

10/110,1722
Mr Robert (Bob) Higgins
Pacific Highway Office
bob_higgins@rta.nsw.gov.au



21 October 2009

General Manager
Coffs Harbour City Council
Cnr Coffs and Castle Street,
COFFS HARBOUR NSW 2450

Attention: Stephen Sawtell

PACIFIC HIGHWAY UPGRADE, SAPPHIRE TO WOOLGOOLGA UPGRADE – UTILITIES ALLIANCE.

Dear Stephen

I refer to discussions in regard to the Sapphire to Woolgoolga Upgrade which is a key project in the Pacific Highway Upgrade programme.

As Council is aware the timely relocation of Council's water and sewer assets to enable the Sapphire to Woolgoolga Upgrade to proceed is critical in achieving the overall programme for the completion of the Upgrade.

As a result and in line with the desire of both Council and the RTA to maintain a cooperative relationship in undertaking the relocation of Council's assets it has been agreed that the necessary works will be delivered through an alliance between Council and the RTA.

It has been agreed that the attached Project Alliance Agreement (PAA) form the basis of the formal arrangement between Council and the RTA. The PAA includes Schedule 7, Commercial Framework, which is separately attached and which details the agreed commercial arrangements.

It is confirmed that RTA accepts the terms of the PAA, including Schedule 7, Commercial Framework. It would be appreciated if you could confirm Council's acceptance of the terms of the PAA, including Schedule 7, by countersigning this letter where indicated below.

The PAA will become effective from the date of the countersigning of this letter by Council.

Council's cooperation in assisting RTA in achieving the programme objectives for the Pacific Highway Upgrade is appreciated.

I look forward to a successful alliance with Council in the relocation of Council's assets.

Yours sincerely

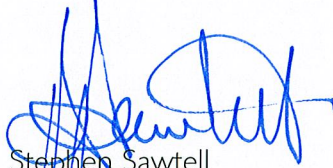
A handwritten signature in blue ink, appearing to read 'R. Higgins', with a long horizontal flourish extending to the right.

Bob Higgins
General Manager, Pacific Highway

21/10/09

Roads and Traffic Authority

On Behalf of Council I accept the terms of the Project Alliance Agreement, including Schedule 7,
Commercial Framework



Stephen Sawtell
General Manager

Date: 21-10-09



**PACIFIC HIGHWAY UPGRADE
SAPPHIRE TO WOOLGOOLGA
UPGRADE
UTILITIES ALLIANCE**

PROJECT ALLIANCE AGREEMENT

Final

Contents

1.	OUR ROLES AND RESPONSIBILITIES	5
1.1	Our responsibilities	5
1.2	Commitment to act in good faith	6
2.	ALLIANCE LEADERSHIP TEAM	6
2.1	Creation of the ALT	6
2.2	ALT Representation	6
2.3	ALT Chairperson	7
2.4	Functions of the ALT	7
2.5	Meetings of the ALT	7
2.6	Decisions of the ALT	8
2.7	Minutes of ALT meetings	8
3.	ALLIANCE MANAGEMENT TEAM AND ALLIANCE MANAGER	9
3.1	Appointment of Alliance Manager	9
3.2	Functions of the Alliance Manager	9
3.3	Functions of the AMT	9
3.4	Meetings of the AMT	9
4.	INTEGRATED PROJECT TEAM	9
4.1	Creation of the Integrated Project Team	9
4.2	Functions of the Integrated Project Team	9
5.	INVESTIGATION AND PROJECT PROPOSAL	10
5.1	Investigation	10
5.2	Design	10
5.3	Implementation	10
5.4	Development and approval of Project Proposal	10
5.5	Separable Portions	11
6.	ALLIANCE WORKS	11
6.1	Commencement and duration of Alliance Works	11
6.2	Compensation for Alliance Works	11
6.3	Date for Completion	11
6.4	Certificate of Completion	11
6.5	Certificate of Final Completion	12
6.6	Separable Portions	12
6.7	Supply of Design and other documents by RTA	13
6.8	Supply of Design and other documents by Council	13
6.9	Site access	13
7.	PERFORMANCE OF ALLIANCE WORKS	14
7.1	Primary performance obligation	14
7.2	Primary performance obligations of RTA	14
7.3	Subcontracts	14
7.4	Compliance with Statutory Requirements	15
7.5	Quality assurance	15

7.6	Health and safety	15
7.7	Occupational health and safety management plan	16
7.8	Protection of people, the environment and property	16
7.9	Care of the Alliance Works	16
7.10	Reinstatement	17
7.11	Environment	17
7.12	Community, social issues and media	17
7.13	Regulatory approvals	17
7.14	RTA Statement of Business Ethics	17
7.15	Protection of Aboriginal heritage and Aboriginal rights	17
7.16	Suspension of Alliance Works	18
7.17	RTA may direct changes to the Alliance Works	18
7.18	ALT may recommend changes to the Alliance Works	19
8.	PAYMENTS	20
8.1	Invoices and payments	20
8.2	Payment for materials not incorporated	21
9.	GST	22
10.	INSURANCES	23
10.1	Insurances provided by RTA	23
10.2	Insurances to be provided by Council	24
10.3	Other insurance requirements	25
10.4	Proof of insurance	25
10.5	Cross liabilities	25
10.6	Insurance claims procedures	25
10.7	Pass through of insurance payouts	26
11.	WITHDRAWAL AND TERMINATION	26
11.1	Termination	26
11.2	Notice of termination	26
11.3	Effect of termination	26
11.4	Our actions	26
11.5	Termination payments	27
12.	NO ARBITRATION OR LITIGATION	27
13.	DEFAULT BY PARTICIPANT	27
13.1	Default by us	27
13.2	Notice of default	28
13.3	Failure to remedy	28
14.	REMEDIES AND LIABILITY	28
14.1	Rights and remedies	28
14.2	Civil Liability Act	29
14.3	Liability under this Agreement	29
14.4	Limitations and exclusions of rights and liabilities	29
14.5	Preservation of insurance rights	29
15.	DOCUMENT MAINTENANCE AND AUDITING	30
15.1	Maintenance of accounts, records and documentation	30

15.2	Access to accounts, records and documentation	30
15.3	Provision of copies	30
15.4	Audit	30
16.	CARE OF INFORMATION	30
16.1	Conflict of interest	30
16.2	Confidentiality	31
16.3	Privacy Act Compliance	32
17.	MISCELLANEOUS PROVISIONS	32
17.1	Service of notices	32
17.2	Right to assign or Subcontract	32
17.3	Governing law	32
17.4	Status of Agreement	33
17.5	Tariff concessions	33
17.6	Australian currency	33
17.7	Relationship of the Participants	33
17.8	Entire agreement	33
17.9	Non-waiver	33
17.10	Corporate power and authority	33
17.11	No representation or reliance	34
17.12	Severability	34
Schedules		
1	ALLIANCE PARTICIPANTS	35
2	DICTIONARY	36
3	ALLIANCE PRINCIPLES	44
4	ALLIANCE OBJECTIVES	45
5	CONTACT DETAILS	46
6	ALLIANCE LEADERSHIP TEAM	47
7	COMMERCIAL FRAMEWORK	48
8	FUNCTIONS OF ALT, AMT AND THE ALLIANCE MANAGER	49
9	ALLIANCE BRIEF	54
10	INSURANCES	55
11	LIKELY INDICATIVE TERMS OF CONSTRUCTION MATERIAL DAMAGE INSURANCE POLICY	56
12	THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE SUMMARY	92

PACIFIC HIGHWAY UPGRADE, SAPPHIRE TO WOOLGOOLGA UPGRADE, UTILITIES ALLIANCE

THIS AGREEMENT is an attachment to a letter of agreement.

PARTIES

Roads and Traffic Authority of New South Wales of 101 Miller Street, North Sydney (RTA)

Coffs Harbour City Council of Coff St, Coffs Harbour (**Council**), the other party to this Agreement set out in Part B of **Schedule 1**

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

RECITALS

- A. RTA intends to upgrade the Pacific Highway between Sapphire and Woolgoolga. To enable the upgrade of the Pacific Highway to proceed, the relocation of water and sewer mains owned by Council is required. For the purpose of this Agreement, this relocation work will be known as the Alliance Works.
- B. Coffs Harbour Water, a division of Council, is the asset owner and manager and will manage and supervise the Alliance Works. The completed Alliance Works will be handed over to Coffs Harbour Water.
- C. Coffs CityWorks, a division of Council, will undertake the Stage 1 Alliance Works.
- D. The undertaking of Stages 2 and 3 of the Alliance Works will be the subject of discussion and resolution.
- E. Completion of Stage 1 of the Alliance Works is scheduled for 20 September 2010. Completion of Stages 2 and 3 will be discussed and agreed.
- F. 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 each Participant in performing the Alliance Works.
- G. 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.
- H. This Agreement sets out the Alliance Principles by which we are to carry out the Alliance Works so as to achieve the Alliance Objectives and the manner in which we will be reimbursed for that participation in the Alliance.

OPERATIVE PROVISIONS

1. OUR ROLES AND RESPONSIBILITIES

1.1 Our responsibilities

We are committed to:

- (a) adopting all reasonable measures to ensure that the Alliance Objectives are achieved;

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

1.2 Commitment to act in good faith

We will, at all times, act in good faith and with trust and mutual respect in relation to the rights of the other Participant under this Agreement as well as our obligations to the other Participant, 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 the other Participant's responsibilities under this Agreement; and
- (d) if a Participant believes this Agreement is operating unfairly or unreasonably with respect to the 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 up to two Representatives from each Participant.

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

2.3 ALT Chairperson

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

2.4 Functions of the ALT

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

2.5 Meetings of the ALT

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

that Representative) agrees that the Representative can fully participate, even though that Representative has, or may have, a conflicting interest or duty.

- (c) Unless a Representative:
 - (i) has made full disclosure under clause 2.5(b); and
 - (ii) at all times acts in a manner consistent with clause 1.1(d),the Representative is not entitled to participate in any discussion of the ALT.
- (d) Each Representative will have equal rights at meetings of the ALT.
- (e) The ALT may:
 - (i) conduct a meeting even though the Representatives are not at the same location, provided that all Representatives who wish to participate in that meeting are linked by an agreed method of instant voice recognition;
 - (ii) use independent experts to assist the ALT with any decision in connection with this Agreement; and
 - (iii) establish subcommittees to advise the ALT in connection with the Alliance. Any such committee will be given written terms of reference from the ALT and will be subject to procedures and rules determined by the ALT.
- (f) A senior executive from each of the Participants not directly associated with the Alliance may attend meetings of the ALT as an observer.
- (g) The RTA Interface Manager may attend meetings of the ALT as an observer.

2.6 Decisions of the ALT

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

2.7 Minutes of ALT meetings

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

3. ALLIANCE MANAGEMENT TEAM AND ALLIANCE MANAGER

3.1 Appointment of Alliance Manager

- (a) The Alliance Manager will:
 - (i) be an employee of Council and be appointed by Council as soon as practicable after the date of this Agreement;
 - (ii) be subject to the control and direction of the ALT and provide reports to Council and the ALT; and
 - (iii) assist us in fulfilling our obligations under this Agreement.
- (b) Council 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 who will be employees of Council.

3.2 Functions of the Alliance Manager

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

3.3 Functions of the AMT

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

3.4 Meetings of the AMT

The RTA Interface Manager may attend any meetings of the AMT as an observer.

4. INTEGRATED PROJECT TEAM

4.1 Creation of the Integrated Project Team

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

4.2 Functions of the Integrated Project Team

The Integrated Project Team will:

- (a) be employees of Council and 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 Council, the AMT, the Alliance Manager and this Agreement at all times.

5. INVESTIGATION AND PROJECT PROPOSAL

5.1 Investigation

- (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) will be developed in 3 separate Stages as follows:
 - (i) Stage 1 – Campbells Close, Sapphire to Killara Avenue, Heritage Park;
 - (ii) Stage 2 – Killara Avenue, Heritage Park to Unwins Road, Woolgoolga
 - (iii) Stage 3 – Unwins Road, Woolgoolga to Arrawarra.

5.2 Design

Council will undertake all necessary design for the Alliance Works. The preparation of the design including the detailed design does not form part of the Alliance Works.

5.3 Implementation

- (a) For all Alliance Works, Council, through Coffs Harbour Water, will undertake:
 - (i) supervision and inspection;
 - (ii) connection of new works to the existing water network;
 - (iii) chlorination/dechlorination of new watermains
 - (iv) quality assurance; and
 - (v) acceptance testing.
- (b) We have agreed that Council, through Coffs CityWorks, will undertake the Stage 1 Alliance Works.
- (c) We will discuss and resolve the method to undertake of the Alliance Works for Stages 2 and 3.
- (d) On completion, the Alliance Works will be handed over to Coffs Harbour Water, on behalf of Council.

5.4 Development and approval of Project Proposal

- (a) Where it is agreed that Coffs CityWorks will undertake a Stage of the Alliance Works, we will prepare and deliver to RTA a Project Proposal for that Stage of the Alliance Works by a date agreed in writing by RTA.
- (b) Following receipt of the Project Proposal, RTA may, in its discretion, elect to:
 - (i) approve the Project Proposal by notice in writing to Council;
 - (ii) request the Participants to amend the Project Proposal and re-submit it to RTA for approval in accordance with this clause 5.4; or
 - (iii) give the ALT a notice in writing informing the ALT that the Alliance Works will not proceed, in which case, clause 11.1(a) will apply on and from the date of that notice.

5.5 Separable Portions

RTA may, as part of the process contemplated under clause 5.4, require the Participants to develop and submit to RTA a Project Proposal for each Separable Portion of the Alliance Works (if applicable). It is agreed that Stage 1 is a Separable Portion.

6. ALLIANCE WORKS

6.1 Commencement and duration of Alliance Works

- (a) We will not commence the Alliance Works unless and until RTA provides its approval in writing to the Project Proposal pursuant to clause 5.4(b)(i) or as otherwise agreed by RTA in writing.
- (b) We will carry out the Alliance Works in accordance with the construction program that forms part of the Project Proposal approved under clause 5.4(b)(i).
- (c) We may extend the Date for Completion only by written agreement of the ALT.

6.2 Compensation for Alliance Works

- (a) RTA will pay Council for carrying out the work under this Agreement in accordance with the Commercial Framework.
- (b) Payment to Council pursuant to clause 6.2(a) will be the sole compensation to Council for the fulfilment of their obligations under this Agreement.
- (c) Despite any other provision of this Agreement, RTA will be under no obligation to pay Council unless Council is in compliance with clause 8.2.
- (d) The terms of compensation under the Commercial Framework may be modified as determined by the ALT, but only where there is a Scope Change.

6.3 Date for Completion

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

6.4 Certificate of Completion

- (a) If the Alliance Manager considers that we have not achieved Completion by the Date for Completion, the Alliance Manager may issue a list of Defects which the Alliance Manager determines must be rectified by Council prior to the issue of the Certificate of Completion.
- (b) When the Alliance Manager considers that we have achieved Completion, the Alliance Manager will submit a draft Certificate of Completion to Council for its approval and the ALT for its information. The draft Certificate of Completion must include a statement by the Alliance Manager to the effect that:
 - (i) the Alliance Manager is not aware of any Defects; and
 - (ii) to the best knowledge of the Alliance Manager, having made reasonable enquiry, the Alliance Works have reached Completion.
- (c) If Council approves the draft Certificate of Completion, the Alliance Manager will sign and date the certificate and issue it to the Participants.
- (d) If Council does not consider the Alliance Works to have reached Completion:

-
- (i) Council will provide details to the Alliance Manager of work Council considers to be outstanding to achieve Completion; and
 - (ii) the Alliance Manager will promptly inform the Participants that Completion has not been achieved and the details of the outstanding work required to achieve Completion.
- (e) Once the Alliance Manager is satisfied that the outstanding work has been completed in accordance with this Agreement, the Alliance Manager will again initiate the approval process under this clause 6.4.
 - (f) The Certificate of Completion must also refer to the date which Council determines is the Date of Completion.

6.5 Certificate of Final Completion

- (a) After expiry of the Defects Correction Period, and provided the Alliance Manager is not aware of any outstanding Defects, the Alliance Manager will submit a draft Certificate of Final Completion to Council for its approval and to the ALT for its information.
- (b) If Council approves the draft Certificate of Final Completion, the Alliance Manager will sign and date the certificate and issue it to the Participants.
- (c) If Council does not consider the Alliance Works to have reached Final Completion or considers that there is some other obligation under this Agreement which has not been performed or observed:
 - (i) Council will inform the Alliance Manager as to what Council considers to be outstanding to achieve Final Completion or to perform or observe the relevant obligation under this Agreement; and
 - (ii) the Alliance Manager will promptly inform the Participants that Completion has not been achieved and any details of the outstanding work or the failure to perform or observe some other obligation under this Agreement.
- (d) Once the Alliance Manager is satisfied that the outstanding work or obligation has been completed, performed or observed in accordance with this Agreement, the Alliance Manager will again initiate the approval process under this clause 6.5.
- (e) The Certificate of Final Completion must also refer to the date which Council determines is the Date of Final Completion.

6.6 Separable Portions

The ALT may determine that any part of the Alliance Works will be a Separable Portion and the interpretations of:

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

will apply separately to each Separable Portion.

6.7 Supply of Design and other documents by RTA

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

6.8 Supply of Design and other documents by Council

Council will:

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

6.9 Site access

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

- (a) RTA will give Council such access to and use and control of the Site or any part of the Site, as is appropriate, to enable the Alliance to execute the Alliance Works to achieve Completion. Any delay by RTA in giving the Alliance access to and use and control of the Site will not be a breach of this Agreement, but may be an Excusable Delay and, consequently, may be grounds for a Scope Change;
- (b) Subject to any access protocols determined by the ALT, RTA, its officers, employees and agents and any other person (for example, a contractor carrying out work or services for RTA) nominated by RTA may at any reasonable time (and, where appropriate, with reasonable notice) have access to any part of the Site, the Alliance Works or at any other place where the work under this Agreement is being carried out or materials are being prepared or stored for the purpose of performing the work under this Agreement;
- (c) Council will comply with all reasonable directions of RTA in relation to access to and use and control of the Site or any part of the Site by any of Council, Subcontractors and other persons;
- (d) we will maintain the Site and any other lands and places required to complete the Alliance Works in a safe, clean and tidy condition and regularly remove surplus materials and rubbish from the Site;
- (e) on completing work at the Site and as a condition precedent to Completion, we will:
 - (i) remove all Construction Plant, Temporary Works and all surplus materials and rubbish from the Site; and
 - (ii) leave the whole of the Site in a safe, clean and tidy condition; and
- (f) Council may inform RTA and the Alliance Manager if Council is of the reasonable opinion that compliance with a direction given by RTA under clause 6.9(c) would place the Council in breach of its obligations:

-
- (i) under the *Occupational Health and Safety Act 2000* (NSW) and the *Occupational Health and Safety Regulation 2001* (NSW); and/or
 - (ii) as the principal contractor pursuant to clause 7.6(c)(ii),

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

7. PERFORMANCE OF ALLIANCE WORKS

7.1 Primary performance obligation

Subject to this Agreement, we will collectively undertake and complete the Alliance Works (to permit them to be certified under clauses 6.4 and 6.5):

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

7.2 Primary performance obligations of RTA

RTA will pay Council 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 of Council; and
 - (ii) Council enters into a Subcontract in its own right and not as our agent or as an agent of RTA.
- (b) The terms of any Subcontract must:
 - (i) be approved by the Alliance Manager; and
 - (ii) contain an assignment of Intellectual Property Rights by the Subcontractor to Council on terms identical to clause 16.1(a) (except for substituting the relevant Subcontractor for Council).
- (c) If any of us engage a Subcontractor we must, where required in writing by either the ALT or RTA, enforce or defend the relevant Subcontract for the benefit of the Alliance and any:
 - (i) such enforcement or defence actions, settlement or proceedings must be conducted under the written direction of either the ALT or RTA; and
 - (ii) costs of such enforcement or defence actions, settlement or proceedings will be dealt with in accordance with the Commercial Framework.

7.4 Compliance with Statutory Requirements

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

7.5 Quality assurance

We are committed to ensuring that the Alliance Works are consistent with a "best for project" approach. For the achievement of this objective, Council will establish, implement and maintain a quality assurance system.

7.6 Health and safety

- (a) We are committed to achieving outstanding performance in relation to health and safety and making every effort to maintain a workplace free of accidents and injuries.
- (b) In this clause 7.6, the terms "principal contractor" and "place of work" have the same meanings assigned to those terms under the *Occupational Health and Safety Act 2000* (NSW) (in this clause, **the Act**) and the *Occupational Health and Safety Regulation 2001* (NSW) (in this clause, **the Regulation**).
- (c) Without limiting our obligations under any other provision of this Agreement, we agree as follows:
 - (i) to the extent that RTA is able to validly appoint Council as the principal contractor under clause 210 of the Regulation then, from the date on which RTA notifies Council:
 - (A) Council is appointed as principal contractor under clause 210 of the Regulation; and
 - (B) RTA give all necessary authority to Council to allow it to fulfil and exercise the obligations and functions of the principal contractor under the Regulation;
 - (ii) Council must, from the date on which RTA notifies Council:
 - (A) where clause 7.6(c)(i) applies, exercise and fulfil the functions and obligations of the principal contractor under the Regulation;
 - (B) where clause 7.6(c)(i) does not apply, exercise and fulfil the functions and obligations of the principal contractor under the Regulation as if Council had been validly appointed as the principal contractor under clause 210 of the Regulation;
 - (C) ensure that all Subcontractors comply with their respective obligations under the Act and the Regulation;
 - (D) at all reasonable times provide the other Participant with access to such records as may be necessary to enable Council to comply with its obligations under this clause;
 - (E) ensure that the Participants execute the Alliance Works in a manner which ensures that the Participants satisfy their obligations under the Act and the Regulations; and
 - (F) immediately inform the other Participant in writing of all incidents involving injury to any person arising during the execution of the Alliance Works; and

-
- (iii) in carrying out the Alliance Works or in exercising our rights under this Agreement we will ensure that we (and our respective officers, employees, Subcontractors and agents) comply with:
 - (A) the latest OH&S Plan;
 - (B) all applicable Statutory Requirements; and
 - (C) all reasonable safety directives, procedures and work instructions issued by the Alliance Manager or personnel authorised by the Council to issue such directives, procedures and instructions.

7.7 Occupational health and safety management plan

The Alliance Manager will ensure that:

- (a) after this Agreement is executed and prior to accessing any part of the Site, that Council promptly:
 - (i) develops an occupational health and safety management plan (**OH&S Plan**) in accordance with the New South Wales OHS&R Management Systems Guidelines dated November 1998; and
 - (ii) submits the OH&S Plan to Council and obtains the Council's approval to the OH&S Plan; and
- (b) Council oversees strict compliance with the requirements of the OH&S Plan.

7.8 Protection of people, the environment and property

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

provided that this clause will not be taken to mean that RTA authorises any action constituting a breach of any Statutory Requirements.
- (b) Our obligations include the provision of barricades, guards, fencing, temporary roads, footpaths, warning signs, lighting, watching, traffic flagging, safety helmets and clothing, removal of obstructions and protection of services.

7.9 Care of the Alliance Works

- (a) From the date of commencement of the Alliance Works until the Date of Completion, we will be responsible for the care of the Alliance Works.

-
- (b) After the Date of Completion, we will remain responsible for the care of such parts of the Alliance Works as are necessary to carry out our obligations until the date on which the Certificate of Final Completion is issued by the Alliance Manager under clause 6.5.

7.10 Reinstatement

We will promptly make good any loss or damage to the Alliance Works that occurs during any period in which we are responsible for the care of the Alliance Works under clause 7.9.

7.11 Environment

We are committed to achieving the highest possible performance in all aspects of the Project in regard to environmental practices. For the achievement of this objective, we will establish, implement and maintain an environmental management system.

7.12 Community, social issues and media

- (a) We are committed to practices and procedures which are rated as world class with genuine sensitivity and responsiveness being shown at all times to community members and groups. RTA may direct the Alliance and the ALT in relation to any matters dealing with Stakeholders, and the Alliance and the ALT must comply with RTA's directions.
- (b) No Participant may disclose any information concerning the Project for distribution through any communications media without RTA's prior written approval. The Participants must refer to RTA any enquiries from any media concerning the Project.

7.13 Regulatory approvals

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

7.14 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.

7.15 Protection of Aboriginal heritage and Aboriginal rights

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

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

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

7.16 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 7.16, the ALT must determine whether the compensation set out in the Commercial Framework payable to Council 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.

7.17 RTA may direct changes to the Alliance Works

- (a) RTA may direct us (**Direction**), through its authorised representative appointed under clause 7.17(g) to:
 - (i) change the design or specification of the whole or any part of the Alliance Works;
 - (ii) change the Alliance Works or any part of the Alliance Works;
 - (iii) change the conduct, order or program of the Alliance Works;
 - (iv) increase, decrease or omit any part of the Alliance Works;
 - (v) change the character or quality of any part of the Alliance Works;
 - (vi) change the levels, lines, positions or dimensions of all or any part of the Alliance Works;
 - (vii) change the means, methods or techniques in relation to the performance of all or any part of the work under this Agreement;
 - (viii) execute additional work or perform additional services under this Agreement; or
 - (ix) demolish or remove material or infrastructure no longer required by RTA, and we must promptly comply with that Direction.
- (b) No Direction will invalidate this Agreement.
- (c) RTA may, in respect of a Direction or proposed Direction, issue to the ALT an Estimation Request.

-
- (d) If RTA issues an Estimation Request or if the ALT determines that RTA has issued a Direction that may give rise to a Scope Change, but has not issued an Estimation Request, the ALT must promptly determine:
- (i) whether the matters contained in the Estimation Request or the subject of the Direction would constitute a Scope Change; and
 - (ii) if the matters contained in the Estimation Request or the subject of the Direction would constitute a Scope Change, the change in the terms of compensation set out in the Commercial Framework to Council which will result from the conduct of those matters,
- and provide written notice as to its determination to RTA and Council.
- (e) Following RTA's receipt of a notice under clause 7.17(d) or upon the ALT determining that, unless a Direction referred to in clause 7.17(a) is withdrawn a Scope Change will arise, RTA must notify the ALT in writing whether it wishes to:
- (i) not proceed with the Direction;
 - (ii) revise the Estimation Request, in which case the provisions of this clause 17 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 Council under this Agreement will be altered in the manner set out in the ALT's notice under clause 7.17(d).
- (f) No Direction will result in a change in the compensation payable pursuant to this Agreement unless the Direction is determined by the ALT to give rise to a Scope Change, the ALT has issued a notice under clause 7.17(d) and provided that all other requirements concerning compensation under this Agreement are satisfied.
- (g) The person authorised at the date of this Agreement by RTA under this clause 17 is the person from time to time occupying the position of "General Manager, Pacific Highway". RTA will give written notice to Council of any change in the person appointed by it as its authorised representative for the purpose of this clause 17.
- (h) RTA and the ALT must use their reasonable endeavours to minimise any delays in the Alliance Works arising from the processes contemplated in this clause 17.
- (i) Council may inform RTA, the ALT and the Alliance Manager if the Council is of the reasonable opinion that compliance with a Direction given by the RTA under this clause 17 would place Council in breach of its obligations:
- (i) under the *Occupational Health and Safety Act 2000 (NSW)* and the *Occupational Health and Safety Regulation 2001 (NSW)*; and/or
 - (ii) as the principal contractor pursuant to clause 7.6(c)(ii)
- and the ALT will then determine a suitable resolution of the occupational health and safety issue which avoids or remedies such breach.

7.18 ALT may recommend changes to the Alliance Works

- (a) The ALT may, at any time during the period of the Alliance Works, recommend to RTA through its authorised representative appointed under clause 7.17(g):
- (i) a change to the design or specification of the whole or any part of the Alliance Works;

-
- (ii) a change in the Alliance Works or any part of the Alliance Works;
 - (iii) a change in the conduct, rate of progress, order or program of the Alliance Works;
 - (iv) an increase, decrease or omission of any part of the Alliance Works;
 - (v) a change in the character or quality of any part of the Alliance Works;
 - (vi) a change in the levels, lines, positions or dimensions of all or any part of the Alliance Works;
 - (vii) a change in the means, methods or techniques in relation to the performance of all or any part of the work under this Agreement;
 - (viii) to execute additional work or perform additional services under this Agreement; or
 - (ix) demolish or remove material or infrastructure no longer required by RTA.
- (b) Any recommendation given under this clause 7.18 must:
- (i) include details of the effect, if any, of the recommendation on the Commercial Framework;
 - (ii) confirm the fitness of the Alliance Works for the purpose of satisfying the performance requirements nominated by RTA; and
 - (iii) clearly state that it is a recommendation given by the ALT to RTA's authorised representative under clause 7.18 of this Agreement.
- (c) Council acknowledges and accept that RTA's authorised representative may consider the ALT's recommendation in its discretion.
- (d) If RTA's authorised representative accepts the ALT's recommendation, RTA's authorised representative will issue a notice to proceed with the recommendation and the ALT will ensure that the notice is immediately complied with.
- (e) Council acknowledges and accept that RTA's authorised representative may place conditions, in its discretion, on any acceptance of the ALT's recommendation.
- (f) If RTA does not accept the ALT's recommendation, that recommendation must be withdrawn by the ALT and the Alliance shall continue to perform the work under this Agreement as if the recommendation had not been made by the ALT.

8. PAYMENTS

8.1 Invoices and payments

- (a) Payment claims may be submitted to RTA as follows:
 - (i) prior to the Date of Final Completion, the Alliance Manager may, with input from Council, prepare and submit to RTA a single Payment Claim at the end of each calendar month in relation to the work done by Council during the relevant period; and
- (b) The amounts to be included in a Payment Claim submitted under this Agreement will be calculated in accordance with the terms of compensation set out in the Commercial Framework.

-
- (c) RTA must issue a Payment Schedule within 10 Business Days after receipt of a Payment Claim. The Payment Schedule must identify the Payment Claim to which it relates and must be based on the terms of compensation set out in the Commercial Framework. If the Payment Schedule shows an amount less than the claimed amount (excluding payments already made), the Payment Schedule must state why the amount is less and any reasons for withholding.
 - (d) Subject to clause 8.1(c), RTA may issue a Payment Schedule at any time even if the Alliance Manager has not lodged a Payment Claim.
 - (e) The following conditions must be satisfied before RTA is obliged to make any payment to Council:
 - (i) if required under clause 9, a Payment Claim must be accompanied by a Tax Invoice from Council;
 - (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;
 - (f) Subject to the conditions contained in clause 8.1(e) being met, RTA will pay Council (or Council 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 Council under clause 8.1(f) no later than 10 Business Days after the Payment Schedule is issued or satisfaction of the conditions set out in clause 8.1(e) (whichever is the later). Council will pay RTA under clause 8.1(f) no later than 10 Business Days after RTA supplies a similar document to that required in clause 8.1(e)(i).
 - (h) No payment by RTA will be evidence of the value of work, an admission of liability or that the work has been executed satisfactorily, but will be deemed to be a provisional payment on account and subject to a final verification audit by the 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 the RTA Audit 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).

8.2 Payment for materials not incorporated

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

- (a) the supplier providing evidence and documentation that unencumbered ownership will pass to RTA on or before payment to the supplier; and

-
- (b) Council properly storing the materials at the Site and labelling them as property of RTA.

9. GST

- (a) In this clause 9:
 - (i) the expressions "**adjustment event**", "**adjustment note**", "**consideration**", "**Goods and Services Tax**", "**GST**", "**recipient created tax invoice**", "**recipient**", "**supply**", "**Tax Invoice**" and "**taxable supply**" have the meaning given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
 - (ii) a reference to a payment being made or received includes a reference to consideration other than money being given or received.
- (b) Unless otherwise expressly stated, all prices or other sums payable or payment to be made under or in accordance with this Agreement, do not include any amount for GST.
- (c) If GST is payable on any supply made under this Agreement, the consideration for the supply must be increased by, and the recipient of the supply must pay to the supplier, an additional amount equal to the GST payable on the supply.
- (d) Any contract entered into with a third party which involves supplies being made, the cost of which will affect the cost of any supplies made under this Agreement, must include a clause including equivalent terms to this clause 9.
- (e) If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled on the acquisition of the relevant supply.
- (f) If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment must be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of any GST component.
- (g) RTA will issue a Tax Invoice for each taxable supply it makes to Council without request.
- (h) RTA will issue to Council a recipient created tax invoice (**RCTI**) for each taxable supply (other than an excluded supply) made by Council 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) Council must not issue a Tax Invoice in respect of any supply made to RTA, other than for an excluded supply. Council 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 Council fail to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.

10. INSURANCES

10.1 Insurances provided by RTA

- (a) RTA will arrange the PPL Insurances referred to as being the responsibility of RTA in **Schedule 10** (Insurances) which:
 - (i) covers Council'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) Council 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.
- (d) Before commencing any of the Alliance Works, Council must contact RTA's insurance broker, Aon Risk Services Australia Limited, to provide contract, Subcontractor and insurance details necessary for the PPL Insurance.
- (e) Council must provide any further details necessary for the PPL Insurance to RTA whenever directed by RTA to do so.
- (f) RTA will before the CW Insurance Date use its best endeavours to arrange the CW Insurance referred to as being the responsibility of RTA in **Schedule 10** (Insurances) which:
 - (i) is intended to cover the physical loss or damage to the Alliance Works identified in **Schedule 10** (Insurances); and
 - (ii) will be in the names of the Participants and the Subcontractors for their respective rights and interests.
- (g) Council acknowledges and agree that:
 - (i) no work will be carried out as part of the Alliance Works before the CW Insurance Date that could result in an event which could give rise to a claim under the CW Insurance and as a consequence, Council accepts that there is no need for any Participant to have CW Insurance type cover at least before that date;
 - (ii) if RTA is unable to obtain CW Insurance by the CW Insurance Date, or it obtains CW Insurance by that date but on provisions, terms, conditions, exclusions or excesses materially and detrimentally different to those indicated in **Schedule 11** (Likely Indicative Terms of Construction Material Damage Insurance Policy), Council may effect such CW Insurance type

cover or top up cover as determined by the ALT and the cost of such cover will form part of the Direct Costs and the need for such cover will qualify as a Scope Change; and

- (iii) if Council effects such CW Insurance type cover under paragraph (ii), the insurance will be deemed to be insurance which was the responsibility of Council to arrange under **Schedule 10** (Insurances).
- (h) RTA will give Council a copy of or access to the provisions, terms, conditions, exclusions and excesses of the CW Insurance promptly after RTA has obtained those details.
- (i) RTA will maintain the CW Insurance from the date it is obtained by RTA until the end of the Defects Correction Period.
- (j) As soon as practicable after the Date of this Agreement, Council must contact RTA's insurance broker, Aon Risk Services Australia Limited, to provide contract, Subcontractor and insurance details necessary for the CW Insurance or CW Insurance type cover, as appropriate.
- (k) Council must provide any further details, necessary for the CW Insurance, if any, to RTA whenever directed by RTA to do so.
- (l) Subject to clause 10.1(g), we must ensure that all Direct Costs and the Target Outturn Cost exclude any allowance for the cost of the Principal Arranged Insurances.
- (m) We will comply with the exclusions and conditions of the Principal Arranged Insurances.
- (n) Professional indemnity insurance:
 - (i) RTA has effected a professional indemnity policy of insurance for its own benefit. In respect of this insurance:
 - (A) RTA is the only beneficiary of this insurance; and
 - (B) the insurer's rights of subrogation against Council are waived by virtue of the provisions of this Agreement. The insurer will not waive any rights of subrogation or action against any other parties.
 - (ii) The obtaining of the insurance referred to in paragraph (i) by RTA does not limit or otherwise affect Council's obligations under this Agreement.

10.2 Insurances to be provided by Council

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

10.5 Cross liabilities

- (a) Wherever under this Agreement insurance is effected by Council 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.

10.6 Insurance claims procedures

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

-
- (b) Notwithstanding the provisions of this clause, we may take immediate action to avoid loss of life or damage to property where that is reasonably necessary in the circumstances and any such action will not prejudice the position of us under the policies of insurance in respect of any loss, destruction or damage.

10.7 Pass through of insurance payouts

To the extent that any Participant receives payment under any insurance policy set out in Schedule 10 that reimburses any cost, loss or expense that was reimbursed or is reimbursable under this Agreement, then Council (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 Council so that the total amounts paid to Council under this Agreement are in accordance with the recalculated final Payment Schedule.

11. WITHDRAWAL AND TERMINATION

11.1 Termination

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

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

11.2 Notice of termination

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

11.3 Effect of termination

Council will have no obligations with respect to that portion of the Alliance Works that is not completed as a result of termination of this Agreement under clauses 11.1 or 11.2.

11.4 Our actions

If this Agreement is terminated under either clause 11.1 or 11.2, we will immediately:

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

-
- (f) comply with any directions of RTA, including any directions to carry out the activities or do the things referred to in clauses 11.4(a) to (e) (inclusive).

11.5 Termination payments

Subject to RTA's rights under or in connection with this Agreement, including the rights to withhold and recover damages, if this Agreement is terminated under either clause 11.1 or clause 11.2, RTA will pay Council or the Council will pay RTA, as the case may be, the difference between:

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

and RTA will not otherwise be liable to Council for any cost, loss, expense or damage incurred by Council 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 Participant may give a written notice to the Defaulting Participant of:

- (a) the default and the Non-Defaulting Participant's intention to exercise the Non-Defaulting Participant's rights under clause 13.3 on the expiry of 7 Business Days if the default is capable of being rectified but is not rectified within the 7 Business Day period; or
- (b) the Non-Defaulting Participant's intention to exercise the Non-Defaulting Participant's 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 Participant give notice under clause 13.2(b),

the Non-Defaulting Participant may, as the Non-Defaulting Participant's sole remedy,

- (c) where the Defaulting Participant is Council:
 - (i) wholly or partly suspend any payment due to the Defaulting Participant under this Agreement until the default has been remedied; and
 - (ii) by notice exclude the Defaulting Participant from further participation in the performance of this Agreement and may recover loss or damage from the Defaulting Participant under clause 14.3(b); or
- (d) where the Defaulting Participant is RTA, wholly or partly suspend the Alliance Works until the default has been remedied.

14. REMEDIES AND LIABILITY

14.1 Rights and remedies

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

14.2 Civil Liability Act

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

14.3 Liability under this Agreement

- (a) Subject to:
 - (i) the indemnities in clauses 14.3(b); and
 - (ii) the provisions of clause 14.5,none of us will be liable to each other under or in connection with this Agreement, at law (including negligence) or equity, for any claim, action, demand or any other right for costs, expenses, damages, losses or other amounts, arising from or in connection with this Agreement, the performance (or non-performance) of our obligations under this Agreement or the termination of this Agreement. This clause survives termination, completion or expiration of this Agreement.
- (b) The Defaulting Participant is liable for and indemnifies the Non-Defaulting Participant for all costs, expenses, damages, losses or other amounts arising from:
 - (i) the Defaulting Participant's Material Default;
 - (ii) exercise of the right of exclusion and/or suspension under clause 13.3; or
 - (iii) termination of this Agreement arising from the Defaulting Participant's Material Default.
- (c) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations under this Agreement and survives termination, completion or expiration of this Agreement.
- (d) It is not necessary for us to incur expense or to make any payment before enforcing a right of indemnity conferred by this Agreement.

14.4 Limitations and exclusions of rights and liabilities

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

14.5 Preservation of insurance rights

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

- (a) the liability is not recoverable from an insurer of any policy of insurance forming part of the insurance regime agreed by the ALT or contemplated under this Agreement; or

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

15. DOCUMENT MAINTENANCE AND AUDITING

15.1 Maintenance of accounts, records and documentation

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

15.2 Access to accounts, records and documentation

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

15.3 Provision of copies

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

15.4 Audit

- (a) RTA may undertake an inspection, audit or copying of Records in relation to the Alliance Works on a monthly basis. RTA in its discretion may amend the frequency of such audits.
- (b) We will provide RTA 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.

16. CARE OF INFORMATION

16.1 Conflict of interest

We must:

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

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

16.2 Confidentiality

- (a) Except for the efficient performance of the Alliance Works, Council 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, Council will execute a confidentiality agreement, on terms reasonably required by RTA, in relation to any information obtained by us for the purposes of this Agreement, the Alliance Works or the Project.
- (c) We must take all reasonable steps to protect the confidentiality of all information relating to the Agreement, the Alliance Works and the Project.
- (d) Clause 16.2(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 Council 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 16.2 do not apply to the extent that Council is required by any applicable law, the requirement of any Authority or the rules of any stock exchange to disclose any information, provided by Council:
 - (i) promptly gives notice to RTA of that requirement;
 - (ii) takes all lawful measures available, and allows RTA to take all lawful measures available, to restrict disclosure of information; and
 - (iii) discloses only that portion of information which it is legally required to disclose.
- (f) Council:
 - (i) acknowledges that RTA may disclose information on this Agreement under section 15A(2) of the *Freedom of Information Act 1989* (NSW) (**FOI Act**) and may be required to disclose information about the Project and Participants under the FOI Act or if requested by Parliament;
 - (ii) acknowledges that the Commercial Framework will contain annexures, separate to the general provisions, and identified as confidential, which will contain (including percentages and amounts) commercial-in-confidence information, as defined in the FOI Act.

16.3 Privacy Act Compliance

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

17. MISCELLANEOUS PROVISIONS

17.1 Service of notices

- (a) Any notice or other communication given by one Participant to the other, unless the contrary intention appears, will only be effective if it is in writing and signed on behalf of the Participant giving the notice.
- (b) To be valid, a written notice under this Agreement must be delivered by hand, registered mail or facsimile, addressed in accordance with the contact details for the receiving Participant stated in **Schedule 5** (Contact Details).
- (c) A notice, consent or other communication that complies with this clause is regarded as given and received:
 - (i) if it is delivered or sent by fax:
 - (A) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - (B) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day; and
 - (ii) if it is sent by mail:
 - (A) within Australia - 3 Business Days after posting; or
 - (B) to or from a place outside Australia - 7 Business Days after posting.
- (d) Electronic communication by email will not constitute a valid notice under this Agreement, but a hard copy of an email may be issued as a valid notice using any of the means listed in clause 17.1(b).
- (e) We may change our address to which notices can be sent to us by giving each other notice of the change in accordance with this clause.

17.2 Right to assign or Subcontract

We must not:

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

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

17.3 Governing law

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

17.4 Status of Agreement

This Agreement:

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

17.5 Tariff concessions

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

17.6 Australian currency

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

17.7 Relationship of the Participants

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

17.8 Entire agreement

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

17.9 Non-waiver

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

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

17.10 Corporate power and authority

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

17.11 No representation or reliance

We each acknowledge that we:

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

17.12 Severability

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

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

Schedule 1

ALLIANCE PARTICIPANTS

PART A

Roads and Traffic Authority

RTA Interface Manager:

RTA

Steven Alford

PART B

Coffs Harbour City Council

Council

Schedule 2

DICTIONARY

1. INTERPRETATION

1.1 Definitions

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

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

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

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

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

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

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

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

Alliance Manager means the person appointed by Council 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 Coffs Harbour Water on behalf of Council, but excluding Construction Plant and Temporary Works.

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

Authority means:

- (a) any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality; or
- (b) any other person having a right to impose a requirement, or whose consent is required, with respect to any part of the Alliance Works.

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

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

Certificate of Completion means the certificate referred to in clause 6.4(c).

Certificate of Final Completion means the certificate referred to in clause 6.5(b) in which the Alliance Manager states that the Defects Correction Period has expired and the date of such expiry and that the Alliance Manager is not aware of any outstanding Defects.

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

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

Completion is that stage when:

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

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

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

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

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

Date for Completion means 20 September 2009.

Date of Completion means the date stated in a Certificate of Completion issued in accordance with clause 6.4.

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

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

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

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

- (a) which is 12 months after the Date of Completion; and
- (b) on which all Defects notified have been rectified.

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

Design Documentation means all:

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

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

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

Direction means a direction under clause 7.17.

Estimation Request means a notice from RTA to the ALT, requesting the ALT to make a determination under clause 7.17(d).

Excusable Delay means:

- (a) war, revolution, act of public enemies, terrorism, epidemic, tidal wave, earthquake, lightning or explosion;
- (b) action or inaction by, or orders, judgements, rulings, decisions or enforcement actions of any State or Federal court, government, tribunal or Authority (including denial, refusal or failure to grant any permit, authorisation, licence, approval or acknowledgment despite the use of timely best endeavours by the Alliance to obtain same) or a change in laws, such change not being foreseeable at the time of entering into this Agreement;
- (c) suspension by RTA of all or part of the Alliance Works pursuant to clause 7.16; or
- (d) any other reasonable cause that the ALT decides.

Fee means the fee calculated in accordance with section 5 of **Schedule 7** (Commercial Framework).

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

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

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

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

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

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

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

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

Material Default means in relation to a Participant:

- (a) any act or omission of the Participant which is fraudulent, illegal or an intentional breach of this Agreement;
- (b) any wanton or reckless act or omission of the Participant without regard to the possible harmful consequences arising from that act or omission;
- (c) the Participant informing another Participant in writing or creditors generally that the informer is insolvent;
- (d) the Participant committing an act of bankruptcy;
- (e) the Participant having a bankruptcy petition presented against it;
- (f) the Participant being made bankrupt;
- (g) the Participant having a meeting of its creditors called with a view to:
 - (i) entering a scheme of arrangement or composition with creditors; or
 - (ii) entering a deed of company arrangement;
- (h) the Participant having a deed of assignment or deed of arrangement made, or accepting a composition, or being required to present a debtor's petition, or having a sequestration order made, under Part X of the *Bankruptcy Act 1996* (Cth);
- (i) the Participant entering into a deed of company arrangement with creditors;
- (j) the Participant being subject to a resolution passed at a meeting of its creditors to place it under official management;
- (k) the Participant having a controller or administrator appointed or a receiver of its property or any part of its property appointed or a mortgagee take possession of any of its property;
- (l) the Participant being the subject of an application to a court for its winding up, which application is not stayed within 14 days;

-
- (m) a winding up order being made in respect of the Participant;
 - (n) the Participant resolving by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up);
 - (o) an execution is levied against the Participant by a creditor;
 - (p) a failure by the Participant to comply with clause 14.3(b);
 - (q) a failure by the Participant to account for or recover insurance proceeds under insurance policies required under this Agreement or a failure by the Participant to comply with any such policy;
 - (r) a Participant:
 - (i) accessing the Site for the purpose of performing the Alliance Works prior to the approval by the ALT of the OH&S Plan; or
 - (ii) (failing to comply with the requirements of the OH&S Plan by heedless, careless, intentional or systemic conduct where the Participant can foresee some probable or possible harmful consequence but nevertheless decides to continue with that conduct with an indifference to, or disregard of, that consequence;
 - (s) a Participant failing to pay another Participant money within 20 Business Days of a written demand which specifies that it is being made for the purposes of this paragraph (s) where that money is due and payable under this Agreement and has not been paid to the Participant within the time required by this Agreement;
 - (t) a Participant failing to comply with the requirements under clause 10; or
 - (u) a Participant repudiating this Agreement.

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

OH&S Plan means the occupational health and safety management plan prepared in accordance with clause 7.7.

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

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

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

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

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

PPL Insurance means public and products liability insurance.

Principal Arranged Insurances means:

- (a) the PPL Insurance referred to in clause 10.1 which has been effected by RTA under clause 10.1, details of which are contained in **Schedule 12** (Third Party Public and Products Liability Insurance Summary); and

-
- (b) the CW Insurance which is intended to be effected by RTA under clause 10.1, likely indicative details of which are contained in **Schedule 11** (Likely Indicative Terms of Construction Material Damage Insurance Policy).

Project means the project the subject of this Agreement.

Project Proposal means a proposal to be prepared and submitted pursuant to clause 5.4, which must include:

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

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

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

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

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

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

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

Scope Change means:

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

Separable Portion means a part of the Alliance Works which the ALT determines is a separable portion.

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

Stakeholder means the New South Wales Government and Agencies (including RTA), Coffs Harbour City Council, police and emergency services, public utility authorities, Coffs Harbour & District Aboriginal Land Council, Yarrawarra Aboriginal Co-operation and other

Aboriginal stakeholders, adjoining property and business owners, local communities and community groups, and road users and representative groups (including NRMA, bus operators and freight operators).

Statutory Requirements means:

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

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

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

Target Outturn Cost (TOC) has the meaning described in **Schedule 7** (Commercial Framework).

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

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

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

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

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

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

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

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

1.2 Interpreting this Agreement

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

- (a) A reference to:

-
- (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (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

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

Schedule 4

ALLIANCE OBJECTIVES

The objectives set out below apply to the Alliance Works.

Key result area	Alliance Objective
Safety	No one is hurt as a result of the project
Cost	The Actual Outturn Cost is less than or equal to the Target Outturn Cost.
Program / Schedule	Completion of Stage 1 by 20 September 2010.
Community	Minimise impact on the community including impact on traffic.
Environment	No incidents need to be raised with Agencies.
Quality	Meet the requirements of the quality specifications.

Schedule 5

CONTACT DETAILS

RTA:

Roads and Traffic Authority

Pacific Highway Office
21 Prince Street
Grafton NSW 2460
Attention: Bob Higgins
Tel: (02) 6640 1305
Fax: (02) 6640 1001
Email: bob_higgins@rta.nsw.gov.au

Council:

Coffs Harbour City Council

Administration Building
Cnr Coff and Castle Street,
Coffs Harbour, NSW 2450
Attention: Stephen Sawtell
Tel: (02) 6648 4101
Fax: (02) 6651 2796
Email: stephen.sawtell@chcc.nsw.gov.au

Schedule 6

ALLIANCE LEADERSHIP TEAM

Name of Representative	Telephone Number	e-mail	Representative of
Chris Clarke	(02) 6690 7013	<i>chris_clark@rt.nsw.gov.au</i>	RTA
Jason Gordon	(02) 6648 4401	<i>jason.gordon@chcc.nsw.gov.au</i>	Council

Schedule 7

COMMERCIAL FRAMEWORK

See attached.

Schedule 8

FUNCTIONS OF ALT, AMT AND THE ALLIANCE MANAGER

Alliance Leadership Team – Role:
• Support and mentor the Alliance Manager
• Review management plans to ensure that outstanding performance occurs in accordance with the Alliance Objectives and Alliance Principles
• Appoint an ALT member to champion each of the Objectives and Principles
• Participate in all Alliance workshops as a peer
• Be visible
• Create and articulate the vision
• Effective and efficient decision making
• Deliver a recommended option in a timely fashion
• Project success
• Give philosophical and strategic direction for the Participants in carrying out the Alliance Works
• Acknowledge success inside and outside the Alliance
• Ensure risks and opportunities are identified and managed continuously throughout the term of the Alliance
• Provide leadership and set an example of the Alliance Objectives and Alliance Principles in action at a senior level
• Promote safety
• Live the purpose
• Effective consideration of community needs
• Effective consideration of environmental values

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

Alliance Management Team – Role:
• Deliver on personal commitments
• Manage and distribute Project information
• Adhere to structured processes and agendas
• Manage competing interests and disciplines
• Cut through red tape
• Support the Alliance Manager
• Deliver the Project safely
• Better ourselves/be open to all ideas and possibilities
• Deliver the maximum length of Project: <ul style="list-style-type: none"> ○ to the highest quality ○ faster ○ with outstanding results ○ with best results for environment, road user and the community
• Meet information requirements of external stakeholders
• Encourage and embrace active participation of the ALT on key functions
• Bring new ideas to the Alliance
• Positively represent the Alliance
• Strive for consensus, but accept it may not always be reached
• Promote safety across all facets of the project
• Work with the community
• Ensure that the Project is enjoyable
• Leadership of the Integrated Project Team
• Set recognition system
• Resource the Project
• Provide commitment to continuous improvement
• Tutor, lead and drive alliance principles and benefits to all players in the Project
• Integrate disciplines
• Drive enthusiasm
• Ensure options development, assessment and start-up is achieved at the earliest time

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

Alliance Manager - Role
• Facilitate and encourage outstanding continuous improvement
• Encourage consensus within the AMT, but make decisions if consensus is not reached
• Provide a framework for turning the energy and drive of individuals into reality.
• Drive the approval process
• Lead by example, developing culture consistent with the Alliance Principles
• Ensure that the AMT and Integrated Project Team maintains focus in all stages of the Project
• Be available, visible and approachable
• Drive the team building/environment synergy
• Drive the program
• Liaison with the RTA Interface Manager
• Interface with external stakeholders
• Deliver the Project safely
• Deliver the Project in accordance with the Alliance Objectives and Alliance Principles
• Have core responsibility for the Alliance Objectives and Alliance Principles
• Promote alignment
• Ensure that processes are followed
• Accountability for Project systems and implementation

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

Schedule 9

ALLIANCE BRIEF

See attached.

**Pacific Highway Upgrade –
Sapphire to Woolgoolga Upgrade
Utilities Alliance**

**Project Alliance Agreement
Schedule 9
Alliance Brief**

FINAL

1. General

- 1.1 The Roads and Traffic Authority (RTA) is in the process of inviting tenders for the design and construction of a dual carriageway for the upgrade of the Pacific Highway between Sapphire and Woolgoolga in the Coffs Harbour City Council (Council) Local Government Area.
- 1.2 As part of the highway upgrade it is necessary to relocate potable water, reuse, sewer rising mains and gravity reticulation mains from the proposed footprint of the highway upgrade.
- 1.3 The highway upgrade program requires that the Stage 1 water and sewer services be relocated by 20 September 2010.
- 1.4 The water and sewer service relocations are broken into three (3) stages being:
 - i) Stage 1 - Campbells Cl, Sapphire to Killara Av, Heritage Park
 - ii) Stage 2 - Killara Av, Heritage Park to Unwins Rd, Woolgoolga
 - iii) Stage 3 - Unwins Rd, Woolgoolga to Arrawarra
- 1.5 As the asset owner of the water and sewer services the RTA has approached Council to carry out the service relocation works. It has been agreed that the works will be delivered under an alliance between RTA and Council.
- 1.6 Council will undertake all design work with construction being undertaken through the alliance. Coffs Harbour Water will be responsible for the supervision and management of all work under the alliance. It is agreed that Stage 1 will be delivered by Coffs CityWorks, a division of Council with the final delivery mode of stages 2 and 3 not yet determined.

2. Design

- 2.1 In February 2009 the RTA engaged Council's Survey and Design Branch to design Stage 1 of the water and sewer main relocation. Then in July 2009 a letter of engagement was received by Council for Stage 2.
- 2.2 The design work involves the investigation, design and identification of service conflicts for the relocation of Council water and sewer services plus the relocation of any other Council infrastructure affected by the Pacific Highway upgrade project.
- 2.3 The design will include investigation and location of existing services and easements, accurate boundary locations from registered survey plans, finding a suitable route for the services that will require to be relocated and the design of the section of services to be relocated.
- 2.4 All surveys undertaken by Council for the design will comply with RTA standards, with the data being in a format compatible with the RTA Survey Code Library.
- 2.5 An environmental assessment is to be prepared by Council for works.
- 2.6 The design work Council has been engaged for does not include the preparation of a specification or tender/contract documentation.
- 2.7 The detailed design of the mains will be carried out to meet with the requirements of both the Coffs Harbour City Council and the RTA.

-
- 2.8 The RTA has provided geotechnical information for the proposed highway corridor while Council has undertaken soil testing to determine bearing capacities for the design of thrust blocks.
 - 2.9 The RTA has undertaken testing for acid sulphate soils and identified several areas that require treatment.
 - 2.10 The RTA's engagement of Council's Survey and Design Branch does not include additional survey and design that may be required if unforeseeable circumstances arise during construction.

3. Scope of Works – Construction – Stage 1

- 3.1 The overall scope is to relocate the relevant services outside the future highway footprint and ensure that water and sewer services to the community are not unduly disrupted.
- 3.2 Call tenders for and manage the following contracts:
 - i) the supply of ductile pipes and fittings to site;
 - ii) the construction of underbores including the installation and grouting of watermains; and
 - iii) the construction of gravity sewer reticulation at Moonee Beach.
- 3.3 Supply all plant, labour and materials necessary to manage and construct the works to the satisfaction of Coffs Harbour Water, Coffs Harbour City Council.
- 3.4 Give notice to residents affected by construction activities and water supply disruptions.
- 3.5 Obtain relevant approvals for lane occupancy on the highway as required from the RTA Traffic Management Branch.
- 3.6 Compile a construction estimate and construction program of the works for Stage 1, Campbells Cl, Sapphire to Killara Av, Heritage Park.
- 3.7 Undertake the works in accordance with the Environmental Management Plan. (EMP)
- 3.8 Report regularly to the RTA through the RTA Interface Manager on progress and costs.
- 3.9 Coffs CityWorks are to provide a 6 months defects liability period on the works to Coffs Harbour Water.
- 3.10 Coffs Harbour Water to provide to the RTA a signoff that the works have been constructed to their satisfaction.
- 3.11 Coffs CityWorks to provide work as executed information on constructed pipelines in a format acceptable to the RTA and Coffs Harbour Water.
- 3.12 Restoration of road and natural surfaces is to be to the satisfaction of the relevant Council asset owner.

4. Responsibilities of Coffs Harbour Water

4.1 The following activities are the responsibility of Coffs Harbour Water for each of the Stages 1, 2 and 3:

- i) supervision and inspections;
- ii) quality plan approval and inspections;
- iii) acceptance testing of the mains;
- iv) chlorination/ dechlorination of new watermains;
- v) all plant, labour and materials necessary for the connection of new works to the existing water network; and
- vi) locating existing trunk mains.

Accordingly these items are not included in the scope of works to be undertaken by Coffs CityWorks.

5. Approvals

5.1 The RTA has obtained environmental approval for the overall highway upgrade project. Where works are outside the approved project boundary Council's environmental assessment is to be reviewed by the RTA and forwarded to the relevant agencies as required.

5.2 The construction Environmental Management Plan (EMP) is to be prepared by Council and forwarded to the RTA for approval.

5.3 If required, additional Agency and all other approvals required for the project are to be obtained by the RTA.

5.4 All community consultation other than issues related to design and construction are to be undertaken by the RTA.

6. Constraints

6.1 Potential restraints on Stage 1 of the project include:

- i) MacCues Rd, Moonee – access to private properties not approved when required;
- ii) 817 Pacific Highway, Sapphire – K. Sangha, access not approved when required;
- iii) Campbells Close, Sapphire - access to private properties not approved when required;
- iv) Timely approval of the EMP by agencies; and
- v) Geotechnical issues such as rock requiring hammering during trench excavation.

7. Limits of Stage 1

7.1 The limit of the Stage 1 Alliance Works is from the Campbell Close works in the south to Killara Avenue, Heritage Park.

7.2 The list of design drawings detailing the works is:

- i) Drawing Number 2090308, sheets 1 to 14
- ii) Drawing Number 2090309, sheets 1 to 13
- iii) Drawing Number 2090310, sheets 1 to 21

8. Land / Easement Acquisition and Adjustment

8.1 Negotiations required with land holders for the proposed new alignment of the services are to be carried out in conjunction with the RTA.

8.2 The RTA is to negotiate all land acquisition for the Highway upgrade works.

9. Standard Specifications

9.1 Work must conform with the following standard specification:

- i) Auspec Specification for Construction of Water and Sewer services – Coffs Harbour City Council.

Schedule 10

INSURANCES

INSURANCES – ALL STAGES			
Type of policy	Responsible Participant	Insurance limits	Excess
Contract works (construction material damage) insurance policy - project specific	RTA	Likely to be as set out in Schedule 11.	Likely to be as set out in Schedule 11
Public and products liability insurance policy	RTA	As set out in Schedule 12.	As set out in Schedule 12
Workers compensation insurance as required by law and where common law claims are possible outside of the relevant statutory scheme, cover for common law claims	Each Participant	Statutory cover – as required by statute Common law cover - \$50m each occurrence Where permitted by law the policies must indemnify RTA for statutory liability to employees of Council	
Plant and equipment belonging to, leased, hired or otherwise in the care, custody or control of Council or its employees, agents or Subcontractors at places where the Alliance Works are being carried out	Each Participant	Not less than market value against all usually insured risks	
Comprehensive motor vehicle insurance for all motor vehicles used by Council at any time in connection with the Alliance Works (including for cover for third party property damage and, in relation to unregistered vehicles, personal injury) and Compulsory Third Party insurance for all registered vehicles	Each Participant	An amount to cover amounts not less than \$20 million for any one event which Council or its employees or agents might become legally liable to pay	

Schedule 11

LIKELY INDICATIVE TERMS OF CONSTRUCTION MATERIAL DAMAGE INSURANCE POLICY

SAPPHIRE TO WOOLGOOLGA UTILITIES UPGRADE ALLIANCE

Roads & Traffic Authority of NSW

Specimen Project

Construction Risks - Material Damage Project Insurance Policy

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

Contents

	Page No
INTRODUCTION	1
SCHEDULE	2
DEFINITIONS / INTERPRETATIONS	5
MATERIAL LOSS OR DAMAGE	9
1. INSURING CLAUSES	9
1.1 Construction Period	9
1.2 Defects Liability Period (Extended Maintenance)	9
1.3 Basis of Settlement	9
1.4 Local Authorities Clause	10
1.5 Undamaged Foundations	10
1.6 Output Replacement	10
1.7 Reasonable Margin for Profit	11
2. EXTENSIONS APPLYING TO THIS POLICY	12
2.1 Additional Costs and Expenses	12
2.2 Plot Ratio Indemnity	14
2.3 Civil Authority	15
3. EXCLUSIONS APPLYING TO THIS POLICY	16
3.1 Consequential Loss	16
3.2 Wear and Tear	16
3.3 Defects (LEG 3/06)	16
3.4 Aircraft or waterborne craft	16
3.5 Disappearance or Shortage	16
3.6 Money	16
3.7 Transits Outside of Australia	17
3.8 Electronic Data Exclusion	17
3.9 Breakdown of Construction Plant and Equipment	17
3.10 Nuclear Risks	17
3.11 War and Terrorism	17
4. CONDITIONS APPLYING TO THIS POLICY	19
4.1 Escalation	19
4.2 Claims Procedure	19
4.3 Limits of Liability	19
4.4 Application of Excess	19
4.5 Insurers' Rights and Subrogation	20
4.6 Multiple Insureds Clause	20
4.7 Notices	21
4.8 Declarations and Premium Payment	21
4.9 Extension to Period of Insurance	22
4.10 Insolvency or Bankruptcy	22
4.11 Hold Harmless Agreements	22
4.12 Jurisdiction and Service of Proceedings	22
4.13 Cancellation	22
4.14 Alterations in Material Fact/Error or Omission	23
4.15 Progress Payments	23
4.16 Engagement of Loss Adjusters	23
4.17 Loss Payee	23

Introduction

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

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

Signed for and on behalf of the Insurers:

Insurers	Policy No.	Proportion %	Signature	Place	Date
All Insurance Limited		100%			

Schedule

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

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

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

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

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

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

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

As agreed
The Roads & Traffic Authority NSW

Loss Payee: (Condition 4.17)

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

Premium: (Condition 4.8) As agreed

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

Definitions / Interpretations

The following Definitions will apply to this Policy.

Aircraft means any craft or machine made or intended to fly or become airborne or move in or through the atmosphere or space.

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

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

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

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

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

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

Indemnity Value means:

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

Insured means:

- i. the Named Insured;
- ii. any parent or subsidiary company (including subsidiaries thereof) of the Named

Insured and any other organisation under the control of the Named Insured and over which it is exercising active management, whether now or hereafter incorporated;

- iii. any of the following persons or entities for whom or for which the insured parties under clauses i and ii above are obliged to arrange insurance by virtue of a Contract or assumption of responsibility, but only to the extent required by such Contract or assumed responsibility and in any event only for such coverage and Limits of Liability as provided in this Policy:
 - (a) any principal or owner or agent of the principal or owner or joint venture partner;
 - (b) any construction manager or project manager;
 - (c) any contractor or sub-contractor of any tier;
 - (d) any architect, engineer or other consultant;
 - (e) any lessor, financier, mortgagee or trustee;
 - (f) any government body;
 - (g) any other party with an insurable interest in the Project;
 - iv. any director, executive officer, employee, contract staff or partner of any of the insureds under clauses i, ii or iii whilst acting as such;
 - v. any office bearer or member of any social, sporting, safety, security, medical or welfare facility of any of the insureds under clauses i, ii, iii(a), iii(b) or iii(c) whilst acting as such; and
- all for their respective rights and interests.

Insured Property means:

i. Contract Works:

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

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

but excluding Construction Plant and Equipment and Existing Property not specified

above.

ii. **Existing Property** being existing buildings, structures, plant, contents and real property of every description. Existing Property is specifically excluded under this Policy unless an amount is specified against this item in the Schedule.

iii. **Construction Plant and Equipment** being:

(a) all construction plant, tools and equipment of every description including spare parts;

(b) employees' tools, equipment and personal property.

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

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

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

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

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

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

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

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

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

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

Option 1 – Covering whole of Project until completion

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

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

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

Option 2 – Covering each separable portion until its completion

- (a) the date the Project has been formally accepted in its entirety by the principal or owner as having achieved practical completion (as defined in the Contract(s));
- (b) with respect to each separable portion of the Project, the date each separable portion is taken over and put into use by the principal or owner;
- (c) the date specified in item (a) of the Schedule, or if such date is extended pursuant to Condition 4.9, that extended date.

For the purpose of clarity, it is noted that the expiry of the Construction Period in respect of any completed separable portion, will not result in the expiry of the Construction Period in respect of any other part of the Project in respect of which there is any uncompleted work.

- ii. **Defects Liability Period** means the period described in any Contract during which an Insured is obliged or legally liable to rectify defects, shrinkages, errors, omissions or other faults and/or to complete the obligations under such Contract (the original Defects Liability Period), which may include the granting of a further period, following rectification of defects under the original period.

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

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

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

Reinstatement Value means:

- i. where the property is lost or destroyed, the cost of replacement thereof by similar property in a condition equal to, but not better nor more extensive than, its condition when new;
- ii. where the property is Damaged and can be repaired, the cost necessarily incurred to restore the property to a condition substantially the same as, but not better nor more extensive than its condition when new, plus the cost of dismantling and re-erection incurred for the purpose of effecting the repairs.

The following Interpretations will apply to this Policy.

Singular/Plural

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

Headings

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

Material Loss or Damage

The Insurers will indemnify the Insured as follows.

1. Insuring Clauses

1.1 Construction Period

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

1.2 Defects Liability Period (Extended Maintenance)

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

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

1.3 Basis of Settlement

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

(a) Reinstatement Value

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

- i. the work of rebuilding, replacing, repairing or restoring as the case may be (which may be carried out upon any other site(s) and in any manner suitable to the requirements of the Named Insured, but subject to the liability of the Insurers not being thereby increased), must be commenced and carried out with reasonable dispatch;
- ii. where Insured Property has been Damaged and where the Named Insured elects not to reinstate such Insured Property, the Insurers will pay to the Named Insured an amount equal to the cost necessary to replace, repair or rebuild the Insured Property to a

condition substantially the same as but not better nor more extensive than its condition at the time the Damage occurred;

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

(b) Indemnity Value

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

- i. where the item is financed and in the event of its total loss or constructive total loss, the amount settled shall be the greater of the cost of discharging the lease or the stated Basis of Settlement;
- ii. in respect of items leased, hired or rented, the basis of settlement shall be in accordance with the rectification provisions of the lease, hire or rental agreement but not exceeding the Reinstatement Value;

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

1.4 Local Authorities Clause

The indemnity provided by this clause 1.4 shall, subject to the Sub-limit of Liability stated in the Schedule (if any), extend to include the extra costs (including demolition or dismantling) of Damaged Insured Property necessarily incurred to comply with the requirements of any Act of Parliament or regulation made thereunder or any by-law or regulation of any municipal or other statutory authority, other than such extra costs as aforesaid with which the Insured had been required to comply prior to the Damage occurring.

1.5 Undamaged Foundations

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

1.6 Output Replacement

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

- (a) If any lost or destroyed Insured Property is to be replaced by an item(s)

which has the same or a lesser total output, then the amount payable thereof is the new installed cost of such replacement item(s) as would give the same total output as the Damaged item(s);

- (b) If any Damaged Insured Property is to be replaced by an item(s) which has a greater total output and the replacement value is no greater than the value of the Damaged items(s) then the amount payable shall be the cost of the replacement item(s) and no deduction shall be made due to improved output;
- (c) If any Damaged Insured Property is to be replaced by an item(s) which has a greater total output and the replacement value is greater than the value of the Damaged item(s) then the insurable value thereof is that proportion of the new installed cost of the replacement item(s) as the output of the Damaged item(s) bears to the output of the replacement item(s). The difference between the insurable value as defined and the new installed cost of the replacement item(s) shall be borne by the Insured.

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

1.7 Reasonable Margin for Profit

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

2. Extensions applying to this Policy

The following Extensions apply to this Policy

2.1 Additional Costs and Expenses

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

(a) Removal of Debris and Other Costs

(i) Debris

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

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

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

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

(iii) Shoring, Propping and Other Costs

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

(b) Expediting Expenses

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

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

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

(c) Search and Locate Costs

Leak search and other costs incurred following irregularities discovered in the results of a hydrostatic or other testing procedure. Such costs will include but not be limited to:

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

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

(d) Professionals' Fees

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

(e) Mitigation Expenses

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

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

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

(f) Plant Hire Charges

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

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

(g) Claim Preparation Costs

Reasonable costs and expenses as may be payable by the Insured and not otherwise recoverable in connection with or incidental to preparing, collating, auditing or qualifying actual or imminent Damage being claimed under this Policy.

(h) Government and other Fees

(i) Any fee, contribution or other impost (excluding fines and/or penalties) payable to any government, municipal or other statutory authority, where payment of such fee, contribution or impost is a condition precedent to the obtaining of consent to reinstate Insured Property.

(ii) Any fee contribution or other impost (excluding fines and/or penalties) payable to any government, municipal or other statutory authority for services rendered or equipment supplied for the purpose of helping to prevent, mitigate or confine further actual Damage at or in the vicinity of the Project Site.

(i) Sue and Labour

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

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

2.2 Plot Ratio Indemnity

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

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

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

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

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

2.3 Civil Authority

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

3. Exclusions applying to this Policy

This Policy does not provide indemnity in respect of:

3.1 Consequential Loss

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

3.2 Wear and Tear

Damage directly caused by:

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

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

3.3 Defects (LEG 2/06)

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

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

3.4 Aircraft or waterborne craft

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

3.5 Disappearance or Shortage

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

3.6 Money

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

3.7 Transits Outside of Australia

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

3.8 Electronic Data Exclusion

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

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

3.9 Breakdown of Construction Plant and Equipment

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

3.10 Nuclear Risks

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

- (a) ionising, radiations or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel; for the purpose of this Exclusion 3.10 (a) only, combustion shall include any self-sustaining process of nuclear fission;
- (b) nuclear weapons materials.

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

3.11 War and Terrorism

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

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

Insurance Act 2003 (Cth).

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

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

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

4. Conditions applying to this Policy

The following Conditions apply to this Policy. 4.1

Escalation

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

4.2 Claims Procedure

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

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

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

4.3 Limits of Liability

- (a) No liability shall attach to the Insurers until the Damage or loss in respect of each Event exceeds the amount of any relevant Excess stated in the Schedule.
- (b) The liability of the Insurers for any one Event at any one situation shall not exceed the Limits of Liability and the accumulative amounts of the Sub-limits of Liability stated in the Schedule.
- (c) The Limits of Liability and Sub-limits of Liability shall apply in excess of the amount of any relevant Excess.

4.4 Application of Excess

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

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

only the highest single Excess amount shall apply.

(c) 72 Hour Clause

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

(d) Inland Transit

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

4.5 Insurers' Rights and Subrogation

- (a) Upon the payment of any claim under this Policy, subject to any restrictions imposed by the Commonwealth Insurance Contracts Act 1984, the Insurers shall be subrogated to all the rights and remedies of the Insured arising out of such claim against any person or corporation whatsoever.
- (b) The Insured shall, at the request and the expense of the Insurers, do and concur in doing all such acts and things as the Insurers may reasonably require to preserve and enforce any rights the Insured may have against anyone in respect of Damage to Insured Property.

4.6 **Multiple Insureds Clause**

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

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

- (e) The Insurers agree to waive all rights of subrogation that they may have or acquire against:
 - (i) any Insured or any individual or organisation affiliated or associated with, parent of or a subsidiary of any Insured;
 - (ii) at the option of the Insured, any other parties or persons, subject to the Insured, waiving rights of subrogation prior to the loss, but only when required to do so under contract;

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

4.7 Notices

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

4.8 Declarations and Premium Payment

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

- (a) Within 30 days of the expiry of the Construction Period, the Named Insured will declare to the Insurers the final value of the Adjustment Factor for each relevant item shown in the Schedule.
- (b) The Premium will be adjusted (subject to any minimum Premium applicable) by payment to the Insurers of an additional Premium or by

allowance to the Named Insured of a return Premium, as the case may be, calculated at the agreed rate on the difference between the original estimated and final value of the relevant Adjustment Factor.

- (c) In the event of any dispute or difference between the Insurers and the Named Insured as to the actual declared values, then for the purposes of this clause and clause 4.1, at the request of either party, such values shall be determined by the President for the time being of the Australian Institute of Quantity Surveyors, or his nominee, acting as an expert and not as an arbitrator. The cost of any such determination shall be borne equally by the Insurers and the Named Insured.

4.9 Extension to Period of Insurance

The Insurers agree to automatically grant any required alteration/extensions to the Period of Insurance. The Named Insured shall notify the Insurers as soon as possible (but no later than the estimated end date of the Construction Period shown in the Schedule or as revised by a subsequent Endorsement to this Policy) after first becoming aware that the completion date last notified to the Insurers will be exceeded and the revised estimated completion date.

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

4.10 Insolvency or Bankruptcy

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

4.11 Hold Harmless Agreements

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

4.12 Jurisdiction and Service of Proceedings

The Insurers agree that:

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

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

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

4.13 Cancellation

- (a) By the Insurers

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

- (b) By the Named Insured

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

- (c) After cancellation by the Named Insured, the Premium will be adjusted in accordance with Condition 4.8 or pro-rata for the period on risk if the outcome does not represent an equitable refund for the cancelled period. The Named Insured will be obliged to supply to the Insurers such information as is necessary to adjust the Premium.

4.14 Alterations in Material Fact/Error or Omission

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

4.15 Progress Payments

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

4.16 Engagement of Loss Adjusters

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

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

4.17 Loss Payee

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

4.18 Currency

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

Schedule 12

THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE SUMMARY

IMPORTANT NOTE:

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

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

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

Policy Number: Section 2 99-0000476-LGR

Insured

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

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

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

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

Business and Activities of the Insured

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

Period of Insurance

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

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

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

Insured Contracts Sections 2

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

Geographical Limits Sections 2 Third Party Liability

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

Limits of Liability Section 2 Third Party Liability

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

Such Limits of Liability apply in excess of the Excesses.

Excesses

Section 2

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

Third Party Liability

Section 2 Insuring Clause

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

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

happening:

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

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

In addition to any indemnity:

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

Exclusions Applicable to Section 2

1. Employer's Liability

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

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

2. Industrial Awards

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

3. Aircraft and Watercraft

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

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

4. Vehicles

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

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

5. Loss of Use

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

6. Products and Work Performed

Liability for:

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

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

7. Professional Liability

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

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

8. Pollution and Contamination

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

9. Fines and Penalties

Liability arising from or attributable to:

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

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

10. Advertising Injury

Liability arising out of Advertising Injury for:

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

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

Damage to property:

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

12. Asbestos

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

Conditions Applicable to Section 2

1. Limits of Liability

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

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

2. Application of Excess

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

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

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

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

(c) **72 Hour Clause**

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

(d) **Inland Transit**

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

3. **Insurers' Rights**

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

4. **Subrogation and Settlement of Claims**

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

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

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

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

5. Multiple Insureds Clause

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

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

6. Notices

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

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

7. Insolvency or Bankruptcy

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

8. Hold Harmless Agreements

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

9. Jurisdiction and Service of Proceedings

The Insurers agree that:

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

10. Cancellation/Non-renewal

(a) By the Insurers

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

(b) **By the Named Insured**

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

(c) **Run-off Cover**

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

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

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

11. Alterations in Material Fact/Error or Omission

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

12. Engagement of Loss Adjusters

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

13. Currency

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

14. Difference In Conditions Cover

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

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

(h) Appeals

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

15. Leading Insurer

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

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

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

General Exclusions Applicable to All Sections

The following Exclusions apply to all Sections of this Policy:

1. Nuclear Risks

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

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

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

- 1.2 nuclear weapons materials.

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

2. War and Terrorism

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

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

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

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

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

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

THE INSURERS AND PARTICIPATION

Section 2 (Third Party Liability)

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
s Third Party Liability *	TBA	Allianz Australian Insurance Ltd	A\$70,000,000	Primary	A\$20,000,000
s Third Party Liability *	TBA	American Home Insurance Ltd	A\$110,000,000	Excess of A\$70,000,000 Excess of A\$20,000,000	