



**Great Western Highway Upgrade
Lawson Alliance**

PROJECT ALLIANCE AGREEMENT

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GREAT WESTERN HIGHWAY UPGRADE, LAWSON

THIS AGREEMENT is made on 2008

PARTIES

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

The other parties to this Agreement set out in Part B of Schedule 1 (each a Non Owner Participant (NOP) 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 approximately 2.9km section of the Great Western Highway at Lawson to dual carriageway with four lanes between Ferguson Ave and Ridge St, Lawson (Project). The Project also includes the realignment of approximately 600 metres of the Main Western Railway, construction of a road bridge over the new railway alignment as well as the widening of an existing road bridge over the Main Western Railway.
- B. The Project is to be undertaken in two phases.
 - (a) Phase 1 includes:
 - (i) construction of Sections 1B and 2; and-
 - (ii) detailed design for Section 1A; and
 - (b) Phase 2 will include construction of Section 1A.
- C. Completion of the Alliance Works will be scheduled to occur by the date to be set by the Participants under clauses 5.1(a) and 5.2(a) as part of the construction program.
- D. 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.
- E. 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.
- F. This Agreement sets out the Alliance Principles by which we are to carry out the Alliance Works so as to achieve the Alliance Objectives and the manner in which we will be reimbursed for that participation in the Alliance.

OPERATIVE PROVISIONS

1. OUR ROLES AND RESPONSIBILITIES

1.1 Our responsibilities

We are committed to:

- (a) adopting all reasonable measures to ensure that the Alliance Objectives are achieved;
- (b) conducting our activities under this Agreement in a way which is consistent with the Alliance Principles;
- (c) acting in an innovative way for the purpose of:
 - (i) meeting or exceeding the Alliance Objectives and fully complying with the Alliance Principles;
 - (ii) producing outstanding results for the Project;
 - (iii) ensuring that the Alliance Works are carried out in a co-operative, co-ordinated and efficient manner;
 - (iv) creating a win-win position for each of the Participants;
 - (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;

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- (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 AND SERG

2.1 Creation of the ALT

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

2.2 ALT Representation

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

2.4 Functions of the ALT

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

2.5 Meetings of the ALT

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

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- (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.

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 or deemed acceptance of the minutes by each of the Representatives, the minutes will be deemed to be the official record of the relevant meeting.

2.8 Senior Executive Review Group

- (a) The Participants must form a Senior Executive Review Group within 20 Business Days of the date of this Agreement.
- (b) The Senior Executive Review Group will comprise:
 - (i) two senior managers from RTA not directly associated with the Alliance; and
 - (ii) one Senior executive from each NOP.
- (c) Each Participant may replace its representatives on the Senior Executive Review Group with the consent of the other members of the Senior Executive Review Group (which will not be unreasonably withheld).
- (d) The purpose of the Senior Executive Review Group is to review the progress of the Project at a higher level than the ALT and to make recommendations about the Project to the Participants.
- (e) Subject to clause 2.8(f), meetings of the Senior Executive Review Group must occur at intervals of four to six months.
- (f) In addition to the meetings referred to in clause 2.8(e), any of us may call a meeting of the Senior Executive Review Group at any other time if we consider it necessary.
- (g) Each of us must ensure that our representative or representatives attend the meetings referred to in this clause 2.8.

3. ALLIANCE MANAGEMENT TEAM AND ALLIANCE MANAGER

3.1 Appointment of Alliance Manager

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

3.2 Functions of the Alliance Manager

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

3.3 Functions of the AMT

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

4. INTEGRATED PROJECT TEAM

4.1 Creation of the Integrated Project Team

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

4.2 Functions of the Integrated Project Team

The Integrated Project Team will:

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

4.3 Members of the Integrated Project Team

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

5. PROJECT PROPOSALS AND DESIGN

5.1 Phase 1 Project Proposal

- (a) Within 60 Business Days of execution of this Agreement, or such other period agreed in writing by RTA, we will prepare and submit to RTA a Project Proposal for Phase 1 which will include:
 - (i) a detailed statement of the scope and technical requirements of the Alliance Works for Phase 1;
 - (ii) a fully detailed proposed target outturn estimate in respect of the Alliance Works for Phase 1;
 - (iii) a draft cash flow schedule for Phase 1;
 - (iv) the assumed commencement date for each of Phase 1 and Phase 2, and a construction program in respect of the Alliance Works for Phase 1 and Phase 2;
 - (v) the Alliance Management Plan; and
 - (vi) the proposed insurance program for Phase 1.
- (b) Following receipt of the Project Proposal for Phase 1 pursuant to clause 5.1(a), 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 the Project Proposal for Phase 1 to RTA for approval in accordance with this clause 5.1(b); or
 - (iii) reject the Project Proposal and give the ALT a notice in writing informing the ALT that the Alliance Works will not proceed under this Agreement, in which case, clause 11.1 will apply on and from the date of that notice.

5.2 Further Project Proposal

- (a) Within 200 Business Days of execution of this Agreement, or such other period agreed in writing by RTA, we will prepare and submit to RTA a Project Proposal for Phase 1 and Phase 2 which will include:
 - (i) Design Documentation for Phase 2, developed to a level of detail approved by the ALT;
 - (ii) a detailed statement of the scope and technical requirements of the Alliance Works for Phase 2;

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- (iii) a fully detailed proposed target outturn estimate in respect of the Alliance Works for Phase 2;
 - (iv) a draft cash flow schedule for Phase 2;
 - (v) the assumed commencement date for Phase 2, and an updated construction program in respect of the Alliance Works for Phase 1 and Phase 2;
 - (vi) an updated Alliance Management Plan;
 - (vii) confirmation that all necessary Works Approvals, including approvals required from RailCorp, for Phase 2 are in place or can be obtained;
 - (viii) (if required by RTA) confirmation that all concerns of Authorities, including RailCorp, have been satisfactorily addressed for Phase 1 and Phase 2; and
 - (ix) the proposed insurance program for the completion of Phase 1 and the insurance program for Phase 2.
- (b) Following receipt of the Project Proposal pursuant to clause 5.2(a) for the Alliance Works, 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 for the Alliance Works and re-submit the Project Proposal to RTA for approval in accordance with this clause 5.2(b); or
 - (iii) reject the Project Proposal and give the ALT a notice in writing informing the ALT that Phase 2 of the Alliance Works will not proceed under this Agreement, in which case clause 5.2(c) will apply.
- (c) If clause 5.2(b)(iii) applies:
- (i) this Agreement will continue to operate as if Phase 1 were the whole Project;
 - (ii) RTA may, whether by itself or with others, proceed with Phase 2 in which event the NOPs will have no right to damages or any other compensation whatsoever in respect of Phase 2;
 - (iii) RTA may (at no additional cost or charge) use any of the work that has been performed by the Alliance under this Agreement for Phase 2 (including Intellectual Property Rights).

5.3 Separable Portions

RTA may, as part of the process contemplated under clauses 5.1 and 5.2 , require the Participants to develop and submit to RTA a proposed target outturn estimate and a construction program for each additional Separable Portion of the Alliance Works (if applicable).

5.4 Design

- (a) Without limiting clause 6.9, Phase 1 of the Alliance Works will include:
 - (i) reviewing the detailed Design for Sections 1B and 2, and completing outstanding Design components together with the design consultants;
 - (ii) preparing the detailed Design for Section 1A, including all associated Design Documentation; and
 - (iii) undertaking investigations and studies, where required, including geotechnical investigations and survey to assist in the development of the Design.
- (b) The Participants acknowledge and agree that:
 - (i) prior to execution of this Agreement RTA had engaged design consultants to undertake Design for the Project (**Design Consultants**); and
 - (ii) from execution of this Agreement, the Design Consultants will assist the Alliance with the Design.

6. ALLIANCE WORKS

6.1 Commencement and duration of Alliance Works

- (a) We will not commence construction of:
 - (i) Sections 1B and 2 of the Alliance Works unless and until RTA provides its approval in writing to the Project Proposal pursuant to clause 5.1(b) or as otherwise agreed by RTA in writing; or
 - (ii) Section 1A unless and until RTA provides its approval in writing to the Project Proposal pursuant to clause 5.2(b) or as otherwise agreed by RTA in writing.
- (b) We will carry out:
 - (i) Phase 1 of the Alliance Works in accordance with the construction program approved under clause 5.1(b); and

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- (ii) Phase 2 of the Alliance Works in accordance with the construction program approved under clauses 5.1(b) and 5.2(b).
 - (c) We may only extend the Date for Completion for Phase 1 or Phase 2 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

- (a) Once the matters in clauses 5.1(b) and 5.2(b) have been finalised the Date for Completion for each of Phases 1 and 2 shall be determined by the ALT. The ALT may revise those dates.
- (b) We agree that the Alliance Works must be executed to achieve Completion for Phases 1 and 2 by the Date for Completion for those phases.

6.5 Certificate of Completion

- (a) If the Alliance Manager considers that we have not achieved Completion for each of Phases 1 and 2 by the Date for Completion for those phases, 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 for the relevant phase.

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- (b) When the Alliance Manager considers that we have achieved Completion for each of Phases 1 and 2, the Alliance Manager will submit a draft Certificate of Completion for the relevant phase to the ALT for its approval. The draft Certificate of Completion for the relevant phase 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 for the relevant phase.
 - (c) If the ALT approves the draft Certificate of Completion for a phase, 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 for that phase:
 - (i) the ALT will provide details to the Alliance Manager of work the ALT considers to be outstanding to achieve Completion for that phase; and
 - (ii) the Alliance Manager will promptly inform the Participants that Completion for that phase has not been achieved and the details of the outstanding work required to achieve Completion for that phase.
 - (e) Once the Alliance Manager is satisfied that the outstanding work has been completed for that phase in accordance with this Agreement, the Alliance Manager will again initiate the approval process under this clause 6.5.
 - (f) The Certificate of Completion for each of Phases 1 and 2 must also refer to the date which the ALT determines is the Date of Completion for each of those phases.

6.6 Certificate of Final Completion

- (a) After expiry of the Defects Correction Period for a phase, and provided the Alliance Manager is not aware of any outstanding Defects, the Alliance Manager will submit a draft Certificate of Final Completion in respect of that phase to the ALT for its approval.
- (b) If the ALT approves the draft Certificate of Final Completion for a phase, 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 for a phase or considers that there is some other obligation under this Agreement which has not been performed or observed:

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- (i) the ALT will inform the Alliance Manager as to what the ALT considers to be outstanding to achieve Final Completion for that phase or to perform or observe the relevant obligation under this Agreement; and
 - (ii) the Alliance Manager will promptly inform the Participants that Final Completion of that phase 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 for a phase must also refer to the date which the ALT determines is the Date of Final Completion in respect of that phase.

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 for each of Phases 1 and 2. Any delay by RTA in giving the Alliance access to and use and control of the Site will not be a breach of this Agreement, but may be an Excusable Delay and, consequently, may be grounds for a Scope Change;
- (b) Subject to any access protocols determined by the ALT, RTA, its officers, employees and agents and any other person (for example, a contractor carrying out work or services for RTA) nominated by RTA may at any reasonable time (and, where appropriate, with reasonable notice) have access to any part of the Site, the Alliance Works or at any other place where the work under this Agreement is being carried out or materials are being prepared or stored for the purpose of performing the work under this Agreement;
- (c) the NOPs will comply with all reasonable directions of RTA in relation to access to and use and control of the Site or any part of the Site by any of the NOPs, Subcontractors and other persons;
- (d) we will maintain the Site and any other lands and places required to complete the Alliance Works in a safe, clean and tidy condition and regularly remove surplus materials and rubbish from the Site;
- (e) on completing work at the Site and as a condition precedent to Completion for each phase, we will:
 - (i) remove all Construction Plant, Temporary Works and all surplus materials and rubbish from the Site; and

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- (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* and the *Occupational Health and Safety Regulation 2001*; 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 in respect of either Phase 1 or 2, 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 of each of Phases 1 and 2, determine any amount which should be either:
 - (i) withheld until the Date of Final Completion for the relevant phase from a Participant's payment of the Fee and/or initial distribution of Gainshare determined in accordance with the Commercial Framework; or
 - (ii) deducted from any final payment of the Fee or Gainshare payable to that Participant in accordance with the Commercial Framework,

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

6.12 Long Service Levy

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

- (a) pay to the Building and Construction Industry Long Service Payments Corporation or the Corporation's agent the amount of the long service levy payable in respect of the building and/or construction work under the *Building and Construction Industry Long Service Payments Act 1986* (NSW); and
- (b) ensure that RTA is provided with the documentary evidence of payment of the levy.

7. PERFORMANCE OF ALLIANCE WORKS

7.1 Primary performance obligation

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

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

7.2 Primary performance obligations of RTA

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

7.3 Subcontracts

- (a) We will ensure that:
 - (i) all Subcontracts are entered into in accordance with the authorisation protocols set by the ALT from time to time;
 - (ii) a NOP enters into a Subcontract in its own right and not as our agent or as an agent of RTA; and
 - (iii) where possible, all Subcontractors are pre-qualified by RTA pursuant to RTA's usual qualification procedures for contractors from time to time.
- (b) The terms of any Subcontract must:

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- (i) contain a requirement that the relevant Subcontractor execute a deed (in such form as RTA may from time to time require) with RTA creating a duty of care in favour of RTA in relation to the works or services to be conducted under the Subcontract, unless RTA decides in its discretion that a deed is not necessary;
 - (ii) be approved by the Alliance Manager;
 - (iii) contain an assignment of Intellectual Property Rights by the Subcontractor to the NOP on terms identical to clause 16.1(a) (except for substituting the relevant Subcontractor for the NOP); and
 - (iv) contain confidentiality obligations substantially the same as those in clause 16.5.
- (c) If any of us engage a Subcontractor we must, where required in writing by either the ALT or RTA, enforce or defend the relevant Subcontract for the benefit of the Alliance and any:
- (i) such enforcement or defence actions, settlement or proceedings must be conducted under the written direction of either the ALT or RTA; and
 - (ii) costs of such enforcement actions or proceedings will be dealt with in accordance with the Commercial Framework.

7.4 Compliance with Statutory Requirements

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

7.6 Quality assurance

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

7.7 **Health and safety**

- (a) We are committed to achieving outstanding performance in relation to health and safety and making every effort to maintain a workplace free of accidents and injuries.
- (b) In this clause 7.7, the terms "principal contractor" and "place of work" have the same meanings assigned to those terms under the *Occupational Health and Safety Act 2000* (in this clause, **the Act**) and the *Occupational Health and Safety Regulation 2001* (in this clause, **the Regulation**).
- (c) Without limiting our obligations under any other provision of this Agreement, we agree as follows:
 - (i) to the extent that RTA is able to validly appoint Abigroup Contractors Pty Limited as the principal contractor under clause 210 of the Regulation then, from the date on which RTA notifies Abigroup Contractors Pty Limited:
 - (A) Abigroup Contractors Pty Limited is appointed as principal contractor under clause 210 of the Regulation; and
 - (B) RTA and the NOPs give all necessary authority to Abigroup Contractors Pty Limited to allow it to fulfil and exercise the obligations and functions of the principal contractor under the Regulation;
 - (ii) Abigroup Contractors Pty Limited must, from the date on which RTA notifies Abigroup Contractors Pty Limited:
 - (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 Abigroup Contractors Pty Limited 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 Abigroup Contractors Pty Limited's compliance 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 OH&S Plan in accordance with the New South Wales OHS&R Management Systems Guidelines and which is equivalent to or better than the standards set out in RTA's *DCM G22 Specification for Occupational Health and Safety (Major Works)*; and
 - (ii) submits the OH&S Plan to 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;

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- (iii) prevent damage, obstruction or other interference with services;
 - (iv) prevent nuisance and unnecessary noise and disturbance;
 - (v) prevent environmental damage or pollution; and
 - (vi) ensure that the Alliance Works do not have any adverse impact on RTA infrastructure and operations to a greater extent than is inherently necessary for the performance of the work under this Agreement,

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

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

7.10 Care of the Alliance Works

- (a) From the date of commencement of the Alliance Works in respect of Phase 1, until the Date of Completion for Phase 1, we will be responsible for the care of the Alliance Works in respect of Phase 1.
- (b) From the date of commencement of the Alliance Works in respect of Phase 2, until the Date of Completion for Phase 2, we will be responsible for the care of the Alliance Works in respect of Phase 2.
- (c) After the Date of Completion for Phases 1 and 2, 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 in respect of those phases.

7.11 Reinstatement

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

7.12 Industrial relations

- (a) We must comply with the *NSW Government Industrial Relations Management Guidelines* and acknowledge that the Project constitutes a Category 1 Project as defined in those guidelines.
- (b) Before starting the Alliance Works, the ALT must ensure that the Alliance Manager prepares and submits to the ALT:

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- (i) evidence of compliance by each of the NOPs with all employment and legal obligations in the preceding twelve months (and the NOPs must provide this evidence when requested by the Alliance Manager);
 - (ii) the location of time and wage records and other documents that are required to be kept to verify ongoing compliance with all employment and legal obligations;
 - (iii) the names of Federal or New South Wales awards that are likely to cover Subcontractors and other contractors on the Project;
 - (iv) the names of those responsible for co-ordinating industrial relations in relation to any part of the Project;
 - (v) an outline of:
 - (A) consultation and communications mechanisms;
 - (B) measures to coordinate the interface with Subcontractors, other contractors and unions;
 - (C) measures for assessing Subcontractors; and
 - (D) measures to monitor and verify ongoing compliance; and
 - (vi) a project industrial relations plan.

7.13 Environment

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

7.14 Community, social issues and media

- (a) We are committed to practices and procedures which are rated as world class with genuine sensitivity and responsiveness being shown at all times to community members and groups. RTA may direct the Alliance and the ALT in relation to any matters dealing with Stakeholders, and the Alliance and the ALT must comply with RTA's directions.
- (b) Nothing in clause 7.14(a) will require a NOP to enter into a contract with a Stakeholder.
- (c) No participant may disclose any information concerning the Project for distribution through any communications media without RTA's prior written approval. The Participants must refer to RTA any enquiries from any media concerning the Project.

7.15 Regulatory approvals

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

7.16 RTA Statement of Business Ethics

We agree that we must comply, in the performance of this Agreement, with the RTA Statement of Business Ethics. Copies of the statement are available at http://www.rta.nsw.gov.au/doingbusinesswithus/downloads/rta_businessethics_d111.html.

7.17 Protection of Aboriginal heritage and Aboriginal rights

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

- (a) do not enter Aboriginal sites or disturb, interfere with or remove anything from such Aboriginal sites or their vicinity, except with the prior written approval of RTA;
- (b) should any Aboriginal sites be identified in or in the vicinity of the Site, immediately cease all activities which could impact on such Aboriginal sites; and
- (c) comply with RTA's instructions reasonably required to enable RTA to comply with any obligations arising as a result of the operation of Statutory Requirements in relation to native title.

7.18 Aboriginal participation in construction

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

7.19 Training management

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

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

7.20 Suspension of Alliance Works

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

7.21 RTA may direct changes to the Alliance Works

- (a) RTA may direct us (**Direction**), through its authorised representative appointed under clause 7.21(g) to:
 - (i) change the design or specification of the whole or any part of the Alliance Works;

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- (ii) change the Alliance Works or any part of the Alliance Works;
 - (iii) change the conduct, rate of progress, 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 a proposed Direction, issue to the ALT an Estimation Request.
- (d) If RTA issues an Estimation Request or if the ALT determines that RTA has issued a Direction that may give rise to a Scope Change, but has not issued an Estimation Request, the ALT must promptly determine:
 - (i) whether the matters contained in the Estimation Request or the subject of the Direction would constitute a Scope Change; and
 - (ii) if the matters contained in the Estimation Request or the subject of the Direction would constitute a Scope Change, the change in the terms of compensation set out in the Commercial Framework to the NOPs which will result from the conduct of those matters,

and provide written notice as to its determination to RTA and the relevant NOPs.

- (e) Following RTA's receipt of a notice under clause 7.21(d) or upon the ALT determining that unless a Direction referred to in clause 7.21(a) is withdrawn, a Scope Change will arise and RTA must notify the ALT in writing whether it wishes to:
 - (i) not proceed with the Direction;

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- (ii) revise the Estimation Request, in which case the provisions of this clause 7.21 will apply to the revised Estimation Request; or
 - (iii) confirm the Direction or issue a Direction for the matters contained in the Estimation Request, in which case the compensation payable to the NOPs under this Agreement will be altered in the manner set out in the ALT's notice under clause 7.21(d).
- (f) No Direction will result in a change in the compensation payable pursuant to this Agreement unless the Direction is determined by the ALT to give rise to a Scope Change, the ALT has issued a notice under clause 7.21(d) and provided that all other requirements concerning compensation under this Agreement are satisfied.
- (g) The person authorised at the date of this Agreement by RTA under this clause 7.21 is the person from time to time occupying the position of "Director, Major Infrastructure". RTA will give written notice to the NOPs of any change in the person appointed by it as its authorised representative for the purpose of this clause 7.21.
- (h) RTA and the ALT must use their reasonable endeavours to minimise any delays in the Alliance Works arising from the processes contemplated in this clause 7.21.
- (i) A NOP may inform RTA, the ALT and the Alliance Manager if the NOP is of the reasonable opinion that compliance with a Direction given by RTA under clause 7.21 would place the NOP in breach of its obligations:
- (i) under the *Occupational Health and Safety Act 2000* and the *Occupational Health and Safety Regulation 2001*; and/or
 - (ii) as the principal contractor pursuant to clause 7.7(c)(ii).

and the ALT will then determine a suitable resolution of the occupational health and safety issue which avoids or remedies such breach.

7.22 ALT may recommend changes to the Alliance Works

- (a) The ALT may, at any time during the period of the Alliance Works, recommend to RTA through its authorised representative appointed under clause 7.21(g):
 - (i) a change to the design or specification of the whole or any part of the Alliance Works;
 - (ii) a change in the Alliance Works or any part of the Alliance Works;
 - (iii) a change in the conduct, rate of progress, order or program of the Alliance Works;

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

7.23 Benchmarking of Alliance performance

- (a) The Participants agree that it is a fundamental obligation of the Alliance to demonstrate, ensure and deliver value for money to RTA.

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- (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).

7.24 Conference of Alliances

- (a) The RTA's authorised representative may, at any time prior to Final Completion of the Alliance Works, direct the ALT to attend a conference which will also be attended by:
 - (i) the representatives of RTA's other alliances; and
 - (ii) nominated invitees of RTA's authorised representative (which may specifically include alliance leadership team representatives from alliances sponsored by parties other than RTA).
- (b) RTA's expectation of this conference is to enable:
 - (i) alliance contracting best practice methodologies to be identified, shared and understood;
 - (ii) RTA to be satisfied that the behaviours, standards and governance of its alliances are equal to other alliances developed or being developed across Australasia; and

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- (iii) development of a benchmark for the performance of RTA's alliances against each other and/or against other alliances developed or being developed across Australasia to the extent that it is practicable to do so.
 - (c) The NOPs agree that they will attend the conference and participate in a manner consistent with our Alliance Principles so as to fully, frankly and honestly disclose all information or lessons learned relating to the Alliance, the work under this Agreement or the Alliance Works, other than that which the ALT determines is genuinely commercial in confidence.

8. PAYMENTS

8.1 Invoices and payments

- (a) Payment claims may be submitted to RTA as follows:
 - (i) prior to the Date of Final Completion for each of Phases 1 and 2, 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 for each of Phases 1 and 2, 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;

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- (ii) all relevant sections of the Payment Claim must be properly completed;
 - (iii) a Payment Claim must be accompanied by a statement by the Alliance Manager that the amounts shown in the Payment Claim are in accordance with the terms of this Agreement and are in order for payment by RTA;
 - (iv) a Payment Claim must be accompanied by a statutory declaration from each of the relevant NOPs:
 - (A) in the form set out in **Schedule 11** (Statutory Declaration);
 - (B) including the details required in **Schedule 11** (Statutory Declaration);
 - (C) made by a person who is in a position to know the facts attested to; and
 - (D) be properly sworn or affirmed according to the *Oaths Act 1900* (NSW) or the equivalent legislation applicable in the place where the declaration is made; and
 - (v) the final Payment Claim must be accompanied by a statement by the Financial Auditor in a form approved by RTA confirming that the amounts shown in the Payment Claim are in accordance with the terms of this Agreement.
- (f) Subject to the conditions contained in clause 8.1(e) being met, RTA will pay the NOPs (or the NOPs will pay RTA as the case may be) the amounts stated in a Payment Schedule in accordance with clause 8.1(g).
 - (g) RTA will pay each NOP under clause 8.1(f) no later than 10 Business Days after the Payment Schedule is issued or satisfaction of the conditions set out in clause 8.1(e) (whichever is the later). The NOPs will pay RTA under clause 8.1(f) no later than 10 Business Days after RTA supplies a similar document to that required in clause 8.1(e)(i).
 - (h) No payment by RTA will be evidence of the value of work, an admission of liability or that the work has been executed satisfactorily, but will be deemed to be a provisional payment on account and subject to a final verification audit by the Financial Auditor and RTA.
 - (i) The Financial Auditor may undertake an audit of a Payment Claim (whether it has been paid or not) to confirm that the amounts shown in the Payment Claim are in accordance with the terms of this Agreement. If the Financial Auditor demonstrates to the ALT that any amount shown in the Payment Claim is not in accordance with the terms of this Agreement, then any adjustment necessary must be made in the Payment Claim following that demonstration.

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- (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), Schedule 2, part 5 of the *Payroll 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.
 - (l) Statutory declarations as required by clause 8.1(e)(iv) must also be provided to RTA by a NOP at other times as requested by the Alliance Manager or, after the Date of Final Completion, by RTA

8.2 Payment for materials not incorporated

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, suppliers or Subcontractors of that NOP.

8.5 RTA may pay on court order

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

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

9. GST

- (a) In this clause 9:
 - (i) the expressions "adjustment note", "consideration", "Goods and Services Tax", "GST", "supply", "tax invoice", "recipient" and "taxable supply" have the meaning given to those expressions in the *New Tax System (Goods and Services Tax) Act 1999*;
 - (ii) a reference to a payment being made or received includes a reference to consideration other than money being given or received.
- (b) Unless otherwise expressly stated, all prices or other sums payable or payment to be made under or in accordance with this Agreement, do not include any amount for GST.
- (c) If GST is payable on any supply made under this Agreement, the consideration for the supply must be increased by, and the recipient of the supply must pay to the supplier, an additional amount equal to the GST payable on the supply.
- (d) Any contract entered into with a third party which involves supplies being made, the cost of which will affect the cost of any supplies made under this Agreement, must include a clause including equivalent terms to this clause 9.
- (e) If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled on the acquisition of the relevant supply.

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- (f) If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment must be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of any GST component.
 - (g) RTA will issue a Tax Invoice for each taxable supply it makes to the NOPs.
 - (h) RTA will issue to the NOPs a recipient created Tax Invoice (**RCTI**) for each taxable supply (other than an excluded supply) made by the NOPs to RTA under this Agreement, and will issue an adjustment note for any adjustment event. We may agree in writing from time to time which supplies are excluded supplies.
 - (i) NOPs must not issue a Tax Invoice in respect of any supply made to RTA, other than for an excluded supply. NOPs must give RTA a Tax Invoice for an excluded supply as part of, or before, the making of a Payment Claim which includes the relevant supply.
 - (j) We must notify each other if we cease to be registered for GST or cease to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.
 - (k) We acknowledge that, at the time of entering into this Agreement, we are registered for GST.
 - (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

10.1A We acknowledge that prior to the commencement of any work on the Site, we must assess the relative risks and benefits to the Alliance of the insurance arrangements referred to in clause 10.1 of this Agreement being taken out and maintained by RTA, the NOPs or the Alliance and must make recommendations to the ALT for approval. The terms and conditions of the insurances under clause 10.1 and terms of settlement of claims under those insurances must be approved by the ALT.

10.1 Insurances provided by RTA

The operation of this clause 10.1 is subject to clause 10.1A.

- (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

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- (ii) is in the names of the Participants and the Subcontractors for their respective rights and interests.
 - (b) The NOPs acknowledge and agree that:
 - (i) before entering into this Agreement, they were given a copy of or access to, and satisfied themselves as to the provisions, terms, conditions, exclusions and excesses of the PPL Insurance; and
 - (ii) they accept the PPL Insurance as full satisfaction of RTA's obligation to insure for public and products liability insurance under this Agreement.
 - (c) RTA will maintain the PPL Insurance for the term of this Agreement.
 - (d) Before commencing any of the Alliance Works, the NOPs must contact RTA's insurance broker, Aon Risk Services Australia Limited, to provide contract, Subcontractor and insurance details necessary for the PPL Insurance.
 - (e) The NOPs must provide any further details necessary for the PPL Insurance to RTA whenever directed by RTA to do so.
 - (f) RTA will before the CW Insurance Date use its best endeavours to arrange the CW Insurance referred to as being the responsibility of RTA in **Schedule 10 (Insurances)** which:
 - (i) is intended to cover the NOPs' liabilities to RTA and to third parties for the limits of liability identified in **Schedule 10 (Insurances)**; and
 - (ii) will be in the names of the Participants and the Subcontractors for their respective rights and interests.
 - (g) The NOPs acknowledge and agree that:
 - (i) no work will be carried out as part of the Alliance Works before the CW Insurance Date that could result in an event which could give rise to a claim under the CW Insurance and as a consequence, the NOPs accept that there is no need for any Participant to have CW Insurance type cover at least before that date;
 - (ii) if RTA is unable to obtain CW Insurance by the CW Insurance Date, or it obtains CW Insurance by that date but on provisions, terms, conditions, exclusions or excesses materially and detrimentally different to those indicated in **Schedule 12 (Likely Indicative Terms of Construction Material Damage Insurance Policy)**, the NOPs may effect such CW Insurance type cover or top up cover as determined by the ALT and the cost of such cover will form part of the Direct Costs and the need for such cover will qualify as a Scope Change; and

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- (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 term of this Agreement.
 - (j) As soon as practicable after the Date of this Agreement, the NOPs must contact RTA's insurance broker, Aon Risk Services Australia Limited, to provide contract, Subcontractor and insurance details necessary for the CW Insurance or CW Insurance type cover, as appropriate.
 - (k) The NOPs must provide any further details, necessary for the CW Insurance, if any, to RTA whenever directed by RTA to do so.
 - (l) Subject to clause 10.1(g), we must ensure that all Direct Costs and the Target Outturn Cost exclude any allowance for the cost of the Principal Arranged Insurances.
 - (m) We will comply with the exclusions and conditions of the Principal Arranged Insurances.

10.2 Insurances to be provided by NOPs

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

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- (ii) not, without the consent of the insurer, or each other, make any admission, offer, promise or payment in connection with any occurrence or claim;
 - (iii) give all information and reasonable assistance as the insurer may require in the prosecution, defence or settlement of any claim; and
 - (iv) give notice to each other as soon as practicable after discovery that a term, condition or clause of any insurance policy has been unintentionally or inadvertently breached.
- (b) Notwithstanding the provisions of this clause, we may take immediate action to avoid loss of life or damage to property where that is reasonably necessary in the circumstances and any such action will not prejudice the position of us under the policies of insurance in respect of any loss, destruction or damage.

10.8 Pass through of insurance payouts

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

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

11. WITHDRAWAL AND TERMINATION

11.1 Notice of termination

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

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

11.2 Effect of termination

- (a) If this Agreement is terminated under clauses 11.1 or 13.3(d), RTA may take and use, in any way, the whole or any part of the Alliance Works.

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- (b) The NOPs will not be liable in any way for that portion of the Alliance Works that is not completed as a result of termination of this Agreement under clauses 11.1 or 13.3(d).

11.3 Our actions

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

- (a) cease work under this Agreement;
- (b) protect property in our possession in which RTA has or may acquire an interest;
- (c) demobilise from the Site all persons, Construction Plant, Temporary Works, vehicles, equipment and other things owned by or under the control of the NOPs;
- (d) assign to RTA all rights and benefits under Subcontracts;
- (e) provide RTA with possession of all materials and other things on the Site or off-Site 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 11.3(a) to (e) (inclusive).

11.4 Termination payments

Subject to RTA's rights under or in connection with this Agreement, including the rights to withhold or set-off payment and recover damages, if this Agreement is terminated under either clause 11.1 or clause 13.3(d), RTA will pay the NOPs or the NOPs will pay RTA, as the case may be, the difference between:

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

- (v) the reasonable costs of complying with any directions given by RTA on or after termination; and
- (b) an amount equal to any amounts which RTA previously paid to the NOPs, and RTA will not otherwise be liable to the NOPs for any cost, loss, expense or damage incurred by the NOPs as a consequence of, or in connection with the Alliance Works, this Agreement or the termination of this Agreement.

12. NO ARBITRATION OR LITIGATION

Except to the extent required by any law:

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

13. DEFAULT BY PARTICIPANT

13.1 Default by us

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

13.2 Notice of default

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

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

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

13.3 Failure to remedy

If:

- (a) the Defaulting Participant fails within 7 Business Days after receiving a notice given under clause 13.2 to rectify a default; or

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

13.4 Exclusion from further participation in this Agreement

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

- (a) the 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) Subject to clause 14.3(b), this Agreement creates legally enforceable rights:
 - (i) despite the fact that certain matters are to be settled, resolved, determined or agreed by the ALT; and
 - (ii) irrespective of how or whether any matters to be settled, resolved, determined or agreed by the ALT are resolved, determined or agreed.
- (c) Interpretation of this Agreement which is consistent with the principles in clauses 14.1(a) and (b) is to be adopted.

14.2 Civil Liability Act

- (a) The operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any rights, obligations and liabilities arising under or in relation to this Agreement regardless of how such rights, obligations or liabilities are sought to be enforced.
- (b) We will use our best endeavours to ensure that a clause equivalent to clause 14.2(a) is included in:
 - (i) each Subcontract; and
 - (ii) any further contract that any Subcontractor enters into with others for the carrying out of works.

14.3 Liability under this Agreement

- (a) Subject to:
 - (i) the indemnities in clauses 14.3(b), 16.1 and 16.3; and
 - (ii) the provisions of clause 14.5,

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

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

14.4 Limitations and exclusions of rights and liabilities

Any provision of this Agreement which seeks to limit or exclude a right or liability is to be construed as doing so only to the extent permitted by law.

14.5 Preservation of insurance rights

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 Audit

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

16. CARE OF INFORMATION

16.1 Intellectual Property

- (a) Unless agreed otherwise, all Intellectual Property Rights in any document, matter or thing created, developed, written or otherwise brought into existence by any one or more of the Participants in the course of performance of this Agreement will vest jointly (as tenants in common) in all of the Participants on creation.
- (b) Each Participant grants to each other Participant a world wide non-exclusive, royalty-free licence to use and exploit all:

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- (i) Intellectual Property Rights vested under clause 16.1(a); and
 - (ii) other Intellectual Property Rights which were created prior to this Agreement but which are inherent in, or essential for, the use of the Intellectual Property Rights created under clause 16.1(a).

The licence created by this clause 16.1(b) continues beyond the expiry or earlier termination of this Agreement and includes rights to sub-licence and further sub-licence.

- (c) Nothing in this clause 16.1 is intended to vest in any Participant any Intellectual Property Rights in the pricing information or pre-existing business methodologies of any other Participant.
- (d) We must ensure that, in providing the Alliance Works, we will not infringe the Intellectual Property Rights of any person or company, and each NOP must ensure that Intellectual Property Rights sufficient to permit RTA's use, maintenance and future modification of the Alliance Works are available to RTA and its nominated sub-licensees and sub-contractors as part of the Alliance Works.
- (e) Records relating to Intellectual Property Rights created by us for the purposes of undertaking the Alliance Works are and will remain the sole property of RTA.
- (f) Records relating to Intellectual Property Rights must be provided to RTA (in such form as RTA may reasonably require) on completion of the Alliance Works and/or within 7 Business Days of being requested to do so by RTA.
- (g) Each of us will indemnify each other against all costs, losses, damages and claims to the extent arising from our breach of clause 16.1(d).

16.2 Moral rights

Each NOP must use its best endeavours to:

- (a) obtain in writing from its officers, employees, Subcontractors, agents and licensees all necessary, unconditional and irrevocable:
 - (i) consents permitted by applicable law, to any alterations to, or use of the Material that would otherwise infringe their respective moral rights in the Material, whether occurring before or after the consent is given; or
 - (ii) to the extent a consent is not permitted by applicable law, waivers permitted by applicable law of their respective moral rights in the Material, for the benefit of RTA;

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- (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 Participant must:

- (a) provide, at no cost to the other, all reasonable assistance required by a NOP to defend a claim or any proceedings arising from defending any claim for the infringement of Intellectual Property Rights vested under clause 16.1 or moral rights of third parties;
- (b) keep each Participant 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;

Each NOP must

- (c) indemnify RTA against all cost, loss, expense or damage (including without limitation legal costs on a solicitor and own client basis and whether incurred by or awarded against RTA) any claim or proceedings, that RTA may sustain or incur as a result of a breach of clause 16.1 or clause 16.2; and
- (d) satisfy any settlement of, or judgement given, in any claim or proceedings to be made by or against RTA to the extent of the indemnity contained in this clause 16.3.

16.4 Conflict of interest

We must:

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

16.5 Confidentiality

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

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

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- (g) Each NOP:
- (i) acknowledges that RTA will disclose information on this Agreement under 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 a schedule, 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.

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(c).
- (e) We may change our address to which notices can be sent to us by giving each other notice of the change in accordance with this clause.

17.2 Right to assign or Subcontract

We must not:

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

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

17.3 Governing law

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

17.4 Status of Agreement

This Agreement:

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

17.5 Tariff concessions

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

17.6 Australian currency

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

17.7 Relationship of the Participants

- (a) Except as expressly provided in this clause, this Agreement is not intended to create and should not be construed as creating, any partnership, joint venture

or fiduciary relationship between any one or more of us or confer a right in favour of any of us to enter into any commitment on behalf of each other or otherwise to act as its agent.

- (b) Each of us is an independent entity, and for the purposes of this Agreement, the officers, employees, agents or Subcontractors of us will not be deemed to be officers, employees, agents or Subcontractors of each other, unless deemed otherwise by law and without limiting the generality of this clause we will pay all costs associated with our own officers and employees including any fringe benefits tax liability attaching to the grant of any fringe benefit to our officers and employees in respect of their employment.

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 agent

Signature of witness

Name

Name

The Common Seal of _____ Pty Ltd
was affixed in the presence of:

Director Signature

Director/Secretary Signature

Print Name

Print Name

The Common Seal of _____ Pty Ltd
was affixed in the presence of:

Director Signature

Director/Secretary Signature

Print Name

Print Name

The Common Seal of _____ Pty Ltd
was affixed in the presence of:

Director Signature

Director/Secretary Signature

Print Name

Print Name

The Common Seal of _____ Pty Ltd
was affixed in the presence of:

Director Signature

Director/Secretary Signature

Print Name

Print Name

SCHEDULE 1
ALLIANCE PARTICIPANTS

PART A

RTA

Roads and Traffic Authority

PO Box K198
HAYMARKET NSW 1240
Attention: Peter Wellings
Tel: (02) 9218 6500
Fax: (02) 9218 6169
E-mail: Peter_WELLINGS@rta.nsw.gov.au

PART B

NOPs

Abigroup Contractors Pty Ltd

PO Box 195
Pymble NSW 1515
Attention: Robert Ioffrida
Tel: (02) 9499 0999
Fax: (02) 9499 9116
Email : robert.ioffrida@abigroup.com.au

Sinclair Knight Merz Pty Ltd

PO Box 164
St Leonards NSW 1590
Attention : Ben Hyde
Tel : (02) 9928 2100
Fax: (02) 9928 2500
E-mail : BHyde@skm.com.au

SCHEDULE 2

DICTIONARY

1. INTERPRETATION

1.1 Definitions

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

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

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

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

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

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

Alliance Management Plan means the documented plan approved by the ALT 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.

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.

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, in respect of each of Phases 1 and 2, the certificate referred to in clause 6.5(c).

Certificate of Final Completion means, in respect of each of Phases 1 and 2, 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 of each of Phases 1 and 2 when:

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

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

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

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

Date for Completion means:

- (a) in respect of Phase 1, the date specified by the ALT in accordance with clause 6.4 or revised by the ALT in accordance with this Agreement; and
- (b) in respect of Phase 2, the date specified by the ALT in accordance with clause 6.4 or revised by the ALT in accordance with this Agreement.

Date of Completion for each of Phases 1 and 2, means the date stated in a Certificate of Completion issued in respect of the relevant phase in accordance with clause 6.5.

Date of Final Completion for each of Phases 1 and 2 means the date stated in the Certificate of Final Completion in respect of the relevant phase.

Defaulting Participant has the meaning given to it in clause 13.1.

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, in respect of each of Phases 1 and 2, the period expiring on the later of the date:

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

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

Design Documentation means all:

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

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

Direction means a direction under clause 7.21.

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

Excusable Delay means:

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

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

Final Completion means for each of Phases 1 and 2 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 gainshare payments (if any) made by RTA to the NOPs calculated in accordance with **Schedule 7 (Commercial Framework)**.

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

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

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

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

Integrated Project Team means the Alliance Manager, the Alliance Management Team and the wider 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 identified in **Schedule 7 (Commercial Framework)** as components of the KRAs which determine Performance Gainshare.

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

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

Material Default means in relation to a Participant:

- (a) any act or omission of the Participant which is fraudulent, intentionally illegal or an intentional breach of this Agreement;
- (b) any wanton or reckless act or omission of the Participant without regard to the possible harmful consequences arising from that act or omission;
- (c) the Participant informing another Participant in writing or creditors generally that the informer is insolvent;
- (d) the Participant committing an act of bankruptcy;
- (e) the Participant having a bankruptcy petition presented against it;
- (f) the Participant being made bankrupt;
- (g) the Participant having a meeting of its creditors called with a view to:
 - (i) entering a scheme of arrangement or composition with creditors; or
 - (ii) entering a deed of company arrangement;

-
- (h) the Participant having a deed of assignment or deed of arrangement made, or accepting a composition, or being required to present a debtor's petition, or having a sequestration order made, under Part X of the *Bankruptcy Act 1996* (Cwlth);
 - (i) the Participant entering into a deed of company arrangement with creditors;
 - (j) the Participant being subject to a resolution passed at a meeting of its creditors to place it under official management;
 - (k) the Participant having a controller or administrator appointed or a receiver of its property or any part of its property appointed or a mortgagee take possession of any of its property;
 - (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 diligently pursue recovery of 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;
 - (u) a Participant failing to comply with clause 16; or

(v) a Participant repudiating this Agreement.

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

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

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

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

Outstanding Performance means the levels of outstanding performance in the KPIs.

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

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

Payment Claim means a claim in accordance with clause 8.1 or in such form as the ALT determines.

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

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

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

Phase or phase means any of Phase 1 or Phase 2 as the context requires.

Phase 1 means that part of the Alliance Works necessary to:

- (a) construct Sections 1B and 2; and
- (b) undertake detailed design for Section 1A.

Phase 2 means:

- (a) that part of the Alliance Works necessary to construct Section 1A; and
- (b) the remainder of the Alliance Works.

Planning Approvals means:

- (a) Great Western Highway Upgrade. Lawson Section One B between Bass Street to Honour Avenue, Lawson. Review of Environmental Factors. Decision Report. August 2003;
- (b) Great Western Highway Upgrade. Lawson Section Two. Honour Avenue to Ridge Street, Lawson. Review of Environmental Factors. Decision Report. May 2006;
- (c) Great Western Highway Upgrade. Lawson Section 1a. Ferguson Avenue to Bass Street, Lawson. Review of Environmental Factors. Decision Report. September 2007;
- (d) Great Western Highway Upgrade. Lawson Section Two. Containment Basin Supplement Review of Environmental Factors. Decision Report. May 2008;
- (e) Department of Environment and Conservation NSW variation to RailCorp's Environmental Protection Licence No 12208 associated with the proposed realignment of the railway track outside of the existing rail corridor;
- (f) all conditions to the approvals referred to in paragraphs (a) to (e), which approvals include all documents incorporated by reference or incorporated by necessary implication, as those approvals may be modified from time to time; and
- (g) any other consent, concurrence or approval, or determination of satisfaction with any matter, which is made, given or issued under the approvals referred to paragraphs (a) to (f) from time to time and all conditions to any of them, as that consent, concurrence, approval or determination may be modified from time to time.

PPL Insurance means public and products liability insurance.

Principal Arranged Insurances means:

- (c) the PPL Insurance referred to in clause 0 which has been effected by RTA under clause 0, details of which are contained in **Schedule 13** (Third Party Public and Products Liability Insurance Summary); and
- (d) the CW Insurance which is intended to be effected by RTA under clause 0, 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 as described in **Recital A**.

Project Proposal means is a proposal to be prepared and submitted pursuant to clause 5.1 and 5.2 respectively.

RailCorp means Rail Corporation New South Wales, ABN 59 325 778 353.

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

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

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

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

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

Section 1A means the Ferguson Avenue to Bass Street part of the Alliance Works.

Sections 1B and 2 means the Bass Street to Ridge Street part of the Alliance Works.

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.

Stakeholders means the Blue Mountains City Council, RailCorp, local community groups, adjoining property and business owners (including the Lawson Town Centre shop owners and operators), Authorities, utility companies and the community at large.

Statutory Requirements means:

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the Alliance Works are being carried out;

-
- (b) certificates, licences, consents, permits, approvals, and requirements of organisations having jurisdiction in connection with the carrying out of the Alliance Works; and
 - (c) fees and charges payable in connection with the matters referred to in paragraphs (a) and (b).

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

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

Target Outturn Cost or **TOC** means the out-turn estimate determined by the AMT and approved by the ALT of the costs to achieve the Minimum Conditions of Satisfaction and Final Completion.

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

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 works or services that any Participant is or may be required to carry out in accordance with this Agreement and includes Variations, Rectification Work, Construction Plant and Temporary Works.

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

1.2 Interpreting this Agreement

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

- (a) A reference to:

-
- (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a Participant includes a permitted substitute or a permitted assign of that Participant;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
 - (v) a discretion means an absolute and unfettered discretion, not limited by implication;
 - (vi) anything (including a right, obligation or concept) includes each part of it; and

'including' and similar expressions are not words of limitation.

- (b) Any reference to currency is a reference to Australian dollars, unless stated otherwise.
- (c) No rule of construction applies to the interpretation of this Agreement to the disadvantage of one Participant on the basis that the Participant prepared it.
- (d) A decision of the ALT includes a direction, determination, approval, authorisation, consent, agreement, recommendation or requirement of the ALT.

SCHEDULE 3
ALLIANCE PRINCIPLES

ALLIANCE PRINCIPLES

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

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

BEHAVIOURAL PRINCIPLES

These principles provide the framework to deliver an outstanding project.

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

SCHEDULE 4
ALLIANCE OBJECTIVES

The objectives set out below apply to the Alliance Works.

Key result area	Alliance Objective
Safety	<p>No-one is injured during or because of project delivery.</p> <p>A safe thoroughfare for all road users is maintained at all times during construction.</p> <p>A safe railway corridor is maintained at all times during construction</p>
Cost	<p>Target Outturn Cost is accepted by Stakeholders as value for money.</p> <p>The actual outturn cost is less than or equal to the Target Outturn Cost.</p>
Schedule	<p>The target completion date and other agreed milestone dates are not exceeded.</p>
Operation and Maintenance	<p>Defect free completion is achieved.</p> <p>Life cycle cost is optimised.</p>
Traffic	<p>The Project provides safe and effective facilities for all road users including heavy vehicles and public transport.</p> <p>The Project provides for cyclists and pedestrians.</p> <p>Traffic (pedestrian, cyclist and vehicular) disruption and delays are minimised during construction.</p> <p>Staging during construction to provide reasonable (no worse than existing) access from North Lawson to the Highway.</p>
Community	<p>Community stakeholders (particularly the Town Centre shop owners/operators) are effectively engaged and informed during detailed design, delivery and transition to operation.</p> <p>Maintain local access for the community during the construction works.</p>
Environment & Social	<p>Design to minimise environmental impacts and meet all conditions of</p>

	<p>approval.</p> <p>Establish, implement and maintain an environmental management system equal to or better than RTA Specification G36.</p>
Quality	<p>Achieve full compliance with RTA specifications.</p> <p>Achieve a fully functioning quality management system complying with RTA Q6.</p> <p>Consistent high quality product.</p>
Railworks	<p>Effectively manage the detailed design for the railway re-alignment to achieve RailCorp Approvals.</p> <p>Effectively manage and coordinate all construction interfaces with RailCorp.</p>
Design	<p>Design work to be accurate and complete.</p> <p>Design interfaces are to be integrated.</p> <p>Constructability to be reviewed during the design process.</p>
Water Quality	<p>Plan, design, implement and maintain a high standard of erosion and sedimentation control.</p>
Urban Design	<p>Integrated design and construction features to produce a high quality urban design.</p>

SCHEDULE 5

CONTACT DETAILS

Financial Auditor: **Deloitte Touche Tohmatsu** Grosvenor Place,
225 George Street Sydney NSW 2000

RTA: Attention: Glenn Munro Tel:
gmunro@deloitte.com.au
Roads and Traffic Authority
PO Box K198
HAYMARKET NSW 1240
Attention: Peter Wellings
peter_wellings@rta.nsw.gov.au

NOPs: **Abigroup Contractors Pty Ltd**

Attention: Robert Ioffrida E-mail :
robert.ioffrida@abigroup.com.au

Sinclair Knight Merz Pty Ltd

Attention : Ben Hyde email :
BHyde@skm.com.au

Probity Auditor: **Procure Group Pty Ltd**
Warwick Smith Tel
wsmith@procureconsulting.com.au

Legal Advisor: **Minter Ellison**
88 Phillip Street
Sydney NSW 2000

Attention: Nicole Green
E-mail: nicole.green@minterellison.com

SCHEDULE 6
ALLIANCE LEADERSHIP TEAM

Name of Representative	Telephone Number	e-mail	Representative of
Dennis Woodbridge (Initial Chairperson)		dennis_woodbridge@rta.nsw.gov.au	RTA
Bernie Chellingworth		bernie_chellingworth@rta.nsw.gov.au	RTA
Robert Ioffrida		robert.ioffrida@abigroup.com.au	Abigroup Contractors Pty Ltd
Scott Wright		scott.wright@abigroup.com.au	Abigroup Contractors Pty Ltd
Ben Hyde		BHyde@skm.com.au	Sinclair Knight Merz Pty Ltd
Stuart Manley		SManlev@skm.com.au	Sinclair Knight Merz Pty Ltd

SCHEDULE 7
COMMERCIAL FRAMEWORK