



ANZAC BRIDGE UPGRADE

PROJECT ALLIANCE AGREEMENT

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ANZAC BRIDGE UPGRADE

THIS AGREEMENT is made on

2010

PARTIES

Roads and Traffic Authority of New South Wales ABN 64 480 155 255 of 101 Miller Street, North Sydney (**RTA**)

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

The Participants will generally be referred to as “We”, “we”, “our” or “us” in this Agreement, unless the context requires otherwise.

RECITALS

- A. The ANZAC Bridge (**Bridge**), formerly known as the Glebe Island Bridge, is maintained by RTA. RTA proposes to refurbish and improve the performance of the stay cable system and associated infrastructure on the Bridge. For the purposes of this Agreement, the work associated with the refurbishment and improvement of the Bridge will be known as the Alliance Works.
- B. Completion of the Alliance Works is scheduled for 31 March 2013.
- C. We have agreed to form an Alliance for the purposes 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;
- (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;

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- (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.

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 three Representatives from RTA and two Representatives from each NOP.
- (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 that becomes a party to this Agreement, that Participant must nominate no more than two Representatives in writing for acceptance by the ALT.

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- (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.
- (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.
 - (f) A senior executive from each of the Participants not directly associated with the Alliance may attend meetings of the ALT as an observer.
 - (g) Members of the RTA Interface Management Team may attend meetings of the ALT as an observer.

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. A Representative who fails to notify the secretary of acceptance or non-acceptance of the minutes within 7 Business Days of issue of the minutes will be deemed to have accepted the minutes. 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).

3.4 Meetings of the AMT

Members of the RTA Interface Management Team may attend any meetings of the AMT as an observer.

4. INTEGRATED PROJECT TEAM

4.1 Creation of the Integrated Project Team

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

4.2 Functions of the Integrated Project Team

The Integrated Project 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 Integrated Project Team

- (a) The Integrated Project 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 Integrated Project Team remain (subject to satisfactory performance by the personnel) members of the Integrated Project Team until the AMT decides that those personnel are no longer required.

5. PROJECT PROPOSALS

5.1 Development and approval of Phase 1 Project Proposal

- (a) We will prepare and deliver to RTA a Phase 1 Project Proposal for the Phase 1 Alliance Works within 15 Business Days after the date of the Agreement or such other period agreed in writing with RTA.
- (b) Following receipt of the Phase 1 Project Proposal, RTA may, in its absolute discretion, elect to:
 - (i) approve the Phase 1 Project Proposal by written notice to the NOPs;
 - (ii) request the Participants to amend the Phase 1 Project Proposal and resubmit it to RTA for approval in accordance with this clause 5.1(b); or
 - (iii) give the ALT a notice in writing informing the ALT that the Alliance Works will not proceed, in which case, clause 11.1(a) will apply on and from the date of that notice.

5.2 Development and approval of Phase 2 Project Proposal

- (a) If RTA approves the Phase 1 Project Proposal under clause 5.1(b)(i), we will as part of the Phase 1 Alliance Works prepare and deliver to RTA a Phase 2 Project Proposal for Phase 2 Alliance Works by no later than 30 April 2011 or such other date agreed in writing by RTA.
- (b) Following receipt of the Phase 2 Project Proposal, RTA may, in its absolute discretion, elect to:
 - (i) approve the Phase 2 Project Proposal by notice in writing to the NOPs;
 - (ii) request the Participants to amend the Phase 2 Project Proposal and re-submit it 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, in which case, clause 11.1(a) will apply on and from the date of that notice.

5.3 Separable Portions

RTA may, as part of the process contemplated under clauses 5.1 and 5.2, require the Participants to develop and submit to RTA a Phase 1 Project Proposal and/or Phase 2 Project Proposal 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 the:
 - (i) Phase 1 Alliance Works unless and until RTA provides its approval in writing to the Phase 1 Project Proposal pursuant to clause 5.1(b)(i) or as otherwise agreed by RTA in writing;
 - (ii) Phase 2 Alliance Works unless and until RTA provides its approval in writing to the Phase 2 Project Proposal pursuant to clause 5.2(b)(i) or as otherwise agreed by RTA in writing.
- (b) We will carry out the Alliance Works in accordance with the programs that form part of the Project Proposals approved under clauses 5.1(b)(i) and 5.2(b)(i).
- (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 clauses 8.2 and 8.3 (inclusive).
- (d) The terms of compensation under the Commercial Framework may be modified as determined by the ALT, but only where there is a Scope Change.

6.3 Set-off

- (a) Without prejudice to any other rights, RTA may deduct from any monies which may be, or become, payable to a NOP under this Agreement any money due from that NOP to RTA under this Agreement.

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- (b) Nothing in this clause 6.3 will affect the right of RTA to recover from the NOP the whole of any debt or any balance that remains owing by that NOP after deduction.

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 Final 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.

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- (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 and the interpretations of:

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

will apply separately to each 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;

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- (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;
 - (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; and
 - (f) a NOP may inform RTA and the Alliance Manager if the NOP is of the reasonable opinion that compliance with a direction given by RTA under clause 6.10(c) would place the NOP in breach of its obligations:
 - (i) under the *Occupational Health and Safety Act 2000* (NSW) and the *Occupational Health and Safety Regulation 2001* (NSW); and/or
 - (ii) as the principal contractor pursuant to clause 7.7(c)(ii),and the ALT will then determine a suitable resolution of the occupational health and safety issue which avoids or remedies such breach.

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.

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) be approved by the Alliance Manager;
 - (ii) 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
 - (iii) 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 or defence actions, settlement 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 and 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:

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- (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* (NSW) (in this clause, **the Act**) and the *Occupational Health and Safety Regulation 2001* (NSW) (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 Pty Ltd ("**Baulderstone**") as the principal contractor under clause 210 of the Regulation then, from the date on which RTA notifies Baulderstone:
 - (A) Baulderstone is appointed as principal contractor under clause 210 of the Regulation; and
 - (B) RTA and the NOPs give all necessary authority to Baulderstone to allow it to fulfil and exercise the obligations and functions of the principal contractor under the Regulation;
 - (ii) Baulderstone must, from the date on which RTA notifies Baulderstone:
 - (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 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's 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

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- (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;
 - (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 occupational health and safety management plan (**OH&S Plan**) in accordance with the New South Wales OHS&R Management Systems Guidelines dated November 1998 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 the 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, the environment 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) To the extent that it is not inconsistent with the code referred to in clause 7.13, 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, social issues and media

- (a) 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 Stakeholders, and the Alliance and the ALT must comply with RTA's directions.
- (b) No Participant may disclose any information concerning the Project for distribution through any communications media without RTA's prior written approval. The

Participants must refer to RTA any enquiries from any media concerning the Project.

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 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 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 sites; and
- (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.
- (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.
- (b) No Direction will invalidate this Agreement.
- (c) RTA may, in respect of a Direction or 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

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- (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 and the relevant NOPs.

- (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(a) is withdrawn a Scope Change will arise, 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 compensation payable to the NOPs under this Agreement 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 compensation payable pursuant to this Agreement unless the Direction is determined by the ALT to give rise to a Scope Change, the ALT has issued a notice under clause 7.21(d) 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 and the ALT must use their reasonable endeavours to minimise any delays in the Alliance Works arising from the processes contemplated in this clause 7.21.
- (i) A NOP may inform RTA, the ALT and the Alliance Manager if the NOP is of the reasonable opinion that compliance with a Direction given by the RTA under this clause 7.21 would place the NOP in breach of its obligations:
 - (i) under the Occupational Health and Safety Act 2000 (NSW) and the Occupational Health and Safety Regulation 2001 (NSW); and/or
 - (ii) as the principal contractor pursuant to clause 7.7(c)(ii),and the ALT will then determine a suitable resolution of the occupational health and safety issue which avoids or remedies such breach.

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, rate of progress, 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;

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- (vi) a change in the levels, lines, positions or dimensions of all or any part of the Alliance Works;
 - (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 recommendation 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 state 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, or against the performance of similar projects.
- (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;
 - (ii) Actual Outturn Cost; and
 - (iii) 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.

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- (e) For the purposes of this Agreement, the expression "commercial in confidence" will have the meaning set out in paragraphs (a) - (e) of the definition of the phrase "commercial-in-confidence provisions" in Schedule 4 of the *Government Information (Public Access) Act 2009* (NSW).

7.24 Conference of Alliances

- (a) The RTA's authorised representative may, at any time prior to Final Completion of the Alliance Works, 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.

7.25 Commonwealth OHS accreditation

- (a) Subject to the exclusions specified in the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005, Baulderstone must maintain accreditation under the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) established by the *Building and Construction Industry Improvement Act 2005* (**BCII Act**) while building work (as defined in section 5 of the BCII Act) is carried out under this Agreement.
- (b) Baulderstone must comply with all conditions of Scheme accreditation.

8. PAYMENTS

8.1 Invoices and payments

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

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- (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 and any reasons for withholding.
- (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) 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
 - (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 a similar document to that required in clause 8.1(e)(i).
- (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 18 of Schedule 2 Part 5 of the *Pay Roll Tax Act 2007* (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.

8.2 Payment for materials not incorporated

The ALT will ensure that the Alliance procurement procedures require that a NOP does not pay a supplier for materials delivered to the Site but not incorporated into the Alliance Works unless certain conditions precedent are met. The conditions precedent will, as a minimum, include:

- (a) the supplier providing evidence and documentation that unencumbered ownership will pass to RTA on or before payment to the supplier; and
- (b) the NOP properly storing the materials at the Site and labelling them as property of RTA.

8.3 Payment for materials not delivered

The ALT will ensure that the Alliance procurement procedures require that a NOP does not pay a supplier for materials not delivered to the Site unless certain conditions precedent are met. The conditions precedent will, as a minimum, include the supplier providing evidence and documentation that:

- (a) the material exists and its value exceeds \$100,000;
- (b) unencumbered ownership will pass to RTA on or before payment to the supplier; and

the materials are properly stored, labelled as property of RTA and insured in the name of RTA and the relevant NOP.

8.4 RTA may make direct payments on request

Without implying any legal relations between the RTA and NOP's workers, Subcontractors or suppliers, 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, Subcontractors or suppliers of that NOP.

8.5 RTA may pay on court order

RTA may pay money direct to a worker, Subcontractor or supplier 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, Subcontractor or supplier 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 event**", "**adjustment note**", "**consideration**", "**Goods and Services Tax**", "**GST**", "**recipient created tax invoice**", "**recipient**", "**supply**", "**Tax Invoice**" and "**taxable supply**" have the meaning given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
 - (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 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 without request.
- (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.
- (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 will arrange 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 for the term of this Agreement.
- (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 physical loss or damage to the Alliance Works 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 and Third Party Public and Products Liability Insurance Summary), 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).

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- (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 the end of the Defects Correction Period.
 - (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.
 - (n) Professional indemnity insurance:
 - (i) RTA has effected a professional indemnity policy of insurance for its own benefit. In respect of this insurance:
 - (A) RTA is the only beneficiary of this insurance;
 - (B) a determination by RTA that it will make available for the benefit of the Participants any proceeds received under this policy (having considered the advice of the ALT) will constitute a Scope Change; and
 - (C) the insurer's rights of subrogation against the NOPs are waived by virtue of the provisions of this Agreement. The insurer will not waive any rights of subrogation or action against any other parties.
 - (ii) The obtaining of the insurance referred to in paragraph (i) by RTA does not limit or otherwise affect the NOPs' obligations under this Agreement.

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.
- (b) All insurances under clause 10.2(a) 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.

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. The NOPs must ensure that in respect of each insurance required to be effected or taken out as required by this clause 10 they:

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- (i) do not do anything which prejudices any insurance;
 - (ii) if necessary, rectify anything which might prejudice any insurance;
 - (iii) immediately notify RTA of any event which may result in an insurance policy lapsing or being cancelled or if they becomes aware of any actual, threatened or likely claims under any of the insurances referred to in clause 10 which could materially reduce the available limit of indemnity; and
 - (iv) gives 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.
- (c) The NOPs must ensure that in respect of each insurance required to be effected or taken out as required by this clause 10 by the NOPs or any Subcontractor they:
- (i) reinstate or cause to be reinstated an insurance policy if it lapses; and
 - (ii) do not cancel, vary or allow an insurance policy to lapse without the prior written consent of RTA.

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

With the exception of statutory policies:

- (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, state of mind, knowledge or nondisclosures before or after the policy was effected by one insured to any other insured; and
- (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 listed in **Schedule 1** and maintained pursuant to this Agreement 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.

11. WITHDRAWAL AND TERMINATION

11.1 Termination

This Agreement will terminate on the date on whichever of the following events occurs first:

- (a) RTA gives notice to the ALT that the Alliance Works will not or will no longer proceed;
- (b) RTA terminates this Agreement under clause 11.2; and
- (c) all the Participants agree in writing to terminate this Agreement.

11.2 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

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- (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.

11.3 Effect of termination

- (a) If this Agreement is terminated under clauses 11.1 or 11.2, RTA may take and use, in any way, the whole or any part of the Alliance Works.
- (b) The NOPs will have no obligations with respect to that portion of the Alliance Works that is not completed as a result of termination of this Agreement under clauses 11.1 or 11.2.

11.4 Our actions

If this Agreement is terminated under either clause 11.1 or 11.2, 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 11.4(a) to (e) (inclusive).

11.5 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 either clause 11.1 or clause 11.2, 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.

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 13.3 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 and may recover loss or damage from the Defaulting Participant under clause 14.3(b); or
- (d) where the Defaulting Participant is RTA, wholly or partly suspend the Alliance Works until the default has been remedied.

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 other 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 other 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) 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 14.1(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 use our best endeavours to 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) the indemnities in clauses 14.3(b), 16.1 and 16.3; and
 - (ii) 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) or equity, 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) The Defaulting Participant is liable for and indemnifies the Non-Defaulting Participants for all costs, expenses, damages, losses or other amounts arising from:
 - (i) the Defaulting Participant's Material Default;
 - (ii) exercise of the right of exclusion and/or suspension under clause 13.3 or 13.4; or
 - (iii) termination of this Agreement arising from the Defaulting 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

- (a) 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:
 - (i) the liability is not recoverable from an insurer of any policy of insurance forming part of the insurance regime agreed by the ALT or contemplated under this Agreement; or
 - (ii) while recoverable under such insurance policy, is not in fact recovered due to the insolvency of the insurer.
- (b) The provisions of this clause 14 do not operate to release a party to this Agreement from liability to another party to this Agreement to the extent that an insurer of any policy of insurance forming part of the insurance regime agreed by the ALT or contemplated under this Agreement, seeks to rely on this clause 14 to deny liability which it otherwise has to indemnify an insured under the relevant policy.

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 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 Provision of copies

We will provide to RTA copies of all Records requested by RTA in a form and within a timeframe acceptable to RTA.

15.4 Audit

- (a) RTA and/or the Financial Auditor may undertake an inspection, audit or copying of Records in relation to the Alliance Works. on a monthly basis. RTA in its discretion may amend the frequency of such audits.
- (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) We will respond to all requests for information from the Financial Auditor promptly and in any event within 30 days of the request.
- (d) RTA and the Financial Auditor will have the right to reproduce any Records obtained under clause 15.3 or 15.4(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 11.2.

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- (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 and its nominated sub-licensees and sub-contractors 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) that RTA may sustain or incur as a result of a breach by that NOP of clause 16.1 or 16.2(a); 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 clause 16.3(c).

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 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) 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 NOP is required by any applicable law, the requirement of any Authority or the rules of any stock exchange to disclose any information, provided the NOP:
 - (i) promptly gives notice to RTA of that requirement;
 - (ii) takes all lawful measures available, and allows RTA 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.
- (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.

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- (g) Each NOP:
- (i) acknowledges that RTA will disclose information on this Agreement under Division 5 of Part 3 of the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**) and may be required to disclose information about the Project and Participants under the GIPA Act or if requested by Parliament;
 - (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;
 - (iii) agrees that the obligation in clause 16.5(g)(ii) is a continuing obligation under this Agreement; and
 - (iv) acknowledges that the Commercial Framework will contain annexures, separate to the general provisions, and identified as confidential, which may be "commercial-in-confidence provisions" of the Agreement, as defined in the GIPA Act.

16.6 Privacy Act Compliance

We will comply with the provisions of the *Privacy Act 1988* (Cth) and the *Privacy and Personal Information Protection Act 1998* (NSW) in relation to any personal information (as respectively defined in those Acts).

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).

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- (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 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.

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**
(ABN 64 480 155 255), by its duly
authorised delegate, in the presence of:

Signature of agent

Signature of witness

Name

Name

EXECUTED by Boulderstone Pty Ltd
(ABN 56 002 625 130)

Signature of director

Signature of director

Name

Name

**EXECUTED by Freyssinet Australia Pty
Ltd** (ABN 15 002 617 736)

Signature of director

Signature of director

Name

Name

EXECUTED by SAGE Automation Pty Ltd
(ABN 59 104 119 833)

Signature of director

Signature of director

Name

Name

Schedule 1

ALLIANCE PARTICIPANTS

PART A RTA

**Roads and Traffic Authority
of New South Wales
(ABN 64 480 155 255)
("RTA")**

Address for notices, etc:

101 Miller Street,
Surry Hills,
New South Wales, 2060

RTA Representative:

Peter Wellings, General Manager,
Infrastructure Contracts

RTA Interface Management Team:

Sada Sadadcharan
Steve Zhivanovich
Rod Oates

PART B NOPs

**Boulderstone Pty Ltd
(ABN 56 002 625 130)**

Address for notices, etc:

Level 4, 39 Delhi Road,
North Sydney,
New South Wales, 2060

Attention:

Mr Stephen Cowdery

**Freyssinet Australia Pty Ltd
(ABN 15 002 617 736)**

Address for notices, etc:

Level 3, 13-15 Lyonpark Road,
Macquarie Park,
New South Wales, 2113

Attention:

Mr Benoit Lecinq

**SAGE Automation Pty Ltd
(ABN 59 104 119 833)**

Address for notices, etc:

24 Bennett Avenue,
Melrose Park,
South Australia, 5039

Attention:

Mr Paul Markwick

Nominated Alliance Manager: Mr Barry Murphy

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 to bring the Alliance Works to Final Completion 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 D**.

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 Plan means the documented plan of how the Participants intend to manage all aspects of the work under this Agreement.

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

Alliance Manager 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).

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
- (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.

Boulderstone means Boulderstone Pty Ltd, ABN 56 002 625 130.

Best for Project is the concept where the overall works objectives have a greater importance than those of the Alliance Participants including RTA.

Bridge means the ANZAC Bridge formerly known as the Glebe Island Bridge.

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.

Corporations Act means the *Corporations Act 2001* (Cth).

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 31 March 2013.

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.

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

- (a) which is 12 months after the Date of Completion; 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 described in Section 3 of **Schedule 7** (Commercial Framework).

Direct Cost Multiplier means the multiplier to be applied to certain Direct Costs for a particular NOP as set out in Annexure 1 of **Schedule 7** (Commercial Framework).

Direction means a direction under clause 7.21.

Establishment Audit means the audit conducted by the Financial Auditor of the NOPS during the selection process for the Project.

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:

- (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.

Fail means the level of performance in a KRA described in Section 5.2 of **Schedule 7** (Commercial Framework) in general terms and Tables 2 and 3 of **Schedule 7** (Commercial Framework) specifically.

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

Fee Percentage means the fee percentage referred to in Section 4 of **Schedule 7** (Commercial Framework), and listed in Annexure 1 of **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).

Freyssinet means Freyssinet Australia Pty Ltd, ABN 15 002 617 736.

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

Gainshare Modifiers means the modifiers of the NOPs entitlement to Gainshare described in Section 5 of **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 a taxable supply (as that term is defined in the GST Legislation) under the GST Legislation.

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

Integrated Project Team (IPT) means the integrated project team established under clause 4.1.

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.

Interface Management Team or **IMT** means the persons nominated by RTA in Schedule 1 (Alliance Participants). The IMT is not part of the Alliance, but will provide an interface between the Alliance and RTA's internal resources.

Key Performance Indicators or **KPIs** means the performance indicators to be developed by the AMT and approved by the ALT.

Key Result Areas or **KRAs** means the key result areas listed in Schedule 4 (Alliance Objectives). Tables 2 and 3 identify Key Result Areas that will be incentivised through the

Gainshare Regime described in Section 5 of **Schedule 7** (Commercial Framework), against which performance 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, 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;
- (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* (Cth);
- (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;
- (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 failing to comply with the requirements under clause 10; or
- (u) a Participant repudiating this Agreement.

Minimum Conditions of Satisfaction (MCOS) means the minimum level of performance for each Key Result Area nominated by RTA as described in section 5.2 of **Schedule 7** (Commercial Framework) in general terms and Tables 2 and 3 of **Schedule 7** (Commercial Framework) specifically.

Non-Defaulting Participant means a Participant other than a 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.

OPS means overall performance score.

Outstanding Performance means the level of outstanding performance in a KRA described in section 5.2 of **Schedule 7** (Commercial Framework) in general terms and Tables 2 and 3 of **Schedule 7** (Commercial Framework) specifically.

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** (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).

Performance Gainshare means the amount the RTA will pay NOPs for outstanding performance against the KRAs as determined by the ALT under this Agreement.

Performance Gainshare/Painshare Models are the performance gainshare/painshare models set out in Section 5 of **Schedule 7** (Commercial Framework).

Performance Painshare means the amount the NOPs are required to pay the RTA on account of poor performance in the KRAs.

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 12** (Likely Indicative Terms of Construction Material Damage Insurance Policy and 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 and Third Party Public and Products Liability Insurance Summary).

Project means the project the subject of this Agreement.

Phase 1 Alliance Works means that part of the Alliance Works so described in the Alliance Brief.

Phase 1 Project Proposal means a proposal to be prepared and submitted pursuant to clause 5.1, which must include:

- (a) a detailed statement of the scope and technical requirements for the Phase 1 Alliance Works;
- (b) a fully detailed proposed target outturn cost estimate in respect of the Phase 1 Alliance Works;
- (c) a draft cash flow schedule for the Phase 1 Alliance Works;
- (d) the assumed commencement date for, and a program in respect of, the Phase 1 Alliance Works; and
- (e) the Alliance Management Plan.

Phase 2 Alliance Works means that part of the Alliance Works so described in the Alliance Brief.

Phase 2 Project Proposal means a proposal to be prepared and submitted pursuant to clause 5.2, which must include:

- (a) a detailed statement of the scope and technical requirements for the delivery of the Phase 2 Alliance Works (including a concept design);
- (b) a fully detailed proposed target outturn cost estimate in respect of the Phase 2 Alliance Works;
- (c) a draft cash flow schedule and construction methodology for the Phase 2 Alliance Works; and
- (d) the assumed commencement date for, and a construction program in respect of, the Phase 2 Alliance Works.

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.

Related Entity Transaction means any transaction between Related Bodies Corporate as defined by section 50 of the Corporations Act.

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

RTA Budget means the budget for the Project nominated by RTA.

RTA Interface Management Team means the persons nominated to undertake that role in Part A of **Schedule 1**.

SAGE means SAGE Automation Pty Ltd, ABN 59 104 119 833.

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

Schedule Gainshare/Painshare Model is the schedule gainshare/painshare model set out in Section 5 of **Schedule 7** (Commercial Framework).

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

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

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 a 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.

Stakeholder includes the New South Wales Government and Agencies (including RTA), Australian Government and Agencies, Cessnock City Council, Lake Macquarie City Council, Maitland City Council, Mines Subsidence Board, police and emergency services, public utility authorities, Awabakal Local Aboriginal Land Council, Mindaribba Local Aboriginal Land Council and other Aboriginal stakeholders, adjoining property and business owners, local communities and community groups, and road users and representative groups (including NRMA, bus operators and freight operators).

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

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- (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 (TOC) means the out-turn estimate determined by the AMT and approved by the ALT for an agreed package of Alliance Works. It is intended to have two TOCs for the Alliance Works, one for Phase 1 Alliance Works and one for Phase 2 Alliance Works. The TOC is the cost for a high performing team to achieve the Minimum Conditions of Satisfaction and complete the package of Alliance Works (represented by Final Completion for the intended Phase 2 TOC) including all Direct Costs and Fee and necessary contingencies required to perform the package of Alliance Works 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.

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, 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;

-
- (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; and
 - (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

| ANZAC BRIDGE UPGRADE WORKS |
|---|
| ALLIANCE PRINCIPLES |
| <p>(a) all Participants win, or all Participants lose, based on achieved project outcomes. Win-lose outcomes are not acceptable;</p> <p>(b) Participants have a peer relationship where each Participant has an equal say in decisions for the Project (except in respect of RTA's reserved powers as project owner);</p> <p>(c) subject to the terms of this Agreement, risks and responsibilities are shared and managed collectively by the Participants, rather than allocated to individual Participants;</p> <p>(d) disputes are avoided by adopting a no blame culture;</p> <p>(e) risks and rewards are shared equitably among Participants;</p> <p>(f) Participants provide 'best-in-class' resources;</p> <p>(g) Participants act consistently according to espoused values;</p> <p>(h) Participants are committed to developing a culture that promotes and drives collaboration, innovation and outstanding performance;</p> <p>(i) the Participants empowering the ALT and the AMT to make decisions and take actions under this agreement</p> <p>(j) all transactions are fully open book;</p> <p>(k) Participants are committed to developing a 'communication culture' and being transparent in all of their dealings with each other;</p> <p>(l) Participants share all information and do not hold back ideas;</p> <p>(m) communication between all Participants is open, straight ad honest so as to enable informed decision making;</p> <p>(n) each Participant is committed to ensuring that each other Participant understands any documentation prepared in respect of the Project and any information, analysis or methodology contained in that documentation;</p> <p>(o) ethical and responsible behaviour at al times;</p> <p>(p) learnings of the Participants are identified and shared and capability is developed; and</p> <p>(q) important decisions are made, and processes and systems are adopted, on a Best For Project basis,</p> <p>or as otherwise agreed by the ALT from time to time.</p> |

Schedule 4

ALLIANCE OBJECTIVES

The objectives set out below apply to the Alliance Works.

| Key result area | Alliance Objective |
|-------------------------------------|--|
| Safety | <ul style="list-style-type: none"> Safety of the workplace and the public is regarded as paramount. No-one is injured during or because of project delivery. Full compliance with all relevant OH&S legislation. Design takes full account of all safety implications (i.e. safety in design and design for maintenance). |
| Cost | <ul style="list-style-type: none"> The Actual Outturn Cost is less than or equal to the Target Outturn Cost. To provide the RTA with effective and accurate cost forecasting. |
| Timeliness / Schedule | <p>Project milestones are met as follows:</p> <p>Milestone 1 - 30 April 2011: Detailed design and development including full documentation of Design Documentation, Environmental Assessment, Stakeholder Consultation and Phase 2 Project Proposal (including Target Outturn Cost).</p> <p><i>Note: Milestones are indicative only. Milestone 1 will be determined during the agreement of Phase 1 Project Proposal. Milestones 2 & 3 would be determined during the agreement of Phase 2 Project Proposal.</i></p> <p>Milestone 2 - 9 February 2012: Construction of vertical access in the towers and underbridge gantries is fully commissioned and operational.</p> <p>Milestone 3 - 31 March 2013: Completion.</p> |
| Traffic | Minimum disruption to flow of all traffic across or under the ANZAC Bridge. |
| Community & Stakeholders | <ul style="list-style-type: none"> Proactive and high standard relations with the community and with internal and external stakeholders. The impact of the Works on the local community (including Bank St) is to be kept to a minimum. This includes noise and lighting impacts. |
| Technical Solution | <ul style="list-style-type: none"> A safe, innovative, constructible and affordable design solution that integrates all project elements. A design that works, in particular in resolving the cable oscillation issue, which incorporates useability, maintainability, and the life costs of the asset and does not negatively impact the structural integrity of the asset during delivery. Required maintainability standards are met. A design that fully complies with relevant RTA technical criteria. |
| Security | <ul style="list-style-type: none"> No security breaches (physical and information) as a result of the Project works. |

Schedule 5

CONTACT DETAILS

Financial Auditor:

RSM Bird Cameron

GPO Box 5138
SYDNEY NSW 2001

Attention: Eric de Haas
Tel: (02) 9233 8933
Fax: (02) 9233 8521

Email: eric.dehaas@rsmi.com.au

RTA:

Roads and Traffic Authority

Locked Bag 928
NORTH SYDNEY NSW 2059

Attention: Peter Wellings
Tel: (02) 8588 5750
Fax: (02) 8588 4171

Email: Peter.WELLINGS@rta.nsw.gov.au

NOPs:

Boulderstone Pty Ltd

Level 4, 39 Delhi Road,
North Sydney,
New South Wales, 2060

Attention: Stephen Cowdery
Tel: **(02) 9935 7183** Fax: (02) 9935 7089 Email:
SCowdery@boulderstone.com.au

Freyssinet Australia Pty Ltd

Level 3, 13-15 Lyonpark Road,
Macquarie Park,
New South Wales, 2113

Attention: Benoit Lecinq
Tel: (02) 9491 7177
Fax: (02) 9491 7199

Email: blecinq@freyssinet.com.au

SAGE Automation Pty Ltd

24 Bennett Avenue,
Melrose Park,
South Australia, 5039

Attention: Paul Markwick
Tel: (03) 8671 3006

Email: paul.markwick@gotoSAGE.com

Schedule 6

ALLIANCE LEADERSHIP TEAM

| Name of Representative | Telephone Number | e-mail | Representative of |
|--|------------------------------|--|---------------------------------|
| Steve Dunlop Manager, Road Asset Policy & Strategy, Network Services | 02 8588 4163 0407 269 892 | Steve_DUNLOP@rta.nsw.gov.au | RTA |
| Gunhan Guven Acting Executive Manger, Strategic Infrastructure, Infrastructure Services | 02 8849 2959 0411 484 053 | Gunhan_GUVEN@rta.nsw.gov.au | RTA |
| Michael Tansey Project Services Manager, Key Project Delivery, Network Services | 02 9352 9544 0411 258 807 | Michael_TANSEY@rta.nsw.gov.au | RTA |
| Stephen Cowdery NSW Civil Manager | 02 9935 7100 0409 940 702 | SCowdery@boulderstone.com.au | Boulderstone Pty Ltd |
| Hugh Bishop Manager - Structures | 02 9935 7100 0409 957 617 | HBishop@boulderstone.com.au | Boulderstone Pty Ltd |
| Benoit Lecinq Managing Director | 02 9491 7177 0448 435 475 | blecinq@freyssinet.com.au | Freyssinet Australia Pty Ltd |
| John Marchese NSW Civil Manager and National Civil Manager | 02 9491 7119 0417 068 724 | jmarchese@freyssinet.com.au | Freyssinet Australia Pty Ltd |
| Adrian Fahey Chief Executive Officer | 08 8276 0735 0417 820 599 | Adrian.Fahey@gotoSAGE.com | SAGE Automation Pty Ltd |
| Paul Markwick NSW/Vic General Manager | 03 8671 3006 0419 030 561 | paul.markwick@gotoSAGE.com | SAGE Automation Pty Ltd |

*Chairperson of ALT (see clause 2.3)

Schedule 7

COMMERCIAL FRAMEWORK



**ANZAC BRIDGE
UPGRADE ALLIANCE**

**SCHEDULE 7 – COMMERCIAL FRAMEWORK
October 2010**

CONFIDENTIAL

CONFIDENTIAL

Alliance Agreement - Commercial Framework

1 OVERVIEW OF COMMERCIAL FRAMEWORK

- 1.1 Each NOPs' entitlements to payment for work under the Alliance Agreement are limited to:
- (a) Direct Costs – in accordance with the principles and on the basis described in Section 3;
 - (b) Fee – to be calculated on the basis described in Section 4; and
 - (c) Gainshare Regime – comprising payments of Gainshare by RTA, or payments of Painshare by the NOPs, to reflect the Alliance's actual performance in identified Key Result Areas (KRAs) and the effect of that performance on the value of the Project to RTA to be calculated on the basis described in Section 5.

2 Principles of the Commercial Framework

- 2.1 In creating the Commercial Framework for the Alliance we have agreed that the Gainshare Regime must satisfy the following principles:
- (a) the Commercial Framework is clear, concise, robust and defensible;
 - (b) equitable rewards commensurate with performance;
 - (c) Gainshare/Painshare provides the only performance related payment mechanism;
 - (d) Gainshare/Painshare will be allocated separately for Phase 1 and Phase 2 of the Alliance Works;
 - (e) the Gainshare Regime is linked to real risks and benefits in identified KRAs that affect the value of the Project to RTA;
 - (f) each NOP's Painshare is capped at the value of the Fee of that NOP;
 - (g) each NOP is given a genuine incentive to exceed Minimum Conditions of Satisfaction (MCOS) through the Gainshare Regime;
 - (h) RTA is committed to the NOPs being able to earn 100% of their possible Gainshare entitlements;
 - (i) the separate elements of the Gainshare Regime are interdependent to provide no incentive to sacrifice performance in one KRA to secure reward in another;
 - (j) complete transparency in all arrangements;
 - (k) the only acceptable outcomes are win/win or lose/lose;
 - (l) each of the NOPs shall reach the maximum Painshare position at the same amount of cost overrun;
 - (m) outstanding performance targets shall be clear, concise and easy to understand, but not easy to deliver;
 - (n) no one Participant shall derive any profit or unreasonable advantage from the utilisation of their resources or personnel for the work under this Agreement;
 - (o) the only way to earn exceptional returns is through outstanding performance; and
 - (p) the Gainshare Regime is intended to remunerate and compensate the NOPs in a manner which drives the pursuit of the Alliance Objectives and rewards NOPs for outstanding performance.

3 Direct Costs

3.1 Principles of Direct Costs

3.1.1 Direct Costs will be determined by the ALT on the principles that:

- (a) all specific costs and expenses directly incurred by the Alliance Participants in performing the work under this Agreement from **9 September 2010** will be Direct Costs as approved by the Alliance Manager in accordance with policies approved by the Alliance Leadership Team (ALT);
- (b) none of us will receive any contribution to corporate overhead costs or expenses or derive any profit (other than as part of the Fees) or unreasonable advantage from the utilisation of people, plant, equipment or resources;
- (c) we cannot recover anything that is not a bona fide specific cost or expense incurred in performing the work under this Agreement; and
- (d) we can only recover a maximum of 100% of any bona fide specific cost or expense incurred in performing the work under this Agreement.

3.1.2 Our Direct Costs will include the items described in Sections 3.2 to 3.18 below and will not include:

- (e) any item, cost and/or expense excluded by Section 3.19;
- (f) any off site administrative or support function which is not directly involved in performing the work under this Agreement and under the immediate control and direction of the Alliance Manager;
- (g) any amount paid or payable by or on behalf of a Participant to a supplier in respect of GST to the extent that the Participant is entitled to claim and retain an Input Tax Credit in respect of that payment; and
- (h) any contribution to corporate overhead costs or expenses or any profit or unreasonable advantage from the utilisation of people, plant, equipment or resources.

3.2 Personnel Costs and Expenses

3.2.1 Personnel costs mean the actual cost of staff, including contracted staff and casual employees, employed or contracted by a Participant dedicated, posted or assigned to the Integrated Project Team, up to and including the Alliance Manager. The actual costs of staff will be calculated for all personnel for each Participant and validated by the Financial Auditor, and may include:

- (a) salary/award wages;
- (b) leave burdens, including sick leave, annual leave loading and long service leave entitlements;
- (c) payroll costs and fringe benefit tax;
- (d) superannuation contributions (reasonable superannuation entitlements in the context of salary package restrictions);
- (e) workers' compensation insurance;
- (f) provisions of industrial agreements, provided that RTA is consulted prior to any new entitlements being accorded to employees and RTA agrees to the new entitlements;
- (g) costs associated with the Participants' implementation and compliance with NSW State and Federal Government Statutory Requirements relating to the employment of people;

- (h) overtime as directed and agreed by the Alliance Manager;
- (i) travel, accommodation and per diem subsistence allowance in accordance with policies endorsed by the ALT;
- (j) vehicle costs which ordinarily form part of an employee's salary package; and
- (k) termination/redundancy payments to staff employed on the works as approved in writing by the ALT prior to making the payment for such time of the person's employment dedicated to the Alliance.

3.2.2 Personnel costs, as assessed by the Financial Auditor in the Establishment Audit, are:

(a) **Boulderstone**

- (i) Salary Staff – actual direct salary costs multiplied by the Direct Cost Multiplier from Annexure 1 for a maximum 38.75 hours / week and 2,015 hours / annum.
- (ii) Wages Staff – wages during standard hours calculated in accordance with the relevant industrial agreement multiplied by the Direct Cost Multiplier from Annexure 1. Standard hours are 36 hours / week and 1,872 hours / annum. Overtime wages calculated in accordance with the relevant industrial agreement multiplied by the Direct Cost Multiplier from Annexure 1.

(b) **Freyssinet**

- (i) Salary Staff – actual direct salary costs multiplied by the Direct Cost Multiplier from Annexure 1 for a maximum 40 hours / week and 1,760 hours / annum.
- (ii) Wages Staff – wages during standard hours calculated in accordance with the relevant industrial agreement multiplied by the Direct Cost Multiplier from Annexure 1. Standard hours are 36 hours / week and 1,584 hours / annum. Overtime wages calculated in accordance with the relevant industrial agreement multiplied by the Direct Cost Multiplier from Annexure 1.

(c) **SAGE**

- (i) Salary Staff – actual direct salary costs multiplied by the Direct Cost Multiplier from Annexure 1 for a maximum 40 hours / week and 1,800 hours / annum. Overtime calculated in accordance with the relevant employee agreement multiplied by the Direct Cost Multiplier from Annexure 1.

3.2.3 We acknowledge and accept that the Boulderstone Direct Cost Multiplier for Salaried Staff included in Annexure 1 contains an allowance of 15% of actual direct salary costs for a contingent bonus entitlement for salaried staff to be determined by Boulderstone in accordance with its remuneration policy. Boulderstone has agreed that:

- (a) Any bonus to be paid to a salaried person will be determined strictly in accordance with the Boulderstone remuneration policy and must be transparent to the ALT; and
- (b) Any part of the contingent bonus entitlement not paid to salaried staff will be payable by Boulderstone to RTA as a credit against the Direct Costs.

3.2.4 All actual costs of staff will be calculated in accordance with the human resources plan approved by the ALT or respective employment policies and practices and employment contracts as determined by the ALT, subject to the principles described above and the following:

- (a) **Overtime Principles** - Salaried employees dedicated to an Alliance team will be entitled to the payment of overtime at the discretion and direction of the Alliance Manager in accordance with the human resources plan approved by the ALT. Salaried staff engaged on the Alliance on an ad-hoc or temporary basis will be entitled to the payment of overtime in accordance with their respective employment contracts, and as approved by the Alliance Manager. Wages employees will be entitled to overtime payments in accordance with the joint collective agreement endorsed by the ALT or relevant industrial awards as appropriate. Any overtime payments will attract a reduced multiplier for employment related overheads as validated by audit.
- (b) **Bonuses** – other than the contingent bonus entitlement included in the Direct Cost Multiplier for Boulderstone Salaried Staff as described in Section 3.2.3 of this schedule, any bonus paid by a NOP to its personnel will not be a Direct Cost and will be funded out of a NOP's Fee entitlements;
- (c) **Reward and Recognition** - the AMT will develop and the ALT will endorse a reward and recognition scheme for the Alliance. Such a scheme must be sensitive to what would be regarded as appropriate where public monies are being expended. The costs incurred by the Participants in accordance with this scheme will be included in the Direct Costs.

3.3 Mobilisation and De-mobilisation

3.3.1 As approved by the ALT, the cost of mobilising and de-mobilising any employee of a NOP to the Site will be reimbursed in accordance with the mobilisation policy determined by the ALT.

3.4 Small Plant and Equipment

3.4.1 As approved by the Alliance Manager, equipment, materials, goods, consumables and small plant purchased specifically for the work under this Agreement.

3.4.2 As approved by the ALT, any Alliance specific hardware and software costs purchased specifically for the work under this Agreement.

3.4.3 All cash, trade and/or industry discounts and rebates obtained by one of us shall be credited against the Direct Costs including any annual or company discounts from suppliers, bulk discounts and company/inter-company discounts and/or rebates.

3.5 Contract Services

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

3.5.2 All cash, trade and/or industry discounts and rebates obtained by a Participant shall be credited against the Direct Costs including any annual or company

discounts from subcontractors, suppliers, vendors, bulk discounts and company/inter-company discounts and/or rebates.

3.6 Construction Plant and Temporary Works

3.6.1 The actual cost to a Participant (including financing costs + interest + fees + charges, depreciation, repairs, maintenance and accrual from major repairs and/or overhauls – on an audited cost basis and avoiding "profit on profit" – agreed by the ALT) of providing or supplying Construction Plant and Temporary Works to perform the work under this Agreement, on a basis and at rates agreed to by the ALT prior to their provision to the Alliance or use on the Site.

3.6.2 Any unique or project specific plant and equipment to be developed or acquired for the performance of the work under this Agreement shall form the basis of a business case to be presented to the ALT for its approval. Any such business case must thoroughly explain the merits and advantages of the solution being recommended by the AMT, any applicable financing arrangements, usage charges, depreciation allowance and/or buy back arrangement being offered by one of the Alliance Participants.

3.7 Site and Facilities

3.7.1 Establishment, maintenance and operation of the Site, any site accommodation, warehousing or other facilities, including all transportation facilities, utilities, consumables and dedicated telecommunications and information technology services and the like necessary to perform the work under this Agreement.

3.7.2 All cash, trade and/or industry discounts and rebates obtained by a Participant shall be credited against the Direct Costs including any annual or company discounts from subcontractors, suppliers, vendors, bulk discounts and company / inter-company discounts and/or rebates.

3.8 Surplus Plant, Materials and Equipment

3.8.1 All plant, materials, equipment and any other item purchased for the work under this Agreement which are "surplus" to requirements or are to be disposed of by the Alliance shall be sold at fair market value and the proceeds of the sale shall be credited against the Direct Costs.

3.9 Statutory Requirements

3.9.1 The costs and expenses to satisfy any Statutory Requirements with respect to the performance of the work under this Agreement.

3.10 Insurances

3.10.1 Premiums for insurance policies agreed by the ALT.

3.10.2 The costs of the administration, preparation of claims and any deductibles/excesses payable under any policy of insurance forming part of the insurance regime for the Alliance are Direct Costs.

3.10.3 Any funds reimbursed to a Participant for an act, event or circumstance arising out of or in connection with the work under this Agreement under any policy of

insurance forming part of the insurance regime under clause 10 of this Agreement will be credited against the Direct Costs provided that the costs, loss, expense or damage arising from the act, event or circumstance were paid as a Direct Cost.

3.11 Legal and Litigation Expenses

- 3.11.1 All sums paid or received (in which case they are credited to Direct Costs) by way of judgment, award, compromise or otherwise and all sums paid defending or prosecuting civil lawsuits or claims arising out of the work under this Agreement, or any legal service otherwise necessary or expedient for the work under this Agreement, excluding the legal or litigation costs incurred by a Defaulting Participant.

3.12 Travel

- 3.12.1 All Alliance specific travel expenses including transfers, accommodation, meals and/or per diems expenses incurred in accordance with respective travel policies.
- 3.12.2 Travel expense incurred exclusively for Alliance purposes by the SAGE ALT representatives.

3.13 Training and Inductions

- 3.13.1 All Alliance specific training costs and/or site inductions (including occupational health & safety inductions) agreed or recommended by either the Alliance Manager or ALT.

3.14 Safety

- 3.14.1 All personal protective or site safety equipment, occupational health & safety requirements and the cost or expenses to provide and maintain a safe working environment and to take all practicable steps to ensure the safety of all persons performing or affected by any aspect of the work under this Agreement.

3.15 Related Entity Transaction

- 3.15.1 The cost of any Related Entity Transaction will be a Direct Cost where:
- (a) any Related Entity Transactions will be treated as an external supply;
 - (b) any Related Entity Transactions will be procured on a Best for Project basis;
 - (c) any Related Entity Transactions will be competitively market tested; and
 - (d) any Related Entity Transactions must be endorsed by the ALT on the recommendations of the Alliance Manager.
- 3.15.2 SAGE Mechanical Designers operate as a separate business unit to SAGE Automation Pty Ltd. It has been agreed that for reimbursement purposes, the SAGE Mechanical Designers will be treated as if they were an internal unit of SAGE Automation Pty Ltd, and reimbursement will comprise actual Direct Costs plus the agreed SAGE Fee (refer Section 4.4(c)) to cover profit and corporate overhead. The SAGE Fee will provide the only contribution to profit and corporate overhead for the activities of the SAGE Mechanical Designers.

3.16 CPRS

3.16.1 If a carbon pollution reduction scheme or emissions trading scheme or any similar legislative scheme (**CPRS**) becomes law and applies to the work under this Agreement then, subject to the ALT determining that such event is a Scope Change, Direct Costs include the costs incurred by an NOP and any Related Body Corporate that is a controlling corporation (as defined in the *National Greenhouse and Energy Reporting Act 2007* (Cth) or any such similar related entity to an NOP that is the subject of CPRS and incurs a cost by reason of the work under this Agreement and CPRS.

3.17 Fuel Tax Credits

3.17.1 All fuel tax credits obtained by one of us shall be credited against our Direct Costs.

3.18 Other Direct Costs

3.18.1 Any other costs or expenses that the ALT determines are Direct Costs.

3.19 Direct Costs DO NOT include

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

- (a) any cost incurred by a NOP prior to the date in Section 3.1.1(a);
- (b) any off site administrative or support function which is not:
 - (i) directly involved in performing the work under this Agreement; and
 - (ii) under the immediate control and direction of the Alliance Manager.
- (c) Subject to Section 3.12, personnel costs of representatives to the ALT performing ALT duties or determinations and attending ALT meetings. Personnel costs for ALT representatives providing services to the Alliance in a non-ALT capacity (eg. technical design and review) are Direct Costs;
- (d) any and all costs, losses, expenses or damages suffered or incurred by a NOP in connection with a breach of clauses 16.1, 16.2 or 16.3 of the Agreement or any Material Default by the NOP;
- (e) any and all costs, losses, expenses or damages suffered or incurred by a Defaulting Participant;
- (f) any fine, penalty or sanction imposed by a court or other Authority upon a Participant;
- (g) any legal expenses defending or appealing any action, fine, penalty or sanction sought or imposed under any Statutory Requirements by any Authority;
- (h) any taxes, duties, excises, levies or similar charges excluded by operation of this Agreement; and
- (i) any other cost, expense, taxes, duties, excise, levies or similar charges that the ALT determines are not a Direct Cost.

4 Fee

- 4.1 The Fee payable to the NOPs is intended to deliver to the NOPs the only contribution under the Alliance, other than Gainshare, to the costs and expense of its corporate overhead structure and its corporate profit expectations.
- 4.2 The NOPs accept that a discount on historical “business as usual” profit is expected for Alliance business as usual performance under this Agreement on the basis of the Alliance characteristics detailed in Table 1.

Table 1: Alliance Characteristics

| Characteristic | Description |
|----------------------------|--|
| All Direct Cost reimbursed | <ul style="list-style-type: none"> No risk of "direct loss" NOPs liability to RTA is capped RTA carries ultimate burden of actual cost of the Project and of performance (including whole of life cost or life cycle cost) |
| No Fault No Blame | <ul style="list-style-type: none"> No risk of threat of legal action for negligence or breach of contract No residual unfunded legal liability for defects/performance RTA carries ultimate burden of risk of performance |
| Integrated Team | <ul style="list-style-type: none"> Greater management focus on performance generated by combination of Alliance characteristics Reduced bureaucracy, less waste and greater efficiency Greater opportunity for innovation |
| Unanimity | <ul style="list-style-type: none"> Cannot be forced into any single decision |
| Collective Responsibility | <ul style="list-style-type: none"> Every risk is “our risk” and no risk is “my risk alone” |
| TOC | <ul style="list-style-type: none"> Agreed estimate of the costs to deliver Minimum Conditions of Satisfaction Includes agreed contingency to match both 'known unknown' and 'unknown unknown' risks |
| Gainshare | <ul style="list-style-type: none"> Benefits of utilisation, productivity, market pressure, brand power still accrue to NOPs Actual reward is commensurate with actual performance All performance reward is in the Gainshare Regime |

- 4.3 These characteristics, together with the results of the Establishment Audit, have been relied upon by the Participants to align on the Fee payable by RTA to the NOPs.
- 4.4 The Fees payable by the RTA to the NOPs, in accordance with this Agreement are:
- (a) **Boulderstone:**
- (i) For Phase 1, the fixed Fee amount set out in Annexure 1; and

- (ii) For Phase 2, a fixed amount determined at the time of agreeing the TOC that is calculated by applying the Boulderstone Total Fee Formula as set out in Annexure 1 using the estimated Direct Costs payable to Boulderstone for Phase 1 and Phase 2, reduced by the Phase 1 fixed Fee amount set out in Annexure 1.
- (b) **Freyssinet:**
 - (i) For Phase 1, a Fee comprising a fixed amount determined at the time of agreeing the TOC for Phase 1, that is calculated by applying the applicable fixed Fee Percentage as set out in Annexure 1, against the estimated Direct Costs payable to Freyssinet for Phase 1; and
 - (ii) For Phase 2, a Fee comprising a fixed amount determined at the time of agreeing the TOC for Phase 2, which is calculated by applying the applicable fixed Fee Percentage as set out in Annexure 1, against the estimated Direct Costs payable to Freyssinet for Phase 2.
- (c) **SAGE:**
 - (i) For Phase 1, a Fee comprising a fixed amount determined at the time of agreeing the TOC for Phase 1, that is calculated by applying the applicable fixed Fee Percentage as set out in Annexure 1, against the estimated Direct Costs payable to SAGE for Phase 1; and
 - (ii) For Phase 2, a Fee comprising a fixed amount determined at the time of agreeing the TOC for Phase 2 that is calculated by applying the applicable fixed Fee Percentage as set out in Annexure 1, against the estimated Direct Costs payable to SAGE for Phase 2.

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5 Gainshare Regime

5.1 Introduction

5.1.1 The Gainshare Regime is intended to incentivise the Alliance Participants to achieve outstanding performance in some or all of the Alliance Objectives in order to increase or protect the value of the Alliance outcomes to RTA. The Gainshare Regime comprises both payments of Gainshare by the RTA to the NOPs and the payment of Painshare by the NOPs to the RTA, as the case may be, as determined by the ALT in accordance with this Agreement.

5.1.2 The Gainshare Regime will be applied to both Phase 1 and Phase 2 of the Alliance Works.

5.1.3 The Phase 1 Gainshare Regime comprises:

- (a) a Phase 1 TOC Gainshare / Painshare Model to incentivise the Alliance Participants to deliver the Phase 1 Alliance Works for less than the Phase 1 TOC;
- (b) a Phase 1 Performance Gainshare / Painshare Model to incentivise the Alliance Participants to exceed the Minimum Conditions of Satisfaction (MCOS) in the Phase 1 Alliance Objectives and to strive for outstanding performance to increase the value of the project outcomes to RTA; and
- (c) Gainshare Modifiers for safety, security, traffic flow and environmental performance.

5.1.4 The Phase 2 Gainshare Regime comprises:

- (a) a Phase 2 TOC Gainshare / Painshare Model to incentivise the Alliance Participants to deliver the Phase 2 Alliance Works for less than the Phase 2 TOC;
- (b) a Phase 2 Schedule Gainshare / Painshare Model to incentivise the Alliance Participants to achieve early Phase 2 completion;
- (c) a Phase 2 Performance Gainshare / Painshare Model to incentivise the Alliance Participants to exceed the Minimum Conditions of Satisfaction (MCOS) in the Phase 2 Alliance Objectives and to strive for outstanding performance to increase the value of the project outcomes to RTA; and
- (d) Gainshare Modifiers for safety, security, traffic flow and environmental performance.

5.2 Performance Spectrum

5.2.1 The structure and operation of the Gainshare Regime depends upon our commitment to a performance spectrum incorporating Outstanding Performance, Minimum Conditions of Satisfaction (MCOS) and Fail. We have agreed that our levels of performance within this performance spectrum will satisfy the following characteristics:

- (a) **Outstanding** – an aspirational outcome beyond the predictable that sets new standards of performance within the industry;
- (b) **MCOS** – predictable and expected levels of performance by a recognised leader in its industry and the lowest levels of acceptable performance nominated by RTA; and
- (c) **Fail** – unacceptable levels of performance that fail to achieve the performance standards nominated by RTA.

5.3 Phase 1 Gainshare Regime – TOC Gainshare / Painshare Model

- 5.3.1 To encourage us to deliver Phase 1 for an Actual Outturn Cost (AOC) less than the TOC, we have agreed that:
- (a) where the AOC is less than the TOC, no Gainshare will be paid to the NOPs; and
 - (b) where the AOC is greater than the TOC, the NOP will be paid their respective Direct Costs only, for all costs in excess of the TOC. (i.e. Fixed Fee Amounts will be agreed with each NOP at the time of agreeing the TOC for Phase I and will not be adjusted in the event that the AOC is greater than the TOC).

5.4 Phase 1 Gainshare Regime - Performance Gainshare / Painshare Model

- 5.4.1 Achieving Outstanding Performance in specific Phase 1 KRAs is of fundamental importance to RTA in entering into this Alliance.
- 5.4.2 To reflect this, RTA has established a Phase 1 Performance Pool for the amount stated in Annexure 1 to incentivise the NOPs to achieve outstanding performance in the KRAs provided in Table 2.

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Table 2: Phase I Incentivised Key Result Areas

| KRA | Weight % | KPI | Measures | Fail | MCOS | Outstanding |
|--------------------------|-----------------|---|---|-------------|-------------|--------------------|
| Technical Solution | 80% | Delivery of RTA's Technical Objectives | <ul style="list-style-type: none"> • Delivery of RTA's technical objectives (design that works, safe, maintainable, minimum whole of life costs etc.) as assessed by the RTA Bridge Section. Assessment criteria to be developed by the Alliance. | TBD | TBD | TBD |
| | | Design Compliance | <ul style="list-style-type: none"> • Compliance with Design Standards and Specifications. | TBD | TBD | TBD |
| | | Urban design | <ul style="list-style-type: none"> • Quality of the urban design, appearance, finish or presentation as measured by the RTA Urban Design Section. Assessment criteria to be developed by the Alliance. | TBD | TBD | TBD |
| Community & Stakeholders | 10% | Stakeholder Relationships | <ul style="list-style-type: none"> • Relationships with stakeholders (including government departments or agencies, local councils, emergency services, transport operators, private organisations) including: <ul style="list-style-type: none"> – Cooperation achieved between Alliance and stakeholders. – Level of frustration (measured by survey of stakeholder representatives). | TBD | TBD | TBD |
| | | Approvals / Concurrences for Stakeholder Requirements | <ul style="list-style-type: none"> • Timeliness and quality of applications for approvals or concurrences from statutory authorities or other stakeholders (including regarding all surrounding documentation). | TBD | TBD | TBD |
| | | Local Community Relationships | <ul style="list-style-type: none"> • Number and seriousness of complaints & responsiveness to complaints and enquiries. • Effectiveness of dealing with unresolved complaints and enquiries. • Number and seriousness of repeat complaints. | TBD | TBD | TBD |

| KRA | Weight % | KPI | Measures | Fail | MCOS | Outstanding |
|--------------------|----------|---------|---|------|------|-------------|
| | | | <ul style="list-style-type: none"> Results of community surveys including the community's perceived level of engagement by the Alliance. | | | |
| Project Management | 10% | Quality | <ul style="list-style-type: none"> Non conformances with use as is dispositions. QA documentation. | TBD | TBD | TBD |
| | | Cost | <ul style="list-style-type: none"> Effective forecast of expenditure. | TBD | TBD | TBD |

Note: TBD = To be determined

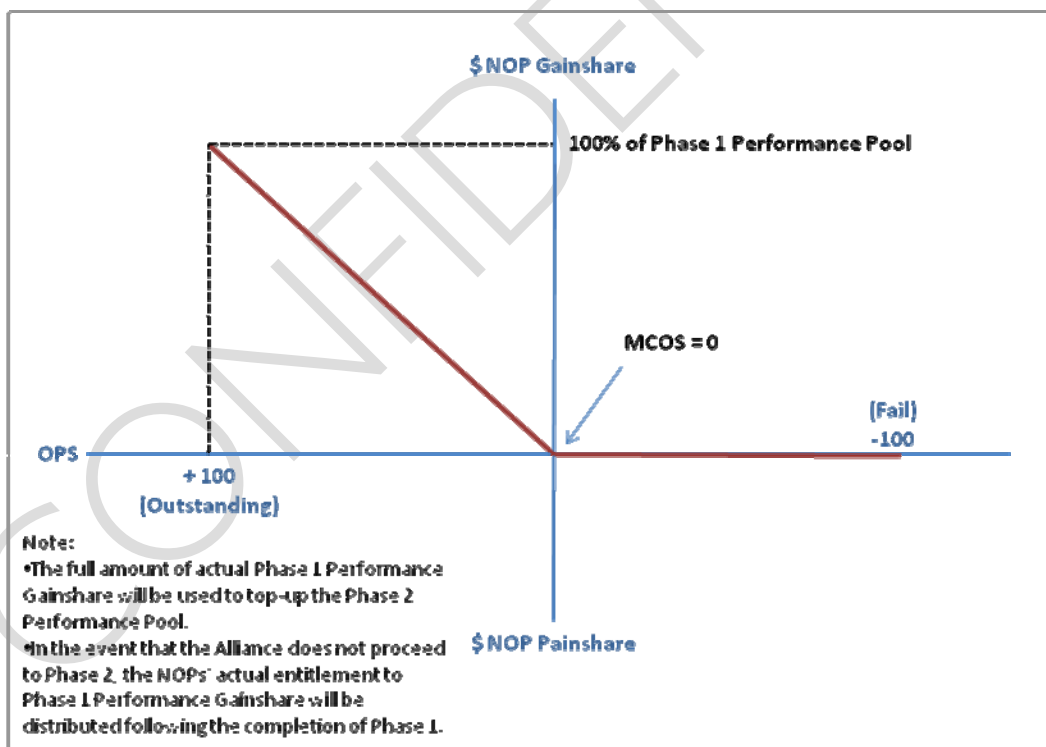
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- 5.4.3 For each incentivised KRA the Participants will:
- Determine KPIs, weightings and benchmark levels of performance;
 - Confirm the performance spectrum;
 - Detail the methodologies for measuring performance; and
 - Prepare final measurement mechanisms;

consistent with the information in Table 2 and prior to agreeing the Phase 1 TOC, so that an aggregated weighted Overall Performance Score (OPS) for performance in the range of -100 (Fail), 0 (MCOS) to 100 (Outstanding) can be determined.

- 5.4.4 The NOP's entitlement to Performance Gainshare will be determined by applying the aggregated OPS for all incentivised KRAs to the Phase 1 Performance Gainshare / Painshare Model in Figure 1 below, where:
- The Performance Gainshare for any OPS between 0 and 100 increases linearly to a maximum Performance Gainshare for an OPS of 100;
 - There is no Performance Gainshare for an OPS of 0; and
 - There is no Performance Painshare for an OPS between 0 and -100.

Figure 1: Phase I Performance Gainshare / Painshare Model



- 5.4.5 The full amount of the NOPs actual entitlement to Phase 1 Performance Gainshare will be used to top-up the Phase 2 Performance Pool. In the event that the Alliance does not proceed to Phase 2, the NOPs' actual entitlement to Phase 1 Performance Gainshare will be distributed to the NOPs following the completion of Phase 1, in accordance with Section 5.11.

5.5 Phase 2 Gainshare Regime – TOC Gainshare / Painshare Model

5.5.1 To encourage us to deliver Phase 2 for an Actual Outturn Costs (AOC) less than the TOC, we have agreed that:

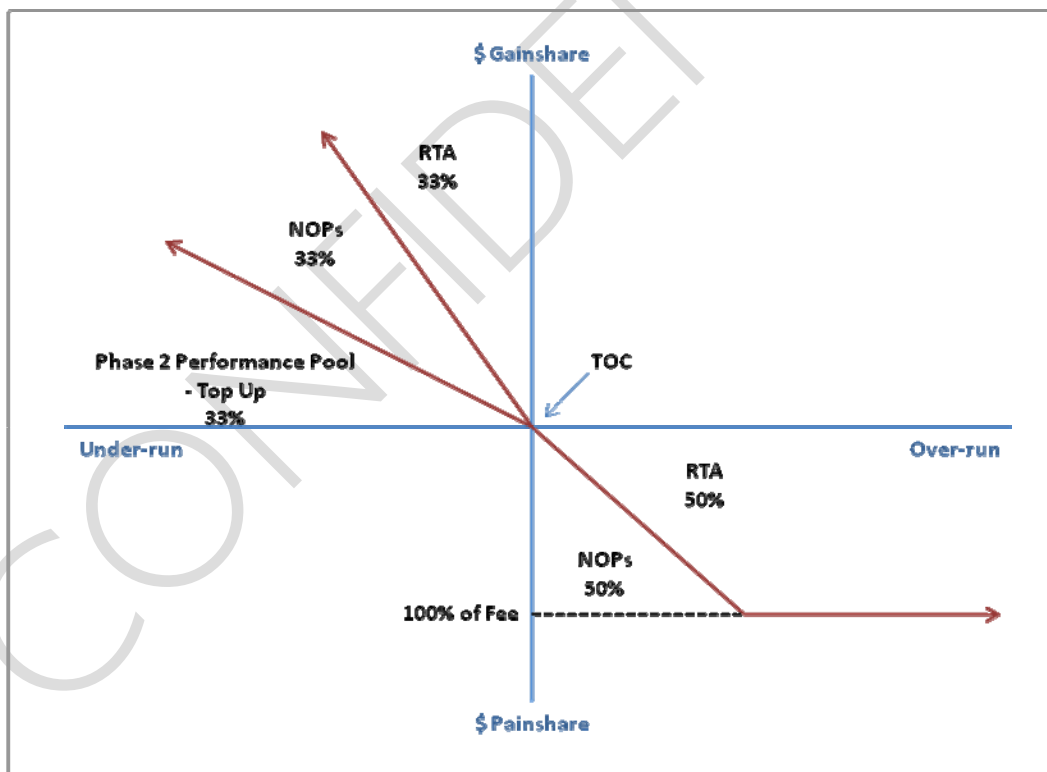
(a) where the AOC is less than the TOC, any such cost underruns shall be allocated as follows:

- (i) RTA will be entitled to 33.3%;
- (ii) The NOPs will be entitled to 33.3%; and
- (iii) The remaining 33.3% will be allocated to the Phase 2 Performance Pool;

(b) where the AOC is greater than the TOC, cost over-runs against the TOC will be shared on the basis of 50% RTA : 50% NOPs,

in accordance with the Phase 2 TOC Gainshare / Painshare Model provided in Figure 2.

Figure 2: Phase 2 TOC Gainshare / Painshare Model



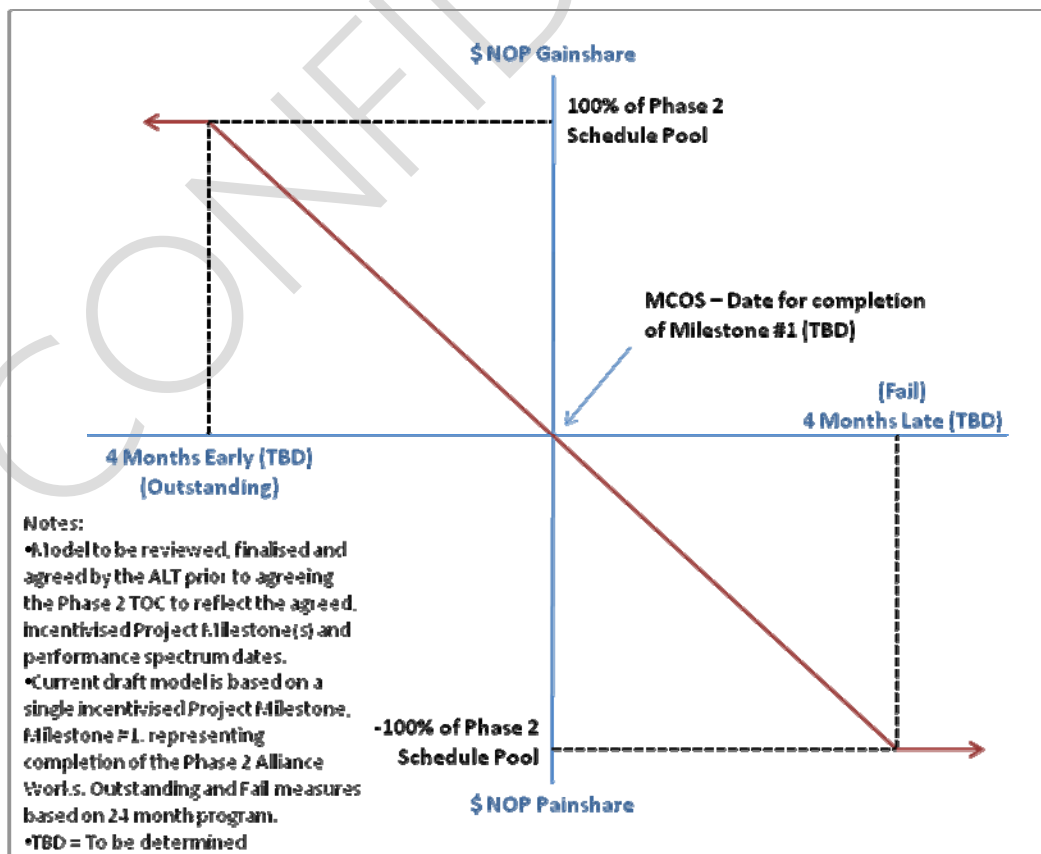
5.5.2 For the purpose of the TOC Gainshare any cost under-runs or cost over-runs against the TOC shall be calculated on the following basis:

(a) under-run or over-run against the TOC = TOC – AOC

5.6 Phase 2 Gainshare Regime - Schedule Gainshare / Painshare Model

- 5.6.1 Meeting or improving upon the dates for completion for Project Milestones is of fundamental importance to RTA in entering into this Alliance. To reflect this RTA has established a dedicated Phase 2 Schedule Pool to incentivise the NOPs to achieve the dates for completion for selected Project Milestone(s). The value of the Phase 2 Schedule Pool is stated in Annexure 1. The selected Project Milestone(s) and the NOPs entitlement to Schedule Gainshare will be as set out in the Phase 2 Schedule Gainshare / Painshare Model in Figure 3.
- 5.6.2 The Participants have also agreed that the NOPs will share with RTA the diminution in the value of the Project to RTA as a result of the Alliance failing to achieve the dates for completion for these selected Project Milestone(s), in accordance with the Phase 2 Schedule Gainshare / Painshare Model in Figure 3.
- 5.6.3 The Phase 2 Schedule Gainshare / Painshare Model will be reviewed, finalised and agreed by the ALT prior to agreeing the Phase 2 TOC including:
- Determination of the Project Milestone(s) that will be incentivised through the Phase 2 Schedule Gainshare / Painshare Model;
 - Determination of the dates representing MCOS, Outstanding and Fail for the Project Milestone(s); and
 - Modifications to the model to account for the incentivisation of multiple Project Milestones.

Figure 3: Phase 2 Schedule Gainshare / Painshare Model



5.7 Phase 2 Gainshare Regime - Performance Gainshare / Painshare Model

- 5.7.1 Achieving Outstanding Performance in specific Phase 2 KRAs is of fundamental importance to RTA in entering into this Alliance.
- 5.7.2 To reflect this, RTA has established a Phase 2 Performance Pool for the amount stated in Annexure 1 to incentivise the NOPs to achieve outstanding performance in the KRAs provided in Table 3. The Phase 2 Performance Pool comprises a “seed amount” which will be topped up by:
- (a) The full amount of actual Phase 1 Performance Gainshare allocated to the NOPs; and
 - (b) 33.3% of the actual Phase 2 TOC Gainshare (refer Section 5.5).

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Table 3: Phase 2 Incentivised Key Result Areas

| KRA | Weight % | KPI | Measures | Fail | MCOS | Outstanding |
|--------------------------|----------|---|--|------|------|-------------|
| Traffic | 25% | Impact on Traffic | <ul style="list-style-type: none"> Complaints from stakeholders during construction phase (eg: TICC, residents, users, emergency services, other transport operators). Audit results on level of disruption to traffic caused by construction. The responsiveness of the Alliance to addressing any identified traffic issues. The effect of the Alliance's work on travel times queues and delays. Compliance with all safety requirements (eg: sign posting and delineation standards). <p><i>[Note: Traffic KPIs should not overlap with the Traffic Flow Gainshare Modifiers]</i></p> | TBD | TBD | TBD |
| Community & Stakeholders | 25% | Stakeholder Relationships | <ul style="list-style-type: none"> Relationships with stakeholders (including government departments or agencies, local councils, emergency services, transport operators, private organisations) including: <ul style="list-style-type: none"> Cooperation achieved between Alliance and stakeholders. Level of frustration (measured by survey of stakeholder representatives). | TBD | TBD | TBD |
| | | Approvals / Concurrences for Stakeholder Requirements | <ul style="list-style-type: none"> Timeliness and quality of applications for approvals or concurrences from statutory authorities or other stakeholders (including regarding all surrounding documentation). | TBD | TBD | TBD |

| KRA | Weight % | KPI | Measures | Fail | MCOS | Outstanding |
|--------------------|----------|--|---|------|------|-------------|
| | | Local Community Relationships | <ul style="list-style-type: none"> Number and seriousness of complaints & responsiveness to complaints and enquiries. Effectiveness of dealing with unresolved complaints and enquiries. Number and seriousness of repeat complaints. Results of community surveys including the community's perceived level of engagement by the Alliance. | TBD | TBD | TBD |
| Technical Solution | 50% | Effectiveness of the As-Built Solution | <ul style="list-style-type: none"> End product meets design requirements. Effectiveness of as-built solution in addressing RTA's technical objectives. | TBD | TBD | TBD |
| | | Quality | <ul style="list-style-type: none"> Non conformances with use as is dispositions. QA documentation. Design errors encountered during construction. Quality of key elements based on inspection and quality of overall product based on RTA Bridge Section Assessment. | | | |
| | | Management of Construction Cost | <ul style="list-style-type: none"> Effective forecasting of expenditure. | TBD | TBD | TBD |

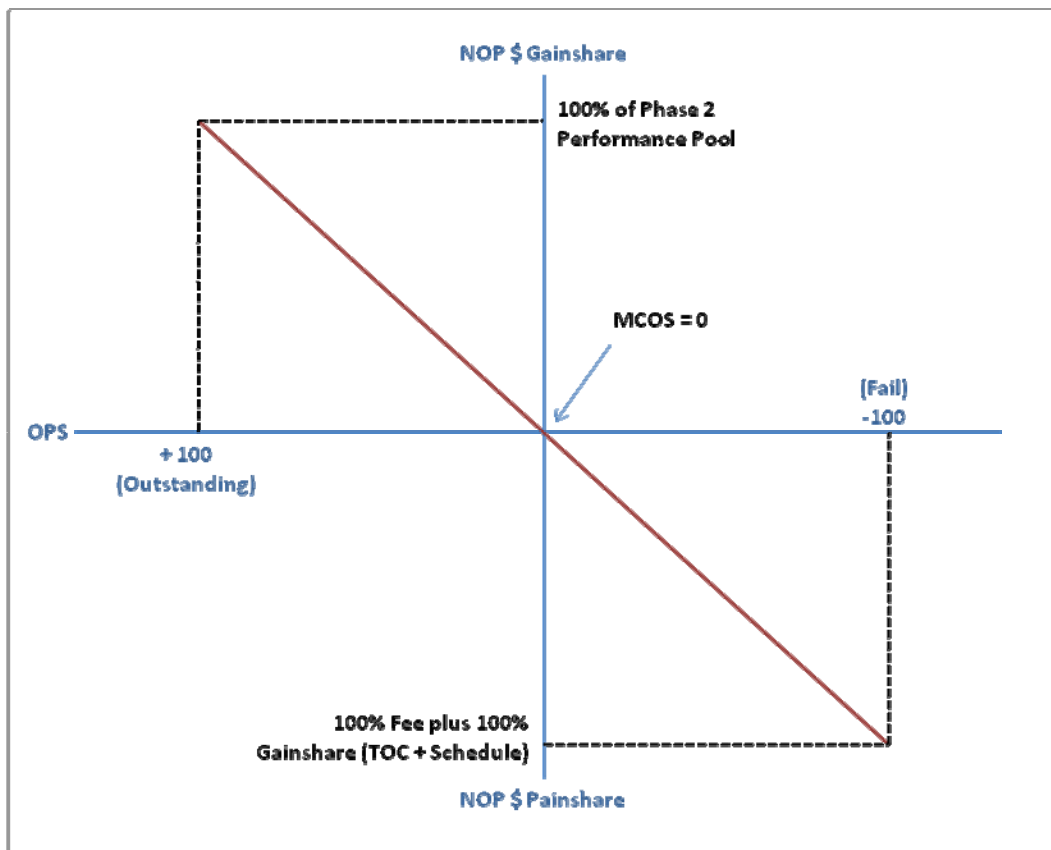
Note: TBD = To be determined

- 5.7.3 For each incentivised KRA the Participants will:
- (a) Determine KPIs, weightings and benchmark levels of performance;
 - (b) Confirm the performance spectrum;
 - (c) Detail the methodologies for measuring performance; and
 - (d) Prepare final measurement mechanisms;

consistent with the information in Table 3 and prior to agreeing the Phase 2 TOC, so that an aggregated weighted Overall Performance Score (OPS) for performance in the range of -100 (Fail), 0 (MCOS) to 100 (Outstanding) can be determined.

- 5.7.4 The NOP's entitlement to Performance Gainshare will be determined by applying the aggregated OPS for all incentivised KRAs to the Phase 2 Performance Gainshare / Painshare Model provided in Figure 4, where:
- (a) The Performance Gainshare for any OPS between 0 and 100 increases linearly to a maximum Performance Gainshare for an OPS of 100;
 - (b) There is no Performance Gainshare for an OPS of 0; and
 - (c) The Performance Painshare for any OPS between 0 and -100 increases linearly to a maximum Performance Painshare for an OPS of -100.

Figure 4: Phase 2 Performance Gainshare / Painshare Model



5.8 Phase 1 and Phase 2 Gainshare Regimes - Gainshare Modifiers

5.8.1 The Participants have agreed that their entitlements to Gainshare, if any under this Agreement, will be modified by our performance against the safety, security, environment and traffic flow KRAs on the basis that:

VfM = MCOS Performance in all KRAs at a value assured TOC

5.8.2 The ALT agree that the principles to be satisfied by these Gainshare Modifiers are that:

- (a) they must drive positive behaviours in the approach to safety, security, environment and traffic flow; and
- (b) they must reflect the impact of both positive and negative behaviours and outcomes in the approach to safety, security, traffic flow and environment on the value of the Project to RTA.

5.8.3 The Participants will develop a Gainshare Modifier framework incorporating minor and major events.

5.8.4 Minor events are a series of indicative “lead indicator” events of performance and /or behaviours and “lag indicator” events of outcomes in the KRAs that fall short of or exceed the Participants’ expectations of MCOS. Negative Minor Events can be negated by positive Minor Events, and the actual impact on the NOP’s Gainshare entitlements will be determined through an assessment of the cumulative positive and negative events.

5.8.5 Major Events are incidents that occur as a result of, or arising out of, the work under this Agreement, resulting in significant and negative outcomes against the Gainshare Modifier KRAs. Gainshare Modifiers for major events irreversibly diminish the NOP’s Gainshare entitlements.

5.8.6 Negative incidents are classified using the Gainshare Modifier Rating Tool provided in Figures 5 to 8 as:

- (a) Minor Modifier: Negligible Deduction
- (b) Minor Modifier: Minor Deduction
- (c) Minor Modifier: Significant Deduction
- (d) Major Modifier: Major Deduction
- (e) Major Modifier: Maximum Deduction

Figure 5: Safety Gainshare Modifier Rating Tool

| | | | | | | | | |
|--|-----------------------|---|---|---------------------------------------|--|----------|-----------|--|
| Failure due to wilful or negligent system non-compliance or obvious risks left unaddressed | SYSTEM FAILURE | D | | | | | | |
| Failure due to systems addressing, but not adequately mitigating risk | | C | | | | | | |
| Failure due to not reasonably foreseen omission and in spite of systems in place | | B | | | | | | |
| Failure in spite of all reasonable mitigating measures and systems in place | | A | | | | | | |
| | | | 1 | 2 | 3 | 4 | 5 | |
| POTENTIAL CONSEQUENCES | | Incident unlikely to cause harm | Incident with potential to cause minor harm | Incident likely to cause serious harm | Incident which could have caused a fatality | | | |
| | | SEVERITY | | | | | | |
| ACTUAL CONSEQUENCES | | | NO INJURIES OR DAMAGE | MINOR INJURIES OR DAMAGE | MAJOR INJURIES OR DAMAGE | | FATALITY* | |
| Consequences Examples | | Systems failure without incident or dropped item caught in second layer of protection | Improper lifting, untidy work areas etc | Not wearing PPE | Dropped items from height, errant vehicles into work areas, fire | | Fatality | |

Incident Rating

| | | |
|--------------------------------------|--|--|
| MINOR MODIFIER (REVERSIBLE) | | Negligible deduction if repeat occurrence else managed as NCR if there were no previous similar occurrences. |
| | | Minor deduction |
| | | Significant deduction |
| MAJOR MODIFIER (IRREVERSIBLE) | | Major deduction |
| | | Maximum deduction |

Figure 6: Security Gainshare Modifier Rating Tool

| | | | | | | | | |
|--|-----------------------|---|--|---|--|----------|----------|--|
| Failure due to wilful or negligent system non-compliance or obvious risks left unaddressed | SYSTEM FAILURE | D | | | | | | |
| Failure due to systems addressing, but not adequately mitigating risk | | C | | | | | | |
| Failure due to not reasonably foreseen omission and in spite of systems in place | | B | | | | | | |
| Failure in spite of all reasonable mitigating measures and systems in place | | A | | | | | | |
| | | | 1 | 2 | 3 | 4 | 5 | |
| POTENTIAL CONSEQUENCES | | Minor system failure with potential for breach | Major System Failure with potential for breach | Major System Failure with potential for breach | Major System Failure with potential for major breach | | | |
| | | SEVERITY | | | | | | |
| ACTUAL CONSEQUENCES | | NO BREACH | NO BREACH | BREACH | MAJOR BREACH | | | |
| Consequences Examples | | Failure to follow document protocol without breach, or not notifying security etc | Leaving doors or hatches unlocked | Leaving doors or hatches unlocked which leads to minor breach | Major breach such as release of documents, or major unauthorised access leading to potential negative publicity. | | | |

Incident Rating

| | | |
|--------------------------------------|--|--|
| MINOR MODIFIER (REVERSIBLE) | | Negligible deduction if repeat occurrence else managed as NCR if there were no previous similar occurrences. |
| | | Minor deduction |
| | | Significant deduction |
| MAJOR MODIFIER (IRREVERSIBLE) | | Major deduction |
| | | Maximum deduction |

Figure 7: Environment Gainshare Modifier Rating Tool

| | | | | | | | |
|--|-----------------------|--------------------------|---|--|---|---|----------|
| Failure due to wilful or negligent system non-compliance or obvious risks left unaddressed | SYSTEM FAILURE | D | | | | | |
| Failure due to systems addressing, but not adequately mitigating risk | | C | | | | | |
| Failure due to not reasonably foreseen omission and in spite of systems in place | | B | | | | | |
| Failure in spite of all reasonable mitigating measures and systems in place | | A | | | | | |
| | | | 1 | 2 | 3 | 4 | 5 |
| POTENTIAL CONSEQUENCES | | Low environmental impact | Medium environmental impact | High environmental impact | Major environmental impact | | |
| | | SEVERITY | | | | | |
| ACTUAL CONSEQUENCES | | INSIGNIFICANT | MINOR | MODERATE | MAJOR | CATASTROPHIC | |
| Consequences Examples | | No environmental effects | Minimal environmental effect (isolated dissatisfaction) | Possible undesirable environmental effects (community dissatisfaction) | Highly undesirable environmental effects (DECCW intervention) | Unacceptable environmental effects (DECCW stop project) | |

Incident Rating

| | | |
|--------------------------------------|--|--|
| MINOR MODIFIER (REVERSIBLE) | | Negligible deduction if repeat occurrence else managed as NCR if there were no previous similar occurrences. |
| | | Minor deduction |
| MAJOR MODIFIER (IRREVERSIBLE) | | Significant deduction |
| | | Major deduction |
| | | Maximum deduction |

Figure 8: Traffic Gainshare Modifier Rating Tool

| | | | | | | | |
|--|-----------------------|--|--|--|---|---------------------------------------|----------|
| Failure due to wilful or negligent system non-compliance or obvious risks left unaddressed | SYSTEM FAILURE | D | | | | | |
| Failure due to systems addressing, but not adequately mitigating risk | | C | | | | | |
| Failure due to not reasonably foreseen omission and in spite of systems in place | | B | | | | | |
| Failure in spite of all reasonable mitigating measures and systems in place | | A | | | | | |
| | | | 1 | 2 | 3 | 4 | 5 |
| POTENTIAL CONSEQUENCES | | Incident unlikely to cause disruption | Incident with potential to cause minor disruption | Incident likely to cause material disruption | Incident which could have caused negative impact on RTA's reputation | | |
| | | SEVERITY | | | | | |
| ACTUAL CONSEQUENCES | | | NO DISRUPTION | DISRUPTION | MAJOR DISRUPTION | DISRUPTION LEADING TO NEGATIVE PUBLIC | |
| Consequences Examples | | Up to 10 minutes late finishing, or unplanned disruptions up to 10 minutes (out of peak) | Up to 20 minutes late finishing, or unplanned disruptions up to 20 minutes (out of peak) | Late finishing peak or unplanned disruption peak | Any unplanned or late finishing disruption leading to delay of more than 20 minutes in peak | Sever disruptions | |

Incident Rating

| | | |
|--------------------------------------|--|--|
| MINOR MODIFIER (REVERSIBLE) | | Negligible deduction if repeat occurrence else managed as NCR if there were no previous similar occurrences. |
| | | Minor deduction |
| MAJOR MODIFIER (IRREVERSIBLE) | | Significant deduction |
| | | Major deduction |
| | | Maximum deduction |

- 5.8.7 Positive incidents are classified using the Positive Minor Modifiers in the Tables 4 to 7.

Minor Events

- 5.8.8 Minor events are listed in Tables 4 to 7 for each KRA. Each Minor Event has a corresponding point value to reflect its relative merit against other indicative events and the acknowledged value to the Participants.
- 5.8.9 Minor events will be monitored by the Alliance Manager to recognise and reward positive behaviour and take ownership of the safety, security, environment and traffic flow KRA commitments.
- 5.8.10 On the recommendation of the Alliance Manager, the ALT will recognise and record the occurrence of any minor modifier events listed in the Tables 4 to 7, or similar or equivalent events and determine the modifier points that have been accumulated from time to time.
- 5.8.11 The net effect of positive or negative events will be determined by the ALT at Final Completion on the recommendation of the Alliance Manager.
- 5.8.12 The maximum point entitlement is either positive 40 points or negative 40 points.
- 5.8.13 A "point" has a value equal to 0.25% of Gainshare entitlement.
- 5.8.14 Where the modifiers accumulate to a total equal to positive 20 points or negative 20 points the ALT will intervene to critically review all aspects of the performance of the Alliance to ensure the RTA's MCOS expectations can be realised by the Alliance and support the behaviours that the ALT expects and reflect value to RTA.
- 5.8.15 Where the net effect of the modifiers at Final Completion (or on completion of Phase 1, in the event that the project does not proceed to Phase 2) as determined by the ALT is:
- (a) a negative percentage, the NOPs entitlement to all individual Gainshare elements shall be diminished as follows: -

$$\text{adjusted Gainshare entitlement} = \text{"raw" Gainshare entitlement} \times (100\% - \text{the negative percentage});$$

or
 - (b) a positive percentage, the NOPs Phase 2 Performance Gainshare OPS (or Phase 1 Performance Gainshare OPS in the event that the project does not proceed to Phase 2) shall be increased as follows: -

$$\text{adjusted OPS} = \text{"raw" OPS (determined in accordance with Section 5.7.3)} \times (100\% + \text{the positive percentage})$$

provided that in no circumstances will the OPS exceed 100.
- 5.8.16 The ALT, at the time of recommending the TOC to RTA, shall validate the Minor Modifiers and the relevant percentage modification set out in Tables 4 to 7.

Table 4: Minor Modifiers for Safety

| Safety Minor Modifiers | |
|------------------------|--|
| -ve Points | Negative outcomes |
| 2 | Minor Modifier: Negligible Deduction |
| 5 | Minor Modifier: Minor Deduction |
| 10 | Minor Modifier: Significant Deduction |
| +ve Points | Positive outcomes |
| 2 | No Safety CARs from an external audit per four months |
| 2 | A number of Lost Time Injury (LTI) free days (per time period) to be approved by the ALT on the recommendation of each NOP |
| 2 | Safety training undertaken bi-monthly |
| 2 | Safety culture improved through innovations |
| TBD | "x" hazard inspections per month (to be approved by the ALT on the recommendation of each NOP) |
| 2 | No crashes on approach to and through worksite 30 plus days. |

Table 5: Minor Modifiers for Security

| Security Minor Modifiers | |
|--------------------------|---------------------------------------|
| -ve Points | Negative outcomes |
| 2 | Minor Modifier: Negligible Deduction |
| 5 | Minor Modifier: Minor Deduction |
| 10 | Minor Modifier: Significant Deduction |
| +ve Points | Positive outcomes |
| TBD | [TBD - TO BE DETERMINED] |
| TBD | [TBD - TO BE DETERMINED] |
| TBD | [TBD - TO BE DETERMINED] |

Table 6: Minor Modifiers for Environment

| Environmental Minor Modifiers | |
|-------------------------------|--|
| -ve Points | Negative outcomes |
| 2 | Minor Modifier: Negligible Deduction |
| 5 | Minor Modifier: Minor Deduction |
| 10 | Minor Modifier: Significant Deduction |
| +ve Points | Positive outcomes |
| TBD | Induction/training of staff and sub contractors re environmental issues |
| 2 per issue | Minuted positive feedback from regulatory agencies (eg. Feedback from EPRGs) |
| TBD | Appropriate management of discovered heritage items during construction |
| 2 per issue | Meets project approval and RTA Environmental Services conditions from regulatory agencies (eg. reports issued on time, compliance) |
| 2 by example | Good environmental design and implementation outcomes, per example |

Table 7: Minor Modifiers for Traffic

| Traffic Minor Modifiers | |
|-------------------------|---|
| -ve Points | Negative outcomes |
| 2 | Minor Modifier: Negligible Deduction |
| 5 | Minor Modifier: Minor Deduction |
| 10 | Minor Modifier: Significant Deduction |
| +ve Points | Positive outcomes |
| TBD | No increase (or a decrease) in number of traffic incidents |
| TBD | No increase (or a decrease) in travel times during peak |
| TBD | Timely notice provided to community on disruptions or changes to traffic / cyclist / pedestrian conditions and arrangements |
| TBD | Traffic Management Plan (TMP) is updated, completed, & signed-off in a timely manner |

Note: Further examples of positive & negative minor safety and environmental events and credits may be added as developed by the AMT, recommended by the AM and approved by the ALT.

Major Events

- 5.8.17 If the ALT determines that an incident representative of a Major Event occurs as a result of, or arising out of, the work under this Agreement, the NOPs entitlement to Gainshare will irreversibly diminish by the percentage shown in Table 8 below.
- 5.8.18 The Participants have agreed that the diminutions for each Major Event shall be irreversible and cumulative. For each Major Event only the greatest applicable diminution will apply, in the event that the event could be classified under more than one KRA. The diminution resulting from Major Events will be applied to the NOP's total Gainshare entitlements (ie. TOC, Schedule and Performance Gainshare) at Final Completion (or on completion of Phase 1, in the event that the project does not proceed to Phase 2).

Table 8: Major Modifiers

| Major Modifiers | Number of Events | | |
|---------------------------------------|------------------|-----|-----|
| | 1 | 2 | 3 |
| Safety KRA | | | |
| Irreversible, Major Deduction Event | 10% Per Event | | |
| Irreversible, Maximum Deduction Event | 25% | 50% | 75% |
| Security KRA | | | |
| Irreversible, Major Deduction Event | 5% Per Event | | |
| Irreversible, Maximum Deduction Event | 10% | 20% | 30% |
| Environment KRA | | | |
| Irreversible, Major Deduction Event | 5% Per Event | | |
| Irreversible, Maximum Deduction Event | 10% | 25% | 50% |

| Major Modifiers | Number of Events | | |
|---------------------------------------|------------------|-----|-----|
| | 1 | 2 | 3 |
| Traffic Flow KRA | | | |
| Irreversible, Major Deduction Event | 5% Per Event | | |
| Irreversible, Maximum Deduction Event | 10% | 25% | 50% |

5.9 NOP's Split of Gainshare/Painshare

- 5.9.1 The NOPs have agreed to a split of any Gainshare payable to them, or Painshare payable by them, under this Agreement in the proportion that an individual NOPs entitlement to Fee paid or payable by RTA under this Agreement is to the total Fee paid or payable by RTA to all NOPs under this Agreement.
- 5.9.2 The Participants have agreed that these proportions shall be determined at the time of the RTA agreeing the Phase 2 TOC based on the combined Phase 1 and Phase 2 Fee or estimated Fee for each NOP at that time.
- 5.9.3 In the event that the project does not proceed to Phase 2, these proportions shall be based on the Phase 1 Fee for each NOP.

5.10 NOP's Cap on Painshare

- 5.10.1 Any Painshare payable by the NOPs to RTA shall be capped at, and shall not exceed the sum of: -
- (a) the amount of the Fee paid or payable by RTA to the NOP; and
 - (b) the amount of the NOPs' Gainshare entitlements, if any, set out in Annexure I;
- in accordance with the Gainshare Regime set out in this Proposed Commercial Framework.
- 5.10.2 Once a NOP's cap on liability to pay Painshare to RTA has been reached, RTA's only obligation to pay, and the NOPs only entitlement to payment, is the payment of Direct Costs in performing the work under this Agreement plus any remaining Gainshare entitlements determined by the ALT. That is if the TOC Painshare is equal to or greater than the Fee, the NOPs may still become entitled to Performance Gainshare or Schedule Gainshare.

5.11 Entitlement to Gainshare

- 5.11.1 The NOP will have no entitlement to Gainshare, and the ALT will make no determination of Gainshare, prior to the issue by the ALT of the Certificate of Completion for the Alliance Works.
- 5.11.2 Immediately after the issue by the ALT of the Certificate of Completion for the Alliance Works the ALT will determine an initial distribution of Gainshare after: -
- (a) having determined: -

- (i) the sum of the AOC in performing the work under this Agreement to bring the Alliance Works to Completion;
 - (ii) the Participants' performance against the KRAs to that stage of the work under this Agreement; and
 - (iii) the ALT's expectation of our performance to bring the Alliance Works to Final Completion; and
- (b) having modified the amount determined by the Gainshare Modifiers.

5.11.3 Immediately after the issue by the ALT of the Certificate of Final Completion the ALT will make a final determination of Gainshare after:

- (a) having determined: -
 - (i) the AOC in performing the work under this Agreement to bring the Alliance Works to Final Completion; and
 - (ii) the Participants' performance in each of the KRAs; and
- (b) having modified the amount determined by the Gainshare Modifiers.

5.11.4 Any determination of Gainshare will be paid by RTA in accordance with clause 8 of this Agreement. Any determination of Painshare will be paid by the NOPs to RTA within 30 days of the ALT's determination.

5.11.5 The ALT will review all Gainshare and Painshare entitlements for adjustment, if necessary, at the time of any audit carried out in accordance with clause 8.1 of this Agreement.

5.12 Trend Analysis

5.12.1 The ALT will ensure that appropriate procedures are put in place to allow a monthly trending analysis of our performance against each element of our Gainshare Regime to be completed and reported to the ALT.

5.12.2 If, at any time during the performance of the work under this Agreement, the ALT determines that our performance in any element of our Gainshare is expected to result in Painshare being payable by NOPs, the ALT will immediately: -

- (a) direct the Alliance Manager to take whatever reasonable steps are available, on a "Best for Project" basis, to remedy the situation and improve the Participants' performance; and
- (b) withhold payment of the Fee to the NOPs to create a Painshare fund to meet the NOPs' liability to RTA to pay Painshare. The Painshare fund will be immediately paid to the NOP when the situation creating the Painshare liability is remedied.

ANNEXURE I TO SCHEDULE 7, COMMERCIAL FRAMEWORK

Commercial – In – Confidence Information

Information for the Calculation of Payment Entitlements

A. INFORMATION FOR THE CALCULATION OF THE FEE

Boulderstone (refer Commercial Framework Section 4.4(a))

| | |
|-------------|--|
| Phase 1 Fee | |
| Phase 2 Fee | <p>Equal to the Boulderstone Total Fee less the Phase 1 Fee.</p> <p>The Boulderstone Total Fee is a fixed amount determined at the time of agreeing the Phase 2 TOC that is calculated by applying the Boulderstone Total Fee Formula provided below.</p> <p>The Boulderstone Total Fee is determined using the formula above where the Indicative Boulderstone Direct Costs is the estimated, combined Boulderstone Direct Costs for Phase 1 and 2, calculated at the time of agreeing the Phase 2 TOC.</p> <ul style="list-style-type: none"> • Where the estimated, combined Boulderstone Phase 1 and Phase 2 Direct |

| | |
|--|--|
| | <p>Costs are between and , the Boulderstone Total Fee is .</p> <ul style="list-style-type: none"> Where the estimated, combined Boulderstone Phase 1 and Phase 2 Direct Costs are between and , the Boulderstone Total Fee is: (plus where equals the estimated, combined Boulderstone Phase 1 and Phase 2 Direct Costs. <p>In the event that the estimated, combined Boulderstone Phase 1 and Phase 2 Direct Costs or the assumed Boulderstone share of the total direct costs is significantly different to that allowed for in the Boulderstone Total Fee Formula, then the Alliance will determine a proposed Boulderstone Fee giving consideration to:</p> <ul style="list-style-type: none"> The RTA's expectations for the Fee as documented in the Request for Proposal except where they have been departed from in this Annexure; The Alliance Principles; and The extent of and reasons for, the variation from the direct costs allowed for in the Boulderstone Total Fee Formula. <p>The Alliance will submit the proposed Boulderstone Fee to RTA for consideration and approval.</p> |
|--|--|

Freyssinet (refer Commercial Framework Section 4.4(b))

| | |
|---|--|
| Phase 1 Fee Percentage (as a % of Phase 1 Direct Costs) | |
| Phase 2 Fee Percentage (as a % of Phase 2 Direct Costs) | |

SAGE (refer Commercial Framework Section 4.4(c))

| | |
|---|--|
| Phase 1 Fee Percentage (as a % of Phase 1 Direct Costs) | |
| Phase 2 Fee Percentage (as a % of Phase 2 Direct Costs) | |

B. INFORMATION FOR THE CALCULATION OF DIRECT COSTS

BI Direct Cost Multipliers

| Personnel/Cost Classification | Direct Cost Multiplier |
|--------------------------------------|------------------------|
| Boulderstone (Section 3.4(a)) | |
| Permanent staff | |
| Wage earning staff (standard hours) | |

| | |
|-------------------------------------|--|
| Wage earning staff (overtime) | |
| Freyssinet (Section 3.4(b)) | |
| Permanent staff | |
| Wage earning staff (standard hours) | |
| Wage earning staff (overtime) | |
| SAGE (Section 3.4(c)) | |
| Permanent staff (standard hours) | |
| Permanent staff (overtime) | (unless additional costs will be incurred for individuals in accordance with their employee agreements – additional costs to be verified by the Financial Auditor) |

C. INFORMATION FOR THE CALCULATION OF GAINSHARE / PAINSHARE

| Commercial Framework Section | Item | Agreed Value |
|-------------------------------------|--------------------------|---|
| Section 5.4.2 | Phase 1 Performance Pool | \$500,000 |
| Section 5.7.2 | Phase 2 Performance Pool | \$1,200,000 plus top up from Phase 1 Performance Gainshare plus top up from Phase 2 TOC Gainshare |
| Section 5.6.1 | Phase 2 Schedule Pool | \$300,000 |

Schedule 8

FUNCTIONS OF ALT, AMT AND THE ALLIANCE MANAGER

1. PART 1 – ALT

1.1 Functions

The role of the ALT is to provide leadership, governance and oversight. In this regard 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 (KRA) and champion the objectives and goals;
- (g) challenge the (Alliance Manager) AM and AMT;
- (h) make timely decisions, informed by alliance values, commercial principles and characteristics;
- (i) appoint the AM and provide empowerment;
- (j) provide high level support and stakeholder interface as requested by the AM;
- (k) support, coach and mentor the AM and AMT;
- (l) ratify the AM's recommendation for AMT and organisation structure;
- (m) set review and revise limits of delegation to AM;
- (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 AM;
- (r) determine AM 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 AM and AMT to the ALT; and
- (u) Agree and sign off on KPIs;

2. PART 2 – AMT

2.1. Functions

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

- (a) appoint the Integrated Project Team (IPT) on a best for project basis;
- (b) provide effective leadership to the IPT, 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) make decisions on cross- or multi-discipline issues;
- (i) collectively make decisions consistent with the Alliance Principles;
- (j) establish KPIs and methods-of-measurement to demonstrate levels of achievement against KRAs determined by the ALT;
- (k) give effect to the ALT policies and implement the managements systems and plans;
- (l) Provide the AM items requiring the decision of the ALT and with the AM produce supporting papers for any item on the ALT meeting agenda no later than 14 days prior to the ALT meeting;
- (m) measure and report on KPIs progressively to optimise performance in all KRAs;
- (n) motivate and support IPT to achieve Outstanding Performance in all aspects of the Project;
- (o) promote and develop culture of safety in everything the Alliance does; and
- (p) identify and manage risk & opportunity.

3. PART 3 – ALLIANCE MANAGER

3.1 Functions

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) nominate the members for the AMT to the ALT for approval;
- (b) lead and manage the AMT and IPT;
- (c) define clear roles & responsibilities of the members of the AMT and other direct reports;
- (d) establish a culture that will ensure Alliance Objectives are exceeded;
- (e) ensure that all Alliance decisions are consistent with Alliance Principles;
- (f) lead and empower the AMT to exceed the MCOS for each objective
- (g) provide the communications link between the ALT, AMT, IPT and stakeholders;
- (h) establish Project budgets and manage Project costs;

- (i) develop and maintain an alliance culture;
- (j) develop and implement best for project systems;
- (k) develop alliance management plan for endorsement by the ALT;
- (l) establish and manage the Project programme;
- (m) report on performance of the alliance against agreed objective;
- (n) provide reports to the ALT, as required by the ALT;
- (o) facilitate and encourage decisions to be made at the lowest level;
- (p) approve all Alliance expenditure and Payment Claims;
- (q) establish a culture and processes which encourage innovative thinking;
- (r) 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;
- (s) conduct periodic performance and development reviews of the AMT;
- (t) actively support and develop safety in everything the Alliance does; and
- (u) 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 IPT 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; and
- (d) any procurement is to be conducted in accordance with the approved procedure.

Schedule 9

ALLIANCE BRIEF

**Alliance
Brief**

October 2010

Revision

1. Introduction

This Alliance Brief applies to the following elements;

- a. Phase 1 - Investigation and Design
 - i. Stay cable system upgrade
 - ii. Permanent Access Improvements
 - iii. Fencing
- b. Phase 2 – Delivery

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. This brief is broken in the following sections:

- a. Project objective and
- b. Technical criteria.

The project objective is the overall intention or reason for the project. All design decisions should be made with the objective in mind. The technical criteria are the critical technical design inputs to be achieved in the final solution. The design constraints will 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 Investigation and Design so that project objectives are achieved.

It is recognised that more detailed technical/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. Phase 1 – Investigation and Design

2.1 Project Objective

The project objective is to carry out detailed inspections and analysis of the existing condition of the bridge in order to enable the Alliance to develop and recommend a scope of works and total outturn cost estimate for Phase 2 which addresses the issues listed below.

Stay Cables

- Increase Stay Cable Capacity: Investigate current condition and capacity of the cables and where required tasking into consideration the weight of new works and current design standards provide extra capacity by utilising existing provision in anchorages to install extra strands.

- Damping: Determine an effective damping solution for the oscillations experienced by the Bridge's stay cables, compatible with the existing stay cables.

- Drainage and Water Ingress: Effective solution for the repair of existing stay cable defects in the cable sheath and anchorage zone. Final design is to minimise the ingress of water into the stay cable system and prevent water retention.
- Wax Removal and Replacement: Remove the existing wax in all of the anchorages, upper and lower. Replace the wax with a compatible material which complies with the current RTA Specification.

Anchorage which currently do not have wax are to be inspected for condition with a view to cleaning and injection with new wax if appropriate.

Access Improvements

- Lifts for Pylon: Provide safe, effective and permanent industrial lift access to the top of both towers from the northern walkway or other location if appropriate.
- Gantry Upgrade: Provide safe, effective and permanent gantry or catwalk access to all stay cable bottom anchorages.

Fencing

- South Side: Carry out investigation and design for the provision of new fence from Pier 2 to Pier 6. The fence is required to provide effective deterrence to unauthorised access to cables, anchorage zone and jumping from the Bridge.
- North Side: Replace existing defective fence with a fencing solution which provides effective deterrence to unauthorised access to cables, anchorage zone and jumping from the Bridge.
- Static line: Consideration must also be given to provide safe access for routine maintenance work outside fence by means of static line or similar.

2.2 Technical Criteria

Stay Cables

- Increase Stay Cable Capacity: The approved bridge design had six traffic lanes. Prior to opening in 1995 it was decided to provide seven traffic lanes on the bridge. This configuration was further changed in 2006 to accommodate eight traffic lanes.

Since this bridge was designed to the Bridge Design code applicable prior to 1990 and the current vehicle loadings have been changed significantly, it is envisaged to carry out a detail analysis to determine the load capacity of the structure. Initial analysis shows that the structure may have limited live load capacity under certain conditions.

It is understood that there are some anchorages with limited strand add-on capacity. Therefore it is necessary to explore the feasibility of adding strands where possible.

- Damping: The cable oscillation occurs under specific conditions of wind and rain resulting in the cables galloping. The affected cables oscillate up to 2 m at mid length.

The proposed damping system shall be compatible with the existing stay cable system, waterproof and not worsen the current loading conditions on the cables or reduce their in-service life.

- Drainage and Water Ingress: The cables are currently experiencing the ingress and ponding of water at the lower anchorages due to water vapour and rainwater entering through the upper expansion joints of all the stay cables sheaths near the towers. This has resulted in degradation of the anchorages and has increased the potential for corrosion in major structural elements including the guide pipe and lower anchorage components.

The proposed solution is to minimise the ingress of water into the sheath and prevent water ponding at the anchorages. The design objectives include:

- Longevity;
 - Ease of repair;
 - Ease of maintenance;
 - Does not hinder maintenance inspection;
 - Prevents the retention of water at the bottom of the guide pipe and maximises water escape
- Wax Removal and Replacement: The method proposed for the removal of the existing wax and its replacement must not reduce the strength properties of the stay cables. The method must ensure:

- Removal of the existing wax does not compromise or melt the wax of the individually sheathed strands inside the cables;
- Removal of the existing wax without leaving any residue;
- Elimination of all air pockets and after replacement the anchorage to be water tight; and
- Environmental considerations are identified and safeguarded.

The anchorages with no wax inside shall be free of rust, moisture and defects.

The replacement/fill material shall be compatible with the sheaths and comply with RTA specification requirements.

Access Improvements

- Lifts for Pylon: The proposed upgrade works would involve a significant amount of works at the upper anchorage level.

The options to install the lift within the tower also needs to consider how personnel evacuate the tower in the event of a lift failure or when a lift is resting at a particular level in the upper section. In these circumstances escape ladders may be required.

If the existing ladders are to be removed, a safe means of access and egress must be provided during construction, commissioning and operating.

- Gantry Upgrade: For the cable upgrade there are significant benefits in accessing anchorages from underneath.

Work shall be done during day time with minimal traffic control by accessing from gantries.

The existing gantry in its current state has issues with:

- Crabbing and inefficient drive system
- Poor ergonomics leading to material handling being difficult
- Not possible to load and unload the gantry easily from the deck
- Emergency escape from the gantry could be considered unsafe
- Very limited load capacity

Existing Gantry shall be upgraded sufficiently or replaced to meet the requirement of a major upgrade such as this and for future maintenance access.

Fencing

- South Side: A well designed that shall be erected using of hold down bolts provided on the bridge.
- North Side: The existing pedestrian railing be removed and replaced by a new higher aluminium railing using the existing holding down bolts and designed to account for all relevant loads effects so that it will last for the remaining life of the structure.

3. Phase 2 – Delivery

3.1 Project Objective

The project objective is to deliver the agreed scope to approved budget. As part of this project a detailed maintenance and inspection plans shall be delivered for all critical, newly installed and/or upgraded bridge components.

3.2 Technical Criteria

RTA is looking for solutions that:

- have a minimum whole of life cost, be reliable, fit for purpose and require minimal recurrent maintenance over the remaining life of the bridge;
- are constructible with minimum disruption to traffic which is a key concern as well as pedestrians, cyclists and local bridge stakeholders;
- provide thorough consideration of and mitigate OH&S, environmental and security risks
- are aesthetically acceptable and complement the existing architectural and cultural qualities of the bridge.

Schedule 10

INSURANCES

Principal Arranged Insurance - Insurance Schedule

| | TYPES OF INSURANCES | MINIMUM SUM INSURED | PERIOD OF INSURANCE | INSURANCE COVER IS TO INCLUDE THE FOLLOWING |
|--|---|---|--|---|
| <p>Principal Arranged Insurance (RTA)</p> <p>The details of the policy are provided in the Aon certificate of currency. A copy of the policy may be inspected by appointment at the offices of the RTA's insurance broker</p> | | | | |
| 1 | Contract Works | Contract Works – as per Declared Value | Duration of the Works – covering RTA, Construction Manager and subcontractors and other parties as specified in the works contract | The RTA has arranged standard policies of insurance for contract works insurance (reinstatement cost) insurance under its principal-arranged insurance. |
| Excess for Contract Works | <p>The Contractor is responsible for meeting the amount of any excess payable under the principal-arranged insurance. The excess amounts current at the date of the Contract are:</p> <p>Contract Works Value (up to \$5m) - excess is \$15,000 any one occurrence</p> <p>Contract Works Value (between \$5m & \$20m) – excess is \$50,000 any one occurrence</p> <p>Contract Works Value (between \$20m & \$50m) – excess is \$100,000 any one occurrence</p> <p>Except Tunnelling Contracts – excess is \$250,000 any one occurrence</p> <p>The Contractor may effect insurance to cover the amount of that excess.</p> | | | |
| 2 | Public and Products Liability | Public and Products Liability \$200m | Duration of the Works – covering RTA, Construction Manager and subcontractors and other parties as specified in the works contract | The RTA has arranged standard policies of insurance for contract works insurance (reinstatement cost) and third party liability insurance under its principal-arranged insurance. |
| Excess for Public and Product Liability | <p>The Contractor is responsible for meeting the amount of any excess payable under the principal-arranged insurance. The excess amounts current at the date of the Contract are:</p> <p>Public Liability - excess is \$10,000 any one occurrence</p> <p>Worker to Worker Liability – excess is \$50,000 any one occurrence</p> <p>Products Liability – excess is \$50,000 any one occurrence</p> <p>Underground Services – excess is \$50,000 any one occurrence</p> <p>The Contractor may effect insurance to cover the amount of that excess.</p> | | | |
| 3 | Professional Indemnity | The RTA has affected a Principal Professional Indemnity policy for its own benefit. | | |

| | TYPES OF INSURANCES | MINIMUM SUM INSURED | PERIOD OF INSURANCE | INSURANCE COVER IS TO INCLUDE THE FOLLOWING |
|---------------------------------------|---|--|---------------------|---|
| Contractor Arranged Insurances | | | | |
| 4 | Motor Vehicle Comprehensive or Third Party Property Damage effected with an approved insurer as defined in Definitions and Notes clause 1 below | \$20 million for any single occurrence | Annual | (a) Motor Vehicles owned or used by the Contractor or subcontractors directly or indirectly engaged in performance of the Services. (b) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in Definitions and Notes clause 2 below. (c) If applicable to the contract – all plant and equipment owned or used by the Contractor or subcontractors directly or indirectly in the performance of the Services. |
| 5 | Workers Compensation effected with an approved insurer as defined in Definitions and Notes clause 1 below | As per the relevant Workers Compensation legislation | Annual | As per State Workers Compensation legislation. |
| 6 | Professional Indemnity | The RTA will not set any requirements for the minimum sum insured for professional indemnity in the Contract. The contractor / consultant / supplier should make their own independent decision regarding their own Professional Indemnity requirements. | | |

(a) Definitions and Notes:

1. Approved insurer means:

- (a) An Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia; or
- (b) Lloyds Underwriters; or
- (c) A Treasury Managed Fund insurance scheme with the NSW State Government; or
- (d) The Comcover insurance scheme for the Australian Federal Government.

Note that where the insurance risk is insured by an insurer not listed in Note 1(a) or 1(b) then a 'fronting' placement is acceptable from an insurer list in Note 1(a) or 1(b).

- 2. Insurances policies must be subject to the laws of Australian (or an Australian State or Territory) and their courts.
- 3. A Cross liability clause operates as if there was a separate policy of insurance covering each of the insured. This means that the insurer provides each party named on the insurance policy access to the limit of liability, subject to the overall limit of the policy.

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 _____ | Insert name of Contractor and ABN if applicable |
| 2. The NOP is a party to an alliance agreement with the Roads & Traffic Authority in respect of the upgrade of the ANZAC Bridge ("Contract"). | insert position title of Declarant |
| 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 2007 and Industrial Relations Act 1996) which is a written statement: | Insert name of Contract |
| 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 2007, Schedule 2 Part 5, section 18, 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. The obligations of the NOP under the Contract relating to Security of Payment, if any, including payment of employees, workers and Subcontractors of the Contractor have been complied with by the NOP. | |
| 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 2007 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.

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.

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 WORKER'S COMPENSATION, PAYROLL TAX AND REMUNERATION (Note1 – see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor:ABN:
(Business name)

of
(Address of subcontractor)

has entered into a contract withABN:
(Business name of principal contractor) **(Note 2)**

Contract number/identifier **(Note 3)**

This Statement applies for work between:...../...../..... and /..... /..... inclusive, **(Note 4)**

subject of the payment claim dated: / /..... **(Note 5)**

I, a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a)** The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with **(b)** to **(g)** below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete **(f)** and **(g)** below. You must tick one box. **(Note 6)**
- (b)** All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../..... **(Note 7)**
- (c)** All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**
- (d)** Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. **(Note 9)**
- (e)** Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**

(f) Signature Full name

(g) Position/Title Date /..... /.....

NOTE: Where required above, 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*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relation Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's 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 contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. 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. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *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.'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance 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. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. 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 the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, 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 *Payroll Tax Act 2007* 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
AND THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE SUMMARY**

ANZAC BRIDGE UPGRADE

October 2010

The Roads and Traffic Authority of NSW

Sample

Allianz Contract Works Policy – Construction Risks – Material Damage

To be used for reference in tenders and contracts for works over \$50,000,000 only.

(RTA will endeavour to provide a specific Contract Works insurance policy as close in wording to this Sample as possible, and that any variations will be notified specifically at the time of placement)

Important Note:

Do not alter or change in any way without reference to RTA Insurance

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Introduction

In consideration of the Named Insured 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 or any Endorsements to 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 below.

Signed for and on behalf of the Insurers:

| Insurers | Policy No. | Proportion % | Signature | Place | Date |
|-----------------|-------------------|---------------------|------------------|--------------|-------------|
|-----------------|-------------------|---------------------|------------------|--------------|-------------|

{To be advised}

Schedule

| | | |
|----------------------------------|--|--------------------------|
| Named Insured: | The Roads and Traffic Authority of New South Wales (RTA) | |
| | This Policy also insures other parties as specified in the definition of the Insured herein. | |
| Project: | {To be advised} | |
| Period of Insurance: | From: 4:00 PM on {to be advised} Local Standard Time | |
| | To: 4:00 PM on {to be advised} Local Standard Time | |
| Defects Liability Period: | 12 months any one Contract in respect of the original Defects Liability Period. | |
| Project Site: | {To be advised} | |
| Territorial Limits: | Material Loss or Damage | |
| | Anywhere in the Commonwealth Australia and/or elsewhere as stated herein. | |
| Limits of Liability: | Material Loss or Damage | |
| | Limit of Liability any one Event at any one situation | {Works Value as advised} |
| | Existing Property | Not Insured |
| | Construction Plant and Equipment | Not Insured |
| | Sub-limits – Applicable to Material Loss or Damage: | |
| | 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. | |
| | (a) Removal of Debris and Other Costs | \$11,000,000 |
| | (b) Expediting Expenses | \$7,500,000 |
| | (c) Search and Locate Costs | \$100,000 |
| | (d) Professionals' Fees | \$7,500,000 |
| | (e) Mitigation Expenses | \$2,000,000 |
| | (f) Claim Preparation Costs | \$100,000 |
| | (g) Government and other Fees | \$1,000,000 |

Offsite Storage \$5,000,000

Insured Property whilst in inland transit \$2,000,000

Loss Payee:
(Condition 4.18)

Material Loss or Damage – the Roads and Traffic Authority of NSW.

Excess:
(Condition 4.4)

Material Loss or Damage

Damage to Insured Property

Water damage each and every loss \$500,000

Other damage each and every loss \$500,000

Tunnelling Contracts \$500,000

Premium:
(Condition 4.9)

As agreed

Definitions / Interpretations

The following Definitions will apply to this Policy.

Aircraft means any craft or machine made or intended to fly or become airborne 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, physical destruction or physical 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 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 property can be repaired, the cost necessarily incurred to restore the property to its former state of serviceability, including 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 property is totally destroyed, abandoned or cannot be satisfactorily repaired at a cost not exceeding the market value immediately before the Damage, the market value of the item at the time of the Event. If due to the nature of the 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;

Insured means:

- i. the Named Insured;
- ii. any parent or 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 required by the Contract(s); for their manual on-site activities only
 - e. any lessor, financier, mortgagee or trustee;
 - f. any government body;
 - g. any other party with an insurable interest in the Project;

It shall be noted that 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 or 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 and Electronic Data;

but excluding Construction Plant and Equipment and Existing Property not specified above.
- ii. **Existing Property** being buildings, existing structures, plant, contents and real property of every description. Existing Property is 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, equipment and personal property;

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.

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

Major Perils means earthquake, landslip, 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:

the period from the commencement date of this Policy shown in the Schedule and includes 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, the date each separable portion is formally accepted by the principal / owner as having achieved completion (as defined in the Contract(s));
- For the purpose of clarity, it is noted that the expiry of the Construction Period in respect of any completed separable portion, will not result in the expiry of the Construction Period in respect of any other part of the Project in respect of which there is any uncompleted work.
- 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 Defects Liability Period stated in the Schedule in respect of any one Contract.

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 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 free supplied materials (if required to be insured under this Policy).

Reinstatement Value means:

- i. where the property is lost or destroyed, the cost of 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 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;

Structures means any building, bridge, tunnel, viaduct and other similar civil structure, mechanical and electrical plant, but does not include road surfaces

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)

The following Interpretations will apply to this Policy.

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. Construction Period

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 and off-site storage within the Territorial Limits during the Construction Period.

2. Defects Liability Period (Extended Maintenance)

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

In the event of Damage to Insured Property the amount payable shall be in accordance with the Basis of Settlement stated in the Schedule in respect of the property designated therein.

3.1 Reinstatement Value

Where the Basis of Settlement is Reinstatement Value the following provisions shall apply:

- i. 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;
- ii. 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;
- 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 the above provisions (as applicable).

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.

3.2 Indemnity Value

Where the Basis of Settlement is Indemnity Value the following exceptions will apply to the settlement of Damage to Construction Plant and Equipment:

- i. 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;
- ii. 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;

3.3 The total amount payable by Insurers will also include any additional amounts as provided in clauses 4 to 0 (as applicable).

4. Local Authorities Clause

The indemnity provided by this clause 4 shall, subject to the Sub-limit of Liability stated in the Schedule (if any), 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 such extra costs as aforesaid with which the Insured had been required to comply prior to the Damage occurring.

5. 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).

6. 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:

- 6.1 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);
- 6.2 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;
- 6.3 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.

This clause does not apply if the Basis of Settlement against the relevant property is designated in the Schedule as Indemnity Value.

7. 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 changes in the method of construction, the 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. Such costs will include but not be limited to:

- (a) the cost of hiring, operating and transporting apparatus;
- (b) the cost of all associated earthworks;

and are payable notwithstanding that 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 under this Policy.

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;

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 Claim Preparation Costs

Reasonable costs and expenses as may be payable by the Insured and not otherwise recoverable in connection with or incidental to preparing, collating, auditing or qualifying actual or imminent Damage being claimed under this Policy. This clause does not provide cover for any loss adjuster and/or legal adviser fees incurred by the Insured.

1.7 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, 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 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 normal 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

All costs rendered necessary by defects of material workmanship design plan or specification, however 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

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. Construction Plant and Equipment

9.1 Damage to Construction Plant and Equipment caused by its mechanical or electrical breakdown, however this Exclusion 3.9(a) shall be limited to the part immediately affected and shall not extend to include other components or parts Damaged in consequence thereof.

9.2 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:

11.1 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 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 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 Exclusion

In relation to piling foundation and retaining wall elements insured:

13.1 for rectifying or replacing piles or retaining wall elements

- (a) which have become misplaced or misaligned or jammed;
- (b) which are lost or abandoned during driving or extraction or
- (c) which have become obstructed by jammed or damaged piling equipment or casings;

13.2 for rectifying disconnected or declutched sheet piles;

13.3 for rectifying any leakage or infiltration of material of any kind;

13.4 for filling voids or replacing lost bentonite;

13.5 as a result of any piles or foundation elements having failed to pass load bearing tests or otherwise not having reached their designed load bearing capacity;

13.6 for reinstating profiles or dimensions.

This Exclusion 13 does not apply to loss or damage caused by Major Perils.

14. Unsealed Roadworks

Damage to Unsealed Roadworks beyond 5,000 metres any one indemnifiable Event.

For the purpose of this Exclusion 3.14 Unsealed Roadworks shall mean partial or completed roadworks that have not received a minimum of one application of a weatherproof course or substance.

15. Rain Damage to earthworks materials and/or pavement materials

Otherwise subject to the terms, exclusions, provisions and conditions contained in the Policy or endorsed thereon, the Insurers will not indemnify the Insured for loss of or damage to earthworks materials and/or pavements materials due to rain; except where such loss or damage is due to an event with a minimum return period of 20 years for the location insured on the basis of the 24 hour statistics prepared by the Bureau of Meteorology for the nearest station to the location Insured.

For the purposes of this endorsement, the following definitions shall apply:

Pavement Materials:

Any material obtained from any source either natural, raw, processed, crushed, manufactured or recycled, either in a stockpile or as part of running surface which may comprise that portion of a road designed for the support of, and to form the running surface for, vehicle traffic.).

Earthworks Materials:

All operations involving the loosening, removing, depositing, shaping and compacting soil or rock. Including the excavating and embankment of earth involved in an engineering construction and the structures resulting from this operation.

Conditions applying to this Policy

The following Conditions apply to this Policy.

1. Escalation

If during the Period of Insurance, the anticipated final Project Value is estimated to exceed the original Project Value, then the Limits of Liability and Sub-limits of Liability shall be increased by the percentage that represents the amount the anticipated final Project Value exceeds the estimated Project Value at commencement of the Construction Period, but the total amount of all such increases shall not exceed twenty-five percent (25%) of the amount set against the Contract Works value in the 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. Permission to Occupy and Operate

Permission is granted by Insurers to the principal and/or owner or any other party to occupy and operate any portion of the construction site or works prior to completion and such occupancy or operation shall not constitute handover of the Insured Property.

4. Limits of Liability

4.1 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.

4.2 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.

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

5. Application of Excess

5.1 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.

5.2 Non-aggregation of Excesses

Should more than one Excess apply for any claim , such Excesses shall not be aggregated and only the highest single Excess amount shall apply.

5.3 72 Hour Clause

For the purpose of the application of any Excess, all Damage resulting from 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.

5.4 Inland Transit

If a transit Excess is specified in the Schedule, such Excess shall apply to Insured Property in the course of loading of the Insured Property, whilst in transit, including any incidental storage and until unloaded at the final destination.

6. Insurers' Rights and Subrogation

- 6.1 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.
- 6.2 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 to preserve and enforce any rights the Insured may have against anyone in respect of Damage to Insured Property.

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 It is understood and agreed that any payment or payments by Insurers to any one or more such insured parties shall reduce to the extent of that payment Insurers liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.
- 7.3 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.
- 7.4 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".
- 7.5 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.
- 7.6 The Insurers agree to waive all rights of subrogation that they may have or acquire against:
 - (a) any Insured or any individual or organisation affiliated or associated with, parent of or a subsidiary of any Insured;

- (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.
- 8.2 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.
- 8.3 Any notice(s) given by the Insurers to any party insured under this Policy shall also be deemed to be given to all other named parties.
- 8.4 If a Nominee for Insurers' Notices is shown in the Schedule, the Insurers agree to give the nominated organisation 30 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 final 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 Named Insured of a return Premium, as the case may be, calculated at the agreed rate on the difference between the original estimated and final value of the relevant 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 ninety (90) days at no greater than pro-rata premium. 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 as revised by a subsequent Endorsement to this Policy) after first becoming aware that the completion date last notified to the Insurers will be exceeded and the revised estimated completion date.

For extensions beyond 90 days, the Insurers shall be entitled to charge the Named Insured an additional premium, to be determined by 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. 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.

13. Jurisdiction and Service of Proceedings

The Insurers agree that:

- 13.1 this Policy is governed by the laws of Australia;
- 13.2 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;
- 13.3 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;
- 13.4 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.

14. Cancellation

14.1 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.

14.2 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.

14.3 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.

15. Alterations in Material Fact/Error or Omission

15.1 The Insured will not be prejudiced under this Policy in the event of any unintentional or inadvertent error, omission or misdescription or any other information contained or omitted from any underwriting information supplied to the Insurers.

15.2 The Insured undertakes to immediately notify the Insurers as soon as any change materially varying any of the facts or circumstances existing at commencement of this insurance that shall come to the knowledge of the Insured. Insurers shall be entitled to make reasonable variations to this Policy's terms and Conditions accordingly.

16. 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 quantum has reasonably been established and such payments shall be deducted from the amount finally determined upon final adjustment of the claim.

17. Engagement of Loss Adjusters

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.

18. 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.

19. Currency

19.1 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.

19.2 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.

October 2010

Roads and Traffic Authority of New South Wales (RTA)

Allianz Public & Products Liability Policy

To be used for reference in tenders and contracts for works over \$50,000,000 only

Important Notice:

This is a current annual policy and is not subject to change or alteration

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Introduction

In consideration of the Named Insured 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 and Sub-limits of Liability 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:

| Insurers | Policy No. | Proportion % | Signature | Place | Date |
|-------------------------------------|------------------------------------|---------------------|------------------|--------------|-------------|
| Allianz Australia Insurance Limited | 99-0000476-CGR & 99-0000476-LGR | 100% | | | |

Schedule

| | |
|--|---|
| Named Insured: | Roads and Traffic Authority of New South Wales ('RTA') as Principal or Contractor. This Policy also insures other parties as specified in the definition of Insured. |
| Business: | Principally but not limited to: <ul style="list-style-type: none">▪ road traffic authority, which includes, property owners and occupiers, lessees and lessors;▪ civil contractors, designers, consultants, suppliers, project and construction managers, maintenance contractors;▪ plant and equipment owners, operators and hirers, lessees and lessors; and all incidental and associated operations, trades and activities. |
| Insured Operations: | Contracts commenced during the Period of Insurance Basis All road network related development, construction and maintenance Contracts of any kind or description undertaken by or on behalf of the Named Insured and commenced during the Period of Insurance, including but not limited to road, bridge, pavement, tunnel, maintenance and other civil works. Insured Operations shall not include: <ol style="list-style-type: none">1. Contracts commenced prior to the initial Period of Insurance; or2. Contracts that are funded by private finance but not excluding incidental works or services associated therewith performed by RTA or their contractors and declared under this Policy; or3. Referral Contracts, being Contracts:<ol style="list-style-type: none">(a) where the original estimated Construction Period exceeds 48 months;(b) where the Tunnelling component exceeds \$20,000,000; or4. Contracts specifically excluded |
| Period of Insurance: | <ol style="list-style-type: none">1. From: {Date of Attachment} To: {Date of practical Completion plus Defects Liability Period} Local Time2. Any subsequent period for which renewal has been agreed. |
| Maximum Defects Liability Period: | 12 months any one Contract in respect of the original Defects Liability Period. |

Territorial Limits:**Legal Liability**

Anywhere in the world but excluding any operations of the Insured domiciled in the United States of America or Canada. Notwithstanding the above, indemnity is provided in respect of:

1. Products exported into those countries;
2. directors of the Insured or Employees who are non-resident in such countries;
3. any person or firm engaged in a consultative capacity in such countries.

Limits of Liability:

(General Condition 1)

Legal Liability

| | |
|-------------------------------------|----------------|
| Limit in respect of each Occurrence | A\$ 20,000,000 |
|-------------------------------------|----------------|

but limited to A\$20,000,000 in the aggregate for all Occurrences in respect of Products.

| | |
|--|---------|
| For all contracts over \$50m, the Limits of Liability cover is \$200m. | A\$200m |
|--|---------|

Nominee for Insurers' Notices:

(General Condition 6.4)

Nominee**Address****Relevant Contract**

As required

Nominee for Legal Service:

(General Condition 10.3)

Allianz Australia Insurance Limited

Agreed Loss Adjuster(s):

(General Condition 14)

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

to be agreed with and approved by RTA

Loss Payee:

Roads & Traffic Authority of NSW

Underlying Insurance:

Underlying Insurance shall include, but are not limited to, those policies and types of policies described below or their substitute policies as specified:

| Contract | Policy Type | Policy No. | Insurer | Underlying Limit |
|---|-------------|------------|---------|------------------|
| and any other relevant contract entered into by the Insured from time to time | Various | Various | Various | Various |

Excesses:

(General Condition 2)

Legal Liability

(inclusive of Defence and Other Costs in clause 2)

| | |
|-----------------------|-----------|
| Injury to Contractors | A\$50,000 |
| Products Liability: | A\$50,000 |
| Underground Services: | A\$50,000 |
| All other claims: | A\$10,000 |

Premium:

(General Condition 7)

| Policy Item | Adjustable | Adjustment Factor | Estimated Value |
|---|------------|-----------------------------|-----------------|
| P/P Liability / Product activity – Full Cover Contracts | Yes | Project Values (Full Cover) | As Declared |
| P/P Liability / Product activity – DIC Contracts | Yes | Project Values (DIC Cover) | As Declared |

Definitions / Interpretations

For the purposes of this Policy the following Definitions/Interpretations will apply unless otherwise specified.

Definitions/Interpretation

Advertising Injury means:

- i. libel, slander or defamation;
- ii. infringement of copyright or of title or of slogan;
- iii. piracy or unfair competition or idea misappropriation under an implied contract;
- iv. invasion of privacy;

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast and arising out of the Insured's advertising activities or any advertising activities conducted on behalf of the Insured, in the course of advertising the Contract, Business, goods or services.

Business includes works in progress or completed in respect of current or activities discontinued by the Insured, the provision and management of canteens, social, sports and welfare organisations for the benefit of the Insured's employees, first aid, security, fire and ambulance services and maintenance of the Insured's premises.

Construction Period means that phase of a Contract until the Contract Works have been formally accepted by the principal/owner as having achieved practical completion. The term of cover in respect of the Construction Period, shall be the period commencing with:

- a. the entering into of each Contract; or
- b. the commencement date of the Period of Insurance;

whichever is the later, until the completion of the Construction Period.

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

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 maintenance or other 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.

For the purposes of cover in respect of the Defects Liability Period, the term of cover in respect of the Defects Liability Period shall be the duration of the Defects Liability Period in each Contract.

Employee means any person under a contract of service or apprenticeship with the Insured.

Injury to Contractors means legal liability of the Insured in respect of recoveries of any payments by any workers' compensation insurer under the provisions of any workers' compensation legislation or policy, or at common law.

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 or alliance 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 Contract(s);

It shall be noted that 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.

Local Time, which appears in the Schedule means the time at the Named Insured's principal location.

Occurrence means an event including continuous or repeated exposure to conditions that results in Personal Injury, Property Damage or Advertising Injury where such injury or damage is neither expected nor intended from the standpoint of the Insured.

Personal Injury includes:

- i. bodily injury, illness, disease, disability, shock, fright, loss of consortium, loss of amenities, mental anguish or mental injury, including any resultant death;
- ii. false arrest, false imprisonment, wrongful detention, malicious prosecution and humiliation;
- iii. the publication or utterance of libel or slander, or of other defamatory or derogatory material, or a publication or utterance in violation of any individual's right of privacy except:
 - a. when the first such publication or utterance is related to any publication or utterance made prior to the commencement of this Policy; or
 - b. when any such publication or utterance is made in the course of or is related to advertising, broadcasting, telecasting or publishing activities conducted by or on behalf of the Insured;
- iv. nuisance, wrongful entry or wrongful eviction or other invasion of the right to private occupancy;
- v. assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing or eliminating danger to persons or property.

Products means anything after it has left the custody or control of the Insured and upon expiry of the Construction Period, which has been or is deemed by law to have been manufactured, grown, produced, processed, formulated, built and/or constructed, assembled, erected, installed, sold, supplied, imported, exported, distributed, treated, serviced, altered or repaired by the Insured, which includes works performed by the Insured, containers, labels and packing materials, directions, instructions and advice given or omitted to be given in connection with such Products. For the purpose of this definition, Products shall

apply to all Contracts of any kind or description undertaken by or on behalf of the Named Insured, irrespective of when the Contract is completed.

Property Damage means physical damage to or destruction of tangible property, including the loss of and loss of use of property, whether or not that property has been destroyed or damaged and includes, without limiting the foregoing:

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.

Vehicle means any type of machine on wheels or intended to be propelled by other than manual or animal power and any trailer made or intended to be drawn by any such machine whilst attached thereto.

Worksite means any place where any work is performed for and/or in connection with the Insured Operations together with all surrounding areas, including whilst in storage.

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.

- i. denial of access to or interference with property, premises, services or facilities;
- ii. interference with or stoppage of vehicular or pedestrian traffic.

Public and Products Liability

The Insurers under Section 2 will indemnify the Insured as follows:

Insuring Clauses

1. Legal Liability

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

- 1.1 Personal Injury;
- 1.2 Property Damage; or
- 1.3 Advertising Injury,

happening:

- (a) during the Construction Period or the Defects Liability Period in respect of the Insured Operations; or
- (b) 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.

2. Defence and Other Costs

In addition to any indemnity pursuant to clause 1 and the Limits of Liability the Insurers will pay in connection therewith:

- 2.1 all legal costs and other expenses incurred with the written consent of the Insurer;
- 2.2 all charges expenses and legal costs recoverable from the Insured by claimants;
- 2.3 all costs and expenses incurred by the Insured for legal representation at any coroner's inquest, fatal accident inquiry or court of summary jurisdiction;
- 2.4 expenses incurred by the Insured for first aid rendered for injury to others at the time of an Occurrence;

Even if the allegations of a suit are groundless, false or fraudulent, the Insurers will defend any proceedings against the Insured for compensation to which indemnity under this Section 2 applies (or would apply if the claim was sustained) and the Insurers may make such investigations and settlement of any claim as the Insurers deem expedient.

Exclusions applying to this Policy

This Section 2 does not provide indemnity for:

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 1 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:

- 3.1 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;
- 3.2 liability arising out of construction plant or equipment mounted upon or operating from any Watercraft, but this subclause 3(b) shall not apply to liability arising out of the use or operation of the Watercraft itself;
- 3.3 the use or existence of explosives on or from any marine craft or vessels whether in, over or under water or otherwise;
- 3.4 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:

- 4.1 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:

- 6.1 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;

- 6.2 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 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

- 8.1 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.

- 8.2 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:

- 9.1 an award of punitive, liquidated, aggravated or exemplary damages;
- 9.2 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:

- 10.1 offences committed prior to the inception date of this Policy;
- 10.2 offences made at the direction of the Insured with knowledge of the illegality or falsity thereof;
- 10.3 breach of contract, other than misappropriation of advertising ideas under an implied contract;
- 10.4 incorrect description of the price of the products, goods or services;
- 10.5 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;

10.6 failure of the products, goods or services to conform with advertised performance, quality, fitness or durability;

10.7 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:

11.1 owned by the Insured;

11.2 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.

General Exclusions to this Policy

General Exclusions

The following Exclusions apply to all Sections of this Policy:

1. 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:

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

for the purpose of this General Exclusion 1 (a) only, combustion shall include any self-sustaining process of nuclear fission;

- 1.2 nuclear weapons materials.

This General Exclusion 1 shall not apply to liability resulting from the use of commercial radioactive isotopes.

2. 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:

- 2.1 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 2(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

- 2.2 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 2(a) and/or 2(b) above.

In the event any portion of this General Exclusion clause 2 is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

General Conditions to this Policy

General Conditions

The following Conditions apply to all Sections of this Policy.

1. Limits of Liability

1.1 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.

1.2 (i) Section 1 – Material Loss or Damage

The liability of the Insurers under Section 1 for any one Event at any one Worksite shall not exceed the Limits of Liability and the accumulative amounts of the Sub-limits of Liability stated in the Schedule.

Section 2 – Legal Liability

The liability of the Insurers under Section 2 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

2.1 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 in clause 2.

2.2 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.

2.3 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.

2.4 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

- 4.1 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.
- 4.2 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.
- 4.3 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.
- 4.4 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

- 5.1 If the Insured comprises more than one insured party each operating as a separate and distinct entity then (save as provided in this clause 5), 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.
- 5.2 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.
- 5.3 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 General Condition 5 as a "Vitiating Act".
- 5.4 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.
- 5.5 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 iii.d. in circumstances where indemnity is not provided under this Policy;
- (b) 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

- 6.1 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.
- 6.2 Any notice(s) given by the Insurers to any party insured under this Policy shall also be given to all other named parties.
- 6.3 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.
- 6.4 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:
 - (a) 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;
 - (b) the Insurers giving any notice under this Policy.

7. Declarations and Premium Payment

- 7.1 If the Premium with regard to an item of this Policy is shown in the Schedule as being adjustable, then the Premium for the applicable Section(s) is provisional and will be adjusted as follows:
- 7.2 Within 30 days of the end of each 3 month period, the Named Insured will declare to the Insurers:
 - (a) the final Project Values by contract type for all Insured Operations commenced and completed during that 3 month period, and the estimated Project Values by contract type for the Insured Operations commenced during that 3 month period, but not completed as at the end of that 3 month period; and
 - (b) any amount required for Existing Structures in addition to the coverage provided within the Project Value; and
 - (c) if applicable, the actual value of Construction Plant and Equipment (in accordance with the agreed Basis of Settlement) at expiry since the preceding period.
- 7.3 If at any time there shall be 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 **Error! Reference source not found.** to Section 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.

8. 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.

9. 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.

10. Jurisdiction and Service of Proceedings

The Insurers agree that:

- 10.1 this Policy is governed by the laws of Australia;
- 10.2 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;
- 10.3 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;
- 10.4 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.

11. Cancellation/Non-renewal**11.1 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 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.

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:

- (a) expiration of the Construction Period and Defects Liability Period; or
- (b) the Named Insured formally advises the Insurers that the Contracts have been insured elsewhere;

whichever occurs first.

In the event of cancellation or non-renewal of this Policy, the Premium will be adjusted in accordance with General Condition 7 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.

12. Alterations in Material Fact/Error or Omission

- 12.1 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.
- 12.2 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.

13. Progress Payments (applicable to Section 1 only)

Provided that indemnity has been granted under this Policy, progress payments on account of any claim under Section 1 only 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 Agreed Loss Adjuster (if appointed), provided such payments shall be deducted from the amount finally determined upon adjustment of the claim.

14. Engagement of Loss Adjusters

- 14.1 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.
- 14.2 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.
- 14.3 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.

15. Currency

- 15.1 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.
- 15.2 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 Insured's accounting practices.

16. Primary

To the extent that insurance is afforded to any Insured party under this policy, this insurance shall apply as primary.

17. 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:

- 17.1 to accept all notices required under this Policy;

- 17.2 to interpret the meaning or intention of any word, expression, Exclusion or Condition of this Policy;
- 17.3 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;
- 17.4 to agree amendments to the wording of this Policy;
- 17.5 to re-negotiate terms commensurate with any change in the risk;
- 17.6 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.

18. Referral Contracts

Where any Contract is excluded from the Insured Operations specified in the Schedule by virtue of it being a Referral Contract, the Contract will be held covered for a period not exceeding 30 days from the commencement of the Construction Period, and thereafter will be covered subject to agreement by the Insurers.

19. Other Insurance

Where allowable by law, this Policy is excess over and above any other valid and collectible insurance and shall not respond to any loss until such times as the limit of liability under such other primary and valid insurance has been totally exhausted. The Treasury Managed Fund is not deemed to be regarded as a policy of insurance or Underlying Insurance, for the purposes of this policy.