



**PACIFIC HIGHWAY UPGRADE
GLENUGIE UPGRADE
ALLIANCE**

PROJECT ALLIANCE AGREEMENT

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PACIFIC HIGHWAY UPGRADE GLENUGIE UPGRADE ALLIANCE

THIS AGREEMENT is made on 2009

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. RTA intends to upgrade the Pacific Highway at Glenugie. The work (as more fully described in this Agreement) comprises approximately seven kilometres of four lane highway with a posted speed limit of 100 kilometres per hour. The northern 3 kilometres includes new 4 lane dual carriageways. The southern 4 kilometres involves a new 2 lane southbound carriageway with the utilisation of the existing highway for the northbound carriageway. For the purpose of this Agreement, the work will be known as the Alliance Works.
- B. Completion of the Alliance Works is scheduled for 2 July 2009.
- C. We have agreed to form an Alliance for the purpose of carrying out the Alliance Works and to develop innovative solutions which aim to achieve outstanding outcomes and result in a win-win position for all of the Participants in performing the Alliance Works.
- D. We will use our best endeavours to ensure that the Alliance Works are carried out in a co-operative, co-ordinated and efficient manner so as to achieve the Alliance Objectives in compliance with the Alliance Principles.
- E. This Agreement sets out the Alliance Principles by which we are to carry out the Alliance Works so as to achieve the Alliance Objectives and the manner in which we will be reimbursed for that participation in the Alliance.

OPERATIVE PROVISIONS

1. OUR ROLES AND RESPONSIBILITIES

1.1 Our responsibilities

We are committed to:

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

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

1.2 Commitment to act in good faith

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

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

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 one Representative from each Participant.
- (b) The Representatives nominated at the date of this Agreement are set out in **Schedule 6** (Alliance Leadership Team).

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- (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.
 - (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) Every six months the ALT will appoint, in writing, another Representative as Chairperson or reappoint the existing Chairperson and record in writing 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.

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- (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
 - (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) The RTA Interface Manager 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

The RTA Interface Manager 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.

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- (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. INVESTIGATION AND PROJECT PROPOSAL

5.1 Development and approval of scope of work

- (a) We will carry out investigations to enable us to recommend to RTA a scope of work for the Alliance Works as contemplated under clause 5.1(b).
- (b) The scope of work referred to in clause 5.1(a) must:
 - (i) be delivered by us to RTA by 16 October 2009 or such other date agreed in writing by RTA;
 - (ii) include the concept design for the new upgrade; and
 - (iii) set out an appropriately detailed estimate of the cost of the scope of work.
- (c) Following receipt by RTA of the scope of work referred to in clauses 5.1(a) and (b), RTA may, in its discretion, elect to:
 - (i) approve the scope of work by notice in writing to the NOPs, in which case, clause 5.2 will apply on and from the date of that notice;
 - (ii) request the Participants to:
 - (A) carry out further investigations in relation to the proposed scope of work;
 - (B) amend the proposed scope of work to take into consideration the findings derived from the further investigations carried out by the Participants or any other amendments as otherwise required by RTA; and
 - (C) re-submit the amended scope of work to RTA for approval in accordance with this clause 5.1(c); or
 - (iii) give the ALT a notice in writing informing the ALT that the Alliance Works will not proceed, in which case, clause 11.1(a) will apply on and from the date of that notice.

5.2 Development and approval of Project Proposal

- (a) If RTA approves the scope of work under clause 5.1(c)(i), we will prepare and deliver to RTA a Project Proposal for the Alliance Works by 4 December 2009 or such other date agreed in writing by RTA.
- (b) The Project Proposal must be developed in accordance with the principles contained in Section 6 and Annexure 3 of Schedule 7 (Commercial Framework).
- (c) Following receipt of the Project Proposal, RTA may, in its discretion, elect to:
 - (i) approve the Project Proposal by notice in writing to the NOPs;
 - (ii) request the Participants to amend the Project Proposal and re-submit it to RTA for approval in accordance with this clause 5.2(c); or

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- (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 clause 5.2, require the Participants to develop and submit to RTA a 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 Alliance Works unless and until RTA provides its approval in writing to the Project Proposal pursuant to clause 5.2(c)(i) or as otherwise agreed by RTA in writing.
- (b) We will carry out the Alliance Works in accordance with the construction program that forms part of the Project Proposal approved under clause 5.2(c)(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 any money due from that NOP to RTA.
- (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 Final Completion or to perform or observe the relevant obligation under this Agreement; and
 - (ii) the Alliance Manager will promptly inform the Participants that Completion has not been achieved and any details of the outstanding work or the failure to perform or observe some other obligation under this Agreement.
- (d) Once the Alliance Manager is satisfied that the outstanding work or obligation has been completed, performed or observed in accordance with this Agreement, the Alliance Manager will again initiate the approval process under this clause 6.6.
- (e) The Certificate of Final Completion must also refer to the date which the ALT determines is the Date of Final Completion.

6.7 Separable Portions

The ALT may determine that any part of the Alliance Works will be a Separable Portion 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 or has not undertaken 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:

- (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 Macmahon as the principal contractor under clause 210 of the Regulation then, from the date on which RTA notifies Macmahon:
 - (A) Macmahon is appointed as principal contractor under clause 210 of the Regulation; and
 - (B) RTA and the NOPs give all necessary authority to Macmahon to allow it to fulfil and exercise the obligations and functions of the principal contractor under the Regulation;
 - (ii) Macmahon must, from the date on which RTA notifies Macmahon:
 - (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 Macmahon 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 enable Macmahon to comply with its obligations under this clause;

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- (E) ensure that the Participants execute the Alliance Works in a manner which ensures that the Participants satisfy their obligations under the Act and the Regulations; and
 - (F) immediately inform the other Participants in writing of all incidents involving injury to any person arising during the execution of the Alliance Works; and
- (iii) in carrying out the Alliance Works or in exercising our rights under this Agreement we will ensure that we (and our respective officers, employees, Subcontractors and agents) comply with:
- (A) the latest OH&S Plan;
 - (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.

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- (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 National Code of Practice

The National Code of Practice for the Construction Industry (the **code**) is applicable to the Temporary Works, Construction Plant and Alliance Works:

- (a) we must comply, in the performance of this Agreement, with the requirements of the National Code of Practice for the Construction Industry and the Industry Guidelines for the Workplace Relations and Occupational Health and Safety Components of the Code (the **industry guidelines**). Copies of the code and the Australian Government Implementation Guidelines for the code and the industry guidelines are available at <http://www.workplace.gov.au>;
- (b) compliance with the code or the industry guidelines will not relieve us from responsibility to perform this Agreement, or from liability for any Defect in the Temporary Works and Alliance Works arising from compliance with the code or the industry guidelines;
- (c) where a change in this Agreement is proposed and that change would affect compliance with the code or the industry guidelines, we must submit a report to the Commonwealth specifying the extent to which our compliance with the code or the industry guidelines will be affected;
- (d) we must maintain adequate records of the compliance with the code and industry guidelines by us and our Subcontractors. We must permit the Commonwealth or any person authorised by the Commonwealth, including the Interim Building Industry Taskforce or any successor of it, to have access to our records and to our premises (to inspect and copy records), as is necessary to allow validation of our progress in complying with the code and industry guidelines. We, in all our Subcontracts, must require Subcontractors to maintain and provide access for the Commonwealth or any person authorised by the Commonwealth to the Subcontractor's records and premises to the same extent as required from us by this clause;
- (e) if we do not comply with the requirements of the code or the industry guidelines in the performance of this Agreement such that a sanction is applied by the Code Monitoring Group, the Commonwealth, without prejudice to any rights that would otherwise accrue, will be entitled to record that non-compliance and take it into account in the evaluation of any future tenders that may be lodged by us or a related corporation in respect of work for any part of the Commonwealth or its agencies;
- (f) we must not appoint a Subcontractor, consultant or supplier in relation to the Alliance Works where the appointment would breach a sanction imposed by the Code Monitoring Group; and
- (g) we must ensure that all Subcontracts contain requirements functionally equivalent to the requirements of this clause.

7.14 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*.

7.15 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.

7.16 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.

7.17 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.

7.18 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.

7.19 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.

7.20 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.

7.21 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 7.21, 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.

7.22 RTA may direct changes to the Alliance Works

- (a) RTA may direct us (**Direction**), through its authorised representative appointed under clause 7.22(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
 - (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 7.22(d) or upon the ALT determining that, unless a Direction referred to in clause 7.22(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 7.22 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 7.22(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 7.22(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 7.22 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 7.22.
- (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 7.22.
- (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 7.22 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.

7.23 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 7.22(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;
 - (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 7.23 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 7.23 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.

7.24 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.
- (e) For the purposes of this Agreement, the expression "commercial in confidence" will have the interpretation that the term has under the operation of the *Freedom of Information Act 1989* (NSW).

7.25 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.

7.26 Commonwealth OHS accreditation

- (a) Subject to the exclusions specified in the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005, Macmahon must maintain

accreditation under the Australian Government Building and Construction OHS Accreditation Scheme (**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) Macmahon 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.
- (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);

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- (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
- (c) 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.

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- (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.

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- (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), the NOPs may effect such CW Insurance type cover or top up cover as determined by the ALT and the cost of such cover will form part of the Direct Costs and the need for such cover will qualify as a Scope Change; and
 - (iii) if the NOPs effect such CW Insurance type cover under paragraph (ii), the insurance will be deemed to be insurance which was the responsibility of the NOPs to arrange under **Schedule 10** (Insurances).
 - (h) RTA will give the NOPs a copy of or access to the provisions, terms, conditions, exclusions and excesses of the CW Insurance promptly after RTA has obtained those details.
 - (i) RTA will maintain the CW Insurance from the date it is obtained by RTA until 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.

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- (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; and
 - (B) 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.

10.4 Proof of insurance

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

10.5 Notices from or to the insurer

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

10.6 Cross liabilities

- (a) Wherever under this Agreement insurance is effected by the NOPs in more than one name, the policy of insurance must provide that, to the extent that the policy

may cover more than one insured, all insuring agreements and endorsements must operate in the same manner as if there were a separate policy of insurance covering each party comprising the insured and that the insurer agrees not to impute any acts, omissions or nondisclosures before or after the policy was effected by one insured to any other insured.

- (b) Such policy must provide that the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties constituting the insured and that failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured party.

10.7 Insurance claims procedures

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

10.8 Pass through of insurance payouts

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

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

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
- (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 for which the RTA has paid the Alliance for 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:

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- (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 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 Participant 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

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- (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

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

- (a) the 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
- (b) while recoverable under such insurance policy, is not in fact recovered due to the insolvency of the insurer.

15. DOCUMENT MAINTENANCE AND AUDITING

15.1 Maintenance of accounts, records and documentation

- (a) Due to the "open book" nature of this Agreement, we will maintain in Australia for a period of at least seven years after the Completion of the Alliance Works 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.

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- (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.

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.
- (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

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- (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,

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- 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.
 - (g) Each NOP:
 - (i) acknowledges that RTA will disclose information on this Agreement under section 15A(2) of the *Freedom of Information Act 1989* (NSW) (**FOI Act**) and may be required to disclose information about the Project and Participants under the FOI 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 will contain (including percentages and amounts) commercial-in-confidence information, as defined in the FOI 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).
- (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,**
by its duly authorised delegate, in the
presence of:

Signature of delegate

Signature of witness

Name

Name

**SIGNED for MACMAHON
CONTRACTORS PTY LIMITED** under
power of attorney in the presence of:

Signature of attorney

Signature of witness

Name

Name

Date of power of attorney

SIGNED for ARUP PTY LIMITED, by its
duly authorised representative, in the
presence of:

Signature of representative

Signature of witness

Name

Name

Schedule 1

ALLIANCE PARTICIPANTS

PART A RTA

RTA Interface Manager: Greg Nash

PART B NOPs

Macmahon Contractors Pty Ltd

Arup Pty Ltd

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 our 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 C**.

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

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

Alliance Management Plan means the documented plan approved by RTA 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).

Arup means Arup Pty Limited, ABN 18 000 966 165.

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.

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

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 2 July 2011.

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

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

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

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

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

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

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

Design Documentation means all:

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

Direct Cost has the meaning given to that term in section 4 of **Schedule 7** (Commercial Framework).

Direct Cost Multiplier is the multiplier to be applied to the actual salary cost of each assigned IPT member to account for all costs that the Participant will incur for that class of personnel, which must be exactly complementary to the costs that are included in the Fee.

Direction means a direction under clause 7.22.

Estimation Request means a notice from RTA to the ALT, requesting the ALT to make a determination under clause 7.22(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 7.21; or
- (d) any other reasonable cause that the ALT decides.

Fee means the fee calculated in accordance with section 5 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).

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

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

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

GST means the tax payable on 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.

Key Performance Indicators or KPIs means the performance indicators as components of the KRAs which determine Performance Gainshare.

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

Macmahon means Macmahon Contractors Pty Limited, ABN 37 007 611 485.

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;

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- (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.

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

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

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

Outstanding Performance means the levels of outstanding performance in the Alliance Key Performance Indicators agreed by the ALT.

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

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

Performance Pool has the meaning described in section 6 of **Schedule 7** (Commercial Framework).

PPL Insurance means public and products liability insurance.

Principal Arranged Insurances means:

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

Project means the project the subject of this Agreement.

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 Alliance Works (including a concept design);
- (b) a fully detailed proposed target outturn cost estimate in respect of the Alliance Works;
- (c) a draft cash flow schedule for the Alliance Works;

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- (d) the assumed commencement date for, and a construction program in respect of, the Alliance Works; and
 - (e) the Alliance Management Plan.

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 Manager means the person nominated to undertake that role in Part A of Schedule 1.

Schedule Gainshare has the meaning described in **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 means the New South Wales Government and Agencies (including RTA), Clarence Valley Shire Council, police and emergency services, public utility authorities, Grafton Ngerrie 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
- (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) has the meaning described in **Schedule 7** (Commercial Framework).

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;

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- (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;
 - (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

GLENUGIE UPGRADE ALLIANCE PRINCIPLES	
Our values – what we stand for:	
Quality of work	Relationships
Holistic design	Safety & Environment
Humane organisation	Can-do approach
Straight and honourable dealings	Innovations
Social usefulness	Consistency
Positive Community Legacy	
Our principles – how we work:	
Ensuring safety first every day	Sharing knowledge, challenges, risks and rewards
Having effective, consultative leadership	Driving innovation and seeking outstanding results
Making 'best for project' decisions	Properly considering short and long term environmental, safety and operational risks and opportunities
Being motivated, courageous and committed	Embracing stakeholder / community needs
Focusing on actions and outcomes	Enjoyable & satisfied workplace as part of one team
Communication with respect, openness and honesty	

Schedule 4

ALLIANCE OBJECTIVES

The objectives set out below apply to the Alliance Works.

Key result area	Alliance Objective
Safety	No-one is injured during or because of project delivery.
Cost	<p>Target Outturn Cost is less than or equal to the Target Outturn Cost budget for the Alliance Works and that this maximises the length of dual carriageway delivered.</p> <p>The Actual Outturn Cost is less than or equal to the Target Outturn Cost budget.</p>
Program / Schedule	<p>Discrete and visible works are commenced by December 2009 with substantial construction commenced in January 2010.</p> <p>Completion by 2 July 2011.</p>
Road Safety	Provide a safe highway for the length of the Alliance Works.
Operation and Maintenance	Delivery of a high quality, defect free asset that is efficiently and safely maintainable and optimises whole of life costs.
Community	<p>The community and relevant Stakeholders are effectively and proactively engaged and informed during detailed design and.</p> <p>Community issues and complaints are proactively managed in a timely manner throughout the design and construction.</p>
Environment & Social	<p>The Alliance Works comply with all relevant environmental standards, Statutory Requirements and legislation and the Project meets the RTA's Statement of Commitments.</p> <p>Provide a high standard of innovative and proactive environmental management including relationships with regulatory agencies.</p>
Quality	The Alliance Works fully comply with relevant RTA standards and technical criteria.
Design	A safe, innovative and constructible design that integrates all project elements consistent with the Pacific Highway design standards.

Schedule 5

CONTACT DETAILS

Financial Auditor:

Deloitte Touche Tohmatsu

Grosvenor Place
225 George Street
Sydney NSW 2000
Attention: Pamela Robertson-Gregg
Tel: (02) 9322 7630
Fax: (02) 9254 1597
Email: probertsongregg@deloitte.com.au

RTA:

Roads and Traffic Authority

101 Miller Street
North Sydney NSW 2060
Attention: Peter Wellings
Tel: (02) 8558 5750
Fax: (02) 8558 4171
Email: peter_wellings@rta.nsw.gov.au

NOPs:

Macmahon Contractors Pty Ltd

Level 7, Tower B
The Zenith, 821 Pacific Highway
Chatswood NSW 2067
Attention: Joe Hauser
Tel: (02) 9855 4000
Fax: (02) 9855 4099
Email: jhauser@macmahon.com.au

Arup Pty Limited

Level 6
77 Castlereagh Street
Sydney NSW 2000
Attention: Ben Schnitzerling
Tel: (07) 3023 6110
Fax: (07) 3023 6023
Email: ben.schnitzerling@arup.com

Schedule 6

ALLIANCE LEADERSHIP TEAM

Name of Representative	Telephone Number	e-mail	Representative of
<p>Mark Eastwood</p> <p>Senior Project Development Manager, Pacific Highway Office</p> <p>Roads & Traffic Authority of NSW</p>	(02) 6640 1333	mark_eastwood@rta.nsw.gov.au	RTA
<p>(Alternative)</p> <p>Bob Higgins</p> <p>General Manager, Pacific Highway</p> <p>Roads & Traffic Authority of NSW</p>	(02) 6640 1305	bob_higgins@rta.nsw.gov.au	RTA
<p>Joe Hauser</p> <p>NSW State and ACT Manager – Construction</p> <p>Macmahon Contractors Pty Ltd</p>	(02) 9855 4000	jhauser@macmahon.com.au	Macmahon
<p>(Alternative)</p> <p>Jim Koukoutaris</p> <p>Macmahon Contractors Pty Ltd</p>	(02) 9855 4000	jkoukoutaris@macmahon.com.au	Macmahon
<p>Ben Schnitzerling</p> <p>Principal</p> <p>Arup Pty Limited</p>	(07) 3023 6110	ben.schnitzerling@arup.com	Arup
<p>(Alternative)</p> <p>Roger Hayim</p> <p>Arup Pty Limited</p>	(07) 3023 6000	roger.hayim@arup.com	Arup

Schedule 7

COMMERCIAL FRAMEWORK

See attached.



**Pacific Highway Upgrade
Glenugie Upgrade Alliance**

**PROJECT ALLIANCE AGREEMENT
SCHEDULE 7
COMMERCIAL FRAMEWORK**

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Commercial – In – Confidence

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1. PRINCIPLES OF THE COMMERCIAL FRAMEWORK

In creating the Commercial Framework for our Alliance we have agreed that our Gainshare Regime and TOC development must satisfy the following principles:

- (a) the Commercial Framework is clear, concise, robust and defensible;
- (b) complete transparency in all arrangements;
- (c) equitable rewards commensurate with performance;
- (d) gainshare/painshare provides the only performance related payment mechanism;
- (e) the Gainshare Regime is linked to real risks and benefits in identified Key Result Areas (KRAs) that affect the value of the Project to RTA;
- (f) each Non-Owner Participant's (NOP) 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) the only acceptable outcomes are win/win or lose/lose;
- (k) each of the NOPs shall reach the maximum Painshare position at the same amount of cost overrun;
- (l) no one Participant shall derive any profit or unreasonable advantage from the utilisation of their resources or personnel for the work under this Agreement;
- (m) the only way to earn exceptional returns is through Outstanding Performance;
- (n) breakthrough performance targets shall be clear, concise and easy to understand, but not easy to deliver; and

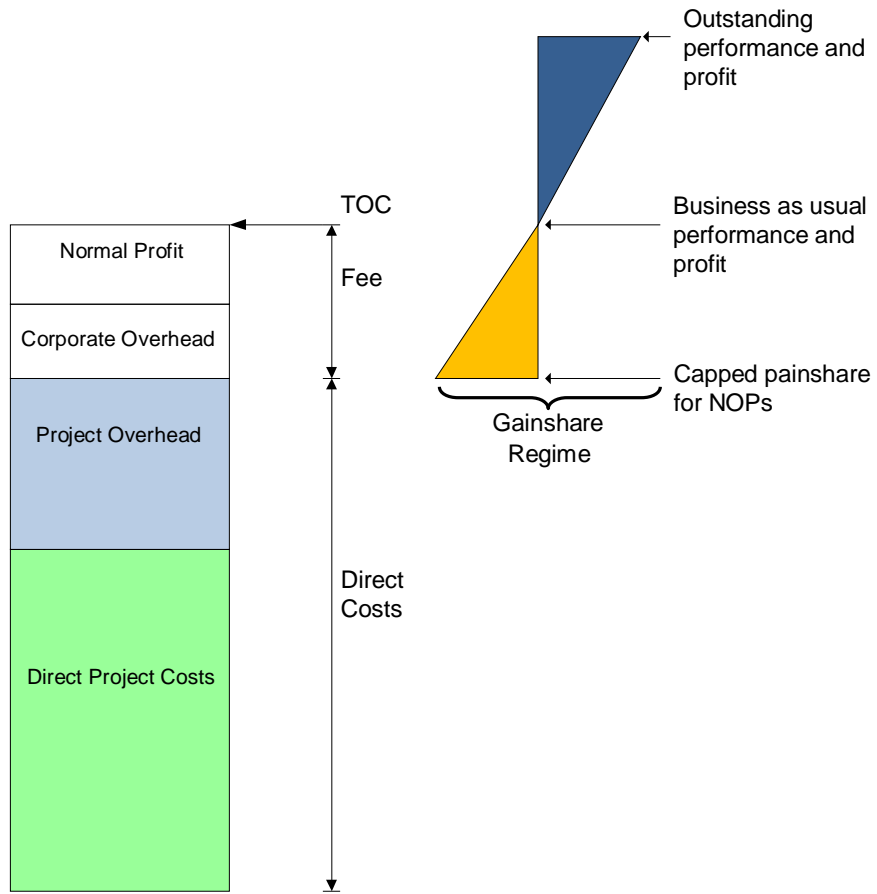
- (o) the Gainshare Regime contemplated by this Proposed Commercial Framework is intended to remunerate and compensate the NOPs in a manner which drives the pursuit of the Alliance Objectives and rewards NOPs for outstanding performance.

2. OVERVIEW OF COMPENSATION TO THE NOPS

Each NOP's entitlement to payment for work under this Agreement is limited to:

- (a) **Direct Costs** – which are intended to cover all direct project costs and project overhead costs incurred by the NOPS, in accordance with the principles and on the basis set out in this Commercial Framework;
- (b) **Fee** – which comprises the allowance for normal corporate overhead and Alliance business-as-usual profit, to be calculated from a fixed percentage on the basis set out in this Commercial Framework; and
- (c) **Gainshare Regime** – which comprises payments of Gainshare by RTA, or payments of Painshare by the NOPS, to reflect the Alliance's actual performance in identified KRAs and the effect of that performance on the value of the Project to RTA on the basis set out in this Commercial Framework.

The relationship between payment entitlements and the TOC is shown in the figure below.



3. DIRECT COSTS

PRINCIPLES OF DIRECT COSTS

- 3.1 Direct Costs will be determined by the ALT on the principles that:
- (a) all specific costs and expenses directly incurred by us in performing the work under this Agreement from 14 August 2009, will be Direct Costs as approved by the Alliance Manager in accordance with the policies established by the AMT and approved by the ALT;
 - (b) none of us will receive any contribution to our corporate overhead costs or expenses or derive any profit or unreasonable advantage from the utilisation of our people, plant, equipment or resources;
 - (c) we cannot recover anything that is not a bona fide specific cost or expense incurred by us 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.
- 3.2 Our Direct Costs shall include without limitation the items described in sections 3.3 to 3.33 inclusive of this Commercial Framework though shall not include:
- (a) any item, cost and/or expense excluded by section 3.34 of this Commercial Framework;
 - (b) 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;
 - (c) 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
 - (d) any contribution to our corporate overhead costs or expenses or any profit or unreasonable advantage from the utilisation of our people, plant, equipment or resources.

PERSONNEL COSTS AND EXPENSES

- 3.3 Personnel costs shall mean the actual cost of staff (including contracted staff and casual employees), employed or contracted by a Participant and dedicated, posted or assigned to our Integrated Project Team, up to and including the Alliance Manager. The costs shall be calculated for all personnel for each Participant as detailed in this Commercial Framework and validated by the Financial Auditor appointed under this Agreement, 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 for wage earning staff 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;
 - (k) termination/redundancy payments to labour/staff employed on the work under this Agreement as approved in writing by the ALT prior to making the payment for such time of the person's employment dedicated to the Alliance; and
 - (l) any other cost incurred in relation to personnel that is not included in the Fee.

3.4 To compensate the NOP's for the personnel costs included in section 3.3 above, personnel costs shall be as follows:

(a) **Macmahon**

- (i) permanent staff - actual salary costs multiplied by the Direct Cost Multiplier for permanent staff as detailed in Annexure 1, for the maximum hours/week and hours per annum as detailed in Annexure 1;
- (ii) casual staff - to be verified by the Financial Auditor as required;
- (iii) contractor staff ("company long term" and "individual long term" contractors) - to be verified by the Financial Auditor as required;
- (iv) wage earning staff – to be determined in accordance with the current Macmahon Civil Works Certified Agreement, subject to validation by the Financial Auditor.

(b) **Arup**

- (i) permanent staff - actual salary costs multiplied by the Direct Cost Multiplier for permanent staff as detailed in Annexure 1, for the maximum hours/week and hours per annum as detailed in Annexure 1;
- (ii) casual staff - actual direct remuneration costs multiplied by the Direct Cost Multiplier for casual staff as detailed in Annexure 1;
- (iii) contractor staff ("company long term" and "individual long term" contractors) - actual remuneration costs multiplied by the Direct Cost Multiplier for contractor staff as detailed in Annexure 1.

3.5 We acknowledge and accept that the Macmahon salary on-cost percentage and multiplier in section 3.4(a)(i) contains a percentage allowance, as detailed in Annexure 1, of actual direct salary costs for contingent bonus entitlements for salaried personnel to be determined by Macmahon in accordance with its remuneration policy.

Macmahon agrees that any part of the contingent bonus entitlements not used for the intended purpose will be payable by Macmahon to RTA as a credit against the Direct Cost.

- 3.6 All actual direct labour and salary costs will be calculated in accordance with the human resources plan approved by the ALT or our respective employment policies and practices and employment contracts as determined by the ALT, subject to the principles set out in sections 3.3 to 3.5 inclusive above and the following:
- (a) Overtime Principles – wage earning employees will be entitled to overtime payments in accordance with the current Macmahon Civil Works Certified Agreement, subject to validation by the Financial Auditor. Salaried employees dedicated to our 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 our 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. Any overtime payments will attract a reduced multiplier for employment related overheads as validated by the Financial Auditor;
 - (b) Bonuses – the Macmahon bonus entitlement for salaried personnel will be dealt with in accordance with section 3.5 of this Commercial Framework. Any Arup bonus entitlement is included in the Direct Cost Multiplier; and
 - (c) Reward and Recognition - the AMT will develop and the ALT will endorse a reward and recognition scheme for the Alliance. The costs incurred by the Participants in accordance with this scheme will not be a Direct Cost and will be a part of the Fee.

MOBILISATION AND DE-MOBILISATION

- 3.7 As approved by the ALT, the cost of mobilising and de-mobilising any employee of a NOP to the Site, to be reimbursed in accordance with section 3.25 of this Commercial Framework and the mobilisation policy determined by the ALT.

MATERIALS, SMALL PLANT AND EQUIPMENT

- 3.8 As approved by the Alliance Manager, equipment, materials, goods, consumables, small plant and tools purchased by us specifically for the work under this Agreement.
- 3.9 As approved by the ALT, any Alliance specific hardware and software costs purchased by us specifically for the work under this Agreement.
- 3.10 All cash, trade and/or industry discounts and rebates obtained by one of us shall be credited against our Direct Costs including any annual or company discounts from suppliers, bulk discounts and company/inter company discounts and/or rebates.

CONTRACTED SERVICES

- 3.11 All contracted third party external services suppliers, equipment, utilities, professional consultant services or contract and technical services directly engaged by one of us from third party sources to perform the work under this Agreement.
- 3.12 All cash, trade and/or industry discounts and rebates obtained by one of us shall be credited against our Direct Costs including any annual or company discounts from subcontractors, suppliers, vendors, bulk discounts and company/inter-company discounts and/or rebates.

CONSTRUCTION PLANT AND TEMPORARY WORKS

- 3.13 The actual cost to a Participant (including financing costs + interest + actual third party fees and 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.
- 3.14 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, buy back arrangement being offered by one of the Alliance Participants and/or alternative asset disposal arrangement following Completion of the Alliance Works.

SITE AND FACILITIES

- 3.15 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.
- 3.16 All cash, trade and/or industry discounts and rebates obtained by one of us shall be credited against our Direct Costs including any annual or company discounts from subcontractors, suppliers, vendors, bulk discounts and company/ inter-company discounts and/or rebates.

SURPLUS PLANT, MATERIALS AND EQUIPMENT

- 3.17 All plant, materials, equipment and any other item purchased for the work under this Agreement which are "surplus" to our 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 our Direct Costs.

STATUTORY REQUIREMENTS

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

INSURANCES

- 3.19 Premiums for insurance policies agreed by the ALT.
- 3.20 The costs of the administration, preparation of claims and any deductibles/excesses payable under any policy of insurance forming part of the insurance regime described in Schedule 10 of this Agreement.
- 3.21 Without limiting clause 10.8 or clause 14.5 of this Agreement, 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 described in Schedule 10 of this Agreement (which does not include any professional indemnity policy held by an NOP or the RTA not directly in connection with the Project) will be credited against our Direct Costs to the extent that the costs, loss, expense or damage arising from the act, event or circumstance were paid as a Direct Cost under this Agreement.

LEGAL AND LITIGATION EXPENSES

- 3.22 Subject to section 3.23 of this Commercial Framework:

- (a) all sums paid or received (in which case they are credited to the Direct Costs) by way of judgment, award, compromise or otherwise; and
- (b) 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 including any sums paid or payable:
 - (i) after Final Completion; or
 - (ii) after the date this Agreement terminates in accordance with clause 11.1;

excluding the legal or litigation costs incurred by a Defaulting Participant at any time.

- 3.23 Any legal or litigation expense incurred by the Alliance in accordance with section 3.22 of this Commercial Framework in accordance with the:
- (a) procedures and protocols agreed by the ALT; and
 - (b) prior written approval of the ALT.

TRANSPORT

- 3.24 Transport of equipment and materials required for the Project. The NOPs shall give all due attention to optimisation of transportation of materials so as to minimise transportation costs. Where appropriate, trip rates or hourly rates will be agreed by the ALT for transport of equipment and materials.

TRAVEL

- 3.25 All Alliance-specific travel expenses including transfers, accommodation, meals and/or per diem expenses incurred in accordance with our respective travel policies including travel expense incurred by an ALT representative attending ALT meetings.

TRAINING AND INDUCTIONS

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

SAFETY

3.27 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.

RELATED ENTITY TRANSACTION

3.28 The cost of any Related Entity Transaction, other than supply of equipment or labour by a plant or labour hire entity from within the Alliance Participant or otherwise offered as a resource of the Participant which will be reimbursed in accordance with sections 3.3 to 3.17, 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.

ALLOWANCES AS DIRECT COSTS

3.29 Nil

OTHER DIRECT COSTS

- 3.30 Personnel recruitment costs and any other costs or expenses that the ALT determines are Direct Costs.
- 3.31 Actual consultant costs, disbursements and out of pocket expenses incurred by Arup multiplied by the Direct Cost Multiplier as detailed in Annexure 1.

CPRS

- 3.32 If a carbon pollution 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.

FUEL TAX CREDITS

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

DIRECT COSTS NOT INCLUDED

- 3.34 The following items, costs and/or expenses are not Direct Costs:
 - (a) any cost incurred by a NOP prior to 14 August 2009;
 - (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) labour and/or salary costs of our representatives to the ALT performing ALT duties or determinations and attending ALT meetings;
 - (d) any cost that is included in the Fee;
 - (e) 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 of the NOP;

- (f) any fine, penalty or sanction imposed by a court or other statutory authority upon an Alliance Participant;
- (g) any legal expenses incurred as a result of defending or appealing any action, fine, penalty or sanction sought or imposed under any Statutory Requirements by any statutory authority;
- (h) any taxes, duties, excises, levies or similar charges excluded by operation of this Agreement;
- (i) any other cost, expense, taxes, duties, excise, levies or similar charges that the ALT determines are not a Direct Cost;
- (j) any Direct Cost already claimed under a different head of Direct Cost;
- (k) any and all costs, losses, expenses or damages suffered by an indemnifier under an indemnity; and
- (l) any costs associated with any reward and recognition scheme implemented in accordance with section 3.6(c).

4. FEE

- 4.1 The Fee payable to the NOPs is intended to deliver to the NOPs the only contribution under this Agreement, other than Gainshare, to the costs and expense of its corporate overhead structure and its corporate profit expectations.

NORMAL CORPORATE OVERHEAD AND ALLIANCE BUSINESS AS USUAL PROFIT

- 4.2 The Fee represents normal corporate overhead and Alliance business as usual profit.
- 4.3 The corporate overheads that are included in the Fee include those costs identified as being included in the Fee in Annexure 2.
- 4.4 The NOPs accept that a discount on historical "business as usual" profit is expected for Alliance business as usual performance under the Agreement on the basis of the following Alliance characteristics:

Alliance Characteristic	Analysis
All Direct Cost Reimbursed	<ul style="list-style-type: none"> • No risk of "direct loss" • NOPs liability to RTA is capped • RTA carries actual cost of the Project and of performance
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 risk of performance
Integrated Team	<ul style="list-style-type: none"> • Greater management focus on performance generated by the combination of the 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

Alliance Characteristic	Analysis
	<ul style="list-style-type: none"> • Actual reward commensurate with actual performance • All performance reward is in the Gainshare Regime

- 4.5 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.
- 4.6 The Fees payable by the RTA to the NOPs, in accordance with this Agreement, are:
- (a) For Arup – a Fee calculated by applying the fixed Fee Percentage set out in Annexure 1 against the actual Direct Costs incurred by Arup associated with Arup’s personnel costs that are identified in section 3.4(b) of this Commercial Framework.
- (b) For Macmahon – a Fee comprising a fixed amount determined at the time of agreeing the TOC that is calculated by applying the applicable fixed Fee Percentage, as set out in Annexure 1 to this Commercial Framework, against the estimated Direct Costs (excluding RTA and Arup’s estimated Direct Costs) forming the basis of the Direct Costs payable to Macmahon.

5. GAINSHARE REGIME

- 5.1 Our Gainshare Regime is intended to reward us for Outstanding Performance in the KRAs. The Gainshare Regime comprises both payments of Gainshare by RTA to the NOPs and the payment of Painshare by the NOPs to RTA, as the case may be, as determined by the ALT in accordance with this Agreement.

PERFORMANCE SPECTRUM

- 5.2 The structure and operation of our Gainshare Regime depends upon our commitment to a performance spectrum incorporating Outstanding Performance, MCOS and Failure. 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 their industry and the lowest levels of acceptable performance nominated by RTA; and
 - (c) **Failure** – unacceptable levels of performance that fail to achieve the performance standards nominated by RTA.

ELEMENTS OF THE GAINSHARE REGIME

- 5.3 The Gainshare Regime under this Agreement incorporates:
- (a) TOC Gainshare;
 - (b) Schedule Gainshare;
 - (c) Performance Gainshare; and
 - (d) Gainshare Modifiers.

as detailed in the following sections 5.4 to 5.14.

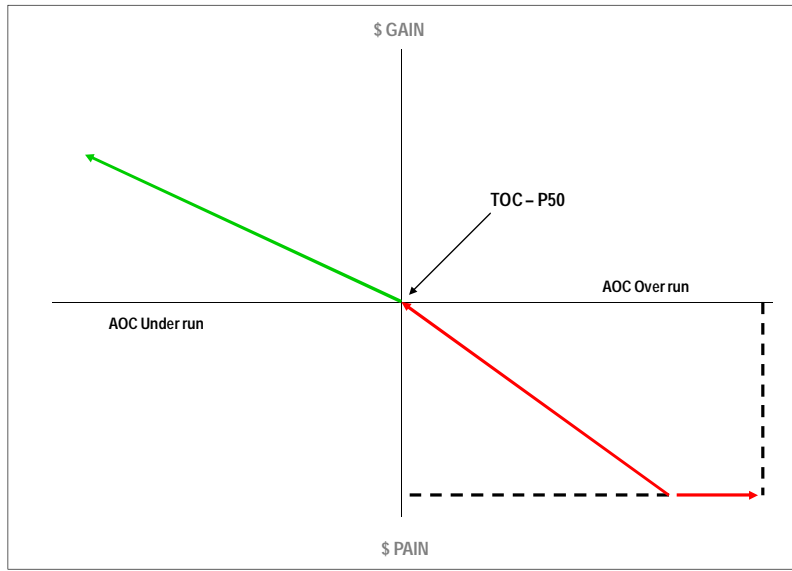
TOC GAINSHARE

- 5.4 To encourage us to deliver the Alliance Works to Final Completion for an AOC less than the TOC we have agreed that:
- (a) where AOC is less than TOC, cost under-runs against the TOC shall be shared on the basis of the TOC Gainshare model set out in Annexure 1; and

- (b) where AOC is greater than TOC, cost over-runs against the TOC shall be shared on the basis of the TOC Gainshare model set out in Annexure 1.

The Framework TOC Gainshare / Painshare model is shown in figure 5.4 below.

TOC Gainshare / Painshare Model (Fig 5.4)



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

$$\textit{Under-Run or Over-Run against the TOC} = \textit{TOC} - \textit{AOC}$$

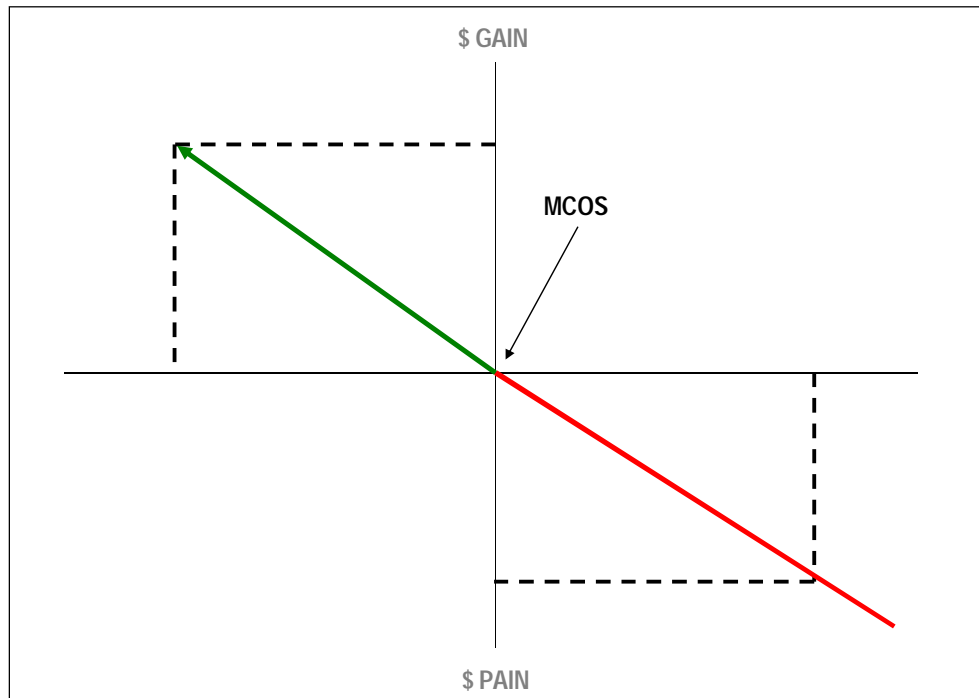
SCHEDULE GAINSHARE

- 5.6 Meeting or improving upon the Date for Completion is of fundamental importance to RTA in entering into this Alliance. To reflect this, RTA has agreed to establish a dedicated Schedule Pool as an incentive to the NOPs to achieve Completion prior to the Date for Completion.
- 5.7 The Participants have agreed that the Schedule Pool will comprise the amount stated in Annexure 1. The NOPs' entitlements to Schedule Gainshare will be as set out in the Schedule Gainshare / Painshare Model in Annexure 1, to reflect the increased value to RTA of early Completion. 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 Participants failing to achieve Completion by the Date for Completion, in accordance with the Schedule Gainshare / Painshare Model. The dates indicated in the Schedule Gainshare / Painshare

Model are subject to review, amendment and agreement with the RTA prior to approval of the TOC by RTA.

- 5.8 The Framework Schedule Gainshare/Painshare Model is shown in figure 5.8 below.

Schedule Gainshare / Painshare Model (Fig 5.8)



PERFORMANCE GAINSHARE

- 5.9 Achieving Outstanding Performance in the specific KRAs is of fundamental importance to RTA in entering into this Alliance. To reflect this, RTA has agreed to establish a dedicated Performance Pool as set out in Annexure 1, as an incentive to the NOPs to achieve Outstanding Performance in these KRAs.
- 5.10 The Participants have agreed that the Performance Pool will comprise the amount stated in Annexure 1. The NOPs' entitlement to Performance Gainshare, or obligation to pay Performance Painshare, will be as set out in the Performance Gainshare/ Painshare Model in Annexure 1, to reflect the value to RTA of Outstanding Performance in the KRAs. The Participants have also agreed that they will share with RTA the diminution in value of the Project to RTA as a result of the Participants failing to achieve MCOS in the KRAs.

Measurement of the performance levels in the KRAs and associated KPIs for the determination of the Performance Gainshare will be based on the

measures identified in Table 5.10 below which will be further developed and agreed with RTA prior to approval of the TOC by RTA.

Table 5.10: Performance Gainshare KRAs and KPIs

Quality KRA					
KPI	Weight	Measure	Fail	MCOS	Outstanding
Pavement					
Ride Quality Measurement before intervention	TBD	#1Roughness Counts			
Uniformity of Concrete Compaction	TBD	#2CV of Relative Density			
Concrete Paving Measurement before intervention	TBD	#1Concrete base slabs with out of specification cracking			
Asphalt Compaction	TBD	#2TBD			
Uniformity of Concrete Strength Measure CV of cylinder UCS at age 28 ± 1 days Need to define rules for rounding, lot size etc	TBD	#1CV of 28 day strengths			
Earthworks					
Uniformity of Pavement Support	TBD	#2CV of Benkleman Beam			
Other					
Testing Availability	TBD	#3Tests available when required			
Workmanship	TBD	#2TBD			
Design Quality	TBD	#2TBD			
Final Presentation (signposting, linemarking, landscaping etc)	TBD	#2TBD Audit against checklist of requirements developed by Alliance			

Notes:

Pavement KPIs will be determined following a decision on the type of pavement to be used.

#1 - values to be reviewed by ALT based on research of past projects

#2 - value to be determined by ALT based on analysis of available data

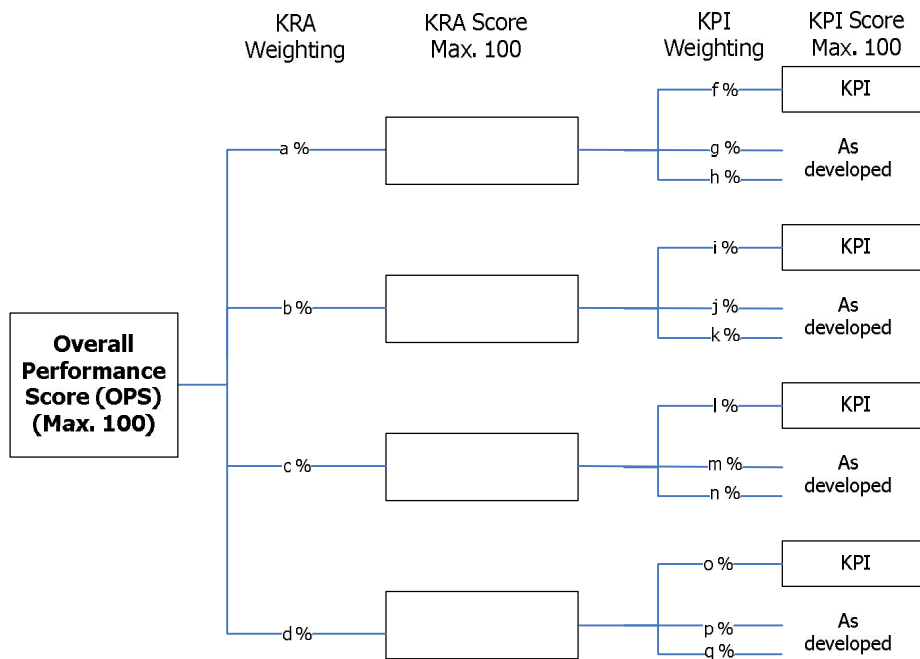
#3 - availability to be defined for each test. Availability is generally:

- (i) Where a test is required to verify conformance prior to another process (i.e. compaction/CBR test results required before placing next layer); or
- (ii) Time required to perform test plus one day.

5.11 For each identified KRA the Participants:

- (a) have agreed or will further develop the KPIs, their weightings and benchmark levels of performance, specified in Table 5.10;
- (b) have confirmed the performance spectrum;
- (c) will develop the detailed methodologies for measuring performance; and
- (d) will prepare final measurement mechanisms,

consistent with the information in Table 5.10 and prior to RTA approving the TOC, so that on Completion of the Alliance Works, an aggregated weighted overall performance score (OPS) for performance in the range of -100 (Fail), 0 (MCOS) to 100 (Outstanding) can be determined as illustrated below.

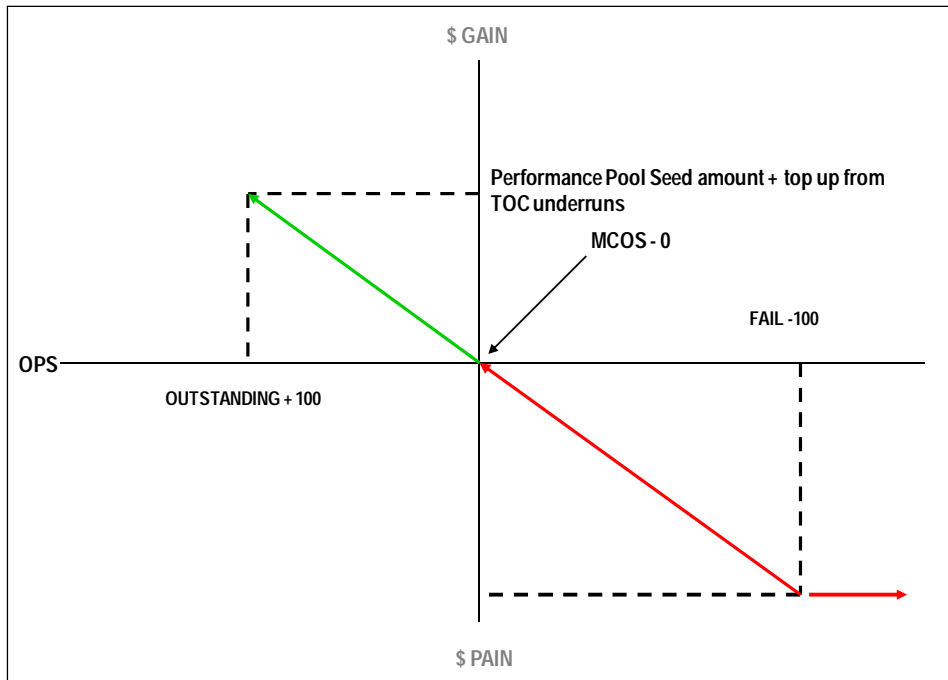


The NOPs' entitlement to Performance Gainshare, or obligation to pay Performance Painshare shall be determined by applying the aggregated OPS for all identified KRAs to the curves in the Performance Gainshare/Painshare Model in Annexure 1, where:

- the Performance Gainshare for any OPS between 0 and 100 increases linearly to a maximum Performance Gainshare for an OPS of 100 of the Performance Pool set out in Annexure 1;
- there is no Performance Gainshare for an OPS of 0; and
- the Performance Painshare for any OPS between 0 and -100 increases linearly to a maximum of the amount set out in Annexure 1.

The Framework Performance Gainshare/Painshare Model is shown in the figure 5.11 below.

Performance Gainshare / Painshare Model (Fig 5.11)



GAINSHARE MODIFIERS

- 5.12 The Participants have agreed that their entitlements to Gainshare, if any, under this Agreement will be modified by our performance against safety and environment requirements on the basis that:

$$VFM = MCOS \text{ Performance in all KRA at a value assured TOC}$$

- 5.13 The ALT agrees that the principles to be satisfied by these Gainshare Modifiers are that:
- (a) they must drive positive behaviours to the approach of safety and environment; and
 - (b) they must reflect the impact of both positive and negative behaviours and outcomes to the approach of safety and the environment on the value of the Project to RTA.
- 5.14 The Participants have developed a Gainshare Modifier framework incorporating minor and major events, as detailed further below.

Minor Events

- (a) Minor events are a series of indicative "lead indicator" events of performance and/or behaviours and "lag indicators" events of

outcomes in safety, environment and traffic flow that fall short of or exceed the Participants' expectations of MCOS, examples of which are set out in the tables below.

- (b) Each event has a corresponding point value to reflect its relative merit against other indicative events and the acknowledged value to the Participants.
- (c) These events will be monitored by the Alliance Manager to recognise and reward positive behaviour and take ownership of the safety and environment KRAs commitments.
- (d) On the recommendation of the Alliance Manager, the ALT will recognise and record the occurrence of any modifier events listed in the tables below, or similar or equivalent events and determine the modifier points that have been accumulated from time to time.
- (e) The net effect of positive or negative events will be determined by the ALT at Final Completion on the recommendation of the Alliance Manager.
- (f) The maximum point entitlement is either positive 40 points or negative 40 points.
- (g) A "point" has a value equal to 0.25% of Gainshare entitlement.
- (h) 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.
- (i) Where the net effect of the modifiers at Final Completion as determined by the ALT is:
 - (i) a negative percentage, the NOPs entitlement to all individual Gainshare elements shall be diminished as follows:

adjusted Gainshare entitlement = Gainshare entitlement in accordance with section 5 of this Commercial Framework x (100% - the negative percentage);

or

- (ii) a positive percentage, the NOPs Performance Gainshare OPS shall be increased as follows:

adjusted OPS = OPS (determined in accordance with section 5.11 of this Commercial Framework) x (100% + the positive percentage)

provided that in no circumstances will the OPS exceed 100.

- (j) The ALT, at the time of recommending the TOC to RTA, shall validate the example modifier events and modifier credits and the relevant percentage modification set out in the tables below.

Safety Minor Modifiers			
-ve Points	Negative outcomes	Positive outcomes	+ve Points
2	Failure to rectify a Corrective Action Report (CAR) within 3 days		
2	CAR relating to a repeat occurrence	No Safety CARs from an external audit per quarter	2
5	WorkCover Improvement Notices	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
10	LTI > 30 days	Safety training undertaken bi-monthly	2
10	WorkCover Prohibition Notice or on-the -spot fine	Safety culture improved through innovations	2
10	Deliberate or reckless disregard of safety systems	"x" hazard inspections per month (to be approved by the ALT on the recommendation of each NOP)	2
Environmental Minor Modifiers			
-ve points	Negative outcomes	Positive outcomes	+ve points

Safety Minor Modifiers			
-ve Points	Negative outcomes	Positive outcomes	+ve Points
		Induction/training of staff and sub contractors re environmental and Aboriginal heritage issues	TBD
2 per issue	Minuted negative criticism from regulatory agencies (eg. Warning letter, negative criticism from Environmental Peer Review Group (EPRG))	Minuted positive feedback from regulatory agencies (eg. Feedback from EPRGs)	2 per issue
5 per issue	Does not meet project approval and specified conditions (eg. issued late, non compliance)	Meets project approval and RTA Environmental Services conditions from regulatory agencies (eg. reports issued on time, compliance)	2 per issue
3 by example (repeats or very serious incidents as 5 points)	Poor environmental implementation outcomes per example (eg. Erosion Sediment Control (ESC) and threatened species incidents, Contractors Environmental Management Plan (CEMP))	Good environmental design and implementation outcomes, per example	2 by example
TBD	Incident requiring self reporting to regulatory agency	Timely internal reporting of all incidents	TBD
10	Issue of penalty notice by a regulatory agency (eg. PIN by DEC)		

(Note: Amendments of existing positive & negative minor safety and environmental events and credits may be made as agreed by the AMT, recommended by the AM and approved by the ALT.)

Major Events

- (a) In addition to the minor events, the Participants have agreed that in respect of major safety and environmental events there will be an irreversible modification of each element of the NOP's Gainshare entitlements.

- (b) If the ALT determines that an incident representative of the indicative major events 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 the table below.
- (c) The Participants have agreed that the diminutions shall be irreversible. They will also be cumulative for each separate event, but only the greatest applicable diminution will apply for any one event. All elements of NOP's Gainshare entitlements will be at risk under these Gainshare Modifiers.

Safety Major Modifiers	Number of Events			
	1	2	3	4
Prosecution	3%	7%	15%	25%
Injury resulting in permanent incapacity	3%	7%	15%	25%
Fatal event caused by Alliance	25%	50%	100%	

Environment Major Modifiers	Number of Events		
	1	2	3
Prosecution by regulatory agency (eg TIER 2 under POEO Act)	10%	25%	50%

(Note: The impact of the major Gainshare Modifiers cannot and are not intended to reflect the full value of any listed event or incident. Rather, significant percentages have been included to indicate that each Participant regards these events and incidents with the highest level of concern.)

NOPs SPLIT OF GAINSHARE/PAINSHARE

- 5.15 The NOPs have agreed to a split of any Gainshare payable to them, or Painshare payable by them, under this Agreement on the following basis:
- (a) Gainshare – Macmahon 80% and Arup 20%
 - (b) Painshare - in the proportion that an individual NOP's 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.

- 5.16 The Participants have agreed that these proportions shall be determined at the time of the RTA agreeing the TOC based on the Fee or estimated Fee for each NOP at that time.

NOPs CAP ON PAINSHARE

- 5.17 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 1;

in accordance with the Gainshare Regime set out in this Commercial Framework.

- 5.18 Once a NOP's cap on liability to pay Painshare to RTA has been reached, RTA's only obligation to pay, and the NOP's 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.

ENTITLEMENT TO GAINSHARE

- 5.19 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.
- 5.20 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.

- 5.21 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.
- 5.22 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.
- 5.23 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(i) of this Agreement.

TREND ANALYSIS

- 5.24 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.
- 5.25 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.

6. DEVELOPMENT OF THE TOC

- 6.1 We have agreed to monitor the development of the TOC to ensure RTA achieves value for money.

- 6.2 Macmahon and the RTA have agreed that the Project Overhead component of the TOC, expressed as a percentage of the Total Project Costs, is expected to fall below the agreed benchmark detailed in Annexure 3 to this Commercial Framework. Percentages greater than this benchmark will only be accepted by the RTA for circumstances that arise that could not have been reasonably anticipated at the date of this agreement.
- 6.3 Macmahon and Arup have agreed that Direct Cost components in the development of the TOC will be allocated to Project Overhead or Project Direct Costs as detailed in Annexure 3 to this Commercial Framework.
- 6.4 The NOPs and the RTA have agreed that the salary and oncost rates for nominated personnel detailed in Annexure 3 to this Commercial Framework are expected not to exceed the agreed benchmark rates detailed in Annexure 3 to this Commercial Framework. Rates higher than those detailed in Annexure 3 to this Commercial Framework will only be accepted by the RTA for circumstances that arise that can be reasonably explained.

7. DEFINED TERMS IN THIS COMMERCIAL FRAMEWORK

The following terms used in this Commercial Framework have the meanings set out below. Other capitalised terms that are used in this Commercial Framework but are not defined below have the meaning given in Schedule 2 of this Agreement:

- 7.1 **Actual Outturn Cost (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.
- 7.2 **Direct Cost** has the meaning described in section 4 this Commercial Framework.
- 7.3 **Direct Cost Multiplier** means the multiplier to be applied to certain Direct Costs for a particular NOP as set out in Annexure 1 to this Commercial Framework.
- 7.4 **Establishment Audit** means the audit conducted by the Financial Auditor of the NOPs during the selection process for the Project.
- 7.5 **Failure** means the level of performance in a KRA described in section 5.2(c) of this Commercial Framework (in general terms) and the table in section 5.10 of this Commercial Framework (specifically).
- 7.6 **Fee** means the fee calculated in accordance with this Commercial Framework.
- 7.7 **Fee Percentages** means the fee percentages referred to in section 4.6 of this Commercial Framework, and listed in Annexure 1.
- 7.8 **Gainshare** means the payments made by RTA to the NOPs calculated in accordance with this Commercial Framework.
- 7.9 **Gainshare Modifiers** means the modifiers of the NOPs entitlement to Gainshare described in section 5 of this Commercial Framework.
- 7.10 **Gainshare Regime** is the regime of risk and reward payments paid by the RTA or NOPs, as the case may be, as calculated in accordance with Commercial Framework.
- 7.11 **Key Performance Indicators (KPIs)** means the performance indicators to be developed by the AMT and approved by the ALT.
- 7.12 **Key Result Area (KRA)** means the key result areas listed in table 5.10, against which our performance will be measured for the purposes of this Agreement.

- 7.13 **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(b) of this Commercial Framework (in general terms) and the table in section 5.10 of this Commercial Framework (specifically).
- 7.14 **OPS** means overall performance score.
- 7.15 **Outstanding Performance** means the level of outstanding performance in a KRA described in section 5.2(a) of this Commercial Framework (in general terms) and the table in section 5.10 of this Commercial Framework (specifically).
- 7.16 **Painshare** means the payments made by the NOPs to RTA calculated in accordance with this Commercial Framework.
- 7.17 **Performance Gainshare** means the amount the RTA will pay NOPs for outstanding performance against the KRAs as determined by the ALT under this Agreement.
- 7.18 **Performance Gainshare/Painshare Model** is the performance gainshare/painshare model set out in Annexure 1 of this Commercial Framework.
- 7.19 **Performance Painshare** the amount the NOPs are required to pay RTA on account of poor performance in the KRAs.
- 7.20 **Performance Pool** has the meaning described in this Commercial Framework.
- 7.21 **Project Overhead** has the meaning described in this Commercial Overhead.
- 7.22 **Related Entity Transaction** means any transaction between a Participant and a "related entity" (as defined in the Corporations Act) of that Participant.
- 7.23 **Schedule Gainshare** has the meanings described in this Commercial Framework.
- 7.24 **Schedule Gainshare/Painshare Model** is the schedule gainshare/painshare model set out in Annexure 1 of this Commercial Framework.
- 7.25 **Schedule Pool** has the meaning described in this Commercial Framework.
- 7.26 **Target Outturn Cost (TOC)** means the out-turn estimate determined by the AMT, endorsed by the ALT and approved by the RTA. It is the cost

for a high performing team to achieve the Minimum Conditions of Satisfaction and Final Completion including all Direct Costs and Fee and necessary contingencies required to perform the work under this Agreement. The RTA may choose to have a single TOC, or multiple TOCs to cover the whole of the Works.

7.27 **TOC Gainshare** has the meaning described in this Commercial Framework.

Schedule 8

FUNCTIONS OF ALT, AMT AND THE ALLIANCE MANAGER

Alliance Leadership Team – Role:
<ul style="list-style-type: none"> • Support and mentor the Alliance Manager
<ul style="list-style-type: none"> • Review management plans to ensure that outstanding performance occurs in accordance with the Alliance Objectives and Alliance Principles
<ul style="list-style-type: none"> • Appoint an ALT member to champion each of the Objectives and Principles
<ul style="list-style-type: none"> • Participate in all Alliance workshops as a peer • Be visible
<ul style="list-style-type: none"> • Create and articulate the vision
<ul style="list-style-type: none"> • Effective and efficient decision making
<ul style="list-style-type: none"> • Deliver a recommended option in a timely fashion
<ul style="list-style-type: none"> • Project success
<ul style="list-style-type: none"> • Give philosophical and strategic direction for the Participants in carrying out the Alliance Works
<ul style="list-style-type: none"> • Acknowledge success inside and outside the Alliance
<ul style="list-style-type: none"> • Ensure risks and opportunities are identified and managed continuously throughout the term of the Alliance
<ul style="list-style-type: none"> • Provide leadership and set an example of the Alliance Objectives and Alliance Principles in action at a senior level
<ul style="list-style-type: none"> • Promote safety
<ul style="list-style-type: none"> • Live the purpose
<ul style="list-style-type: none"> • Effective consideration of community needs
<ul style="list-style-type: none"> • Effective consideration of environmental values

Alliance Leadership Team - Functions
<ul style="list-style-type: none"> • To use best endeavours to meet the Alliance's obligations under this Agreement.
<ul style="list-style-type: none"> • Co-ordinate and monitor the obligations of the Participants to ensure that: <ul style="list-style-type: none"> ○ the terms of this Agreement are complied with ○ the Alliance Works are carried out in accordance with this Agreement, and ○ the Participants, the Alliance Manager, the AMT and the Integrated Project Team adhere to the objectives of this Agreement, the Alliance Objectives and Alliance

Principles
<ul style="list-style-type: none"> • Ensure implementation of effective and efficient systems and controls
<ul style="list-style-type: none"> • Monitor the performance of the Alliance Manager, AMT and the Integrated Project Team and implement appropriate measures (including corrective actions based on the Alliance Objectives and Alliance Principles) to correct undesirable trends
<ul style="list-style-type: none"> • Review and, if appropriate, approve proposed performance targets (both cost and non-cost) and management plans for the Project
<ul style="list-style-type: none"> • Authorise the appointment of an Alliance Manager with clear objectives, responsibilities and delegated authority to lead the AMT and the Integrated Project Team
<ul style="list-style-type: none"> • Authorise the appointment of the AMT, after appropriate consultation with the Participants
<ul style="list-style-type: none"> • Set, review and revise limits of delegated authority, as appropriate
<ul style="list-style-type: none"> • Monitor the health and Project performance of the Alliance
<ul style="list-style-type: none"> • Review and, if appropriate, approve the Project program
<ul style="list-style-type: none"> • Approve the option selection process
<ul style="list-style-type: none"> • Review and approve options from the selection process
<ul style="list-style-type: none"> • Ensure that management plans are developed and approved
<ul style="list-style-type: none"> • Initiate and/or approve the commitment of resources to carry out the Alliance Works and provide corporate support where necessary
<ul style="list-style-type: none"> • Report progress and performance of the Alliance Works to senior management of

Alliance Management Team – Role:
<ul style="list-style-type: none"> • Deliver on personal commitments
<ul style="list-style-type: none"> • Manage and distribute Project information
<ul style="list-style-type: none"> • Adhere to structured processes and agendas
<ul style="list-style-type: none"> • Manage competing interests and disciplines
<ul style="list-style-type: none"> • Cut through red tape
<ul style="list-style-type: none"> • Support the Alliance Manager
<ul style="list-style-type: none"> • Deliver the Project safely
<ul style="list-style-type: none"> • Better ourselves/be open to all ideas and possibilities
<ul style="list-style-type: none"> • Deliver the maximum length of Project: <ul style="list-style-type: none"> ○ to the highest quality ○ faster ○ with outstanding results ○ with best results for environment, road user and the community
<ul style="list-style-type: none"> • Meet information requirements of external stakeholders
<ul style="list-style-type: none"> • Encourage and embrace active participation of the ALT on key functions

• Bring new ideas to the Alliance
• Positively represent the Alliance
• Strive for consensus, but accept it may not always be reached
• Promote safety across all facets of the project
• Work with the community
• Ensure that the Project is enjoyable
• Leadership of the Integrated Project Team
• Set recognition system
• Resource the Project
• Provide commitment to continuous improvement
• Tutor, lead and drive alliance principles and benefits to all players in the Project
• Integrate disciplines
• Drive enthusiasm
• Ensure options development, assessment and start-up is achieved at the earliest time

Alliance Management Team - Functions
• Implement directions, decisions and recommendations by the ALT
• Implement the management and operational processes and systems
• Identify and manage risk and opportunity
• Recommend the option selection process to the ALT
• Develop and deliver the Project Proposal
• Deliver the project safely
• Ensure value for money outcomes
• Manage the Integrated Project Team in terms of: <ul style="list-style-type: none"> ○ roles ○ responsibilities, and ○ time requirements
• Provide reports to the ALT
• Ensure that short and long term environmental, road safety and operational risks and opportunities are managed

Alliance Manager - Role
• Facilitate and encourage outstanding continuous improvement
• Encourage consensus within the AMT, but make decisions if consensus is not reached
• Provide a framework for turning the energy and drive of individuals into reality.
• Drive the approval process
• Lead by example, developing culture consistent with the Alliance Principles

•	Ensure that the AMT and Integrated Project Team maintains focus in all stages of the Project
•	Be available, visible and approachable
•	Drive the team building/environment synergy
•	Drive the program
•	Liaison with the RTA Interface Manager
•	Interface with external stakeholders
•	Deliver the Project safely
•	Deliver the Project in accordance with the Alliance Objectives and Alliance Principles
•	Have core responsibility for the Alliance Objectives and Alliance Principles
•	Promote alignment
•	Ensure that processes are followed
•	Accountability for Project systems and implementation

Alliance Manager - Functions	
•	Recommend the members of the AMT for appointment by the ALT
•	Act as team leader, providing leadership to the Integrated Project Team and setting an example of the Alliance Objectives and Alliance Principles in action
•	Act as a communication conduit to/from the ALT and to/from the AMT/Integrated Project Team
•	Provide early and accurate written and verbal reports on time and budget to the ALT, at the times and in the manner required by the ALT
•	Undertake any payment audits or other payment processing functions required of the Alliance Manager under this Agreement
•	Ensure all AMT members have clearly defined roles and responsibilities
•	Ensure value for money outcomes
•	Represent AMT issues at ALT level and make requests of the ALT in relation to those issues
•	Manage the program
•	Manage the Project development approvals
•	Be responsible for occupational, health and safety issues and ensure that the AMT owns its responsibilities in that regard
•	Day-to-day management of the resources employed or used in carrying out the Alliance works to achieve the objectives set down by the ALT
•	Manage the Alliance Works
•	Implement the directions and decisions of the ALT
•	Other duties as directed from time to time by the ALT

Schedule 9

ALLIANCE BRIEF

The following draft Alliance Brief has been provided as a framework for inclusion within the PAA to assist in the development of documents to be submitted as part of the Project Proposal.

It is the responsibility of the Alliance Team to develop and detail the technical requirements contained within the Alliance Brief submission and its appendices, and obtain endorsement by the ALT.

**Highway No. 10
Pacific Highway
Clarence Valley Council**

Pacific Highway Upgrade

GLENUGIE UPGRADE

Alliance Brief

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1 INTRODUCTION

1.1 Project Objectives

- (a) RTA's Pacific Highway upgrade objectives are to:
 - § significantly reduce road accidents and injuries;
 - § reduce travel times;
 - § reduce freight transport costs;
 - § develop a route that involves the community and considers their interests;
 - § provide a route that supports economic development;
 - § manage the upgrading of the route in accordance with Ecologically Sustainable Development (ESD) principles; and
 - § provide the best value for money.
- (b) Specific project objectives are detailed in the Environmental Documents.
- (c) Additional objectives are to:
 - (i) satisfy the technical and procedural requirements of RTA with respect to investigation, design, construction and maintenance of the Upgrade;
 - (ii) utilise high quality urban design to ensure the final form, line, colour and texture of the Alliance Works is compatible with existing landscape;
 - (iii) provide all connections, modifications and improvements necessary to link the Upgrade to the existing traffic network;
 - (iv) make temporary arrangements during construction to minimise disruption to local and through traffic and to maintain access to affected properties and land;
 - (v) ensure that the Alliance Works are handed over to RTA in the specified condition at the Date of Completion;
 - (vi) consider and accommodate the future design, construction and maintenance, by others, of future works as detailed in section 4.23 of this Alliance Brief ; and
 - (vii) develop, operate and maintain effective systems to manage occupational health safety and rehabilitation, industrial relations, environment and quality.

1.2 Purpose and Interpretation of Alliance Brief

- (a) The criteria in this document are minimum criteria, including technical, operational and performance requirements for the Alliance Works, which the Alliance will satisfy to fulfil its obligations under the PAA.
- (b) If more than one criterion applies in respect of any part of the work under this Agreement then all criteria will be satisfied.
- (c) All appendices referred to in this Alliance Brief will be developed by the Alliance and submitted to RTA with the Project Proposal.

1.3 Site Boundaries

- (a) Appendix 1 contains location sketches of the Alliance Works.
- (b) Appendix 2 contains details of the Project Site,
- (c) The Upgrade will be designed and constructed to lie completely within the Project Site.
- (d) Local Roads will be constructed entirely within local road reserves, the Project Site and/or areas provided for Local Road Works.

1.4 RTA Specifications and Australian Standards

- (a) Any reference to Specifications must be read as a reference to the specifications contained in Appendices 5, 6, 9, and 15.
- (b) Any references in Specifications to "Drawings" (or "drawings") must be read as a reference to drawings prepared by the Alliance and approved for construction
- (c) Any references in Specifications to "testing" must be read as a reference to "RTA Test Methods" on RTA's website, (www.rta.nsw.gov.au).
- (d) Any reference in Specifications to "you" means the Alliance.
- (e) References to Australian Standards or to codes refers to the publications of Standards Australia and, unless stated otherwise, to the version of each publication current at the date the TOC is agreed by RTA.

1.5 Definitions

Unless the context otherwise requires, terms which have a defined meaning in the Project Alliance Agreement (also referred to herein as the "PAA") have the same meaning where used in this Alliance Brief.

In this Alliance Brief, unless the context otherwise indicates:

"Assets" means all components of the Upgrade including all Asset Items and Asset Sub-Items

"Asset Elements" are the broader categorisations of the Asset Types, such as rigid pavement, concrete bridge components, warning signs or longitudinal linemarking.

"Asset Types" are the distinct class of Asset, such as plain concrete pavements, elastomeric bearings, fans, pumps, switchboards advisory speed signs, or barrier lines.

"Asset Items" are single occurrences of an Asset, such as a pavement section, a bridge bearing, specific items of plant or equipment, a warning sign or a length of barrier line.

"Asset Sub-Items" are components of Asset Items which have a specified design life or maintenance requirements which vary from that established for the Asset Item, of which the Asset Sub-Item forms a part, such as light lamps and fan bearings.

"Code of Maintenance Standards" are the set of performance measures for each Upgrade Asset Type set out in Appendix 9.

"Environmental Documents" means the following documents.

- (a) Appendix 4 to the Alliance Brief ;
- (b) the Planning Minister's Approvals and all conditions to them and includes all documents incorporated by reference, as modified from time to time;

"Extra Land" means any land in addition to the Project Site that the Alliance procures for itself and at its own cost to occupy, use or have relevant rights over that it may deem requisite or necessary for the execution of the work under this Agreement including land required for the Local Road Works and the Service Works.

"Hold Point" means a point beyond which a work process must not proceed without the authorisation or release of a nominated authority determined by the AMT.

"Local Roads" means all local roads, state highways, regional roads and main roads, including their associated road reserves, which:

- (a) cross; and/or
- (b) are adjacent to; and/or
- (c) connect to; and/or
- (d) are in any way affected by the Alliance Works or Temporary Works, including those sections of Local Roads that are made redundant or become service roads as part of the road network.

"Local Road Works" means the modification, reinstatement and improvement of Local Roads which the Alliance must design and construct and hand over to RTA or the relevant Authority in accordance with the PAA and as specified in section 2.3.1(c) of this Alliance Brief.

"Maintenance Plan" includes the Maintenance Documentation produced by the Alliance during the course of the work under this agreement.

"Performance Measures" are the defined, quantifiable attributes describing the required performance of an Upgrade Asset Type.

"Project Plan" means any plan of the kind referred to in section 2.7 of the Alliance Brief as that plan may be updated, amended and further developed under section 2.7.

"Project Site" means the land and airspace through or on which the Upgrade is to be constructed and which is more particularly described in Appendix 2 to the Alliance Brief.

"Property Works" means:

- (a) those works described or specified in sections 2.3.1(b) and 6.1 of the Alliance Brief; and
- (b) all other works necessary to ensure that:
 - (i) the amenity of;
 - (ii) access to and egress from; or
 - (iii) the functionality of,

any property (including any structure thereon) including such property located outside of the Project Site which is affected by the Alliance Works is maintained to at least the standard that it was in immediately prior to the date of the Project Alliance Agreement including:

- (iv) fencing work to separate the property located outside the Project Site from the property located within the Project Site;
- (v) construction of access;
- (vi) construction of drainage; and
- (vii) reinstatement and landscaping.

"Service" means any physical service or item of physical infrastructure, including water, electricity, gas, fuel, telephone, existing drainage, sewerage, railway, airport, industrial waste disposal and electronic communications service.

"Service Works" means the construction, modification, or relocation of Services all of which are to be designed and constructed by the Alliance or the relevant Service Authority and handed over to RTA, an Authority or any other person in accordance with the PAA.

"Upgrade" means the physical works, Services, materials and equipment within the Project Site which the Alliance must design, construct and hand over to RTA in accordance with the Project Alliance Agreement excluding:

- (a) the Local Road Works;
- (b) the Property Works; and
- (c) the Service Works;

“We” refers to the Alliance.

2 BASIC REQUIREMENTS

2.1 General

- (a) The Alliance will implement a fully integrated approach to the work under this Agreement which accommodates and addresses our role as the designer and constructor for a key part of the Pacific Highway.
- (b) In particular, we will
 - (i) ensure that our planning and programming is comprehensive and provides for the concurrent delivery of the performance and environmental requirements;
 - (ii) proactively liaise with and satisfy the requirements of all relevant Authorities;
 - (iii) diligently address safety, road safety, function, durability, reliability and aesthetics in all aspects of the work under this Agreement;
 - (iv) preserve and protect existing infrastructure (including Services, structures, roads, railways and buildings);
 - (v) design the Alliance Works to accommodate maintenance and maintain user convenience;
 - (vi) provide for operation of the Upgrade which is coordinated with and complementary to the management of the rural road network;
 - (vii) implement a proactive community involvement strategy which enables the Alliance to respond to and accommodate reasonable community expectations;
 - (viii) incorporate appropriate urban and landscape design in all aspects of the Alliance Works; and
 - (ix) diligently minimise disruption and inconvenience to all road users, to the public and to other affected parties.

2.2 Work under this Agreement

2.2.1 Nature and Extent of the work under this Agreement

The work under this Agreement includes all tasks and things necessary to:

- (a) investigate, design, construct and commission the Alliance Works and any Temporary Works;
- (b) demolish, remove and rehabilitate all existing infrastructure including roads, road tie-ins, structures, services, buildings, improvements and properties that are

Glenugie Upgrade

- affected by or are made redundant, except as identified otherwise by the Environmental Documents, as a result of the Alliance Works or the Temporary Works;
- (c) ensure we can hand over the Alliance Works to RTA at the Date of Completion in the specified condition;
- (d) hand over and correct all Defects during the Defects Correction Periods applicable to the relevant parts of the Alliance Works;
- (e) secure, maintain, repair, reinstate and hand back (in the specified condition) areas occupied by or affected by Temporary Works;
- (f) connect, modify, make arrangements and undertake improvements necessary to link the Upgrade to the surrounding traffic network and accesses and to ensure the continuous functioning of the surrounding traffic network during and after completion of the Alliance Works;
- (g) prepare all Design Documentation (including detailed construction drawings and specifications) and prepare all programs;
- (h) provide quality assurance of the work under this Agreement;
- (i) enable the Environmental Representative (ER) to perform the services identified in the Environmental Documents;
- (j) develop, implement and maintain an environmental management system including environmental monitoring;
- (k) mitigate environmental impacts during the design and construction of the Alliance Works and the Temporary Works;
- (l) develop, implement and maintain an occupational health, safety and rehabilitation management system;
- (m) restore and rehabilitate lands outside of the Project Site owned by RTA which has been made available for temporary use by the Alliance;
- (n) implement all necessary traffic management to effectively manage traffic affected by the construction of the Alliance Works and the Temporary Works during construction;
- (o) develop, implement and maintain the Project Plans;
- (p) provide effective community involvement;
- (q) open the Upgrade and Local Roads affected by the Local Road Works to traffic; and
- (r) prepare maintenance documentation.

2.3 Alliance Works and Temporary Works

2.3.1 Categories

The Alliance Works and the Temporary Works include the following categories of works:

(a) The Upgrade

The Upgrade includes:

- (i) all the infrastructure necessary to provide the safe and efficient passage of motor vehicles as envisaged in the Environmental Documents;
- (ii) the items and the configurations contained in Appendix 30, but excluding the infrastructure associated with Property Works, Local Road Works, Service Works and Temporary Works;
- (iii) all works to allow pedestrians, disabled persons and pedal cyclists to use routes nominated in the Environmental Documents;
- (iv) drainage (including subsurface drainage), fencing, earthworks, all structures (including retaining walls, bridges, overpasses and underpasses), pavements (including ramps and connections to the existing road network), all finishes and landscaping;
- (v) all infrastructure necessary to operate and maintain the Upgrade including any buildings;
- (vi) the provision of all Services to any facility necessary to operate and maintain the Upgrade;
- (vii) pavement markings, signs, sign support systems and the provision of all lighting (street, pedestrian and emergency lighting);
- (viii) all environmental safeguards and measures necessary to mitigate environmental impacts during operation of the Upgrade, including those identified in the Environmental Documents;
- (ix) all measures necessary to achieve discharge water quality;
- (x) all measures necessary to mitigate noise during operation of the Upgrade;
- (xi) all works required as a consequence of the community liaison process;
- (xii) all equipment necessary to monitor the environmental performance of the Upgrade and assess the durability of all elements;
- (xiii) all infrastructure required to connect the Upgrade to the surrounding road network;
- (xiv) all measures in the Upgrade which are necessary as a consequence of the requirements in Appendix 3; and

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- (xv) those parts of the works identified in section 2.3.2 of this Alliance Brief, which are on, or in, the area of land upon which the Upgrade is located.

(b) Property Works

Property Works include:

- (i) all adjustments to existing infrastructure or property, excluding Local Road Works or Service Works, which are necessary as a consequence of the work under this Agreement or as a consequence of the community liaison process;
- (ii) all changes in access arrangements;
- (iii) demolition and adjustment of built features;
- (iv) adjustments to buildings;
- (v) adjustments to property drainage;
- (vi) all adjustments to property which are necessary as a consequence of the requirements in Appendix 3;
- (vii) all other property adjustment works necessary as a consequence of the work under this Agreement including those identified in the Environmental Documents; and
- (viii) those parts of the works identified in section 2.3.2 of this Alliance Brief, which relate to adjustments to property.

(c) Local Road Works

Local Road Works includes:

- (i) all works necessary to adjust any existing Local Road, footpath, cycleway, open space, landscaped area or street:
 - A. affected by the Upgrade;
 - B. required by the Environmental Documents; and
 - C. required as a consequence of the community liaison process;
- (ii) all fencing, drainage including subsurface drainage, erosion and sediment control works, earthworks, all structures (including retaining walls), pavements and planting;
- (iii) all provisions to allow all road users including public transport, pedestrians and pedal cyclists to use the surrounding road network affected by the work under this Agreement;
- (iv) all permanent arrangements to allow people and vehicles access to properties affected by the work under this Agreement;

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- (v) all provision of adjustments to pavement markings, signs, sign support systems and street lighting;
 - (vi) items of roadside furniture erected to improve safety (including safety barriers) and the provision of all fencing and other security measures necessary to prevent either unlawful or accidental access;
 - (vii) measures to mitigate noise and vibration during operation of the Local Roads;
 - (viii) all environmental safeguards necessary to mitigate environmental impacts which might arise as a consequence of the use of the Local Roads, including those identified in the Environmental Documents;
 - (ix) all measures in the Local Road Works which are necessary as a consequence of the requirements of Appendix 3; and
 - (x) those parts of the works identified in section 2.3.2 of this Alliance Brief which relate to adjustments to Local Roads. The Pacific Highway, with the exception of the portion defined by 2.3.2 (a), is a Local Road.
- (d) Service Works
- Service Works include:
- (i) the protection, adjustment or enhancement of infrastructure related to Services which are affected by the work under this Agreement;
 - (ii) the preservation of Services throughout the design and construction of the Alliance Works and the Temporary Works;
 - (iii) the provision of all Services' connections for undertaking the work under this Agreement;
 - (iv) subject to section 2.3.1(b)(vi), all measures to Services necessary to meet the requirements of, and all works required by, Appendix 3; and
 - (v) those parts of works identified in section 2.3.2 of this Alliance Brief which relate to Services.
- (e) Temporary Works
- Temporary Works include:
- (i) temporary measures necessary to meet the needs of all road and pathway users during all stages of design and construction of the Alliance Works;
 - (ii) temporary arrangements to divert and control traffic and to provide public amenity, security and safety during all stages of design and construction of the Alliance Works;
 - (iii) temporary arrangements for people and vehicles to access all property affected by design and construction of the Alliance Works;

- (iv) all environmental safeguards and measures necessary to mitigate environmental effects during design and construction of the Alliance Works;
- (v) cleaning, maintenance, repair, replacement and reinstatement, as required, of all areas occupied by the Alliance during design and construction of the Alliance Works;
- (vi) temporary site facilities required for design and construction of the Alliance Works;
- (vii) temporary infrastructure installed or erected to undertake design and construction of the Alliance Works; and
- (viii) all temporary measures necessary to meet the requirements in Appendix 3.

2.3.2 Principal Items of Infrastructure to be Constructed

The permanent infrastructure includes approximately 7km of new dual carriageway, with connections to the existing Pacific Highway, 3 lane two way style road, at approximately 650m south of Eight Mile Lane to the north, and at approximately 300m south of Franklins Road to the south.

The permanent works will include a combination of arterial and motorway style road including:

- (a) Providing a design that achieves 110km/h design speed for horizontal alignment on new carriageway sections and 100km/h where existing highway is being utilised as one of the carriageways.
- (b) Four-lane dual carriageways, with a wide median allowing for the future addition of a third lane in each direction, for the following:
 - (i) Approximately 3.5km overall length of north bound carriageway
 - (ii) Approximately 7km overall length of south bound carriageway
 - (iii) Approximately 1km arterial style road tie in to the existing Pacific Highway, south of Eight Mile Lane (along with an at grade intersection for connection to the service road)
 - (iv) Approximately 400m arterial style road tie in for south bound traffic onto the existing Pacific Highway to the south (approx tie in point 300m south of Franklins Road)
 - (v) Approximately 600m arterial style road tie in for north bound traffic from the existing highway onto the new four lane divided carriageway

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- (vi) Provision of a future motorway connection stub clear of the arterial road tie in points at both the northern and southern ends.
- (c) utilisation of approx 3.5km of the existing Pacific Highway as the northbound carriageway, to arterial highway standard (design for 100km/h design speed, provision of two 3.5m wide lanes);
 - (i) Geometric realignment to meet 100km/h design standard, and targeted pavement rehabilitation and resurfacing to provide a minimum 20 year pavement life
- (d) A local road at grade intersection at tie in points with the existing three lane, two way highway in the vicinity of Franklins Road and Eight Mile Lane.
- (e) Retention of the existing highway as a local service access road to the west of the new roadway.
- (f) A new access track into Glenugie State Forest that would connect Eight Mile Lane to Lookout Road.
- (g) Permanent spill containment basins at environmentally significant watercourse crossings
- (h) Fauna underpasses at river and creek crossings and key habitat areas
- (i) Overhead rope crossing for Glider species
- (j) 12 culverts with a number being combined drainage/fauna crossings.
- (k) Emergency crossovers and u-turn facilities
- (l) Road signage
- (m) Pavement markings, signs and sign support systems
- (n) Roadside furniture, including safety barriers
- (o) All required property adjustments
- (p) Pavements;
- (q) Earthworks formation and ground treatments;
- (r) retaining walls;
- (s) Fauna fences;
- (t) stopping bays;
- (u) the incorporation of architectural, urban and landscape design in all visible elements of the Alliance Works;

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- (v) the incorporation of environmental mitigation measures;
- (w) pedestrian and cyclist amenity;
- (x) lighting at intersections;
- (y) all infrastructure required for the maintenance and repairs of the Upgrade;
- (z) access arrangements to all parts of the Upgrade for maintenance;
- (aa) emergency vehicle access to all parts of the Upgrade for Incident response; and
- (bb) additional infrastructure identified in the Environmental Documents.
- (cc) Firetrail road from Eight Mile Lane to Lookout Road.

2.4 Commissioning and Testing

We will undertake comprehensive testing and commissioning of the Alliance Works to ensure that the Alliance Works comply with the requirements of this agreement..

2.5 Environment

2.5.1 Environmental Management System

We will develop, implement and maintain an Environmental Management System (EMS) which:

- (a) is in accordance with AS/NZS ISO 14000;
- (b) complies with RTA Specification G36 in Appendix 6;
- (c) complies with the Environmental Documents;
- (d) complies with New South Wales Government Environmental Management Systems Guidelines, November 1998; and
- (e) is accredited by a NSW Government construction agency.

2.6 Occupational Health, Safety and Rehabilitation

In addition to the requirements of the PAA, we will

- (a) incorporate occupational health, safety and rehabilitation in all aspects of the work under this Agreement including the Project Plans, the Maintenance Plan, the design of the Alliance Works and the Temporary Works and the Design Documentation;
- (b) provide a suitably qualified Site Safety Representative (SSR) who has authority and responsibility for issues relating to occupational health, safety and

rehabilitation throughout the work under this Agreement The SSR will be allocated to occupational health, safety and rehabilitation management on a full time basis.

2.7 Project Plans

- (a) We will prepare and update Project Plans in accordance with section 3, Appendix 6 and Appendix 8 of this Alliance Brief and the requirements of the PAA.
- (b) Each Project Plan will be a quality assurance document prepared in accordance with AS/NZS ISO 9001-2000.
- (c) All Project Plans will recognise and adhere to the requirements of the Quality Plan.

2.8 Durability

- (a) We will ensure the durability of all Assets. Durability will be addressed throughout the design, construction and maintenance of all Assets and will be reflected in the Project Plans.
- (b) The durability portions of the Project Plans will demonstrate how the selected design, materials, construction and maintenance will achieve the durability objectives of each Asset in conjunction with the specified Design Life for that Asset in section 4.4 of this Alliance Brief. For each Asset which comprises part of the Upgrade, the Project Plans will:
 - (i) define the characteristics of the environment;
 - (ii) identify the potential deterioration mechanisms in that environment;
 - (iii) determine the likely rate of deterioration;
 - (iv) assess the material life;
 - (v) define the required material performance;
 - (vi) assess the need for further protection;
 - (vii) if appropriate, develop procedures for replacement of Asset Items and Asset Sub-Items at intervals consistent with the Design Life specified in section 4.4 of this Alliance Brief;
 - (viii) determine inspection and monitoring requirements for both critical and non-critical Assets; and
 - (ix) if appropriate, outline possible remedial measures.

- (c) The durability requirements will be applied diligently and continuously throughout the process of design, including design review and design amendments, and during construction of the Alliance Works.

2.9 Effects of work under this Agreement

- (a) We will ensure that the Alliance Works and the Temporary Works have no adverse impacts on the performance of any infrastructure (including roads, railways, Services, buildings and slopes).
- (b) We will undertake a detailed engineering analysis as appropriate to predict the effects (the 'Predicted Effects') of the Alliance Works and the Temporary Works on existing ground conditions and infrastructure (including roads, railways, Services, buildings and slopes). The Predicted Effects must include the limits of accuracy of the prediction and the expected statistical spread of measured results. We will also determine the extent to which the existing infrastructure may be acceptably affected (the 'Acceptable Effects'), consistent with satisfying the requirements of paragraph (a) above.
- (c) Throughout the work under this Agreement we will monitor the actual effects of the Alliance Works and the Temporary Works and compare the actual effects to both the Predicted Effects and the Acceptable Effects.

2.10 Traffic and Transport Management and Safety

- (a) We will manage and minimise the impacts of the work under this Agreement on the capacity and performance of the traffic and transport network.
- (b) We will:
 - (i) develop and implement a Traffic Management and Safety Plan; and
 - (ii) update and develop the Traffic Management and Safety Plan based on the Traffic Management and Safety Plan which is attached as Appendix 43 .

2.11 Investigation, Survey and Condition Monitoring

We will undertake all site investigations, property and land surveys and ground and infrastructure condition surveys required for the Work under this Agreement in accordance with Appendix 21.

2.12 Availability of Project Information and Data

The Alliance will determine the requirements for project and site extranet and local area network and project collaboration systems, including provisions for data and information sharing with Authorities. The requirements for project and site extranet and

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local area network and project collaboration systems will be developed as part of the Alliance Management Plan.

3 QUALITY AND PROJECT VERIFICATION

3.1 Quality Assurance

3.1.1 Quality System

- (a) We will provide a Quality Manager who is directly responsible to senior management and has responsibility for ensuring that the requirements of the Quality Plan are implemented and maintained throughout the work under this Agreement.
- (b) We will implement and maintain a quality system for the duration of the work under this Agreement.
- (c) The quality system will be in accordance with RTA Specification Q6 in Appendix 6 and AS/NZS ISO 9001 - 2000, Quality management systems – Requirements.
- (d) We will develop and implement a Quality Plan, which documents the quality system referred to in paragraph (b).
- (e) We will comply with the quality system and Quality Plan.

3.1.2 Quality Plan

- (a) We will undertake surveillance, audit and review of our Quality Plan and report on all non-conformances in accordance with the requirements of Specification Q6 in Appendix 6.
- (b) Management Responsibilities

Without limiting section 3.1.1 of this Alliance Brief, the Quality Plan will:

- (i) nominate the Quality Manager who has the defined authority and responsibility for ensuring that the requirements of the Quality Plan are implemented and maintained;
- (ii) define the responsibilities and authority and reporting function of personnel primarily responsible for quality assurance;
- (iii) identify how independent inspection, witnessing and monitoring and reporting will be carried out;
- (iv) identify the interfaces, if any, between corporate support and on-site personnel in relation to paragraphs (i) and (ii) of this subsection (b);
- (v) identify the qualifications, experience and required competencies of personnel who must undertake the duties required in each of paragraphs (i), (ii) and (iii) of this subsection (b);
- (vi) contain systems, processes and procedures which give effect to and co-ordinate the implementation of each Project Plan;

- (vii) address the durability of the Alliance Works in every aspect of the work under this Agreement; and
- (viii) address safety in every aspect of the work under this Agreement.

3.1.3 Hold Points

- (a) The Quality Plan will include a schedule of Hold Points.
- (b) The schedule will include any Hold Points nominated in Specifications and Appendix 9 to this Alliance Brief. The schedule will contain sufficient additional Hold Points as are necessary to ensure that the work under this Agreement and related activities are undertaken in a manner consistent with the quality system required under section 3.1.1 of this Alliance Brief.

3.1.4 Release of Hold Points

- (a) Each Hold Point will be assigned a nominated authority ("Nominated Authority") to release the Hold Point.
- (b) The Quality Manager must be satisfied that all activities in the Hold Point process (including methods of work, sequences of activities, inspections and tests preceding any Hold Point specified in the Quality Plan) comply fully with specified requirements and, once satisfied, must:
 - (i) release that Hold Point, where authorised according to the schedule of Hold Points, in order that work may proceed on that part of the work under this Agreement; or
 - (ii) obtain release from the Nominated Authority that work may proceed on that part of the work under this Agreement
- (c) We will not proceed beyond any Hold Point without release by the Nominated Authority.

3.1.5 Nonconformances and Continuous Improvement

- (a) We will regularly update and develop the Quality Plan and the Project Plans in order to minimise the recurrence of any non conformances.
- (b) We will review and analyse the cause of all non conformances and develop a plan of corrective action to minimise the likelihood of recurrence. Details of such corrective action will be entered in a non conformance report or corrective action request as appropriate.

3.1.6 Nonconformances During Construction

- (a) The Quality Plan will make specific provision for recording and reporting all non conformances that will impact the future durability or performance of the Upgrade.
- (b) Proposals for rectification work of such non conformances will be reviewed by the relevant designer and will take all durability objectives and performance requirements into account.

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(c) A procedure for a disposition of "use as is" will be endorsed by the ALT.

4 PERFORMANCE REQUIREMENTS

4.1 General

- (a) The Alliance Works and the Temporary Works will comply with the performance requirements in this section 4 of this Alliance Brief.
- (b) We will ensure that all investigation, design and construction are entirely integrated and compatible and that together they mutually satisfy all the requirements of the PAA. The required performance of the Alliance Works and the Temporary Works will be taken into account during all stages of the work under this Agreement.
- (c) We will design the Alliance Works and the Temporary Works to:
 - (i) satisfy the technical design criteria and scope of work stated in the Alliance Brief;
 - (ii) integrate all the design components.
- (d) Safety requirements will be taken into account in all aspects of the work under this Agreement.

In particular, the design will address:

- (i) safety during construction;
 - (ii) safety during operation; and
 - (iii) safety during maintenance.
- (e) The concept design is detailed in Appendix 30. Adjustments to the concept design in Appendix 30 will be assessed with respect to the impact on:
 - (i) durability;
 - (ii) aesthetics and visible features;
 - (iii) whole of life performance;
 - (iv) user benefits and/or user costs; and
 - (v) functional performance,
 - (f) Except where the provisions of this Alliance Brief specify otherwise, materials, manufactured articles and workmanship will, as a minimum, conform to the Reference Documents referred to in section 4.3 of this Alliance Brief and current at the time at which the relevant work under this Agreement is undertaken.
 - (g) All visible elements of the Alliance Works and the Temporary Works will be designed to have an attractive appearance of no lesser standard than the

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urban and landscape design requirements for the Alliance Works as described in Appendix 11 and Appendix 31.

- (h) The Alliance Works will be:
 - (i) designed so that the Upgrade is contained within the Project Site;
 - (ii) designed so that road furniture on the Upgrade is positioned in a way which is compatible with other sections of the existing Pacific Highway; and
 - (iii) designed and constructed so that the Local Roads comply with the requirements of relevant Authorities, including RTA.

4.2 Safety

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

- (a) the identification of all hazards involved in the work under this Agreement;
- (b) the identification and management of occupational health and safety (OHS) legislative requirements, OHS goals and objectives and generic hazards associated with the work under this Agreement;
- (c) the analysis of health and safety issues, including generic issues, associated with the work under this Agreement;
- (d) detailing the principles of the design, the identification of hazards which cannot be managed or mitigated by the design and the measures to be adopted in the construction and maintenance phases to manage and mitigate the hazards;
- (e) the identification and specification of hazards that require the development of specific procedures in the construction and maintenance phases;
- (f) consideration of health and safety issues related to the on-going repair, maintenance, upgrading and demolition of Assets, including issues related to shoulder widths, bridge widths, accessibility and working in confined spaces;
- (g) issues relating to working adjacent to or with live Services, including high voltages, overhead clearances, dangerous excavations and asbestos materials;
- (h) the risks identified as part of the risk management process;
- (i) the OHS implications of the site layout for the work under this Agreement including the:
 - (i) positioning of site access and egress points;
 - (ii) location of site accommodation;
 - (iii) location of traffic/pedestrian routes;

- (iv) safe height work requirements for bridge construction and repair; and
- (v) proximity to traffic during the performance of the work under this Agreement;

The Design Documentation will include specific site rules to address the issues identified in sections 4.2 (a) to (j) of this Alliance Brief and for any other reasons that require such site rules. These site rules will include specific permit-to-work rules and emergency procedures. We will develop the Design Documentation to assist in the implementation of the site rules; and

- (j) the identification of health hazards which arise from the materials specified for the work under this Agreement and require precautions either because of the nature of the materials or the manner of their intended use. The materials will be specified in sufficient detail to allow the use of the materials safely, based on precautionary information provided by the suppliers.

These health hazards include exposure to hazardous substances (including lime as a stabilising agent, preservatives used on timber materials, removal of lead based paint and asbestos) and issues relating to manual handling on site.

These safety issues will be addressed in the OHS Development Plan in accordance with the requirements of Appendix 8 of the Alliance Brief.

4.3 Reference Standards

4.3.1 General

The work under this Agreement will meet the standards of RTA and AUSTRROADS publications and relevant Australian Standards. Some of these documents are included in the listing of Reference Documents contained in Appendix 7. If suitable Australian Standards do not exist for the design of any element of the work under this Agreement the Alliance may use appropriate international standards.

4.3.2 Upgrade Classification

The Upgrade must be regarded as a controlled access road in accordance with section 49 of the Roads Act 1993 (NSW).

4.3.3 Order of Precedence

Unless otherwise stated, the following order of precedence will apply in the event of any inconsistency, ambiguity or discrepancy between the PAA, Reference Documents and other standards:

- (a) any specific provisions in the PAA;
- (b) this Alliance Brief;
- (c) RTA publications;
- (d) AUSTRROADS publications;

- (e) Australian Standards;
- (f) Standards Australia handbooks; and
- (g) Other Reference Documents and standards.

4.3.4 Standard Units

Unless otherwise specified, SI units will be used in the work under this Agreement and in all Design Documentation.

4.3.5 Design Datum

Design datum levels and Design Documentation will be produced in accordance with Appendix 21 of this Alliance Brief.

4.4 Design Life

- (a) Design Life is defined as the period over which an Asset must perform its intended function without replacement, refurbishment or significant maintenance. Assets include Asset Items and Asset Sub-Items which for the purpose of project Asset management are also identified by Asset Element and Asset Type.
- (b) Where Asset Items and Asset sub-items are defined in Appendix 24 as having a design life less than specified in Table 4.1 below or where they are determined as being accessible for the purposes of Table 4.1 below, the design will detail the methodology of replacement including access provisions for both inspection and replacement. Asset items which can not be replaced without closure or severe disruption to traffic (ie large culvert wingwalls) are deemed to be inaccessible.
- (c) Except as specified in Appendix 24 the various Assets will have the following minimum Design Life:

Table 4.1

Number	Asset	Minimum Design Life
(i)	Inaccessible drainage elements	100 years
(ii)	drainage elements that are accessible for refurbishment including sedimentation and detention ponds and basins	20 years
(iii)	sign faces	10 years
(iv)	sign support structures and other roadside furniture	40 years
(v)	fences, including fauna fences	20 years
(vi)	lighting and electrical equipment	20 years

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(vii)	bridge structures, including underpasses, overpasses and wildlife tunnels	100 years
(viii)	retaining walls including reinforced soil walls	100 years
(ix)	noise barriers (noise attenuation devices)	50 years
(x)	dual carriageway and ramp permanent pavements	40 years
(xi)	Local Road embankment and support structures	100 years
(xii)	new Local Road pavements	20 years
(xiii)	reconstructed Local Road pavements	20 years
(xiv)	embankments, including reinforced embankments	100 years
(xv)	cut batters, including batter treatments	100 years
(xvi)	timber furniture for environmental works	30 years
(xvii)	other Assets not detailed in numbers (i) to (xvi) inclusive above or in Appendix 24	Typical industry values for similar Assets of a high standard and quality

4.5 Road and Traffic Safety

- (a) Road safety during construction and operation will be incorporated into all aspects of the design and construction in accordance with this Alliance Brief.
- (b) We will arrange for independent road safety audits to be undertaken, in accordance with RTA's Road Safety Manual, for scope approval as contemplated by clause 5.1 of the PAA, at final design stage and immediately prior to opening any part of the Alliance Works or Temporary Works to traffic.
- (c) We will consider and respond to the findings of the independent road safety audits and to the findings of any road safety audits which may be undertaken by RTA.
- (d) Provision will be made for the safe movement of all road users at all times.
- (e) Our use and care of Local Roads must be approved by the relevant Authority.
- (f) As a minimum, all traffic management will comply with the Environmental Documents and RTA Specification G10, traffic management practices set out in relevant Australian Standards, the RTA publication titled Traffic Control at Worksites and the Traffic Management and Safety Plan.
- (g) We will employ work practices and equipment that provide for the safe passage of all road users, including public transport, pedestrians and pedal cyclists, at all times during the performance of the work under this Agreement.

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- (h) We will define the traffic and safety management responsibilities of all relevant staff in regard to all aspects of construction.
- (i) We will carry out road safety audits of all temporary traffic management proposals.
- (j) We will obtain approval from RTA's Interface Manager and relevant Authorities prior to implementing any traffic adjustments or interruption. Traffic changes or lane closures which are considered by RTA as likely to cause unnecessary delay or disruption to traffic will not be implemented.
- (k) RTA's Interface Manager may order removal, or cessation of any activity, which causes delay to traffic or threatens the safety of the public, notwithstanding that approval has been given to the traffic change.

4.6 Urban and Landscape Design

- (a) We will design, construct, develop and establish urban design solutions that:
 - (i) are consistent with the urban and landscape design concepts contained in the Environmental Documents;
 - (ii) complies with the requirements of Appendix 11 of this Alliance Brief;
 - (iii) are generally as shown in and incorporate no lesser standards than those provided in the Alliance's urban and landscape design in Appendix 31; and
 - (iv) complies with the conditions of approval.
- (b) Our urban and landscape design through good design practice will be integrated into a cohesive urban and landscape design plan for all components of the Alliance Works.

4.7 Environmental Design

We will develop a high standard environmental design for the work under this Agreement, including:

- (a) erosion, sedimentation and water quality infrastructure;
- (b) fauna underpasses, overpasses, arboreal crossings and fauna fencing;
- (c) fish friendly structures, including waterway design;
- (d) management and mitigation measures for environmentally sensitive areas, including marine environments and cultural heritage sites; and
- (e) construction and operational noise measures.
- (f) Noise mitigation measures and structures will be:

- (i) provided in accordance with the requirements of the Environmental Documents;
- (ii) designed in accordance with RTA Noise Wall Design Guidelines May 2003; and
- (iii) integrated with the urban and landscape design.

The environmental design will be developed in consultation with appropriate agencies and Authorities and in accordance with the requirements of Appendix 4 and Appendix 5 and RTA Specification G36.

4.8 Traffic

As a minimum the Alliance Works will be designed and constructed to cater for:

- (a) the design speeds specified in section 4.11 and Appendix 20;
- (b) the provisions for traffic in Appendix 19;
- (c) the vehicle classifications in figure 7.1 and Table 7.1 of "Pavement Design – A Guide to the Structural Design of Road Pavements" Austroads, 2004;
- (d) all possible traffic conditions for Upgrade operation;
- (e) the design loadings in Appendix 12 of this Alliance Brief;
- (f) personnel movement associated with breakdowns and other Incidents;
- (g) access by emergency service vehicles, personnel and plant;
- (h) access by maintenance vehicles, personnel and plant;
- (i) pedestrian, pedal cyclist and disabled persons movements as detailed in the Environmental Documents; and
- (j) turning movements of a B double truck except where excluded in the Environmental Documents.

4.9 Traffic Separation

- (a) Median barriers will be provided where the median width (between edge of traffic lanes) is less than 11 metres. Adequate sight distance will be provided.
- (b) Median widths and median barriers will comply with the requirements in Appendix 20.
- (c) An 11.0m clear zone will be provided on the nearside of the Upgrade. Where it is not cost effective for this requirement to be met, a safety barrier will be provided.

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- (d) We will conduct a risk analysis on the design in accordance with section 6 of the RTA Road Design Guide to determine the warrant for and location of safety barriers.
- (e) Where wire rope safety barriers (WRSB) are provided, the minimum distance between the offside edge of a lane and the barrier will be in accordance with figure 20.10 in Appendix 20.
- (f) All safety barriers and crash attenuators will be designed in accordance with provisions of AS 3845 and RTA Specification R132.
- (g) Where shrubs are provided in the median to mitigate head light glare, the planting/ seeding width will be a minimum of 4m.
- (h) Unprotected ends of concrete barriers and railings, bridge piers and other solid objects are not permitted within the design clear zone.
- (i) Solid barriers will not be used in areas where fauna habitat is adjacent to the Project Site and fauna has not been effectively prevented from crossing the Project Site, or where a solid barrier could adversely impact the effects of floods.

4.10 Durability

- (a) RTA Specifications have been developed in the context of RTA design guidelines and details.
- (b) We will make our own assessment of the performance requirements (including this Alliance Brief) in relation to each Asset, including Asset Items and Asset Sub-Items in terms of:
 - (i) the micro-environment;
 - (ii) potential deterioration mechanisms in this micro-environment;
 - (iii) rate of deterioration;
 - (iv) the likely material life;
 - (v) the feasibility and cost of in-situ monitoring, maintenance and/or repair and replacement;
 - (vi) the necessity of providing additional protection (e.g. coatings); and
 - (vii) the significance of failure.

4.11 Geometric Design Requirements

4.11.1 General Standards and Applications

- (a) The design of the Upgrade and Local Road Works will be such that they form an integral part of the New South Wales road network in visual and functional respects.
- (b) The Upgrade and Local Road Works will comply with the RTA Road Design Guide and the requirements of section 4.11 and Appendix 20 of this Alliance Brief.

4.11.2 Local Roads (Other than Pacific Highway)

- (a) Where the longitudinal gradient on a carriageway is less than 1% for longer than 500 metres and where the crossfall/superelevation is 3%, consideration will be given to increasing the crossfall/superelevation to 4% to assist with surface drainage.
- (b) The road geometry design will be integrated with the urban and landscape design to gain benefits from the views and to reduce the adverse affects of glare from sunlight and opposing vehicle headlights.
- (c) The desirable clearance between the road formation and the Project Site boundary is 6 metres. Where this clearance is not practical at specific locations, an absolute minimum clearance of 3 metres may be adopted subject to provision for facilities such as sedimentation basins and maintenance access.
- (d) Stopping bays and bus bays will be provided in accordance with the configuration and locations detailed in Appendix 20.
- (e) Horizontal and vertical alignment of Local Roads will be of similar standard to existing roads. All Local Roads constructed or re-constructed will have a sealed wearing surface to the tie-in point
- (f) The cross sections of Local Roads will comply, as a minimum, with the requirements of Appendix 20.

4.12 Functional Upgrade Design Requirements

4.12.1 Connections to the Upgrade

- (a) Interchanges, intersections and accesses to the Upgrade will be in accordance with Appendix 19 and Appendix 20.
- (b) All interchanges on the Upgrade will be provided with entry (onload) and exit (offload) auxiliary lanes in accordance with Appendix 20, Figure 20.9.
- (c) The design of interchanges and intersections will provide for the layouts, traffic movements and volumes shown in Appendix 19 with the minimum intersection requirements shown in Appendix 20.

Glenugie Upgrade

- (d) Well sited intersections and interchanges with layouts that clearly identify to motorists the permitted manoeuvres, including those required to load and unload from the main carriageways;
- (e) All local road intersections on the Upgrade will be provided with partial left turn deceleration auxiliary lanes in accordance with the lengths detailed in Appendix 20 and the warrants as defined in the RTA Road Design Guide;
- (f) All local road intersections on the Upgrade requiring sea-gull or modified sea-gull treatment will be provided with full right turn deceleration auxiliary lanes in accordance with the lengths detailed in Appendix 20 and the warrants as defined in the RTA Road Design Guide;
- (g) All local road and service road intersections on the Upgrade incorporating an access u-turn facility, will be provided with a full right turn deceleration auxiliary lane in accordance with the length detailed in Appendix 20 and the warrants defined in the RTA Road Design Guide;
- (h) Interchanges and intersections will provide for Level of Service "C" or better, in accordance with Austroads Traffic Engineering Practice Series Part 2, for design year 2029 for the 100th highest hour.
- (i) Interchanges will be designed in accordance with Grade Separated Interchanges (A Design Guide) NAASRA 1984;
- (j) The maximum rate of deceleration adopted in the design will be 2.5m/s²;
- (k) Intersections will be designed to provide for a 19.5 metre long semi-trailer, except where proclaimed B-double routes meet the Upgrade, in which case provision will be made for the longer B-double vehicles. The minimum lengths of auxiliary lanes at intersections will comply with Appendix 20 of this Alliance Brief.

4.12.2 Cross Carriageway Access and Off Road Access

- (a) Cross carriageway accesses between the Upgrade main carriageways include:
 - (i) access u-turn bays to allow u-turn movements to gain access to and from properties and Local Roads on the adjacent carriageways; and
 - (ii) emergency crossover / u-turn bays to allow u-turn movements between adjacent carriageways for emergency services vehicles only and to allow diversion of traffic to adjacent carriageways for incident management
- (b) Cross carriageway accesses will comply with the layouts detailed Appendix 20 of this Alliance Brief.
- (c) Access u-turn bays will be provided with deceleration lanes in accordance with Appendix 20 of this Alliance Brief;
- (d) Cross carriageway accesses will be located to achieve sight distances that provide for the safe use of each such access in accordance with Appendix 9.

- (e) Emergency crossovers and emergency u-turn bays are for emergency incident management, are not for unrestricted use, and will be signposted accordingly.

4.12.3 Pedal Cyclists and Pedestrians

- (a) Continuous pedal cycle access will be provided for the full length of the Upgrade in accordance with the requirements of the Environmental Documents.
- (b) Bicycle paths will comply with the requirements for pedal cyclists as defined in the Reference Documents in Appendix 7 and the Environmental Documents. The minimum width of bicycle paths will be 2 metres, except where they are a part of a shared pedestrian / cycle pathway where the minimum width will be 2.5 metres. The surfaces will be concrete or asphaltic concrete.
- (c) The vertical alignment for paths will be in accordance with section 6.4 of AUSTRROADS "Guide to Engineering Practice Part 14 - Bicycles". Paths will be designed as commuter paths using a design speed of 50km/hr.
- (d) Approaches to underpasses and to footpaths and cycle-ways under bridges will be open and clearly visible.
- (e) Pavements for bicycle paths will comply, as a minimum, with the requirements of figures 8.1 (a), (b) or (c) of the NSW Bicycle Guidelines. Pavement thicknesses will be designed to accommodate maintenance vehicle access.
- (f) Access will be provided for pedestrian movements associated with Local Roads, Incidents and other emergencies on the Upgrade as identified in the Environmental Documents.

4.13 Earthworks Formation

4.13.1 Embankment Formation

- (a) Embankments must be globally and locally stable with no foreseeable possibility of a failure involving the whole embankment or a major part of it. The design will detail the proposed methods for the treatment of all embankment foundations.
- (b) We will design and construct the embankments to limit level changes in the pavement as a result of settlement of foundation layers, changes in moisture and compression within the constructed embankment.
- (c) Except as detailed under section 4.13.1(g) of this Alliance Brief level changes in embankments will be limited to:
 - (i) no increase in levels after construction of the pavement;
 - (ii) a maximum decrease in levels in the first ten years of operation of the greater of:
 - A. 15mm; or
 - B. 0.25% of embankment height at carriageway centreline; and

- (iii) a maximum change of grade, in any direction, of 0.3% over pavement design life;
- (d) Embankment levels should at all times conform to the flood level requirements detailed in section 4.14 of this Alliance Brief.
- (e) RTA requires all embankment areas to be monitored to determine any movements in levels. Survey measurements must be made at 50m intervals along each carriageway's median side edge line and at 20m intervals within 100m of bridge abutments. We will establish and take baseline measurements for the embankment monitoring.
- (f) We will complete baseline surveys and measurements within 4 weeks of the completion of construction of the pavement over each embankment.
- (g) Where embankments are located above compressible foundation materials and where it is predicted that the requirements of section 4.13.1(c) of this Alliance Brief can not be met without the application of specific foundation improvement techniques then:
 - (i) the construction of pavement layers above the compressible foundation materials will not commence until:
 - A. predicted total residual settlement and predicted differential settlements of the compressible foundation materials meets the requirements of Appendix 18;
 - B. the predicted residual settlements and differential settlements of the compressible foundation materials in both the transverse and longitudinal directions satisfy the specified pavement performance criteria; and
 - C. the geotechnical designer has released a Hold Point certifying that the requirements of section 4.13.1(g)(iii) A and B of this Alliance Brief above have been achieved;
 - (ii) instrumentation to measure internal settlement, external settlement, pore water pressure and lateral movement of the embankments will be provided at spacing intervals less than 100 metres along the embankment axis and within ten metres of structures. Monitoring of settlement must include at least three settlement plates and a horizontal profile gauge (HPG) at each location; and
 - (iii) over the design life of the pavement:
 - A. the maximum total residual settlements of embankments will be limited to the values detailed in Table 18.1 of Appendix 18; and
 - B. the maximum residual differential settlements of embankments will not exceed values detailed in Appendix 18.

4.13.2 Batters General

- (a) All slopes and batters within the Project Site, or affected by the work under this Agreement will have an Assessed Risk Level (ARL) in accordance with "RTA Guide to Slope Risk Analysis Version 3.1 November 2001" of ARL 4 or better.
- (b) We will design and construct excavation and embankment batter slopes so that the slope stability is not compromised by erosion, fretting or change of shape.
- (c) Material which becomes detached from excavation batters must be prevented from reaching the road shoulder.
- (d) Access to the final batter slopes must be available for plant and equipment to allow ready installation of any treatment measures which may become necessary and to facilitate inspection of the face of the batter.

4.13.3 Cuttings Batters

- (a) Batters in cuttings will be designed to satisfy the following criteria:
 - (i) batters will satisfy the performance requirements in section 4.13.2 of this Alliance Brief;
 - (ii) the overall batter slope must be stable with no foreseeable possibility of a failure involving the whole slope or a major part of it;
 - (iii) limited failures during construction are acceptable but must not extend beyond one bench;
 - (iv) batters must be designed so that material which may become detached is prevented from reaching the road shoulder; and
 - (v) plant and equipment access must be available to the final batter slope to allow ready installation of any treatment measures which may become necessary and to facilitate inspection and maintenance of the face of the batter.
- (b) Benches will be provided on batter slopes in accordance with the requirements of the following table, to restrict the length of unbroken batter face and to minimise erosion of soil and weathered materials.
- (c) Benches will be designed to accommodate safe access for maintenance plant items and to control runoff. The vertical spacing and width of benches will comply with the limits specified in the following table:

Batter Slope	Maximum Spacing Batters	Vertical Between	Minimum Width	Bench
Steeper than 2:1 H:V	7 metres		4.5 metres	
2:1 H:V or flatter	10 metres		4.5 metres	

- (d) Bench widths will be designed to accommodate safe access for maintenance plant items and to control runoff.
- (e) Designs for cutting batters will include logic for selection and application of batter protection for:
 - (i) soft seams;
 - (ii) shattered, fractured or jointed rock;
 - (iii) degradable rock; and
 - (iv) stress release in rock cuts.
- (f) Batter designs will detail the required surface condition and roughness of cut batters including:
 - (i) measures to control water flow and inhibit erosion; and
 - (ii) measures to retain topsoil and seed.
- (g) Batter designs will detail measures to prevent erosion of material from the seams in cuttings that are prone to rapid weathering.
- (h) Except for transitions at the ends of cuts, batter slopes between 0.75:1 H:V and 1.5:1 H:V will not be provided.
- (i) A rock fence will be provided on the lowest bench in cuttings where the batter above the lowest bench is steeper than 1.5H:1V.
- (j) Cut batters steeper than 3:1 H:V will be laid back and curved at the ends, for a minimum 50 m length, to reflect the influence of the subsurface profile and to blend in with adjacent slopes.

4.13.4 Embankments Batters

Embankment batters will be designed to satisfy the following criteria:

- (a) embankment design will include measures to ensure that scour and erosion of batters is minimised or protected;
- (b) benches will be provided on all earth embankment batters, in accordance with the requirements of the following table. The benches will be designed to satisfy the requirements of the proposed maintenance methodology;

Batter Slope	Vertical Height of Batter
Steeper than 2:1 H:V	Maximum 7 metres
2:1 H:V or flatter	Maximum 10 metres

- (c) where earth batters are used benches will be a minimum of four (4) metres wide and will be designed to accommodate safe access for maintenance plant items;

- (d) berms are not required on rockfill batters or on rock-faced embankment batters; and
- (e) except for rock protected batters and abutment spill through batters, embankment batter slopes will not be steeper than 2:1 H:V.

4.14 Water Management

- (a) Drainage design will be in accordance with this Alliance Brief and the technical requirements detailed in Appendix 17
- (b) We will develop a drainage system and develop design solutions which comply with the Environmental Documents and avoid or minimise any potential damage or loss that may result from, or be contributed to by, water discharge from the Alliance Works and Temporary Works.
- (c) We will provide a water management system that requires a minimum of maintenance consistent with the need to ensure appropriate water quality discharge from the Alliance Works and Temporary Works.
- (d) We will provide a drainage system that:
 - (i) preserves the existing elements such as natural channels, wetland and riparian vegetation;
 - (ii) manages both the quality and quantity of stormwater as close to its sources as possible, including the installation of devices which treat the stormwater and retain the run-off so that the system changes the existing water regime to the smallest amount practicable;
 - (iii) is integrated with our construction process so that the total investment in drainage infrastructure is minimised and access is available to all devices which need on-going maintenance during both the construction phase and the maintenance phase;
 - (iv) is capable of being partitioned to contain spillage from Incidents;
 - (v) is designed for ease of maintenance; and
 - (vi) is structurally safe in any storm.
- (e) Bridge drainage will be connected to the road drainage system.
- (f) The Upgrade will be designed so that the two-lane dual carriageways are protected by physical means to prevent flooding of the Upgrade. The edge line on the pavement surface must be above the 100 year ARI flood level, as detailed by the flood level in Figure 17.1 of Appendix 17 to this Alliance Brief.
- (g) We will provide flood immunity in accordance with the Environmental Documents.

- (h) We will design the Upgrade so that the above requirement of paragraphs (f) and (g) are maintained for the design life of the Assets.

4.15 Pavements

4.15.1 Pavement Reference Documents

Pavement designs will be carried out in accordance with the requirements in this Alliance Brief and with the following pavement related Reference Documents in Appendix 7. For the purposes of pavement design, the following documents are listed in order of precedence:

- (a) RTA Supplement to AUSTRROADS Guide to the Structural Design of Road Pavements (Draft August 2006 Version 16).
- (b) CIRCLY - Geomechanics Computer Program Version 5 or later version.
- (c) RTA Rigid Pavements – Standard Details:
 - (i) Volume 1 – Continuously Reinforced Concrete Pavements (Drawing MD.R84.CC.A);
 - (ii) Volume 2 – Plain Concrete Pavements (Drawing MD.R83.CP.A); and
- (d) RTA Interim Guide to the Maintenance of Concrete Pavements (2000).
- (e) RTA Guide to the Design & Construction of Concrete Roundabout Pavements (March 2004).
- (f) AUSTRROADS (2004) – “Pavement Design – A Guide to the Structural Design of Road Pavements”.
- (g) AUSTRROADS (1998) – APRG Report No. 21 – “A Guide to the Design of New Pavements for Light Traffic”.

4.15.2 Pavement Performance

- (a) Pavements will:
 - (i) incorporate drainage practices that maintain a constrained moisture regime which prevents significant variations in the capacity of the sub-base and subgrade to support the pavement;
 - (ii) accommodate movements of the subgrade associated with changes in moisture content (particularly near batters);
 - (iii) accommodate settlement and deformation of the embankments and subgrade resulting from settlement of foundations;
 - (iv) deliver the levels of performance of the wearing surface specified in Appendix 8 and the Code of Maintenance Standards;
 - (v) minimise spray in wet conditions;

- (vi) separate surface and subsurface drainage systems to avoid overloading subsurface systems;
- (vii) at all times conform to the surface flow requirements detailed in Appendix 17 of this Alliance Brief; and
- (viii) have a wearing surface which produces noise levels and tonal noise characteristics that contribute to noise mitigation and compliance with the noise level requirements .

(b) Performance Measures

Pavement performance will be assessed using the following performance measures:

- (i) pavement deflection;
- (ii) pavement curvature;
- (iii) rutting;
- (iv) cracking;
- (v) roughness;
- (vi) skid resistance; and
- (vii) texture.

We will ensure that pavements are designed and constructed to comply with the performance measures specified in Appendix 8.

- (c) The pavement wearing surfaces of structures will comply with the performance requirements of sections 4.15.2(a) (b) and (d) of this Alliance Brief.
- (d) Dense grade asphalt does not provide the pavement texture depth of 0.5mm required by Appendix 12 of this Alliance Brief and will not be used as a surface course where the design speed is greater than 80 km/h.

4.16 Structures

- (a) This section covers the requirements for the design of structural aspects of the Alliance Works and Temporary Works, including:
 - (i) bridges;
 - (ii) submerged structures;
 - (iii) overpasses and underpasses;
 - (iv) sign support structures;
 - (v) retaining walls and other associated structures;

- (vi) noise walls;
 - (vii) major components of drainage; and
 - (viii) fauna crossings.
- (b) We will provide bridge inventory details to RTA in accordance with the requirements of Appendix 25.
 - (c) Structures will be designed and constructed in accordance with the requirements of Appendix 14.
 - (d) The Design Documentation for each bridge will include design summary drawings and bridge load ratings sufficient to assess the bridge's ability to accommodate wide, high and/or heavy loads.
 - (e) Bridges located on separate carriageways will be designed as stand alone structures and will not be connected in any way either structurally or otherwise to each other. A minimum horizontal clearance of 50mm will be provided between the bridges. The traffic barriers on the median side of the bridges will be designed as two separate traffic barriers, one for each bridge.
 - (f) We will provide structural designs to a high level of technical competence and will incorporate the most appropriate technology available.
 - (g) The structures will be designed and detailed to ensure an economic life of 100 years in accordance with AS 5100.1 Bridge Design (Part 1), section 6.2 "Design Life".

4.17 Delineation and Signposting

- (a) Delineation and signposting must be appropriate to the climatic, lighting and traffic conditions reasonably expected in the Upgrade, Local Roads and all areas accessible by the public, which are affected by the Alliance Works.
- (b) Delineation Outcomes

We will deliver a project that provides:

- (i) Appropriate and sufficient delineation systems that:
 - provide positive guidance controlling the position and movement of traffic;
 - identify the safe and legal limits of the road;
 - regulate lane changing and passing;
 - convey information about the road geometry ahead; and
 - identify potentially hazardous locations,

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- (ii) definition of the Upgrade carriageways, particularly under adverse weather conditions;
 - (iii) clear visibility of merge and diverge areas; and
 - (iv) pavement wearing surfaces that combine with the delineation to give both audible and visual warnings that vehicles are moving out of a through lane.
- (c) Signposting Outcomes

We will provide signposting in accordance with the Environmental Documents and Appendix 13. The signposting strategy will provide:

- (i) consistency and compatibility between the Upgrade and the rest of the State road network, including colour coordination and consistent messages with the Pacific Highway Route;
- (ii) a safe and effective means of informing, warning and controlling drivers using the upgrade and related intersections;
- (iii) legibility at the posted speeds of the road taking into account the possible range of climatic conditions;
- (iv) Warning signs to indicate conditions that might involve risk to the road user;
- (v) regulatory signs to indicate the rules for traffic movement;
- (vi) guide signs to direct traffic along a the route or to a destination;
- (vii) information signs associated with place names, height clearances, feature names and appropriate symbols;
- (viii) tourist destination signing to direct traffic to tourist destinations;
- (ix) supporting structures that collapse on impact where they are free standing or protection to supporting structures where they are not designed to collapse;and
- (x) outcomes that address the Planning Minister's Approvals.

4.18 Lighting

Street lighting will be provided for interchanges, ramps, intersections, roundabouts and rest areas in accordance with Appendix 20.

4.19 Roadside Furniture

- (a) Roadside furniture will not be placed within the shoulder and road verges will be kept as free of furniture as possible.

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- (b) Any furniture within the design clear zone (refer to section 3.7 of the RTA Road Design Guide) that does not collapse on impact will be protected using a safety barrier which is designed for impact from a passenger car travelling at 110km/h at a departure angle from the road of 2.9° to 22°.
- (c) Batters of cuttings will be shaped and constructed to provide either a clear zone run-off area or features that emulate a rigid safety barrier.
- (d) Bridge piers in the clear zone will incorporate an appropriate safety barrier.
- (e) Safety barriers will comply with the requirements detailed in section 6 of the Road Design Guide.
- (f) Guide posts will be provided on the nearside and offside of the carriageways. Guidepost reflectors will be red on the nearside and yellow on the offside. The reflector pattern will be integrated so that there is consistent guidance provided through cuttings and across embankments, especially where safety barriers are erected and on bridges.

4.20 Fences and Gates

- (a) Subject to section 4.20(c) of the Alliance Brief, the design will incorporate fauna exclusion fencing in accordance with Appendix 4 to this Alliance Brief. The fauna exclusion fences will include the requirements detailed in Appendix 5.
- (b) Subject to section 4.20(c) of the Alliance Brief, the design will incorporate fencing to the boundary of the Project Site in accordance with Appendix 4 and Appendix 3 to this Alliance Brief. The functions of boundary fencing and fauna exclusion fencing are separate and mutually exclusive and the requirements for fauna fencing are additional to those for boundary fencing.
- (c) The fencing will be designed to prevent livestock from entering the Project Site.
- (d) Fencing will be designed to prevent pedestrians from accessing the Upgrade.
- (e) Gates will be provided where required for maintenance or for access by relevant Authorities, including emergency services.
- (f) Materials used for fencing will be selected to fit sympathetically into the local environment. Timber fence posts must be suited to the local conditions and acceptable to property owners.

4.21 Authorities and Emergency Services

- (a) We will satisfy the reasonable requirements of all relevant Authorities including emergency service providers in accordance with RTA policy and consistent with the requirements of this Alliance Brief.
- (b) The Alliance Works will include the necessary infrastructure to provide access for operation and maintenance purposes, including Incident responses.

5 PROPERTY WORKS, LOCAL ROAD WORKS AND SERVICE WORKS

5.1 Property Works

- (a) We will carry out all Property Works arising from the work under this Agreement including work as may be necessary to satisfy RTA's obligations arising from the Environmental Documents and property acquisition within the boundary of private properties and land controlled by Authorities.
- (b) We will repair any damage to property caused by the work under this Agreement as soon as possible and at no cost to the owner or occupier of the relevant property. The property will be reinstated to a condition at least equivalent to the condition it was in immediately prior to the occurrence of the damage.
- (c) In respect of all Property Works, the consent of the owner and any occupier of each property affected by the Property Works will be obtained prior to any work commencing. The Property Works will be designed and implemented to the standards specified in the PAA and this Alliance Brief or, in the absence of any such specification, to reasonable engineering standards and must be fit for their intended purpose specified in the Alliance Brief.

5.2 Local Road Works

- (a) We will modify, reinstate and reconstruct Local Roads as described in section 2.3 of this Alliance Brief.
- (b) The Local Road Works will be designed and constructed in accordance with the standards and requirements specified in this Alliance Brief and in accordance with the requirements of all relevant Authorities and RTA.
- (c) We will deliver the Local Road Works in such a way that it minimises delay and disruption to local and through traffic, including pedestrians, the disabled, pedal cyclists and public transport services, and maintains access to and minimises disruption to affected businesses, properties and land throughout construction. Appropriate signposting will be provided to assist safe movements and to demonstrate access arrangements.
- (d) We will communicate our planned processes, solutions and program to the tenants, occupiers and owners of properties that have the potential to be affected by Local Road Works.
- (e) The form and finishes of footpaths, land, public areas, street furniture and landscape areas will be constructed at least to the standards specified in Appendix 11 and Appendix 31.

5.3 Service Works

- (a) We will identify all the Services potentially affected by the work under this Agreement to determine requirements for adjustment, protection and support. This will be undertaken in consultation with the relevant Service owner or Authority.
- (b) We will identify all Services required for the work under this Agreement and do all things necessary to connect such Services to the Upgrade.
- (c) We will investigate, adjust, protect, support, relocate, enhance and/or provide for all Services that are affected by the work under this Agreement or required for the work under this Agreement.
- (d) We will ensure that there are no unplanned disruptions to Services resulting from the work under this Agreement and that planned disruptions are minimised. We will advise local residents and businesses prior to any disruption of any Service.
- (e) We will arrange and coordinate the relocation of all Services and ensure that the requirements of each Service owner or Authority are met. We will obtain written approval and acceptance of all works to and around any Service from the relevant Service owner or Authority.
- (f) We will approach all relevant Service owners and Authorities to determine whether they require allowance for a provision of future Services on and in any of the proposed Upgrade structures.
- (g) Maintenance points for Services will be located within the Project Site only with the prior written approval of RTA's Interface Manager.
- (h) Permanent location markers will be provided as required by the relevant service owner or Authority.
- (i) All Services exposed to view as a consequence of the work under this Agreement will be permanently concealed in a manner consistent with the urban and landscape design.

6 MAINTENANCE

6.1 Asset Management System

6.1.1 Asset Inventory

We will compile an "Asset Inventory" prior to Completion. The Asset Inventory will list all Asset Elements, Asset Types, Asset Items and Asset Sub-Items.

6.1.2 Location Referencing

We will use a location referencing system, based on RTA's ROADLOC road referencing system, for both reporting and Asset Inventory records.

6.2 Maintenance Documentation

6.2.1 General

We will develop a Maintenance Plan. The Maintenance Plan will contain a procedure for each maintenance activity and treatment and will describe any particular maintenance requirements of the fixed plant and equipment in the Upgrade.

6.2.2 Contents of the Maintenance Documentation

As a minimum, the Maintenance Plan will include:

(a) Upgrade Description and Records

A description of the physical elements of the Upgrade, including fixed plant and equipment, operational and security systems and a comprehensive set of as constructed documentation as required in Appendix 24.

(b) Relevant Component of Project Plans

The components of the Project Plans which relate to maintenance of the Alliance Works.

(c) Performance Standards

The performance standards will address the performance requirements, including:

- (i) pavement riding quality targets;
- (ii) design life and durability strategies;
- (iii) as constructed information;
- (iv) load limits and ratings; and
- (v) bridge inventory.

(d) Fixed Plant and Equipment Inventory

The inventory will detail all fixed plant and equipment that is part of the Upgrade and that may require periodic maintenance and/or inspection.

This inventory will also contain associated data, which includes:

- (i) handbooks;
- (ii) typical operating levels of voltage, current etc., as appropriate;
- (iii) spare parts lists;
- (iv) any recommendations from the manufacturers with respect to servicing and/or inspection schedules; and
- (v) schedules of spare parts to be held in stock.

(e) Handover Procedure

We will develop a procedure for handing over the maintenance and operation of Asset Elements to RTA at Completion.

This procedure will detail the training of RTA personnel required, as well as the maintenance schedules for the Asset Elements/Asset Types in the Upgrade as required to satisfy the durability requirements.

7 COMMUNITY INVOLVEMENT OBLIGATIONS

7.1 General Community Involvement Obligations

- (a) We will develop and implement a Community Stakeholder Involvement Plan in accordance with the requirements of Appendix 8.
- (b) We will meet the reasonable needs and desires of the community to minimise construction impacts and be responsible for overall management and coordination of community involvement and consultation.
- (c) We will comply with the requirements of the Privacy and Personal Information Protection Act 1998 (NSW).
- (d) We will, as a minimum, comply with the requirements of RTA guidelines, policies and the following Reference Documents in Appendix 7 in relation to its community relations obligations:
 - (i) NSW (Government) Guidelines for Advertising; and
 - (ii) RTA Visual Identity Guidelines.
- (e) During the investigation, detailed design and construction of the Alliance Works and the Temporary Works, we will ensure that:
 - (i) impacted property owners are consulted;
 - (ii) the local community is informed of, and wherever possible contributes to, decisions taken on the details of the work under this Agreement which impact it;
 - (iii) the community is informed of the progress of the work under this Agreement, significant milestones, design changes, changed traffic conditions, opportunities for input and other matters that either affect or are of interest or concern to the community;
 - (iv) users of the affected road network are informed of planned traffic arrangements including any temporary traffic switches or likely delays;
 - (v) all relevant agencies are informed of planned construction and maintenance activities;
 - (vi) in consultation with RTA's Interface Manager we will arrange and chair all community group meetings relating to the work under this Agreement;
 - (vii) RTA's Interface Manager is informed of all community issues, consulted on all decisions affecting the community and is invited to attend any session to which members of the community are invited (the Alliance must not commit to a specific date for a presentation or site tour to a community group without prior approval of RTA's Interface Manager); and

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- (viii) RTA's Interface Manager is contacted immediately in relation to planned or unplanned local community protests that may arise during the performance of the work under this Agreement.
- (f) We will not release any information, in any form, regarding the work under this Agreement to any organisation or person without the prior approval of RTA's Interface Manager.
- (g) We will refer all enquiries from Federal, State and/or local government representatives to RTA's Interface Manager. Any briefings for the above representatives will be arranged by RTA's Interface Manager.
- (h) We will take, and provide RTA with, regular photographs of the progress of the work under this Agreement. The photographs will be of a professional quality suitable for RTA's use in publications, project communications and promotions of a broader nature and the resolution will be sufficient for use in display materials. Photographs will be provided on a monthly basis.
- (i) We will recognise and identify RTA's role in any promotional material or award submissions that we develop in relation to the work under this Agreement.
- (j) If the Alliance or NOPs produce a professional video, then video objectives, format and content will be as agreed with RTA's Interface Manager. All proposed video content requires approval by RTA's Interface Manager prior to commencing the video production.
- (k) We will provide a 24 hour toll free telephone service, until two months after Completion, for the community to obtain information report incidents and register complaints.
- (l) We will provide an internet site and display locations for the project.
- (m) We will comply with the social/community policies of the Participants on a best for project basis.

Schedule 10

INSURANCES

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

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 two sections of Windsor Road ("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:

1. 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)**
2. 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)**
3. All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**
4. 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)**
5. 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)**
6. 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

7. 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.

8. 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.
9. Provide the unique contract number, title, or other information that identifies the contract.
10. 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.'

11. Provide the date of the most recent payment claim.
12. 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.
13. 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.
14. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
15. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
16. 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:

1. the person is the subcontractor;
2. 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

GLENUGIE UPGRADE ALLIANCE

Roads & Traffic Authority of NSW

Specimen Project

Construction Risks - Material Damage Project Insurance Policy

Period: 5/01 /2009 to 28 / 02 /2012

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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
All Insurance Limited		100%			

Schedule

Named Insured:	Roads & Traffic Authority of NSW This Policy also insures other parties as specified in the definition of the Insured herein.								
Project:	Contracts relating to the works which comprise the upgrade of existing Highway by providing 2.9 km of new dual carriageway from Ave to St Specimen. Works includes realignment of 600m of the Railway and construction of a road bridge over the new railway alignment and widening of an existing road bridge as more particularly defined in the scope of works in the contract including variations thereto..								
Period of Insurance:	From: 4pm on 5 th January 2009_ (Local Time) To: As more particularly defined in this Policy, but estimated at: <ul style="list-style-type: none">(a) Construction Period - ending 4pm 28th February 2012_(b) plus the Defects Liability Period as more particularly defined herein.								
Defects Liability Period:	12___ months any one Contract in respect of the original Defects Liability Period								
Project Site	Highway, Specimen								
Territorial Limits:	Anywhere in Australia, including cover for Insured Property whilst in storage and in transit. <table><tr><td></td><td>\$</td></tr><tr><td>Existing Property</td><td>\$ Included in above</td></tr><tr><td>Construction Plant and Equipment</td><td>\$ Not covered</td></tr></table>		\$	Existing Property	\$ Included in above	Construction Plant and Equipment	\$ Not covered		
	\$								
Existing Property	\$ Included in above								
Construction Plant and Equipment	\$ Not covered								
Sub-limits of Liability:	The liability of Insurers will be further limited in respect of any one Event at any one situation as set out in the Sub-limits below. These Sub-limits will apply in addition to the above Limits of Liability. <table><tr><td>Extensions:</td><td>\$</td></tr><tr><td></td><td>Combined limit in respect of items 2.1(a) to (i).</td></tr><tr><td>2.1(a) Removal of Debris and Other Costs</td><td>\$5,000,000</td></tr><tr><td>2.1(b) Expediting Expenses</td><td>\$5,000,000</td></tr></table>	Extensions:	\$		Combined limit in respect of items 2.1(a) to (i).	2.1(a) Removal of Debris and Other Costs	\$5,000,000	2.1(b) Expediting Expenses	\$5,000,000
Extensions:	\$								
	Combined limit in respect of items 2.1(a) to (i).								
2.1(a) Removal of Debris and Other Costs	\$5,000,000								
2.1(b) Expediting Expenses	\$5,000,000								

2.1(c) Search and Locate Costs	\$100,000
2.1(d) Professionals' Fees	\$5,000,000
2.1(e) Mitigation Expenses	\$2,000,000
2.1(f) Claim Preparation Costs	\$100,000

Offsite Storage	\$5,000,000
Insured Property whilst in transit	\$2,000,000

Basis of Settlement (Insuring Clause 1.3)	1. Contract Works:	Reinstatement Value
	2. Existing Property	Reinstatement Value

Nominee for Insurers' Notices: (Condition 4.7(d)) To be agreed

Nominee for Legal Service:
(Condition 4.12(c)) To be agreed

Agreed Loss Adjuster(s):
(Condition 4.16) Claims under this Policy shall be adjusted with any of the following company(ies) or as otherwise agreed by the Insured and the insurers.

As agreed
The Roads & Traffic Authority NSW

Loss Payee:
(Condition 4.17)

Excess:
(Condition 4.4) Damage to Insured Property each and every loss: \$100,000

Premium:
(Condition 4.8) As agreed

Policy Item	Adjustable	Adjustment Factor	Estimated Value
Contract Works	Yes	Project Value	Over \$50M

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, destruction or damage with the word Damaged having a corresponding meaning.

Defined Peril means, for the purposes of Exclusion 3.8, fire, lightning, explosion, earthquake, Aircraft or 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 landslide.

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 owner 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;
 - (e) any lessor, financier, mortgagee or trustee;
 - (f) any government body;
 - (g) any other party with an insurable interest in the Project;
 - 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, iiia, iiib or iiic 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 existing buildings, 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, ii 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.

Performance Testing Period means the period for the testing and/or commissioning of the Contracts Works or any of its component parts and begins when 'live load' is introduced, including the use of feedstock or other materials for processing or other media to simulate working conditions and in the case of electrical motors, electrical generating, transforming, converting or rectifying plant or machinery, connection to a grid or other load circuit or as more particularly described in a Contract, and ends at the completion of testing and commissioning under the Contract, but in no case exceeding the Performance Testing Period shown in the Schedule.

Performance Testing that exceeds the maximum period stated in the Schedule will only be covered subject to the prior approval of the Insurers.

Where Performance Testing is performed in stages, any periods between the applications of 'live load' are not considered to be part of the Performance Testing Period. Simple functionality tests without the application of 'live load' are not considered to be part of the Performance Testing Period.

Period of Insurance means the period from the commencement date of this Policy shown in the Schedule and includes the Construction Period (in accordance with the option shown in the Schedule) and Defects Liability Period.

i. Construction Period means the period of construction including any relevant Performance Testing Period of any Contract until the earlier of:

Option 1 – Covering whole of Project until completion

(a) the date the Project has been formally accepted in its entirety by the

principal or owner as having achieved practical completion (as defined in the Contract(s)), notwithstanding the fact that portions of the Project may have been handed over, put into use or accepted prior to that time;

- (b) The date specified in item (a) of the Schedule, or if such date is extended pursuant to Condition 4.9, that extended date.

Option 2 – Covering each separable portion until its completion

- (a) the date the Project has been formally accepted in its entirety by the principal or 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 taken over and put into use by the principal or owner;
- (c) the date specified in item (a) of the Schedule, or if such date is extended pursuant to Condition 4.9, that extended date.

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.

- 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 Site shall extend to include overseas situations stated in the Schedule or subsequently endorsed onto this Policy.

Project Value means the total value of work and construction costs incurred by or on behalf of the Insured in respect of the Project and includes the value of principal supplied and other 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 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.

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.

1. Insuring Clauses

1.1 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 within the Territorial Limits during the Construction Period.

1.2 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, provided such Damage:

- (a) manifests itself during the Defects Liability Period; and
- (b) originates from:
 - (i) a cause arising during the Construction Period and at the Project Site; or
 - (ii) an act or omission of any of the Insured parties or some other cause occurring in connection with an Insured party complying with the requirements of the Defects Liability Period provisions of the Contract.

1.3 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.

(a) 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).

(b) 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;

- (c) The total amount payable by Insurers will also include any additional amounts as provided in clauses 1.4 to 1.7 (as applicable).

1.4 Local Authorities Clause

The indemnity provided by this clause 1.4 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.

1.5 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).

1.6 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:

- (a) 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);

- (b) 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 items(s) then the amount payable shall be the cost of the replacement item(s) and no deduction shall be made due to improved output;
- (c) 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.

1.7 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).

2. Extensions applying to this Policy

The following Extensions apply to this Policy

2.1 Additional Costs and Expenses

The Insurers shall, in addition to the Limits of Liability, pay the following extra costs and expenses 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):

(a) Removal of Debris and Other Costs

(i) 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.

(ii) Temporary Protection Costs and expenses incurred by or on behalf of the Insured:

- (1) for the removal of and/or the temporary protection and safety of Insured Property;
- (2) 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.

(iii) Shoring, Propping and Other Costs

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

(b) 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:

- (i) express or chartered carriage or delivery (including by sea or air);
- (ii) travel (including by sea or air) of the Insured's employees, agents, sub-contractors, consultants or representatives;

-
- (iii) overtime or penalty rates of wages and other related allowances and payments;
 - (iv) hire of additional labour, plant, equipment, materials, expertise or services;
 - (v) reasonable and necessary changes in the method of construction, the cost of earlier than usual delivery or manufacture and/or costs of purchasing resources;
 - (vi) accommodation and boarding costs (including meals and other costs associated therewith);
 - (vii) additional administrative and/or overhead expenses.

(c) 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:

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

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

(d) 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.

(e) 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 or imminent threat to life or further Damage occurring at or adjacent to or immediately threatening the Insured Property.

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

- (i) the payment for additional labour (including the Insured's employees), services or resources;
- (ii) 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.

(f) Plant Hire Charges

Reasonable costs and expenses incurred by the Insured for the hire of

Construction Plant and Equipment to replace an item of Damaged Construction Plant and Equipment at the Project Site and/or the continuous hire charges incurred for the Damaged item.

(g) 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.

(h) Government and other Fees

(i) 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.

(ii) 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.

(i) Sue and Labour

Sue and labour and other costs incurred for general average contributions, the salvage, rescue, recovery or retrieval of Insured Property, together with the cost of dismantling and transportation of property to an appropriate place for assessment of any Damage including any transportation costs returning the Insured Property to the Project Site or storage yard once it has been repaired or replaced. Such costs and expenses shall be covered notwithstanding the fact that the loss may not have arisen from physical damage to the item affected.

For the purpose of claims for general average contributions and salvage charges recoverable hereunder, the Insured Property shall be deemed to be insured for its full contributory value.

2.2 Plot Ratio Indemnity

In the event of Damage to Insured Property and as a result of the exercise of statutory powers and/or authority by any government or statutory authority the replacement of Insured Property as before is prohibited or is only permissible subject to a reduced floor space ratio index and/or to the payment of certain fees and contributions as a prerequisite to replacement or reinstatement, then the Insurers agree to pay to the Insured in addition to any amount otherwise payable:

- (a) the difference between the actual cost of replacement or reinstatement incurred in accordance with a reduced floor space ratio index and the cost of replacement which would have been incurred had a reduced floor space ratio index not been applicable;
- (b) the amount of any fees, contributions or other impost payable to any government department, local government or other statutory authority

where such fee, contribution or impost is a condition precedent to consent being given to the replacement of such property;

- (c) the amount of any additional costs and expenses incurred by or on behalf of the Insured as a result of alterations to the specifications of such property brought about by the reduced floor space ratio index as aforesaid.

In arriving at the amount payable under clause (a) above, any amount paid by the Insurers shall include any extra costs of reinstatement or replacement as insured under clause 1.4.

2.3 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.

3. Exclusions applying to this Policy

This Policy does not provide indemnity in respect of:

3.1 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.

3.2 Wear and Tear

Damage directly caused by:

- (a) normal wear and tear;
- (b) 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.

3.3 Defects (LEG 2/06)

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 the said defects the cost of replacement or rectification which is hereby excluded is that cost which would have been incurred if the 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.

3.4 Aircraft or waterborne craft

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

3.5 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.

3.6 Money

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

3.7 Transits Outside of Australia

Damage to Insured Property in the course of ocean marine shipment between countries or transit by air between countries.

3.8 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.

3.9 Breakdown of Construction Plant and Equipment

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

3.10 Nuclear Risks

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

- (a) 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;
- (b) nuclear weapons materials.

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

3.11 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:

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

Insurance Act 2003 (Cth).

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.

4. Conditions applying to this Policy

The following Conditions apply to this Policy. 4.1

Escalation

If during the Period of Insurance, the anticipated final Project Value is estimated to exceed the original estimated Project Value, then the Limits of Liability and Sub-limits of Liability shall be increased by the percentage that represents the amount the anticipated final Project Value exceeds the original 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 each item in the Limits of Liability and Sub-limits of Liability.

4.2 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.

4.3 Limits of Liability

- (a) No liability shall attach to the Insurers until the Damage or loss in respect of each Event exceeds the amount of any relevant Excess stated in the Schedule.
- (b) 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.
- (c) The Limits of Liability and Sub-limits of Liability shall apply in excess of the amount of any relevant Excess.

4.4 Application of Excess

- (a) 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.
- (b) Non-aggregation of Excesses

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

only the highest single Excess amount shall apply.

(c) 72 Hour Clause

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

(d) Inland Transit

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.

4.5 Insurers' Rights and Subrogation

- (a) 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.
- (b) 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.

4.6 **Multiple Insureds Clause**

- (a) If the Insured comprises more than one insured party each operating as a separate and distinct entity then (save as provided in this clause 4.6), cover hereunder shall apply in the same manner and to the same extent as if individual policies had been issued to each such insured party provided that the total liability of the Insurers to all of the insured parties collectively shall not exceed the Limits of Liability or Sub-limits in this Policy.
- (b) The insured parties will, to the extent allowed under contract, at all times preserve the various contractual rights and agreements entered into by the insured parties and contractual remedies of such parties in the event of loss or damage.
- (c) The Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from an insured party in circumstances of such insured party committing fraud, misrepresentation, material non-disclosure or breach of any warranty or Condition of this Policy referred to in this Condition 4.6 as a "Vitiating Act".
- (d) However a Vitiating Act or any other act or neglect committed by one insured party, either at the time of entering this contract or during the Period of Insurance, shall not prejudice the right to indemnity of any other

insured party who has an insurable interest and who has not committed a Vitiating Act.

- (e) The Insurers agree to waive all rights of subrogation that they may have or acquire against:
 - (i) any Insured or any individual or organisation affiliated or associated with, parent of or a subsidiary of any Insured;
 - (ii) 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.

4.7 Notices

- (a) Any notice(s) required by the Conditions of this Policy to be given to the Insurers shall be given by the Insured through any office of their insurance broker, Aon Risk Services Australia Limited (Aon) or direct to the Insurers. Any notice(s) given to any office of the appointed broker constitutes notice upon Insurers.
- (b) 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.
- (c) Any notice(s) given by the Insurers to any party insured under this Policy shall also be given to all other named parties.
- (d) If a Nominee for Insurers' Notices is shown in the Schedule, the Insurers agree to give the nominated organisation 30 business days prior notice in the event of:
 - (i) 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;
 - (ii) the Insurers giving any notice under this Policy.

4.8 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.

- (a) 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.
- (b) 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.

- (c) 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.

4.9 Extension to Period of Insurance

The Insurers agree to automatically grant any required alteration/extensions to the Period of Insurance. 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.

Extensions to the estimated Period of Insurance of up to 60 days shall be at no additional cost. For extensions beyond 60 days, the Insurers shall be entitled to charge the Named Insured an additional premium, but in no case shall the additional premium charged be greater than pro-rata.

4.10 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.

4.11 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.

4.12 Jurisdiction and Service of Proceedings

The Insurers agree that:

- (a) this Policy is governed by the laws of Australia;
- (b) in the event of a dispute arising under this Policy, Insurers at the request of the Insured will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court;
- (c) any summons notice or process to be served upon the Insurers may be served upon the Nominee For Legal Service stated in the Schedule. Such Nominee has authority to accept service and to enter an

appearance on the Insurers' behalf. If directed by the Insured the Nominee shall give a written undertaking that the Nominee will enter an appearance on the Insurers' behalf;

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

4.13 Cancellation

- (a) By the Insurers

The Insurers may cancel this Policy for any of the reasons set forth in Section 60 of the Commonwealth Insurance Contracts Act 1984 by serving on the Named Insured sixty (60) days notice in accordance with Section 59 of that Act, in which case the Named 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 this Policy at any time by giving notice in writing to the Insurers.

- (c) After cancellation by the Named Insured, the Premium will be adjusted in accordance with Condition 4.8 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.

4.14 Alterations in Material Fact/Error or Omission

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

4.15 Progress Payments

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

4.16 Engagement of Loss Adjusters

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

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- (b) The Insurers and Insured agree that the Agreed Loss Adjusters shall be agents of the Insurers and the Insured and all documents, transcripts, reports (verbal and written) shall be made available to the Insurers and the Insured.
 - (c) If at any time there shall be any dispute or difference between the Insurers and the Insured in respect of the adjustment of a loss, then the Insurers or the Named Insured shall be entitled to appoint an independent loss adjuster.

4.17 Loss Payee

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

4.18 Currency

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

Schedule 13

THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE SUMMARY

IMPORTANT NOTE:

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

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

**Telephone 61 2 9253 8407
Facsimile 61 2 9253 7106**

Policy Number: Section 2 99-0000476-LGR

Insured

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

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

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

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

Business and Activities of the Insured

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

Period of Insurance

From: **1 October 2006 at 4.00pm**

To: **1 October 2009 at 4.00pm**

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

Insured Contracts Sections 2

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

Geographical Limits Sections 2 Third Party Liability

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

Limits of Liability Section 2 Third Party Liability

A\$400,000,000 any one Occurrence unlimited to the number of Occurrences during the Period of Insurance but limited to **A\$400,000,000** in the annual aggregate during each 12 month period during the Period of Insurance arising from Products Liability.

Such Limits of Liability apply in excess of the Excesses.

Excesses

Section 2

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

Third Party Liability

Section 2 Insuring Clause

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

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

happening:

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

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

In addition to any indemnity:

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

Exclusions Applicable to Section 2

1. Employer's Liability

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

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

2. Industrial Awards

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

3. Aircraft and Watercraft

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

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

4. Vehicles

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

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

5. Loss of Use

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

6. **Products and Work Performed**

Liability for:

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

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

7. **Professional Liability**

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

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

8. **Pollution and Contamination**

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

9. **Fines and Penalties**

Liability arising from or attributable to:

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

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

10. **Advertising Injury**

Liability arising out of Advertising Injury for:

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

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

Damage to property:

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

12. Asbestos

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

Conditions Applicable to Section 2

1. Limits of Liability

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

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

2. Application of Excess

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

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

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

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

(c) **72 Hour Clause**

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

(d) **Inland Transit**

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

3. **Insurers' Rights**

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

4. **Subrogation and Settlement of Claims**

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

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

In respect of Section 2 of this Policy, no admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the Insured without the consent of the Insurers who shall be entitled, if the Insurers so desire, to take over and conduct in the name of the Insured the defence or settlement of any claim or to prosecute in the name of the Insured for the Insurer's own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings or in the settlement of any claim, however the Insurers shall discuss the conduct, defence, prosecution or settlement of any claim or proceeding with the Insured prior to taking action or effecting settlement.

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

5. **Multiple Insureds Clause**

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

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

6. **Notices**

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

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

7. Insolvency or Bankruptcy

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

8. Hold Harmless Agreements

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

9. Jurisdiction and Service of Proceedings

The Insurers agree that:

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

10. Cancellation/Non-renewal

(a) By the Insurers

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

(b) **By the Named Insured**

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

(c) **Run-off Cover**

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

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

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

11. Alterations in Material Fact/Error or Omission

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

12. Engagement of Loss Adjusters

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

13. Currency

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

14. Difference In Conditions Cover

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

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

(h) Appeals

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

15. Leading Insurer

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

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

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

General Exclusions Applicable to All Sections

The following Exclusions apply to all Sections of this Policy:

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 Exclusion only, combustion shall include any self-sustaining process of nuclear fission;

- 1.2 nuclear weapons materials.

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

2. War and Terrorism

- 2.1 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:

- 2.2 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
- 2.3 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.

THE INSURERS AND PARTICIPATION

Section 2 (Third Party Liability)

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