



GREAT WESTERN HIGHWAY UPGRADE

July 2009

Bullaburra West section

DESIGN ALLIANCE AGREEMENT

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GREAT WESTERN HIGHWAY UPGRADE - BULLABURRA WEST SECTION

THIS AGREEMENT is made on

2009

PARTIES

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

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

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

RECITALS

- A. RTA intends to upgrade a section of Great Western Highway from approximately 400 metres west of Genevieve Road, Bullaburra, to immediately east of Tableland Road, Wentworth Falls to a four lane divided carriageway. RTA requires detailed design and documentation preparation works to be undertaken prior to the tendering of the construction works for the upgrade. For the purpose of this Agreement, the design, and tender document preparation will be known as the Alliance Works.
- B. Completion of the Alliance Works is scheduled for **July 2010**
- C. The NOP will be available to RTA to respond to clarification issues relating to the Alliance Works during the tendering and construction of the construction works which will be the subject of the Alliance Works.
- 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;

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- (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;
 - (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; and
 - (g) acting in good faith to resolve any disputes within the ALT and promoting a no blame and no litigation culture.

1.2 **Commitment to act in good faith**

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

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

2. ALLIANCE LEADERSHIP TEAM

2.1 Creation of the ALT

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

2.2 ALT Representation

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

2.3 ALT Chairperson

- (a) At the date of this Agreement, the chairperson of the ALT is the Representative identified in **Schedule 6** (Alliance Leadership Team) as the Chairperson.
- (b) The Chairperson will convene the meetings under clause 2.5.
- (c) The ALT will appoint, in writing, another Representative as Chairperson or reappoint the existing Chairperson every six months and update **Schedule 6** (Alliance Leadership Team) to include the details of any change in the Chairperson.

2.4 Functions of the ALT

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

2.5 Meetings of the ALT

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

2.6 Decisions of the ALT

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

2.7 Minutes of ALT meetings

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

3. ALLIANCE MANAGEMENT TEAM AND ALLIANCE MANAGER

3.1 Appointment of Alliance Manager

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

3.2 Functions of the Alliance Manager

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

3.3 Functions of the AMT

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

4. WIDER ALLIANCE TEAM

4.1 Creation of the Wider Alliance Team

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

4.2 **Functions of the Wider Alliance Team**

The Wider Alliance Team will:

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

4.3 **Members of the Wider Alliance Team**

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

5. **INVESTIGATION**

5.1 **Development and approval of scope of work**

- (a) We will carry out investigations to enable us to recommend to RTA a scope of work for the Alliance Works as contemplated under clause 5.1(b).
- (b) The scope of work referred to in clause 5.1(a) must:
 - (i) be delivered by us to RTA within [30] Business Days after the date of this Agreement or such other period agreed in writing by RTA;
 - (ii) set out a draft cash flow schedule;
- (c) Following receipt by RTA of the scope of work referred to in clauses 5.1(a) and (b), RTA may, in its discretion, elect to:
 - (i) approve the scope of work by notice in writing to the NOP, in which case, clause 5.2 will apply on and from the date of that notice;
 - (ii) request the NOP to:
 - (A) amend the proposed scope of work as required by RTA; and
 - (B) re-submit the amended scope of work to RTA for approval in accordance with this clause 5.1(c); or

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- (iii) give the ALT a notice in writing informing the ALT that the Alliance Works will not proceed under this Agreement, in which case, clause 11.1 will apply on and from the date of that notice.

5.2 Development and approval of a Target Fee Budget and Alliance Works program

- (a) If RTA approves the scope of work under clause 5.1(c)(i), we will prepare a Target Fee Budget and a program in respect of the Alliance Works and deliver the proposed target outturn estimate and the Alliance Works program to RTA within [30] Business Days after the date on which RTA notifies us in writing that it has approved the scope of work under clause 5.1(c)(i) or such other period agreed in writing by RTA.
- (b) Following receipt of the items referred to in clause 5.2(a), RTA may, in its discretion, elect to:
 - (i) approve the Target Fee Budget and the Alliance Works program by notice in writing to the NOP;
 - (ii) request the Participants to amend the Target Fee Budget and/or the Alliance Works program and re-submit those items to RTA for approval in accordance with this clause 5.2(b); or
 - (iii) give the ALT a notice in writing informing the ALT that the Alliance Works will not proceed under this Agreement, in which case, clause 11.1 will apply on and from the date of that notice.

6. ALLIANCE WORKS

6.1 Commencement and duration of Alliance Works

- (a) We will commence any detailed design work which forms part of the Alliance Works once RTA provides its approval to the Target Fee Budget pursuant to clause 5.2(b) or as otherwise agreed by RTA in writing.
- (b) We will carry out the Alliance Works in accordance with the Alliance Works program approved under clauses 5.2(a) and (b).
- (c) We may extend the Date for Completion only by written agreement of the ALT.

6.2 Compensation for Alliance Works

- (a) RTA will pay the NOP for carrying out the work under this Agreement in accordance with the Commercial Framework.
- (b) Payment to the NOP pursuant to clause 6.2(a) will be the sole compensation to the NOP for the fulfilment of its obligations under this Agreement.
- (c) The terms of compensation under the Commercial Framework may be modified as determined by the ALT, but only where there is a Scope Change.

6.3 **Set-off**

- (a) Without prejudice to any other rights, RTA may deduct from any monies which may be, or become, payable to a NOP any money due from that NOP to RTA.
- (b) Nothing in this clause 6.3 will affect the right of RTA to recover from the NOP the whole of any debt or any balance that remains owing by that NOP after deduction.

6.4 **Date for Completion**

We agree that the Alliance Works must be completed by the Date for Completion.

6.5 **Confirmation of Design and Documentation Completion**

The ALT will on the recommendation of the Alliance Manager provide confirmation, in writing, that we have achieved Design and Documentation Completion.

6.6 **Supply of documents by RTA**

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

6.7 **Supply of documents by the NOP**

We will:

- (a) prepare documentation referred to in this clause 6.9 as is necessary to enable us to perform the Alliance Works; and
- (b) ensure that RTA is provided with copies of all other documentation as RTA may require from time to time.

6.8 **Site access**

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

- (a) RTA will give the NOP such access to the Site or any part of the Site, as is appropriate, to enable the Alliance to perform the Alliance Works;
- (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 or at any other place where the work under this Agreement is being carried out;
- (c) the NOP will comply with all reasonable directions of RTA in relation to access to the Site or any part of the Site by any of the NOP, Subcontractors and other persons;

6.9 Design Clarification Issues

- (a) RTA may, at any time, alert the NOP to any concern, issue or ambiguity arising in relation to the Alliance Works discovered during the implementation of any design work under this Agreement as part of the Project (the **Design Clarification Issue**).
- (b) In the event any Design Clarification Issue occurs:
 - (i) the NOP will meet with RTA to resolve the Design Clarification Issue, including RTA requesting the NOP to:
 - (A) provide advice in relation to the Design Clarification Issue in order to resolve it or overcome its consequences; or
 - (B) perform part of the design work performed under this Agreement; and
 - (ii) the NOP will comply with RTA's request.

7. PERFORMANCE OF ALLIANCE WORKS

7.1 Primary performance obligation

Subject to this Agreement, we will collectively undertake and complete the Alliance Works:

- (a) in a careful, diligent and skilful manner and shall endeavour to achieve the intended purposes stated in the Agreement when doing so;
- (b) with the equal aim, at all times, of minimising cost expenditure and satisfying all non-cost objectives of this Agreement;
- (c) with the skill, experience, capacity and resources necessary to perform the work under this Agreement; and
- (d) with the aim of producing designs which are able to be built in accordance with the proposed Construction Requirements.

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

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- (iii) where necessary, all Subcontractors are pre-qualified by RTA pursuant to RTA's usual qualification procedures for contractors from time to time.
 - (b) The terms of any Subcontract must:
 - (i) be approved by the Alliance Manager;
 - (ii) contain an assignment of Intellectual Property Rights by the Subcontractor to the NOP on terms identical to clause 16.1(a)(except for substituting the relevant Subcontractor for the NOP); and
 - (iii) contain confidentiality obligations substantially the same as those in clause 16.5.

7.4 Compliance with Statutory Requirements

Without limiting our obligations under any other provision of this Agreement, we agree that 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, and that the Alliance Works comply with, all applicable Statutory Requirements.

7.5 Subcontractor warranties

We will obtain written warranties in favour of RTA from Subcontractors, to the extent such warranties are relevant and reasonably possible of being obtained, that the Alliance Works are fit for the intended purposes stated in this Agreement.

7.6 Quality assurance

We are committed to ensuring that the Alliance Works are consistent with a "best for project" approach. We will ensure that a fully functioning quality management system complying with ISO 9001 is operating effectively.

7.7 Health and safety

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. The design which forms part of the Alliance Works will promote the objectives of safety in the construction and ongoing use and maintenance of the Project.

7.8 Environment

We are committed to endeavouring to achieve the highest possible performance in all aspects of the Project in regard to environmental practices. We will ensure that the design work which forms part of the Alliance Works minimises and manages the impacts of road run-off and drainage on the local aquatic and terrestrial ecosystems.

7.9 Community and social issues

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

community or other stakeholders, and the Alliance and the ALT must comply with RTA's directions.

7.10 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 ensure that the Alliance Works are consistent with the Works Approvals.
- (c) Nothing in this Agreement will operate to fetter the statutory functions of RTA.

7.11 RTA Statement of Business Ethics

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

7.12 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 7.12, the ALT must determine whether the compensation set out in the Commercial Framework payable to the NOP should be amended to take into account the effect of the suspension.
- (e) We must use all reasonable endeavours to mitigate costs during the period of any suspension.

7.13 Changes to the Alliance Works

- (a) RTA's Authorised Representative may direct the NOP (a Direction) , or the ALT, through its authorised representative, may recommend to RTA (a Recommendation) to Change the Alliance Works.
- (b) RTA and the ALT must clearly identify any Direction or Recommendation which they issue as a Direction or Recommendation.
- (c) The NOP must promptly comply with any Direction. No Direction will:

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- (i) invalidate this Agreement; or
 - (ii) result in a change in the compensation payable pursuant to this Agreement unless:
 - (A) the Direction is determined by the ALT to give rise to a Scope Change; and
 - (B) all other requirements concerning compensation under this Agreement are satisfied.
 - (d) Any Recommendation must:
 - (i) include details of the effect, if any, of the change to the Alliance Works on the Commercial Framework; and
 - (ii) confirm the fitness of the Alliance Works for the purpose of satisfying the performance requirements nominated by RTA.
 - (e) RTA may issue to the ALT an Estimation Request. If RTA does so, the ALT must promptly determine:
 - (i) whether the matters contained in the Estimation Request would constitute a Scope Change; and,
 - (ii) if they do, the change in the terms of compensation set out in the Commercial Framework to the NOP which will result from the conduct of those matters.

The ALT must provide written notice as to its determination to RTA. A determination must also set out the matters in clause 7.13(d).

- (f) The ALT must also do the things set out in clause 7.13(e) 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.
- (g) Following RTA's receipt of a notice under clause 7.13(e) or (f) or upon the ALT determining that unless a Direction referred to in clause 7.13(e) or (f) is withdrawn, a Scope Change will arise, RTA must notify the ALT in writing whether it wishes to:
 - (i) not proceed with the Direction;
 - (ii) revise the Estimation Request, in which case the provisions of this clause 7.13 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 NOP under this Agreement will be altered in the manner set out in the ALT's notice under clause 7.13(e) or (f) as the case may be.
- (h) In the event of a Recommendation:

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- (i) the NOP acknowledges and accepts that RTA's Authorised Representative may consider the ALT's recommendation in its discretion;
 - (ii) 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;
 - (iii) the NOP acknowledges and accepts that RTA's Authorised Representative may place conditions, in its discretion, on any acceptance of the ALT's recommendation; and
 - (iv) 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.
- (i) 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 7.13.

7.14 **Benchmarking of Alliance performance**

- (a) The Participants agree that it is a fundamental obligation of the Alliance to demonstrate, ensure and deliver value for money to RTA.
- (b) The NOP will provide every opportunity to enable the ALT to effectively demonstrate that these value for money outcomes are and/or will be achieved and have agreed to benchmark the performance of the Alliance against the performance of other alliance participants delivering other works or projects similar to the Alliance Works.
- (c) The NOP agrees that for the purposes of benchmarking the performance of the Participants they will, in a manner consistent with our Alliance Principles, fully, frankly and honestly disclose all information relating to the:
 - (i) actual outturn performance of all aspects of the Alliance; and
 - (ii) work under this Agreement or the Alliance Works other than that which the ALT determines is genuinely commercial in confidence.
- (d) Where the ALT determines that information is genuinely commercial in confidence, the ALT must determine an acceptable and appropriate manner to protect the confidential nature of the information but will share the information for the purposes of benchmarking the actual outturn performance of all aspects of the Alliance.
- (e) For the purposes of this Agreement, the expression "commercial in confidence" will have the interpretation that the term has under the operation of the *Freedom of Information Act 1989* (NSW).

7.15 Conference of Alliances

- (a) The RTA's authorised representative may, at any time, direct the ALT to attend a conference which will also be attended by:
 - (i) the representatives of RTA's other alliances; and
 - (ii) nominated invitees of RTA's authorised representative (which may specifically include alliance leadership team representatives from alliances sponsored by parties other than RTA).
- (b) RTA's expectation of this conference is to enable:
 - (i) alliance contracting best practice methodologies to be identified, shared and understood;
 - (ii) RTA to be satisfied that the behaviours, standards and governance of its alliances are equal to other alliances developed or being developed across Australasia; and
 - (iii) development of a benchmark for the performance of RTA's alliances against each other and/or against other alliances developed or being developed across Australasia to the extent that it is practicable to do so.
- (c) The NOP agrees that it 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) A single Payment Claim may be submitted to the RTA by the Alliance Manager (with the input from the NOP) at the end of each calendar month in relation to the work done by the NOP during the relevant period.
- (b) The amounts to be included in a Payment Claim submitted under this Agreement will be calculated in accordance with the terms of compensation set out in the Commercial Framework.
- (c) RTA must issue a Payment Schedule within 10 Business Days after receipt of a Payment Claim. The Payment Schedule must identify the Payment Claim to which it relates and must be based on the terms of compensation set out in the Commercial Framework. If the Payment Schedule shows an amount less than the claimed amount (excluding payments already made), the Payment Schedule must state why the amount is less.
- (d) Subject to clause 8.1(b), RTA may issue a Payment Schedule at any time even if the Alliance Manager has not lodged a Payment Claim.

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- (e) The following conditions must be satisfied before the Alliance Manager is entitled to make any payment to the NOP:
- (i) if required under clause 9, a Payment Claim must be accompanied by a Tax Invoice from the NOP;
 - (ii) all relevant sections of the Payment Claim must be properly completed;
 - (iii) a Payment Claim must be accompanied by a statement by the Alliance Manager that the amounts shown in the Payment Claim are in accordance with the terms of this Agreement and are in order for payment by RTA; and
 - (iv) a Payment Claim must be accompanied by a statutory declaration from the NOP:
 - (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.
- (f) Subject to the conditions contained in clause 8.1(e) being met, RTA will pay the NOP (or the NOP 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 the 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(d) (whichever is the later). The NOP will pay RTA under clause 8.1(f) no later than 10 Business Days after RTA supplies similar documents to those required in clause 8.1(d).
- (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 RTA.
- (i) RTA 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 RTA demonstrates to the ALT that any amount shown in the Payment Claim is not in accordance with the terms of this Agreement, then any adjustment necessary must be made in the Payment Claim following that demonstration.
- (j) Nothing in this clause 8.1 limits or otherwise affects RTA's rights under section 175B(7) of the *Workers Compensation Act 1987* (NSW), section 18 of Schedule 2 Part 5 of the *Pay Roll Tax Act 2007* (NSW) or section 127 of the *Industrial Relations Act 1996* (NSW).

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- (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 a statement of its Direct Costs for the relevant period.
 - (l) Statutory declarations as required by clause 8.1(e)(iv) must also be provided to RTA by the NOP at other times as requested by the Alliance Manager or by RTA

8.2 RTA may make direct payments on request

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

8.3 RTA may pay on court order

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

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

9. GST

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

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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 NOP.
 - (h) RTA will issue to the NOP a recipient created Tax Invoice (**RCTI**) for each taxable supply (other than an excluded supply) made by the NOP 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) The NOP must not issue a Tax Invoice in respect of any supply made to RTA, other than for an excluded supply. The NOP 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 NOP fails to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.

10. **INSURANCES**

10.1 **Insurances provided by RTA**

- (a) RTA has arranged the public and product liability (**PPL**) Insurances referred to as being the responsibility of RTA in **Schedule 10** (Insurances) which:
 - (i) covers the NOP's liabilities to RTA and to third parties for the limits of liability identified in **Schedule 10** (Insurances); and
 - (ii) is in the names of the Participants and the Subcontractors for their respective rights and interests.
- (b) The NOP acknowledges and agrees that:
 - (i) before entering into this Agreement, they were given a copy of or access to, and satisfied themselves as to the provisions, terms, conditions, exclusions and excesses of the PPL Insurance; and
 - (ii) they accept the PPL Insurance as full satisfaction of RTA's obligation to insure for public and products liability insurance under this Agreement.
- (c) RTA will maintain the PPL Insurance for the term of this Agreement.

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- (d) Before commencing any of the Alliance Works, the NOP 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 NOP must provide any further details necessary for the PPL Insurance to RTA whenever directed by RTA to do so.
 - (f) We must ensure that all Direct Costs and the Target Fee Budget exclude any allowance for the cost of the Principal Arranged Insurances.
 - (g) We will comply with the exclusions and conditions of the Principal Arranged Insurances.

Professional Indemnity Insurance:

- (h) RTA has effected a professional Indemnity policy of insurance for its own benefit. In respect of this insurance:
 - (i) (A) RTA is the only beneficiary of this insurance; and
 - (B) Insurers rights of subrogation against NOP's are waived by virtue of the provisions of this agreement. The insurer will not waiver any rights of subrogation or action against any other parties.
 - (ii) The obtaining of this insurance by RTA does not limit or otherwise effect the NOP's obligations under this agreement.

10.2 Insurances to be provided by NOP

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

10.7 **Insurance claims procedures**

- (a) We must, as relevant to this Agreement:
 - (i) provide notice with full particulars of any occurrence likely to give rise to a claim under any insurance policy or on receipt of notice of any claim or subsequent proceeding as soon as practicable after becoming aware of any such event to:
 - (A) the relevant insurer or insurance broker; and
 - (B) each other (other than a potential claim by one party against another);
 - (ii) not, without the consent of the insurer, or each other, make any admission, offer, promise or payment in connection with any occurrence or claim;
 - (iii) give all information and reasonable assistance as the insurer may require in the prosecution, defence or settlement of any claim; and

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- (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 10.8 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 NOP so that the total amounts paid to the NOP 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 NOP:

- (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.

11.2 Effect of termination

- (a) If this Agreement is terminated under clauses 11.1 or 13.3(d), RTA may take and use, in any way, the whole or any part of the Alliance Works.
- (b) The NOP 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) assign to RTA all rights and benefits under Subcontracts;

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- (d) provide and deliver to RTA all design documents, and electronic information, which are required for the Alliance Works; and
 - (e) 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 (d) (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 NOP or the NOP 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 be determined on a just and equitable basis by the ALT;
 - (ii) costs reasonably incurred by the NOP in the expectation of completing the whole of the Alliance Works and not included in any payment by RTA; and
 - (iii) 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 NOP,

and RTA will not otherwise be liable to the NOP for any cost, loss, expense or damage incurred by the NOP 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:

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

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

13.3 **Failure to remedy**

If:

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

14. REMEDIES AND LIABILITY

14.1 Rights and remedies

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

14.2 Civil Liability Act

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

14.3 Liability under this Agreement

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

14.4 Limitations and exclusions of rights and liabilities

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

14.5 Preservation of insurance rights

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

- (a) the 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 (for the avoidance of doubt, this clause excludes Hyder Consulting's annual professional indemnity insurance policies and any professional indemnity policy obtained by the RTA which does not include Hyder Consulting as an insured with a waiver of rights of subrogation in respect of co-insureds); 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 or termination of this Agreement (as the case may be), a complete set of:

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

16. CARE OF INFORMATION

16.1 Intellectual Property

- (a) Unless agreed otherwise, all Intellectual Property Rights created in any document, matter or thing created or written in the course of performance of this Agreement will vest in RTA on creation and, by this Agreement, the NOP assigns to the RTA absolutely all such Intellectual Property Rights immediately upon creation.
- (b) RTA grants the NOP a non-exclusive, royalty-free licence to use RTA's Intellectual Property Rights vested under clause 16.1(a) and any other Intellectual Property Rights of or licensed to RTA that are necessary for undertaking the Alliance Works in Australia, solely for the purposes of the conduct of the Alliance Works. The licence created by this clause 16.1(b) continues subject to the exercise of any rights of RTA under clause 13 and until termination under clauses 11.1 or 13.3(d).
- (c) Nothing in this clause 16.1 is intended to vest in RTA any Intellectual Property Rights in the pricing information or pre-existing business methodologies of the NOP.
- (d) We must ensure that, in providing the Alliance Works, we will not infringe the Intellectual Property Rights of any person or company, and each NOP must ensure that Intellectual Property Rights sufficient to permit RTA's use, maintenance and future modification of the Alliance Works are available to RTA as part of the Alliance Works.
- (e) Records relating to Intellectual Property Rights created by us for the purposes of undertaking the Alliance Works are and will remain the sole property of RTA.

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- (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

The NOP must use its best endeavours to:

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

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

16.3 Claims

The NOP must:

- (a) provide all reasonable assistance required by RTA to defend a claim or any proceedings arising from defending any claim for the infringement of Intellectual Property Rights vested in RTA under clause 16.1 or moral rights of third parties;
- (b) keep RTA fully informed of all suspected or actual infringements and claims by any person that the Materials, or their use, infringe the Intellectual Property rights or moral rights of any person;
- (c) indemnify RTA against all cost, loss, expense or damage any claim or proceedings, that RTA may sustain or incur as a result of a breach of clause 16.1 or clause 16.2 by the NOP; and
- (d) satisfy any settlement of, or judgement given, in any claim or proceedings to be made by or against RTA to the extent of the indemnity contained in this clause 16.3.

16.4 Conflict of interest

We must:

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

16.5 Confidentiality

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

relating to this Agreement, the Alliance Works or the Project, without obtaining RTA's prior written consent (which consent can be withheld in the discretion of RTA).
- (b) If requested by RTA, the NOP 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:

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

17. MISCELLANEOUS PROVISIONS

17.1 Service of notices

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

-
- (B) to or from a place outside Australia - 7 Business Days after posting.
- (d) Electronic communication by email will not constitute a valid notice under this Agreement, but a hard copy of an email may be issued as a valid notice using any of the means listed in clause 17.1(b).
- (e) We may change our address to which notices can be sent to us by giving each other notice of the change in accordance with this clause.

17.2 Right to assign or Subcontract

We must not:

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

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

17.3 Governing law

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

17.4 Status of Agreement

This Agreement:

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

17.5 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.

17.6 Relationship of the Participants

- (a) Except as expressly provided in this clause, this Agreement is not intended to create and should not be construed as creating, any partnership, joint venture or fiduciary relationship between any one or more of us or confer a right in favour of any of us to enter into any commitment on behalf of each other or otherwise to act as its agent.
- (b) Each of us is an independent entity, and for the purposes of this Agreement, the officers, employees, agents or Subcontractors of us will not be deemed to be officers, employees, agents or Subcontractors of each other, unless deemed otherwise by law and without limiting the generality of this clause we will pay all costs associated with our own officers and employees including any fringe benefits tax liability attaching to the grant of any fringe benefit to our officers and employees in respect of their employment.

-
- (c) In the event that there is more than 1 NOP, as between RTA on the one part and the NOP on the other part:
- (i) except in relation to clause 14.3(b), a liability of the NOP under this Agreement is a several liability of each of them;
 - (ii) a right given to the NOP under this Agreement is a right given severally to each of them; and
 - (iii) a representation or acknowledgement made by the NOP is made by each of them.

17.7 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.

17.8 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.

17.9 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.

17.10 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.

17.11 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.

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: **Peter Wellings**

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

Signature of agent

Signature of witness

Name

Name

SCHEDULE 1
ALLIANCE PARTICIPANTS

PART A

RTA

Roads and Traffic Authority

Address for notices, etc:

101 Miller Street, North Sydney, New South Wales

RTA ALT Representatives:

Peter Letts & Diana Loges

RTA Interface Manager:

Maximus Anandappa

PART B

Hyder Consulting Pty Ltd

Hyder ALT Representatives:

Paul Davis & Syd Gamble

Alliance Project Manager:

Belinda Virant

Address for notices, etc:

Level 5, 141 Walker Street, North Sydney, NSW 2060

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:

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

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

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

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

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

Alliance Manager 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 including the design, conceptual design and design development.

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

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

Authority means:

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

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

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).

Change means to:

- (a) change the Alliance Works or increase, decrease, omit or change the character or quality of any part of the Alliance Works;
- (b) change the Alliance Works program; or
- (c) execute additional work or perform additional services under this Agreement.

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

Completion is that stage when:

- (a) the Alliance Works are 100% complete;
- (b) all documents and other information associated with the Alliance Works and essential for the use of the Alliance Works have been supplied to RTA; and
- (c) any other things required to be done under this Agreement as part of the Alliance Works have been done.

Date for Completion means the date for the completion of the Alliance Works as described in **Recital B**

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

Design and Documentation Completion is that stage when:

- (a) design work which form part of the Alliance Works is 100% complete;
- (b) all Documentation has been provided; and
- (c) 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 have been issued.

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

Direction means a direction under clause 7.22.

Documentation includes 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;

-
- (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.

Estimation Request means a notice from RTA to the ALT, requesting the ALT to make a determination under clause 7.13(e).

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

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

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

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

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

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

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) an intentional failure by the Participant to comply with clauses 14.3(b), or 16;
 - (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;
 - (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) RTA failing to comply with the requirements under clause 10; or
 - (u) a Participant repudiating this Agreement,

but shall not include any act or omission which is merely negligent (which does not also satisfy one of the above criteria).

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.

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

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

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

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

Planning Approvals means:

- (d) the approval under section 115B of the Environmental Planning and Assessment Act 1979 issued by the Minister for Infrastructure and Planning (now the Minister for Planning) dated **September 2008** in respect of the Project;
- (e) all conditions to the approvals referred to in paragraph (a), which approvals include all documents incorporated by reference, as those approvals may be modified from time to time; and
- (f) any other consent, concurrence or approval, or determination of satisfaction with any matter, which is made, given or issued under the approvals referred to paragraph (b) 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.

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

Recommendation means a recommendation under clause 7.13.

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.

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.

RTA's Authorised Representative means the person from time to time occupying the position of "General Manager, Project Management Services". RTA will give written notice to the NOP of any change in the person appointed by it.

Scope Change means any other event or circumstance which the ALT agrees justifies a modification to the terms of compensation to the NOP as determined by the ALT in accordance with this Agreement.

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 based.

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 Fee Budget means the proposed out-turn estimate prepared by the NOP in accordance with clause 5.2 of the costs to achieve the Minimum Conditions of Satisfaction and Completion

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

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

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

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

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

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

Works Approvals means any approvals arising from Statutory Requirements in connection with the Alliance Works or the Site, including 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; and
 - (vi) anything (including a right, obligation or concept) includes each part of it.
- (b) Any reference to currency is a reference to Australian dollars, unless stated otherwise.
- (c) No rule of construction applies to the interpretation of this Agreement to the disadvantage of one Participant on the basis that the Participant prepared it.
- (d) A decision of the ALT includes a direction, determination, approval, authorisation, consent, agreement, recommendation or requirement of the ALT.

SCHEDULE 3

ALLIANCE PRINCIPLES

ALLIANCE PRINCIPLES

- One integrated team with a common goal - a primary focus on satisfying project objectives;
- Commitment to a “no blame” culture but with clear responsibilities and accountabilities;
- All decisions will be made on a “Best for Project” basis;
- Collective responsibility for performance with an equitable sharing of risk and reward;
- Participants are dedicated to building a culture that has a commitment to achieving outstanding results, whilst maintaining a healthy work-life balance; and
- A peer relationship where all Alliance participants have an equal say in decisions for the project and communication is both clear and honest.

SCHEDULE 4

ALLIANCE OBJECTIVES

The objectives set out below apply to the Alliance Works.

Key Result Area (KRA)	Alliance objective
Cost and Time	Actual Outturn Cost is equal to the Target Fee Budget (TFB) and the project is delivered within the agreed programme.
Quality and Completeness of design and contract documentation	The design and contract documents are clearly and accurately detailed, thereby specifying the works to be constructed without ambiguity for the purposes of construction.
Constructability and Maintenance	Ensure minimum disruption and inconvenience to road users whilst maintaining working efficiency and providing a safe environment for workers and road users.
Urban Design	To develop an integrated engineering/urban design outcome that sensitively fits into the built, natural and community context is well designed and contributes to the character and functioning of the area.
Environment	To achieve a positive outcome for the natural environment and future generations by maintaining a sustainable balance between environmental, economic and social considerations, including developing example erosion and sediment control plans and basin designs ensuring these objectives are met.

SCHEDULE 5
CONTACT DETAILS

Independent Performance Auditor: To be determined by the ALT, if required.

RTA: Level 8, 17 Argyle Street
Parramatta NSW 2124
Attention: Peter Letts
Tel: (02) 8849 2074
Fax: (02) 8849 2814
E-mail: Peter_Letts@rta.nsw.gov.au

Hyder : Level5, 141 Walker Street,
North Sydney NSW 2060
Attention: Syd Gamble
Tel: (02) 8907 9106
Fax: (02) 8907 9001
E-mail: syd.gamble@hyderconsulting.com

SCHEDULE 6
ALLIANCE LEADERSHIP TEAM

Name of Representative	Telephone Number	e-mail	Representative of
Peter Letts	8849 2074	Peter_Letts@rta.nsw.gov.au	RTA
Diana Loges	8849 2986	Diana_Loges@rta.nsw.gov.au	RTA
Paul Davis	8907 9235	Paul.Davis@hyderconsulting.com	Hyder Consulting
Syd Gamble	8907 9106	Syd.Gamble@hyderconsulting.com	Hyder Consulting

SCHEDULE 7

Great Western Highway Upgrade Bullaburra West Design Alliance

COMMERCIAL FRAMEWORK

1. PRINCIPLES OF THE COMMERCIAL FRAMEWORK

- a) equitable rewards commensurate with performance;
- b) the Bonus Pool is linked to real risks and benefits in identified Key Result Areas (KRAs) that affect the value of the design outcomes and design process to RTA;
- c) the Non Owner Participant (NOP) is genuinely encouraged to exceed Minimum Conditions of Satisfaction (MCOS) through the Bonus Pool;
- d) RTA is committed to the NOP being able to earn 100% of its available Bonus entitlements;
- e) the Commercial Framework is clear, concise, robust and defensible;
- f) the separate components of the Bonus Pool are interdependent to provide no incentive to sacrifice performance in one element to secure reward in another ;
- g) complete transparency in all arrangements;
- h) the only acceptable outcomes are win/win or lose/lose;
- i) the Commercial Framework will allow the Alliance to invest extra resources to drive outstanding performance without penalising the NOP which invests the extra resource;
- j) the only way to earn exceptional returns is through outstanding performance;
- k) scope changes shall allow variations to the TFB, if approved by the ALT;
- l) if the TFB is exceeded in carrying out the works the NOP will be entitled only to fees without margins for overhead and profit.

The Commercial Framework is intended to reward the NOP in a manner which drives the pursuit of outstanding performance in KRAs and Alliance Objectives identified by RTA that are of significant value to RTA with the driver to protect and improve the value of the design outcomes to the RTA.

2 OVERVIEW OF COMMERCIAL FRAMEWORK

The NOP's entitlement to payment for its work under the Design Alliance Agreement (DAA) is limited to:

- a) Service Fees
- b) Disbursements and
- c) Bonus Pool – which comprises payments of Bonus by RTA to reflect the Alliance's actual performance in identified KRAs **in exceeding MCOS** and the effect of that performance on the value of the design outcomes to RTA.

3 FEES

Fees are to be separated between Design Stage Services Fees and Construction Stage Services Fees and shall be comprised of:

a) Salaries

Salaries will be calculated based on daily charge-out rates for all direct personnel engaged on the project and the agreed resource effort applied to the project. With the exception of any unplanned Construction Stage Services Fees required as a result of design and documentation deficiencies, Charge-out rates shall be set to recover direct costs plus the actual costs of the operation and support of the corporate structure of the NOP plus an equitable level of profit to the NOP for achieving, but not exceeding the MCOS in each of the KRAs. The NOP will be paid 100% of its Fees in the Design

Stage.

b) Unplanned Construction Stage Services

For any unplanned Construction Stage Services Fees required as a result of a design or documentation deficiency, the charge-out rates shall be discounted and shall represent direct cost only.

c) Sub-Consultants

Fees for sub-consultants will be calculated based on actual costs for all personnel engaged on the project and the agreed resource effort applied to the project charged by the Sub-Consultant plus the actual costs of the operation and support of the corporate structure of the NOP. NOP profit shall not be applied to Sub-Consultant fees.

d) Disbursements

Disbursements may include goods and services, procured by the NOP and which are not by their nature an overhead cost of the NOP.

Fees will be calculated using the hourly rates provided in Hyder Consulting's response to the RTA Request for Proposal dated January 2009 for the period until 1st October 2009. After this point, and for additional staff, hourly rates will be calculated according to the tables below.

Fee calculation	Direct Cost	Contribution to corporate overhead structure and profits
Hyder staff rates		
Hyder contract staff rates		
Sub-consultants		
Disbursements		

Designation	Margin
ALT	
Technical Advisory Panel	
Principal	
Review Team	
Senior	
Experienced	

Designation	Margin
Snr MX Technician	
Snr CAD Technician	
Engineer / Consultant	
Graduate	
Technician	
Trainee	

Alliance Characteristic	Analysis
<i>All Direct Cost Reimbursed</i>	<ul style="list-style-type: none"> No risk of "direct loss" NOP's liability to RTA is capped RTA carries ultimate burden of actual cost of the design outcomes and of performance

Alliance Characteristic	Analysis
<i>No Fault No Blame</i>	<ul style="list-style-type: none"> No risk of threat of legal action for negligence or breach of contract No residual unfunded legal liability for defects/performance RTA carries ultimate burden of risk of performance of the design outcomes and performance
<i>Integrated Team</i>	<ul style="list-style-type: none"> Greater management focus on performance generated by combination of Alliance characteristics Less waste effort and greater efficiency Greater opportunity for innovation
<i>Unanimity</i>	<ul style="list-style-type: none"> Cannot be forced into any single decision
<i>Collective Responsibility</i>	<ul style="list-style-type: none"> Every risk is "our risk" and no risk is "my risk alone"
<i>Target Fee Budget</i>	<ul style="list-style-type: none"> Agreed estimate of the costs to deliver Minimum Conditions of Satisfaction Includes agreed contingency to match 'known unknown' and 'unknown unknown' risks
<i>Bonus Pool</i>	<ul style="list-style-type: none"> Actual reward commensurate with actual performance All performance reward is in the Bonus Pool

4 BONUS POOL

The Bonus Pool provides a mechanism for rewarding the NOP for delivering improved value to the RTA for identified KRAs. The amount of the Bonus Pool is \$250,000

The NOP will have no entitlement to Bonus, and the ALT will make no determination of Bonus, prior to the issue by the ALT of the Certificate of Completion for Design Services.

Immediately after the issue by the ALT of the Certificate of Completion for Design Services, the ALT will determine an initial distribution of Bonus.

Within 30 days of the issue, by the ALT, of the Certificate of Completion for Design Services, the ALT will make a final determination of Bonus based on finalised costs for this stage of the services.

The available Bonus Pool of \$250,000 will be allocated according to the agreed percentages set out in the KRA table below.

Key Performance Indicators (KPI's) for Key Result Areas (KRA's)

Where assessment against a scale is noted in the table the following scoring system is used (half marks may be used):

1 – Very Poor

2 – Not satisfactory, needs improvement

3 – Meets requirements (MCOS)

4 - Very good

5 – Outstanding

Key Result Area (KRA)	OBJECTIVE	Incentivised Weighting	KPIs	Weighting	MCOS	Outstanding Performance	Measurement method
Cost and Time	Actual Outturn Cost is equal to the Target Fee Budget (TFB) and the project is delivered within the agreed programme.	20%	Cost	10%	Actual Outturn Cost is equal to the Target Fee Budget (AOC = TFB).	Actual Outturn Cost is 95% of Target Fee Budget (AOC = 95% TFB).	Measured against the TFB.
			Time	10%	Project is delivered within the agreed programme.	Completion date is delivered X weeks ahead of the agreed project programme completion (X weeks is equivalent to 5% of TFB in terms of weeks of average spend on the project).	Measured against the agreed programme.
Quality and Completeness of design and contract documentation	The design and contract documents are clearly and accurately detailed, thereby specifying the works to be constructed without ambiguity for the purposes of construction.	30%	Design Documentation* ¹	15%	Overall score of 3 in survey.	Overall scored of 5 in survey.	Measured by peer review assessment undertaken by Maximus Anandappa (Interface Manager) at 3 design documentation milestone periods. MA to develop survey proforma and criteria.
			Contract Documentation* ¹	7.5%	Score of 3 in the RTA Contracts Branch assessment at the end of the final detailed design phase.	Score of 5 in the RTA Contracts Branch assessment at the end of the final detailed design phase.	Measured by the RTA Contracts Branch assessment during the final detailed design and contract documentation stage.

Key Result Area (KRA)	OBJECTIVE	Incentivised Weighting	KPIs	Weighting	MCOS	Outstanding Performance	Measurement method
				7.5%	Score of 3 in the RTA PM assessment of the first 6 months of the construction phase* ² .	Score of 5 in the RTA PM assessment of the first 6 months of the construction phase* ²	Measured by RTA PM assessment of the examination of the nature and number of RFI (relating to design errors or omissions during the first 6 months of construction). Maximus Anandappa to develop criteria for assessment with input from RTA Contracts Branch.
Constructability and Maintenance	Ensure minimum disruption and inconvenience to road users whilst maintaining working efficiency and providing a safe environment for workers and road users.	20%	Constructible and maintainable solution (materials management and retaining wall type)* ¹	20%	Overall score of 3 in assessment.	Overall scored of 5 in assessment.	Measured by peer review assessment undertaken by David Blackmore and David Heins at the completion of the design phase. DB / DH to develop survey proforma and criteria.
Urban Design	To develop an integrated engineering/ urban design outcome that sensitively fits into the built, natural and community context is well designed and contributes to the character and functioning of the area.	15%	Integrated process and solution* ¹	15%	Overall score of 3 in assessment.	Overall scored of 5 in assessment.	Measured by peer review assessment undertaken by Michael Sheridan (Urban Design Peer Reviewer), Leigh Trevitt and Phil Mahoney at two stages in the project.

Key Result Area (KRA)	OBJECTIVE	Incentivised Weighting	KPIs	Weighting	MCOS	Outstanding Performance	Measurement method
Environment	To achieve a positive outcome for the natural environment and future generations by maintaining a sustainable balance between environmental, economic and social considerations, including developing example erosion and sediment control plans and basin designs ensuring these objectives are met.	15%	1. Process and solution* ¹ 2. Water quality* ¹ 3. Footprint (ecological and carbon)* ¹	15%	Overall score of 3 in assessment.	Overall scored of 5 in assessment.	Measured by peer review assessment undertaken by Joseph Fanous (Environmental Peer Reviewer) at end of the project. <i>JF to develop survey proforma and criteria.</i>

- Note
1. Exact KPI to be finalised once the assessment criteria used for measurement has been established.
 2. If construction phase does not follow the end of the Design Alliance, the RTA Contracts Branch assessment will account for the final score

SCOPE CHANGE

The principles for scope change are:

- a) The Alliance will make contingency provision within the TFB and program based upon an analysis if envisaged scope change risks. The quantum of the contingency is to be reviewed and approved by the ALT.
- b) The analysis if envisaged scope risks will be used as a 'scope change benchmark' for the review of any future potential scope changes.

-
- c) Should a potential scope change occur during the project, the ALT will review and determine if the scope change is within the TFB and program contingency by comparing it to the 'scope change benchmark'.
 - d) Where the ALT determine the potential scope change is outside the TFB and program contingency, the ALT will recommend to the RTA a Change in the Alliance Works in accordance with clause 7.13 (a) of the DAA.
 - e) The review of the effects of the Change will include a review of the effects upon the TFB, Program and KRA targets.

SCHEDULE 8

FUNCTIONS OF THE ALLIANCE LEADERSHIP TEAM (ALT), THE ALLIANCE INTERFACE MANAGER, THE ALLIANCE PROJECT MANAGER (APM) AND THE ALLIANCE MANAGEMENT TEAM (AMT)

1. ALLIANCE LEADERSHIP TEAM (ALT)

The role of the ALT is to provide leadership, governance, direction and oversight. The function of the ALT is:

- a) Accountable to the project sponsor for the performance of the Alliance to ensure (through monitoring) that the Alliance achieves its objectives and that obligations are fulfilled in every respect. Take corrective action as required.
- b) Commit resources.
- c) Facilitate the development of a vision and a set of values and champion these values, ensuring that these are owned by all participants, and in the absence of policy make decisions based on these values.
- d) Set policy and provide strategic direction.
- e) Set challenging goals for the APM and AMT that represent outstanding performance in each of the KRA objectives and champion these objectives and goals.
- f) Make timely decisions.
- g) Collectively appoint an APM and provide empowerment, support and coaching.
- h) Ratify the APM's recommendation for the AMT and project organisational structure.
- i) Provide high level support and stakeholder interface as requested by the APM.
- j) Set and review limits of delegation to the APM.
- k) Review and approve the Alliance Project Management Plan and ensure adherence to the plan
- l) Set reporting requirements for the APM to the ALT.
- m) Agree and sign off on KPI's
- n) Issue directions, approvals and decisions as required by the Design Alliance Agreement
- o) Monitor the cultural health of the Alliance, the performance of the team and take corrective action as required.
- p) Manage, review and approve release of the contingency allowed for in the TFB, and any scope changes that are excluded from the TFB (and elevate to the Project Sponsor if required).
- q) Decide which key project issues need to be elevated to the Project Sponsor and seek the Project Sponsor's approval accordingly.
- r) Individually champion at least one of the Key Result Areas.

2. RTA INTERFACE MANAGER

The function of the RTA Interface Manager is:

- a) Day to day role in assisting the APM to obtain access to the appropriate RTA peer review group personnel.

-
- b) Manage the interface with the wider RTA and arrange to bring into the Alliance the necessary RTA expertise for advice, review, and/or decisions as and when required.
 - c) Attend workshop, ALT meetings, selected AMT meetings.
 - d) Work closely with the APM and AMT on a day to day basis.

3. ALLIANCE PROJECT MANAGER (APM)

The role of the APM is the day to day management of the project to achieve the project objectives. The function of the APM is:

- a) Recommend a project organisational structure and AMT for ratification by ALT.
- b) Be accountable to the ALT for the delivery of the project.
- c) Set clear roles and responsibilities for the AMT.
- d) Lead, coach and empower the AMT to exceed the MCOS for each objective.
- e) Be an advocate for the Alliance team to the ALT, attending ALT meetings and following consultation with the AMT provide the ALT with an agenda and supporting papers for agenda item as required.
- f) Make timely decisions on a best for project basis.
- g) Meet fortnightly with the AMT (as a minimum), communicate with the WPT and stakeholders.
- h) Develop and maintain an Alliance culture.
- i) Develop and implement best for project systems.
- j) Develop an Alliance Project Management Plan for endorsement by the ALT.
- k) Report on performance of the Alliance against agreed objectives.
- l) Advise the ALT on project issues

The APM's Delegated Authority is:

- a) Commit the Alliance participants to expenditure up to the limits determined by the ALT, either as a single or continuous commitment, provided the commitment is within the budget line item for that expenditure within the Target Fee Budget
- b) Delegated Authority is \$25,000 for any single commitment with a single written quote
- c) Delegated Authority is \$50,000 for any single commitment with 3 written quotes. Any single quote over \$50,000 should be delegated to an ALT member with 3 written quotes and countersigned by a second ALT member.
- d) Delegate to any member of the AMT authorisation to commit the Alliance participants to expenditure up to the limit determined by the ALT, provided the commitment is within the budget line item for that expenditure within the Target Fee Budget
- e) Delegate to any other member of the Wider Project Team authorisation to commit the Alliance participants to expenditure up to the limit determined by the ALT, provided the commitment is within the budget line item for that expenditure within the Target Fee Budget
- f) Any procurement is to be conducted in accordance with the approved procedure

4. ALLIANCE MANAGEMENT TEAM (AMT)

The role of the AMT is to deliver outcomes to meet or exceed Alliance objectives. The function is:

- a) Appoint the WPT on a best for project basis.
- b) Provide effective leadership to the WPT, provide clear accountabilities and coaching.
- c) Be accountable for the objectives and outstanding performance goals.
- d) Deliver outstanding results and be accountable for the solution.
- e) Work collaboratively and communicate effectively to the WPT.
- f) Provide day to day management of the project.
- g) Measure, forecast and report performance to the APM.
- h) Take appropriate corrective action.
- i) Meet fortnightly (as a minimum)
- j) Provide the APM items requiring the decision of the ALT and with the APM produce supporting papers for the ALT meeting agenda items (as required).
- k) Make timely decisions on a best for project basis, resolve issues and elevate as required.
- l) Maintain an Alliance culture
- m) Implement best practice systems
- n) Manage their team, clearly scope their work and deliverables and monitor the budget of their team.
- o) Input, review and monitor the project programme with respect to their discipline.
- p) Communicate regularly with the corresponding RTA peer reviewer and ensure they are involved in the design as the project develops.
- q) Review risks and opportunities and apply safety in design processes throughout the project duration.
- r) Apply innovative thinking to develop best for project solutions.

SCHEDULE 9
ALLIANCE BRIEF

Alliance brief documents include the following:

1. Request for Proposal, Bullaburra West
2. Hyder Consulting response to RTA Request for Proposal
3. RTA Detail Design and Documentation Brief
4. Alliance Scope of Works
5. Alliance Target Fee Budget

Documents listed in dot points 3 through to 5 above are being developed at the time of signing this DAA, and will require approval and sign off by the ALT, once complete.

SCHEDULE 10

PRINCIPAL ARRANGED INSURANCE - INSURANCE SCHEDULE

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
Principal Arranged Insurance (RTA)				
The details of the policy are provided in the Aon certificate of currency. A copy of the policy may be inspected by appointment at the offices of the RTA's insurance broker				
1	Public and Products Liability	Public and Products Liability \$20m	Duration of the Works – covering RTA, Contraction Manager and subcontractors and other parties as specified in the works contract	The RTA has arranged standard policies of insurance for contract works insurance (reinstatement cost) and third party liability insurance under its principal-arranged insurance.
Excess for Public and Product Liability	<p>The Contractor is responsible for meeting the amount of any excess payable under the principal-arranged insurance. The excess amounts current at the date of the Contract are:</p> <p>Public Liability - excess is \$10,000 any one occurrence</p> <p>Worker to Worker Liability – excess is \$50,000 any one occurrence</p> <p>Products Liability – excess is \$50,000 any one occurrence</p> <p>Underground Services – excess is \$50,000 any one occurrence</p> <p>The Contractor may effect insurance to cover the amount of that excess.</p>			
2	Professional Indemnity	The RTA has effected a Principal Professional Indemnity policy for its own benefit.		
Contractor Arranged Insurances				
3	Motor Vehicle Comprehensive or Third Party Property Damage effected with an approved insurer as defined in Definitions and Notes clause 1 below	\$20 million for any single occurrence	Annual	<p>(a) Motor Vehicles owned or used by the Contractor or subcontractors directly or indirectly engaged in performance of the Services.</p> <p>(b) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in Definitions and Notes clause 2 below.</p> <p>(c) If applicable to the contract – all plant and equipment owned or used by the Contractor or subcontractors directly or indirectly in the performance of the Services.</p>
4	Workers Compensation effected with an approved insurer as defined in Definitions and Notes clause 1 below	As per the relevant Workers Compensation legislation	Annual	As per State Workers Compensation legislation.
5	Professional Indemnity	The RTA will not set any requirements for the minimum sum insured for professional indemnity in the Contract. The contractor / consultant / supplier should make their own independent decision regarding their own Professional Indemnity requirements.		

Definitions and Notes:

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

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

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

SCHEDULE 11

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

RTA Form No 592 (Modified)	Schedule
Statutory Declaration	
I, _____ of _____	Insert name of Declarant
_____ do solemnly and sincerely declare that:	Insert address
1. I am a representative of _____ ("NOP") in the Office Bearer capacity of _____	Insert name of Contractor and ABN if applicable
2. The NOP is a party to an alliance agreement with the Roads & Traffic Authority in respect of the upgrade of _____ ("Contract").	Insert position title of Declarant
3. Attached to and forming part of this declaration is a Subcontractor's Statement given by the NOP in its capacity as 'Subcontractor' (as that term is defined in the Workers Compensation Act 1987, Pay-roll Tax Act 2007 and Industrial Relations Act 1996) which is a written statement:	Insert name of Contract
a. under the Workers Compensation Act 1987, section 175B, in the form and providing the detail required by that legislation;	
b. under the Pay-roll Tax Act 2007, Schedule 2 Part 5, section 18, in the form and providing the detail required by that legislation; and	
c. under the Industrial Relations Act 1996, section 127, in the form and providing the detail required by that legislation.	
4. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.	
5. The obligations of the NOP under the Contract relating to Security of Payment, if any, including payment of employees, workers and Subcontractors of the Contractor have been complied with by the NOP.	
6. If the NOP has Subcontractors and the subcontract price exceeds \$25,000 at commencement, the NOP has received from each of those Subcontractors a statutory declaration and Subcontractor's Statement in equivalent terms to this declaration (made no earlier than 14 days before the date of this declaration).	
7. All statutory declarations and Subcontractor's Statements received by the NOP from Subcontractors referred to in clause 6 were:	
(a) given to the NOP in its capacity as 'Principal Contractor' as defined in the Workers Compensation Act 1987, the Pay-roll Tax Act 2007 and the Industrial Relations Act 1996 ('Acts'); and	
(b) given by the Subcontractors in their capacity as 'Subcontractors' as defined in the Acts.	
8. I am not aware of anything that would contradict the statements made in the statutory declarations and Subcontractor's Statements provided to the NOP by its Subcontractors.	

9. The period of the Contract covered by this declaration and the attached Subcontractor's

Statement is from _____ to _____.

10. The NOP is not, under any law, insolvent or unable to pay its debts as and when they fall due.

Insert the relevant payment period

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

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

Signature of person making the declaration

Before me: _____

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

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

SUBCONTRACTOR'S STATEMENT

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

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

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

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

Subcontractor: ABN:
(Business name)

of
(Address of subcontractor)

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

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

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

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

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

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

(f) Signature Full name

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

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987*.

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relation Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

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

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

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

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

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

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

SCHEDULE 12

EXTRACT OF INSURANCE TERMS

ROADS AND TRAFFIC AUTHORITY OF NSW

Three Year Principal Contract Works Insurance

SUMMARY

The contents and the intellectual property of these wordings are deemed to be commercially sensitive and are the property of the Aon Risk Services Australia Limited and as such there should be no disclosure of the information contained therein to parties outside of ***Roads and Traffic Authority of NSW***.

No material anywhere in this report or in the policy wordings may be copied or further disseminated without the express and written permission of Aon Risk Services.

Issued through:

Corporate Risk Services

Aon Risk Services Australia Limited

ABN 17 000 434 720

Level 33, Aon Tower

201 Kent Street

SYDNEY NSW 2000

Telephone 61 2 9253 8407

Facsimile 61 2 9253 7106

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

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

Signed for and on behalf of the Insurers

Section 1 Contract Works & Section 2 Third Party

Insurers and Proportions

Class of Insurance	Policy No	Underwriter	Policy Limit(s)	Deductible (s) / Excesses	
Contract Works	99-0000476-CGR	Allianz Australian Insurance Ltd	Contracts up to A\$50,000,000	Contracts up to A\$5,000,000	A\$15,000 A\$50,000
				Contracts between A\$5,000,001 and \$20,000,000	A\$100,000
				Contracts between A\$20,000,001 and A\$50,000,000	A\$250,000
				Tunnelling Contracts	
Third Party Liability	99-0000476-LGR	Allianz Australian Insurance Ltd	A\$20,000,000	Injury to Contractors Products Liability Underground Services All other claims	A\$50,000 A\$50,000 A\$50,000 A\$10,000
Excess Third Party Liability *	TBA	Allianz Australian Insurance Ltd	A\$70,000,000	Primary A\$20,000,000	
Excess Third Party Liability *	TBA	American Home Insurance Ltd	A\$110,000,000	Excess of A\$70,000,000 Excess of A\$20,000,000	

* Excess Third Party insurances are annually renewable.

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Important Notice

This document is a summary of the Annual Contract Works – Third Party Liability Insurance Policies arranged on behalf of the RTA in respect of its Construction Contracts commenced after 1 October 2006.

This summary is designed to acquaint the RTA Project Management and contractors with the details of the basic cover provided by the Insurance Policies.

The summary is an abbreviated form of the actual policy documents and is not a substitute for the full Policy Wordings.

Aon Risk Services Australia Limited

Sydney

Schedule

Sections 1 and 2

Insured

Roads and Traffic Authority of New South Wales ('RTA') as Principal or Contractor.

Any subsidiary company (including subsidiaries thereof) of the Named Insured and any other organisation under the control of the Named Insured and over which it is exercising active management, whether now or hereafter incorporated;

any of the following persons or entities for whom or for which the insured parties under clauses and above are obliged to arrange insurance by virtue of a contract or assumption of responsibility, but only to the extent required by such contract or assumed responsibility and in any event only for such coverage and Limits of Liability as provided in this Policy:

- a. any principal or owner or agent of the Principal; or joint venture partner or alliance partner;
- b. any construction manager or project manager;
- c. any contractor or sub-contractor of any tier;
- d. any architect, engineer or other consultant for their onsite activities only;
- e. any lessor, financier, mortgagee or trustee;
- f. any government body;
- g. any other party with an insurable interest in the Contract(s);

It shall be noted that the architect, engineer or other consultant referred to in d. above shall not be construed as any other Insured

any director, executive officer, employee, contract staff or partner of any of the insureds under whilst acting as such;

any office bearer or member of any social, sporting, safety, security, medical or welfare facility of any of the insureds whilst acting as such; and

all for their respective rights and interests.

Business and Activities of the Insured

Principally but not limited to:

- civil contractors, designers, consultants, suppliers, project and construction managers, maintenance contractors;
- plant and equipment owners, operators and hirers, lessees and lessors;
- road traffic authority, which includes, property owners and occupiers, lessees and lessors;

and all incidental and associated operations, trades and activities.

Period of Insurance

From: *1 October 2006 at 4.00pm*

To: *1 October 2009 at 4.00pm*

Maximum defects liability period

24 months any one Contract in respect of the original Defects Liability Period.

Insured Contracts Sections 1 & 2

All contracts commenced by the Insured after 4.00p.m. on 1 October 2006 but shall not include:

1. Contracts commenced prior to the initial Period of Insurance; or
2. Contracts that are funded by private finance but not excluding works or services associated therewith performed by or at the direction of RTA and declared under this Policy;

Geographical Limits

Section 1 Material Damage

Anywhere in Australia

Sections 2 Third Party Liability

Anywhere in the world but excluding any operations of the Insured domiciled in the United States of America or Canada.

Sums Insured Sections 1 Material Damage

In respect of contracts commencing during the Period of Insurance, as defined herein:

A\$50,000,000 any one Occurrence

This Sum Insured applies in excess of the Excesses

Limits of Liability Section 2 Third Party Liability

- A. **A\$200,000,000 ANY ONE OCCURRENCE UNLIMITED TO THE NUMBER OF OCCURRENCES DURING THE PERIOD OF INSURANCE BUT LIMITED TO A\$200,000,000 IN THE ANNUAL AGGREGATE DURING EACH 12 MONTH PERIOD DURING THE PERIOD OF INSURANCE ARISING FROM PRODUCTS LIABILITY.**
- B. **SUCH LIMITS OF LIABILITY APPLY IN EXCESS OF THE EXCESSES.**

Excesses

Sections 1 occurrence	Contracts up to A\$5,000,000	A\$15,000 any one
one occurrence	Contracts between A\$5,000,000 and A\$20,000,000	A\$50,000 any
one occurrence	Contracts between A\$20,000,000 and A\$50,000,000	A\$100,000 any
occurrence	Except: - Tunnelling Contracts A\$250,000	any one
Section 2	Worker to Worker	A\$50,000
	Products Liability	A\$50,000
	Underground Services	A\$50,000
	All Others	A\$10,000
	All any one occurrence	

Insuring Clauses

Section 1

The Insurers under this Section 1 will indemnify the Insured against Damage to the Insured Property from a cause not specifically excluded, occurring at Worksites or in transit within the Territorial Limits

The Insurers will indemnify the Insured in respect of their legal liability under the maintenance or defects liability clauses under any Contract in accordance with the Basis of Settlement for Damage to the Insured Property from a cause not specifically excluded, provided that such Damage:

- (a) manifests itself during the Defects Liability Period; and
- (b) originates from:
 - (i) a cause prior to the commencement of the Defects Liability Period; or
 - (ii) an act or omission of any of the Insured parties in the course of complying with the requirements of the Defects Liability Period provisions of the Contract.

Section 2

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

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

happening:

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

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

In addition to any indemnity:

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

Exclusions Applicable to Section 1

1. Consequential Loss

Liquidated damages or penalties for non-completion of or delay in completion of the Contract or non-compliance with contract conditions or consequential loss, other than as specifically provided under this Section 1.

2. Wear and Tear

Damage directly caused by:

- (a) normal wear and tear;
- (b) rust, oxidation, corrosion or gradual deterioration, in each case when due to atmospheric conditions or other gradual causes;

but this Exclusion 2, shall be limited to that part of the Insured Property which is immediately affected and shall not apply to any other parts lost or damaged in consequence thereof.

3. Defects (LEG2/96)

All costs rendered necessary by defects of material workmanship design plan or specification and should damage occur to any portion of the Insured Property containing any of the said defects the cost of replacement or rectification which is hereby excluded is that cost which would have been incurred if replacement or rectification of the Insured Property had been put in hand immediately prior to the said damage. all costs rendered necessary by defects of material, workmanship, design, plan or specification, however should Damage (which for the purposes of this Exclusion 3 shall include any patent detrimental change in the physical condition of the Insured Property) occur to any portion of the Insured Property containing the said defects the cost of replacement or rectification which is hereby excluded is that cost incurred to improve the original material, workmanship, design, plan or specification.

4. Aircraft or Watercraft

Aircraft or Watercraft or plant and equipment permanently mounted thereon.

5. Disappearance or Shortage

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

6. Money

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

7. Transits Outside of Australia

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

8. Electronic Data Exclusion

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

However, Exclusion 8 will not apply to physical damage occurring to Insured Property during the Construction Period or Defects Liability Period directly caused by a Defined Peril.

9. Construction Plant and Equipment and its Breakdown

- (a) Damage to Construction Plant and Equipment owned or the responsibility of any Insured except RTA (and then only where declared by the RTA).
- (b) Damage caused by mechanical or electrical breakdown of Construction Plant and Equipment, however this Exclusion 9(b) shall be limited to the part immediately affected and shall not extend to include other components or parts Damaged in consequence thereof.

10. Vegetation

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

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

Exclusions Applicable to Section 2

1. Employer's Liability

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

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

2. Industrial Awards

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

3. Aircraft and Watercraft

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

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

4. Vehicles

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

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

5. Loss of Use

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

6. Products and Work Performed

Liability for:

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

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

7. Professional Liability

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

Personal Injury or Property Damage arising there from; or

the rendering of or failure to render professional medical advice by medical persons employed by the Insured to provide first aid and other medical services on the Insured's premises.

8. Pollution and Contamination

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

9. Fines and Penalties

Liability arising from or attributable to:

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

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

10. Advertising Injury

Liability arising out of Advertising Injury for:

- (a) offences committed prior to the inception date of this Policy;

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

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

Damage to property:

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

12. Asbestos

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

Exclusions Applicable to Sections 1 & 2

1. Nuclear Risks

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

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

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

- (b) nuclear weapons materials.

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

2. War and Terrorism

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

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; Notwithstanding this clause 2(a), this Policy shall cover loss, damage or liability caused by missiles and/or mines and/or bombs and/or other explosives not discovered at the moment of commencement of this Policy as long as no state of war exists in the country where the loss occurs; or
- (b) any act of terrorism.

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

This clause also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 2(a) and/or 2(b) above.

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

3. Contractors & subcontractors construction plant and equipment

No cover is provided in respect of contractors and subcontractors construction plant and equipment.

Conditions Applicable to Sections 1 & 2

1. Escalation (section 1 only)

If during the Construction Period, the anticipated actual Project Value of a Contract or series of Contracts in connection with one project exceeds the Limit of Liability, then the Limit of Liability and Sub-Limits of Liability shall be increased by the percentage that represents the amount the anticipated actual Project Value for such Contract(s) exceeds the estimated Project Value at commencement of the Contract(s), but the total amount of all such increases shall not exceed 25% of the amount set against each item in the Limits of Liability and Sub-limits of Liability.

2. Claims Procedure (section 1 only)

For estimated Damage up to A\$100,000 the Insured is at liberty to immediately proceed with repairs or replacement and shall provide to the Insurers full details of the cause and circumstances of the Damage, followed by written notification of the claim, supported by the necessary invoices and other details.

For estimated Damage exceeding A\$100,000 the Insured is to defer proceeding with repairs or replacement until the Insurers or their representatives have made a preliminary survey or have agreed to the Insured proceeding with repairs or replacement.

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

3. Permission to Occupy and Operate (section 1 only)

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

4. Limits of Liability

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

(b) (i) Section 1 – Material Loss or Damage

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

(ii) Section 2 – Legal Liability

The liability of the Insurers under Section 2 in respect of each Occurrence shall not exceed the Limit of Liability stated in the Schedule. All Personal Injury, Property Damage or Advertising Injury arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one Occurrence.

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

5. Application of Excess

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

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

- (b) Non-aggregation of Excesses

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

- (b) 72 Hour Clause

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

- (c) Inland Transit

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

6. Insurers' Rights

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

7. Subrogation and Settlement of Claims

- (a) The Insured shall inform the Insurers as soon as reasonably practicable of the happening of any Damage which may give rise to a claim under this Policy.
- (b) Upon the payment of any claim under this Policy, subject to any restrictions imposed by the Commonwealth Insurance Contracts Act 1984, the Insurers shall be subrogated to all the rights and remedies of the Insured arising out of such claim against any person or corporation whatsoever.
- (c) In respect of Section 2 of this Policy, no admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the Insured without the consent of the Insurers who shall be entitled, if the Insurers so desire, to take over and conduct in the name of the Insured the defence or settlement of any claim or to prosecute in the name of the Insured for the Insurer's own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings or in the settlement of any claim, however the Insurers shall discuss the conduct, defence, prosecution or settlement of any claim or proceeding with the Insured prior to taking action or effecting settlement.
- (d) The Insurers may pay to the Insured, the amount of the applicable Limit of Liability of the Insurers or such lesser sum for which the claim can be settled subject in either case to deduction of any sum or sums already paid as compensation in respect of such claim and the Insurers shall thereafter be under no further liability in respect of such claim except for the payment of costs and expenses for which the Insurers are liable hereunder incurred prior to the date of such payment.

8. Multiple Insureds Clause

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

- (i) any Insured or any individual or organisation affiliated or associated with, parent of or a subsidiary of any Insured other than those defined in the Insured iii.d. in circumstances where indemnity is not provided under this Policy;
- (ii) at the option of the Named Insured, any other parties or persons, subject to the Insured, waiving rights of subrogation prior to the loss, but only when required to do so under contract;

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

9. Notices

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

10. Insolvency or Bankruptcy

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

11. Hold Harmless Agreements

Where, in connection with or in relation to a Contract, the Insured enters into an agreement with another party and where such agreement provides, inter alia, that the Insured shall indemnify and/or hold harmless and/or release from liability such other party in respect of any damage, defect or liability

hereby insured against, it is understood and agreed that this Policy shall not be prejudiced or invalidated by the Insured agreeing to such provisions and that the indemnity and/or hold harmless and/or release from liability given by the Insured shall be equally binding upon the Insurers.

12. Jurisdiction and Service of Proceedings

The Insurers agree that:

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

13. Cancellation/Non-renewal

- (a) By the Insurers

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

- (b) By the Named Insured

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

- (c) Run-off Cover:

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

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

whichever occurs first.

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

14. Alterations in Material Fact/Error or Omission

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

15. Progress Payments (applicable to Section 1 only)

Provided that indemnity has been granted under this Policy, progress payments on account of any claim under Section 1 only shall be made to the Insured, at such intervals and for such amounts as may be agreed upon production of an acceptable report by the Agreed Loss Adjuster (if appointed), provided such payments shall be deducted from the amount finally determined upon adjustment of the claim.

16. Engagement of Loss Adjusters

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

17. Loss Payee (Section 1 only)

Any claim arising under Section 1 shall be settled with and paid to the Loss Payee stated in the Schedule or as they may direct.

18. Currency

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

19. Difference In Conditions Cover

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

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

(h) Appeals

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

20. Leading Insurer

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

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

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

21. Referral Contracts

Where any Contract

Exceeds \$50,000,000 any one contract site or

construction period exceeds 48 months or

tunnelling component exceeds \$20,000,000 and

And the subject of referral to insurers for special acceptance

the Contract will be held covered for a period not exceeding 30 days from the commencement of the Construction Period, and thereafter will be covered subject to agreement by the Insurers.

22. Other Insurance

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

Extensions to Section 1

The following Extensions apply to this Policy

1. Additional Costs and Expenses

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

(a) Removal of Debris and Other Costs

(i) Debris

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

(ii) Temporary Protection

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

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

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

(iii) Shoring, Propping and Other Costs

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

(b) Expediting Expenses

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

- (i) express or chartered carriage or delivery (including by sea or air);

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

(c) Search and Locate Costs

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

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

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

(d) Professionals' Fees

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

(e) Mitigation Expenses

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

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

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

(f) Claims Preparation Costs

Reasonable costs and expenses up to \$100,000 any one Event as may be payable by the Insured and not otherwise recoverable in connection with or incidental to preparing, collating, auditing or qualifying actual or imminent Damage being claimed under this Section excluding loss adjuster and legal adviser fees incurred by the Insured.

(g) Government and other Fees

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

(h) Civil Authority

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

2. Terrorism Cover

This insurance is an eligible insurance contract for the purposes of the terrorism act. The terrorist exclusion contained in this insurance is ineffective in relation to loss or liabilities arising from a declared terrorist incident affecting eligible property located in Australia.

Definitions

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

Definitions/Interpretation to All Sections of this Policy

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

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

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

Construction Period means, at the option of the Named Insured, that phase of a Contract:

- (i) until the Contract Works have been formally accepted in their entirety by the principal/owner as having achieved practical completion., notwithstanding the fact that portions of the Contract(s) may have been handed over, put into use and accepted by the principal/owner prior to that time, including any Performance Testing Periods; or
- (ii) with respect to each separable portion of the Contract Works, until the time it is taken over or put into use (whichever is the earlier) by the principal/owner.

The term of cover in respect of the Construction Period, shall be the period commencing with:

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

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

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

Damage, for the purposes of Section 1, means physical loss, destruction or damage with the word Damaged having a corresponding meaning.

Defects Liability Period means the period described in any Contract during which an Insured is obliged or legally liable to rectify defects, shrinkages, errors, omissions or other faults and/or to complete the maintenance or other obligations under such Contract (the original Defects Liability Period), which may include the granting of a further period, following rectification of defects under the original period. The original Defects Liability Period shall not exceed the Maximum Defects Liability Period stated in the Schedule in respect of any one Contract.

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

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

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

Event means, for the purposes of Section 1, an occurrence or series of occurrences consequent upon or attributable to one source or original cause.

Indemnity Value means:

- (a) where the Damage to Insured Property can be repaired, the Insurers will pay the cost necessarily incurred to restore the property to its former state of serviceability, plus the cost of dismantling and re-erection incurred for the purpose of effecting the repairs. Deductions will not be made for depreciation in respect of parts replaced, but the salvage value of such parts shall be taken into account;
- (b) where the Insured Property is totally destroyed or cannot be satisfactorily repaired at a cost not exceeding the market value immediately before the Damage, the Insurers will pay the market value of the item at the time of the Event. If due to the nature of the Insured Property, it is not possible to readily ascertain a market value, the basis of settlement shall be the replacement cost of the damaged property less due allowance for depreciation taking into consideration the anticipated useful life of the property and the nature of its usage.

- (c) if the Insured Property is reasonably abandoned because the cost of recovery would exceed the amount payable under this Policy in respect of such property, it shall be deemed to be a constructive total loss and settlement shall be made in accordance with clause i.

Insured means:

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

It shall be noted that the architect, engineer or other consultant referred to in d. above shall not be construed as any other Insured,

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

Insured Property:

- (i) **Contract Works** means property of every description used or to be used in part of or incidental to or having any connection whatsoever with the Insured Operations. It shall include but not be limited to:
 - (a) the whole of the works, whether permanent or temporary works, structures, materials and supplies including free supplied materials;
 - (b) temporary buildings, camp buildings and all other Project buildings and their contents;
 - (c) formwork, falsework, scaffolding, access platforms, hoardings, mouldings, and the like, whether the foregoing be consumable or reusable;
 - (d) consumables, drawings and other documents, plant and improvements;
 - (e) but excluding Construction Plant and Equipment not specified above.

- (ii) **Existing Structures** being existing structures, plant, contents and real property of every description. Existing Structures are specifically excluded under Section 1 of this Policy unless an amount is specified against this item in the Schedule.

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

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

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

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

If as a result of Damage it becomes necessary to repeat any test, trial or to carry out subsequent test(s) and/or trial(s), the Insurers will bear the cost of any such repeated and/or subsequent test(s) or trial(s).

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

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

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

Reinstatement Value means:

- (i) where the Insured Property is lost or destroyed, the replacement thereof by similar property in a condition equal to, but not better nor more extensive than, its condition when new;
- (ii) where the Insured Property is Damaged and can be repaired, the Insurers will pay the cost necessarily incurred to restore the property to a condition substantially the same as, but not better nor more extensive than its condition when new, plus the cost of dismantling and re-erection incurred for the purpose of effecting the repairs;
- (iii) the work of rebuilding, replacing, repairing or restoring as the case may be (which may be carried out upon any other site(s) and in any manner suitable to the requirements of the Named Insured, but subject to the liability of the Insurers not being thereby increased), must be commenced and carried out with reasonable dispatch;
- (iv) where Insured Property has been Damaged and where the Named Insured elects not to reinstate such Insured Property, the Insurers will pay to the Named Insured an amount equal to the cost necessary to replace, repair or rebuild the Insured Property to a condition substantially the same as but not better nor more extensive than its condition at the time the Damage occurred;
- (v) if the Insured Property is reasonably abandoned because the cost of recovery would exceed the amount payable under this Policy in respect of such property, it shall be deemed to be a constructive total loss and settlement shall be made in accordance with the above provisions (as applicable).

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

Underground Services means existing pipework, cables, conduits, conveying services such as electricity, gas, water, waste and electronic communications, located below the existing ground service.

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

Watercraft means any vessel, craft or thing in excess of 8 metres in length (measured at the waterline) made or intended to float on or travel on or through water.

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

Singular/Plural

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

Headings

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

Definitions/Interpretations Specific to Section 2

For the purposes of Section 2, the following Definitions will apply:

Advertising Injury means:

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

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

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

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

Personal Injury includes:

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

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

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

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

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

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