Court.

13. Cancellation

13.1 By the Insurers

The Insurers may cancel this Policy for any of the reasons set forth in Section 60 of the Commonwealth Insurance Contracts Act 1984 by serving on the Named Insured sixty (60) days notice in accordance with Section 59 of that Act, in which case the Named Insured will be entitled to a pro-rata refund of the Premium.

13.2 By the Named Insured

The Named Insured (on behalf of itself and all other Insureds unless otherwise specified) may cancel this Policy thereof at any time by giving notice in writing to the Insurers.

13.3 After cancellation by the Named Insured, the Premium will be adjusted in accordance with Condition 4.9 or pro-rata for the period on risk if the outcome does not represent an equitable refund for the cancelled period. The Named Insured will be obliged to supply to the Insurers such information as is necessary to adjust the Premium.

14. Alterations in Material Fact/Error or Omission

14.1 The Insured will not be prejudiced under this Policy in the event of any alteration in material fact or otherwise regarding construction methods or procedures, an unintentional or inadvertent error, omission or misdescription or any other information contained or omitted from any underwriting information supplied to the Insurers.

14.2 The Named Insured undertakes to immediately notify the Insurers as soon as the alteration or omission becomes known to them, and the Insurers shall be entitled to make reasonable variations to this Policy's terms and Conditions as may be mutually agreed between the Insurers and the Insured.

15. Progress Payments

Provided that indemnity has been granted under this Policy, progress payments on account of any claim shall be made to the Insured, at such intervals and for such amounts as may be agreed upon production of an acceptable report by the Loss Adjuster (if appointed), provided such payments shall be deducted from the amount finally determined upon adjustment of the claim.

16. Engagement of Loss Adjusters

16.1 Aon is authorised to appoint a loss adjuster from the panel of Agreed Loss Adjusters to investigate and quantify losses that are potentially indemnifiable under this Policy. Loss adjuster fees and expenses shall be payable by the Insurers.

16.2 The Insurers and Insured agree that the Agreed Loss Adjusters shall be agents of the Insurers and the Insured and all documents, transcripts, reports (verbal and written) shall be made available to the Insurers and the Insured.

16.3 If at any time there shall be any dispute or difference between the Insurers and the Insured in respect of the adjustment of a loss, then the Insurers or the Named Insured shall be entitled to appoint an independent loss adjuster.

17. Loss Payee

Any claim arising under this Policy shall be settled with and paid to the Loss Payee stated in the Schedule or as they may direct.

18. Currency

18.1 All monetary amounts expressed in this Policy are in Australian dollars. The Premium and losses shall be paid in Australian dollars or as otherwise agreed between the Insurers and the Insured.

18.2 For the purposes of this Policy, the Insurers agree to the Named Insured's normal practice of converting currency to Australian dollars in accordance with the Named Insured's accounting practices.

19. Difference In Conditions Cover (Underlying Insurance)

In circumstances where an Underlying Insurance has been arranged, this Policy shall be deemed to be the 'Master Policy'.

19.1 In the event of the Insured being indemnified by an Underlying Insurance in respect of a claim for which indemnity is available under this Master Policy, the insurance afforded by this Policy shall be excess insurance over the applicable limit of indemnity of the Underlying Insurance.

- 19.2 Coverage under this Master Policy shall not apply unless and until a claim for payment is made under the Underlying Insurance up to the amount of the Underlying Limit which, save for the limit of indemnity of the Underlying Insurance, would be covered by this Master Policy.
- 19.3 If such Underlying Insurance provides indemnity to the Insured by virtue of its scope of cover, definitions or conditions in respect of loss, damage, legal liability, costs and expenses which are not provided under the terms, Conditions and Exceptions of this Master Policy, then this Master Policy shall provide such indemnity to the same extent as provided by the Underlying Insurance.
- 19.4 Should any such Underlying Insurance, by virtue of its scope of cover, definitions, deductibles or excesses, conditions or limits of indemnity, not indemnify the Insured in whole or in part in respect of a loss, damage, liability, costs or expenses indemnifiable under this Master Policy, this Master Policy will provide indemnity to the extent that such indemnity is not provided by the terms and conditions of such Underlying Insurance. For the purpose of clarity, it is intended that indemnity by this Policy extends to cover losses not covered under the Underlying Insurance by virtue of the fact that such Underlying Insurance has a higher deductible or excess than the Excess under this Master Policy.
- 19.5 In the event that the Insured cannot obtain an admission of liability from the insurer of an Underlying Insurance and/or Underlying Insurance fails or is reasonably likely not to indemnify the Insured, then the Insurers of this Master Policy shall be obligated to indemnify the Insured.
- 19.6 The provisions of this clause are subject always to the terms, Conditions and Exclusions of this Master Policy, except as provided under (c) above.
- 19.7 In the event of cancellation of an Underlying Insurance or reduction or exhaustion of the limits of indemnity thereunder, this Master Policy shall:
- (a) in the event of reduction, pay in excess of the reduced Underlying Limit;
 - (b) in the event of cancellation or exhaustion, continue in force as Underlying Insurance.
- 19.8 Appeals**
- In the event the Insured or the insurers of the Underlying Insurance electing not to appeal a judgement in excess of the Underlying Limits, the Insurers may elect to make such appeal at their own cost and expense and shall be liable for the taxable costs and disbursements and interest incidental thereto, but in no event shall the liability of the Insurers exceed the Limits of Liability excluding the costs and expenses of such appeal.

SCHEDULE 13

THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE SUMMARY

IMPORTANT NOTE:

This is a summary of Section 2 of the RTA Annual Contract Works/Third Party Liability Insurance Policy. Arrangements to inspect the full Policy Wording can be made by contacting RTA's Insurance Broker:

Corporate Risk Services
Aon Risk Services Australia Limited
ABN 17 000 434 720
Level 33, Aon Tower
201 Kent Street
SYDNEY NSW 2000

Telephone 61 2 9253 8407
Facsimile 61 2 9253 7106

Policy Number: Section 2 99-0000476-LGR

Insured

The Roads and Traffic Authority of New South Wales (RTA), (Principal).

Any Person, Company, Corporation or Joint Venture which has entered or that it is intended will enter into a contract with the Principal to perform work (**Contractor**).

Any Person, Company, or group of Companies or Joint Venture which has entered or that it is intended to enter into a Contract with the Contractor to perform work or to supply goods or to provide services (Sub Contractors).

The policy also extends to include the interests of any principal (where RTA will be the Contractor) in respect of any contract and/or Alliance Works to which the insurances apply to the extent to which that interest is required to be insured jointly with RTA including any other party and/or Government body or Department where RTA or their related Government Department are in Joint Venture for their respective rights, interests and liabilities.

Business and Activities of the Insured

Civil contractors (mainly roads, bridges and pavement works and all other associated contracts), designers, consultants, suppliers, project and construction managers, plant and equipment owners, operators and hirers, lessees, lessors, and all incidental and associated operations trades and activities and further in respect of RTA only: property owners and occupiers, lessees and lessors.

Period of Insurance

From: *1 October 2006 at 4.00pm*

To: *1 October 2009 at 4.00pm*

Or any subsequent period for which the Insured has requested and the Insurer accepted renewal

Insured Contracts Sections 2

All contracts commenced by the Insured after 4.00p.m. on **1 October 2006**

Geographical Limits Sections 2 Third Party Liability

Worldwide but excluding liability arising from any Business and Activities of the Insured carried on, by, at or from any premises situated in U.S.A, or Canada, except in respect of overseas visits by the Insured's directors and/or employees to the U.S.A. or Canada.

Limits of Liability Section 2 Third Party Liability

A\$200,000,000 any one Occurrence unlimited to the number of Occurrences during the Period of Insurance but limited to **A\$200,000,000** in the annual aggregate during each 12 month period during the Period of Insurance arising from Products Liability.

Such Limits of Liability apply in excess of the Excesses.

Excesses

Section 2

- Worker to Worker claims, \$50,000 any one occurrence
- Products Liability, \$50,000 any one occurrence
- Underground Services, \$50,000 any one occurrence
- All other claims \$10,000 any one occurrence

Third Party Liability

Section 2 Insuring Clause

The Insurers will indemnify the Insured against the Insured's legal liability to pay damages or compensation in respect of:

- Personal Injury;
- Property Damage; or
- Advertising Injury,

happening:

- (i) during the Construction Period or the Defects Liability Period in respect of the Insured Operations; or
- (ii) during the Period of Insurance in respect of the Insured's Products;

within the Territorial Limits in connection with the Business and related activities as a result of an Occurrence.

In addition to any indemnity:

- (i) all legal costs and other expenses incurred with the written consent of the Insurer;
- (ii) all charges expenses and legal costs recoverable from the Insured by claimants;

- (iii) all costs and expenses incurred by the Insured for legal representation at any coroner's inquest, fatal accident inquiry or court of summary jurisdiction;
- (iv) expenses incurred by the Insured for first aid rendered for injury to others at the time of an Occurrence.

Exclusions Applicable to Section 2

1. Employer's Liability

Liability for which the Insured is entitled to indemnity under any policy of insurance required to be taken out pursuant to any legislation relating to workers and workmen's compensation, whether or not the Insured has effected such a policy.

This Exclusion does not apply with respect to liability of others assumed by the Insured under written contract.

2. Industrial Awards

Liability to or of any Employee of the Insured imposed by the provisions of any industrial award or agreement or determination where such liability would not otherwise have attached.

3. Aircraft and Watercraft

Liability arising from the ownership, possession or use by the Insured of any Aircraft or Watercraft, but this Exclusion shall not apply to:

- (a) Aircraft or Watercraft which are not owned by the Insured when such craft are hired, leased or chartered to or by the Insured with a pilot/master and crew supplied;
- (b) liability arising out of construction plant or equipment mounted upon or operating from any Watercraft, but this Exclusion subclause 3(b) shall not apply to liability arising out of the use or operation of the Watercraft itself;
- (c) the use or existence of explosives on or from any marine craft or vessels whether in, over or under water or otherwise;
- (d) liability in respect of work undertaken on marine craft or vessels.

4. Vehicles

Liability arising from the ownership, possession or use by the Insured of any Vehicle in respect of which there is required by law, at the time of the Occurrence, to be in force compulsory third party bodily injury liability insurance. In the absence of indemnity afforded by any other insurance, this Exclusion 4 shall not apply to:

- (a) liability arising out of the loading or unloading of or the delivery or collection of goods to or from any Vehicle;
- (b) liability caused by or arising out of or in connection with the Vehicle working as a tool of trade on any site or at the premises of the Insured.

5. Loss of Use

Loss of use of tangible property that forms part of a Contract which has not been physically damaged or destroyed resulting from a delay in or lack of performance by or on behalf of the Insured of any Contract.

6. Products and Work Performed

Liability for:

- (a) the cost of making good, replacing or reinstating workmanship performed by the Insured or of any Product which is or is alleged to be defective or deficient;
- (b) the cost of or damages claimed in relation to the withdrawal, recall, inspection, repair, replacement or loss of use of the Products or any property of which such Products form a part, if such Products or property are withdrawn from the market or from use solely because of any known or suspected defect or deficiency therein;

This Exclusion 6 shall apply only to the part which is defective or deficient and shall not apply to any other parts of the works, Products or any other property lost or damaged as a consequence.

7. Professional Liability

Liability arising out of the rendering of or failure to render professional advice or service given for a specific fee by the Insured or error or omission connected therewith, but this Exclusion 7 does not apply to:

- (a) Personal Injury or Property Damage arising there from; or
- (b) the rendering of or failure to render professional medical advice by medical persons employed by the Insured to provide first aid and other medical services on the Insured's premises.

8. Pollution and Contamination

- (a) Liability arising out of discharge, dispersal, seepage, release or escape of Pollutants into or upon land, the atmosphere, or water; but this Exclusion 8(a) does not apply if such discharge, dispersal, seepage, release or escape is sudden and accidental and neither expected nor intended from the standpoint of the Insured and occurs at a specific time and place.
- (b) Any costs and expenses incurred in the prevention, removing, nullifying or clean up of Pollutants, but this Exclusion 8(b) does not apply where clean up, removal or nullifying expenses are incurred consequent upon a sudden and accidental happening neither expected nor intended from the standpoint of the Insured, which results in Property Damage and/or Personal Injury.

9. Fines and Penalties

Liability arising from or attributable to:

- (a) an award of punitive, liquidated, aggravated or exemplary damages;
- (b) any fine or penalties, including but not limited to civil penalties;

but this Exclusion 9 does not apply to civil awards in the nature of compensatory damages.

10. Advertising Injury

Liability arising out of Advertising Injury for:

- (a) offences committed prior to the inception date of this Policy;
- (b) offences made at the direction of the Insured with knowledge of the illegality or falsity thereof;
- (c) breach of contract, other than misappropriation of advertising ideas under an implied contract;
- (d) incorrect description of the price of the products, goods or services;
- (e) infringement of trade mark, service mark or trade name by use thereof as the trade mark, service mark or trade name of the products, goods or services sold, offered for sale or advertised, but this Exclusion 10 does not apply to titles or slogans;
- (f) failure of the products, goods or services to conform with advertised performance, quality, fitness or durability;
- (g) any Insured whose business is advertising, broadcasting, publishing or telecasting.

11. Property owned by or in Care, Custody or Control of the Insured

Damage to property:

- (a) owned by the Insured;
- (b) held in trust or in the custody or control of the Insured, but only to the extent that such damage is payable under Section 1 of this Policy.

12. Asbestos

Claims directly or indirectly caused by, contributed to by or arising from exposure to asbestos or materials containing asbestos.

Conditions Applicable to Section 2

1. Limits of Liability

- (a) No liability shall attach to the Insurers until the Damage or loss in respect of each Event/ Occurrence exceeds the amount of any relevant Excess stated in the Schedule. The Limits of Liability and Sub-limits of Liability shall apply in excess of the amount of the relevant Excess.
- (b) The liability of the Insurers in respect of each Occurrence shall not exceed the Limit of Liability stated in the Schedule. All Personal Injury, Property Damage or Advertising Injury arising out of

continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one Occurrence.

The total aggregate liability of the Insurers for all claims arising out of Products shall not exceed the Limits of Liability stated in the Schedule for each 12 month period from the inception date of this Policy.

2. Application of Excess

- (a) The Insured shall be liable to pay the amount of the Excess in respect of each Event/Occurrence. If a series of claims are made under a Section of this Policy arising out of the one Event/Occurrence then only one Excess shall apply in respect of that Policy Section.

In respect to Section 2, the Excess is inclusive of Defence and Other Costs as described.

(b) **Non-aggregation of Excesses**

In respect of Section 1 only, should more than one Excess apply for any claim or series of claims arising from the one Event, such Excesses shall not be aggregated and only the highest single Excess shall apply.

(c) **72 Hour Clause**

For the purpose of the application of any Excess under Section 1 only, all Damage resulting from fire, earthquake, cyclone, flood, hail, storm and/or tempest, occurring during each period of 72 consecutive hours shall be considered as one Event where such peril is sporadic in its sweep and scope. The Insured shall select the time from which any such period shall commence but no two selected periods shall overlap.

(d) **Inland Transit**

In respect of the transit Excess under Section 1 (if any), such Excess shall apply to Insured Property in the course of loading of the Insured Property, whilst in transit, including incidental storage until unloading at the point of discharge at the final destination.

3. Insurers' Rights

The Insured shall, at the request and the expense of the Insurers, do and concur in doing all such acts and things as the Insurers may reasonably require with a view to recovery of Damaged Insured Property or to preserve and enforce any rights the Insured may have against anyone in respect of Damage to Insured Property or liability for Personal Injury, Property Damage or Advertising Injury.

4. Subrogation and Settlement of Claims

The Insured shall inform the Insurers as soon as reasonably practicable of the happening of any Damage which may give rise to a claim under this Policy.

Upon the payment of any claim under this Policy, subject to any restrictions imposed by the Commonwealth Insurance Contracts Act 1984, the Insurers shall be subrogated to all the rights and remedies of the Insured arising out of such claim against any person or corporation whatsoever.

In respect of Section 2 of this Policy, no admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the Insured without the consent of the Insurers who shall be entitled, if the Insurers so desire, to take over and conduct in the name of the Insured the defence or

settlement of any claim or to prosecute in the name of the Insured for the Insurer's own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings or in the settlement of any claim, however the Insurers shall discuss the conduct, defence, prosecution or settlement of any claim or proceeding with the Insured prior to taking action or effecting settlement.

The Insurers may pay to the Insured, the amount of the applicable Limit of Liability of the Insurers or such lesser sum for which the claim can be settled subject in either case to deduction of any sum or sums already paid as compensation in respect of such claim and the Insurers shall thereafter be under no further liability in respect of such claim except for the payment of costs and expenses for which the Insurers are liable hereunder incurred prior to the date of such payment.

5. Multiple Insureds Clause

- (a) If the Insured comprises more than one insured party each operating as a separate and distinct entity then (save as provided in this clause), cover hereunder shall apply in the same manner and to the same extent as if individual policies had been issued to each such insured party provided that the total liability of the Insurers to all of the insured parties collectively shall not exceed the Limits of Liability or Sub-limits in this Policy.
- (b) The insured parties will, to the extent allowed under contract, at all times preserve the various contractual rights and agreements entered into by the insured parties and contractual remedies of such parties in the event of loss or damage.
- (c) The Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from an insured party in circumstances of such insured party committing fraud, misrepresentation, material non-disclosure or breach of any warranty or Condition of this Policy referred to in this General Condition as a "Vitiating Act".
- (d) However a Vitiating Act or any other act or neglect committed by one insured party, either at the time of entering this contract or during the Period of Insurance, shall not prejudice the right to indemnity of any other insured party who has an insurable interest and who has not committed a Vitiating Act.
- (e) The Insurers agree to waive all rights of subrogation that they may have or acquire against:
 - (i) any Insured or any individual or organisation affiliated or associated with, parent of or a subsidiary of any Insured other than those defined in the Insured iii.d. in circumstances where indemnity is not provided under this Policy;
 - (ii) at the option of the Named Insured, any other parties or persons, subject to the Insured, waiving rights of subrogation prior to the loss, but only when required to do so under contract;

except where the rights of subrogation or recourse are acquired in consequence or otherwise following a Vitiating Act, in which circumstances the Insurers may enforce such rights against the party committing the Vitiating Act.

6. Notices

- (a) Any notice(s) required by the Conditions of this Policy to be given to the Insurers shall be given by the Insured through any office of their insurance broker, Aon Risk Services Australia Limited (Aon) or direct to the Insurers. Any notice(s) given to any office of the appointed broker constitutes notice upon Insurers. Any such notice shall be deemed to be given on behalf of the Insured giving the notice and on behalf of all other Insureds.

- (b) Any notice(s) given by the Insurers to any party insured under this Policy shall also be given to all other named parties.
- (c) Any notice of claim given to the Insurers by any party insured under this Policy shall be accepted by the Insurers as a notice of claim given on behalf of all other parties insured under this Policy.
- (d) Subject to the Named Insured providing details to the Insurers of the name of the Nominee for Insurers' Notices and the relevant Contract provisions, the Insurers agree to provide 30 business days prior notice to that Nominee in the event of:
 - (i) the cancellation or expiry of this Policy before completion of the Construction Period and/or Defects Liability Period of the relevant Contract due to non payment of premium or any other cause;
 - (ii) the Insurers giving any notice under this Policy.

7. Insolvency or Bankruptcy

The insolvency or bankruptcy of any party comprising the Insured shall not release the Insurers from any of their obligations assumed hereunder.

8. Hold Harmless Agreements

Where, in connection with or in relation to a Contract, the Insured enters into an agreement with another party and where such agreement provides, inter alia, that the Insured shall indemnify and/or hold harmless and/or release from liability such other party in respect of any damage, defect or liability hereby insured against, it is understood and agreed that this Policy shall not be prejudiced or invalidated by the Insured agreeing to such provisions and that the indemnity and/or hold harmless and/or release from liability given by the Insured shall be equally binding upon the Insurers.

9. Jurisdiction and Service of Proceedings

The Insurers agree that:

- (a) this Policy is governed by the laws of Australia;
- (b) in the event of a dispute arising under this Policy, Insurers at the request of the Insured will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court;
- (c) any summons notice or process to be served upon the Insurers may be served upon the Nominee For Legal Service stated in the Schedule. Such Nominee has authority to accept service and to enter an appearance on the Insurers' behalf. If directed by the Insured the Nominee shall give a written undertaking that the Nominee will enter an appearance on the Insurers' behalf;
- (d) if proceedings are instituted against any one of the Insurers, all Insurers hereon will abide by the decision of such Court or any competent Appellate Court.

10. Cancellation/Non-renewal

- (a) **By the Insurers**

The Insurers may cancel this Policy for any of the reasons set forth in Section 60 of the Commonwealth Insurance Contracts Act 1984 by serving on the Named Insured sixty (60) days notice in accordance with Section 59 of that Act, in which case the Insured will be entitled to a pro-rata refund of the Premium.

(b) By the Named Insured

The Named Insured (on behalf of itself and all other Insureds (unless otherwise specified) may cancel any Section of this Policy or cancel cover in respect of any Contract or Insured Property at any time by giving notice in writing to the Insurers.

(c) Run-off Cover

Notwithstanding the Period of Insurance, in the event of cancellation by either the Insurers or the Named Insured or non-renewal of this Policy, at the Named Insured's option, the insurance by this Policy shall continue for each Contract or Insured Property until:

- (i) expiration of the Construction Period and Defects Liability Period; or
- (ii) the Named Insured formally advises the Insurers that the Contracts have been insured elsewhere;
- (iii) whichever occurs first.

In the event of cancellation or non-renewal of this Policy, the Premium will be adjusted or pro-rata for the period on risk if the outcome does not represent an equitable refund for the cancelled period. The Named Insured will be obliged to supply to the Insurers such information as is necessary to adjust the Premium.

11. Alterations in Material Fact/Error or Omission

- (a) The Insured will not be prejudiced under this Policy in the event of any alteration in material fact or otherwise regarding construction methods or procedures, an unintentional or inadvertent error, omission or misdescription or any other information contained or omitted from any underwriting information supplied to the Insurers.
- (b) The Named Insured undertakes to immediately notify the Insurers as soon as the alteration or omission becomes known to them, and the Insurers shall be entitled to make reasonable variations to this Policy's terms and Conditions as may be mutually agreed between the Insurers and the Insured.

12. Engagement of Loss Adjusters

- (a) Aon is authorised to appoint a loss adjuster from the panel of Agreed Loss Adjusters to investigate and quantify losses that are potentially identifiable under this Policy. Loss adjuster fees and expenses shall be payable by the Insurers.
- (b) The Insurers and Insured agree that the Agreed Loss Adjusters shall be agents of the Insurers and the Insured and all documents, transcripts, reports (verbal and written) shall be made available to the Insurers and the Insured.
- (c) If at any time there shall be any dispute or difference between the Insurers and the Insured in respect of the adjustment of a loss, then the Insurers or the Named Insured shall be entitled to appoint an independent loss adjuster.

13. Currency

- (a) All monetary amounts expressed in this Policy are in Australian dollars. The Premium and losses shall be paid in Australian dollars or as otherwise agreed between the Insurers and the Insured.
- (b) For the purposes of this Policy, the Insurers agree to the Named Insured's normal practice of converting currency to Australian dollars in accordance with the Insured's accounting practices.

14. Difference In Conditions Cover

In circumstances where an Underlying Insurance has been arranged, this Policy shall be deemed to be the 'Master Policy'.

- (a) In the event of the Insured being indemnified by an Underlying Insurance in respect of a claim for which indemnity is available under this Master Policy, the insurance afforded by this Policy shall be excess insurance over the applicable limit of indemnity of the Underlying Insurance.
- (b) Coverage under this Master Policy shall not apply unless and until a claim for payment is made under the Underlying Insurance up to the amount of the Underlying Limit which, save for the limit of indemnity of the Underlying Insurance, would be covered by this Master Policy.
- (c) If such Underlying Insurance provides indemnity to the Insured by virtue of its scope of cover, definitions or conditions in respect of loss, damage, legal liability, costs and expenses which are not provided under the terms, Conditions and Exceptions of this Master Policy, then this Master Policy shall provide such indemnity to the same extent as provided by the Underlying Insurance.
- (d) Should any such Underlying Insurance, by virtue of its scope of cover, definitions, deductibles or excesses, conditions or limits of indemnity, not indemnify the Insured in whole or in part in respect of a loss, damage, liability, costs or expenses indemnifiable under this Master Policy, this Master Policy will provide indemnity to the extent that such indemnity is not provided by the terms and conditions of such Underlying Insurance. For the purpose of clarity, it is intended that indemnity by this Policy extends to cover losses not covered under the Underlying Insurance by virtue of the fact that such Underlying Insurance has a higher deductible or excess than the Excess under this Master Policy.
- (e) In the event that the Insured cannot obtain an admission of liability from the insurer of an Underlying Insurance and/or Underlying Insurance fails or is reasonably likely not to indemnify the Insured, then the Insurers of this Master Policy shall be obligated to indemnify the Insured.
- (f) The provisions of this clause are subject always to the terms, Conditions and Exclusions of this Master Policy, except as provided under (c) above.
- (g) In the event of cancellation of an Underlying Insurance or reduction or exhaustion of the limits of indemnity thereunder, this Master Policy shall:
 - (i) in the event of reduction, pay in excess of the reduced Underlying Limit;
 - (ii) in the event of cancellation or exhaustion, continue in force as Underlying Insurance.
- (h) Appeals

In the event the Insured or the insurers of the Underlying Insurance electing not to appeal a judgement in excess of the Underlying Limits, the Insurers may elect to make such appeal at their own cost and expense and shall be liable for the taxable costs and disbursements and interest incidental thereto, but in no event shall the liability of the Insurers exceed the Limits of Liability excluding the costs and expenses of such appeal.

15. Leading Insurer

The Leading Insurer is the company named first in the Schedule. Each other company named in the Schedule agrees to accept the same terms and Conditions as the Leading Insurer and authorises the Leading Insurer to act on behalf of all the named companies for all purposes connected with this Policy and, without limiting the generality of the foregoing:

- (a) to accept all notices required under this Policy;
- (b) to interpret the meaning or intention of any word, expression, Exclusion or Condition of this Policy;
- (c) to accept increases in any Limit of Liability or Sub-limit of this Policy up to 10% of the limit existing at the time of the increase;
- (d) to agree amendments to the wording of this Policy;
- (e) to re-negotiate terms commensurate with any change in the risk;
- (f) to negotiate and settle claims under this Policy.

Subject otherwise to the terms and conditions of this Policy and to notification of each alteration as soon as practicable thereafter, each other company named in the Schedule agrees to accept and be bound by the decisions of the Leading Insurer.

General Exclusions Applicable to All Sections

The following Exclusions apply to all Sections of this Policy:

20. Nuclear Risks

The Insurers shall not be liable in respect of loss, damage or liability directly or indirectly caused by or contributed to by or arising from:

- 20.1 ionising, radiations or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel;

for the purpose of this Exclusion only, combustion shall include any self-sustaining process of nuclear fission;

- 20.2 nuclear weapons materials.

This General Exclusion shall not apply to liability resulting from the use of commercial radioactive isotopes.

21. War and Terrorism

Notwithstanding any provision to the contrary within this Policy or any endorsement thereto it is agreed that this Policy excludes loss, damage, cost or expense of whatsoever nature directly or

indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

21.1 war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; Notwithstanding this clause 21(a), this Policy shall cover loss, damage or liability caused by missiles and/or mines and/or bombs and/or other explosives not discovered at the moment of commencement of this Policy as long as no state of war exists in the country where the loss occurs; or

21.2 any act of terrorism.

For the purpose of this clause an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This clause also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 21(a) and/or 21(b) above.

In the event any portion of this General Exclusion clause 21 is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

THE INSURERS AND PARTICIPATION

Section 2 (Third Party Liability)

Third Party Liability	99-0000476-LGR	Allianz Australian Insurance Ltd	A\$20,000,000	Injury to Contractors Products Liability Underground Services All other claims	A\$50,000 A\$50,000 A\$50,000 A\$10,000
Excess Third Party Liability *	TBA	Allianz Australian Insurance Ltd	A\$70,000,000	Primary A\$20,000,000	
Excess Third Party Liability *	TBA	American Home Insurance Ltd	A\$110,000,000	Excess of A\$70,000,000 Excess of A\$20,000,000	