



**PERFORMANCE SPECIFIED MAINTENANCE
CONTRACT**

SYDNEY – NORTH EAST

Execution version

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Exhibits

1	LIST OF EXHIBITS	
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PERFORMANCE SPECIFIED MAINTENANCE CONTRACT

DATE

PARTIES

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

Downer EDI Works Pty Ltd ABN **66 008 709 608** of 1 Unwin Street, Rosehill, NSW, 2142 (**Contractor**)

RECITALS

- A. RTA's vision is to have a sustainable, safe and efficient road transport system in NSW through the delivery of the Community Outcomes and the Business Outcomes.
- B. The parties have agreed the following Contract Outcomes to support RTA's vision:
- an open, honest and cooperative working environment;
 - a systems based approach to the delivery of the Services;
 - a safe working environment;
 - a customer based approach to management of the PSMC Network;
 - a safe network for users;
 - delivery of a plan of treatments of consistent scale which will sustain the Assets through to 2028;
 - a commitment to innovation, which seeks to improve service delivery and reduce costs to the benefit of both parties; and
 - to avoid, remedy or mitigate as far as possible the adverse effects, if any, of the Services on the Environment.
- C. This Contract sets out the terms upon which the Contractor will perform the Services to achieve the Contract Outcomes.

OPERATIVE PROVISIONS

PART A CONTRACT FRAMEWORK

1. CONTRACTOR'S OBLIGATIONS

1.1 Scope

The Services the Contractor must perform are set out generally in RTA QA Specification M1 PSMC and RTA QA Specification M2 PSMC.

1.2 Asset treatment requirements

The Contractor's obligations with respect to the treatment of Assets are set out in the following documents:

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- (a) the Tendered Annual Treatment Program, which defines the minimum extent and intensity of work required in each Contract Year;
 - (b) the Annual Treatment Program, developed by the Contractor each Contract Year to:
 - (i) deliver the extent and intensity of work required under the Tendered Annual Treatment Program; and
 - (ii) meet the Pavement Performance Measures;
 - (c) RTA QA Specification M100, which sets out the design principles and requirements for work on pavement Assets;
 - (d) the Maintenance Intervention Requirements, which deal with Routine Maintenance on the PSMC Network and which define the Contractor's obligation to rectify Defects in the Assets based on:
 - (i) the maximum allowable severity of the Defect;
 - (ii) the maximum allowable response time; or
 - (iii) the frequency at which the Defect is to be rectified; and
 - (e) the Maintenance Rectification Requirements, which define:
 - (i) the standard to which the Contractor must rectify Defects in the Assets; and
 - (ii) the work necessary to achieve the required standard of Defect rectification.

1.3 Measurement of performance

The Contractor's performance of the Services will be measured by the following Performance Criteria:

- (a) the Management Performance Measures, which monitor the inspection, planning, management and implementation aspects of the Contract. The Management Performance Measures relate to management and reporting systems such as quality, occupational health and safety, environmental, community consultation, data gathering and reporting;
- (b) the Pavement Performance Measures, which are long term measures that relate to the overall condition of the PSMC Network pavement Assets, including pavement roughness, pavement remaining life and pavement cracking. These will drive the Contractor's maintenance and rehabilitation program; and
- (c) the Operational Performance Measures, which are short term measures and apply to the daily serviceability of the Assets and include the required conditions for pavements and road furniture to ensure safe and efficient movement of traffic and user comfort.

2. ROLES AND RELATIONSHIPS

2.1 General responsibilities

- (a) The Contractor must:
 - (i) perform the Services in accordance with the Contract;

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- (ii) exercise and cause to be exercised all reasonable skill, care, judgment and diligence in the performance of the Services; and
 - (iii) perform and observe its other obligations under the Contract.
 - (b) RTA must:
 - (i) pay the Contractor the Establishment Services Fee, the Maintenance Fee and any Additional Services Fee and any other amounts due under the Contract for the Contractor's performance of the Services, in accordance with and subject to the Contract; and
 - (ii) perform and observe its other obligations under the Contract.
 - (c) RTA and the Contract Manager may give Directions to the Contractor concerning the Services and anything connected with the Services, including:
 - (i) changing the PSMC Boundary or limits of responsibility within the Zone; and
 - (ii) changing the composition and types of Assets within the Zone,and the Contractor must comply with such Directions.

2.2 Authorised persons

- (a) The Contractor must ensure that at all times there is a person appointed to act with its full authority in all matters relating to the Contract as the Contractor's Authorised Person and must keep RTA informed in writing of the name of that person, and of any change. If RTA reasonably objects to that person appointed from time to time, the Contractor must replace that person.
- (b) RTA must ensure that there is a person appointed to act on behalf of RTA in relation to the Contract as the Contract Manager and will advise the Contractor in writing of any limitations or qualifications to the powers of the Contract Manager. RTA must keep the Contractor informed in writing of the name of that person and of any change. The Contract Manager does not act as independent certifier, assessor or valuer. The Contract Manager acts only as an agent of RTA. The Contract Manager may delegate all powers except the power to delegate.
- (c) RTA will advise the Contractor in writing if the Contract Manager delegates any of its powers to others.

2.3 Co-operation

- (a) The parties must do all they reasonably can to co-operate in all matters relating to the Contract, but their rights and responsibilities under the Contract (or otherwise) remain unchanged unless the parties agree in writing to change them.
- (b) The Contractor must:
 - (i) fully cooperate with other contractors and RTA employees carrying out work within the Zone, whether for RTA or for a third party;
 - (ii) carefully coordinate and interface the Services with the work carried out by such other contractors and RTA employees; and
 - (iii) perform the Services so as to avoid interfering with, disrupting or delaying the work of other contractors and RTA employees.

2.4 Duty not to hinder performance

- (a) Each party must do all it reasonably can to avoid hindering the performance of the other under the Contract.
- (b) In undertaking the Services, the Contractor must:
 - (i) not interfere or cause interference with the exercise or performance by RTA of any of its powers or duties under any applicable Law except to the extent necessary for the proper performance by the Contractor of its obligations under the Contract; and
 - (ii) carry out its obligations under the Contract so as to ensure performance of those functions imposed on RTA under any applicable Law which are, by virtue of the Contract, to be performed by the Contractor.

2.5 RTA as an Authority

The Contractor acknowledges and agrees that:

- (a) the Contract will not restrict or affect the unfettered discretion of RTA to exercise any of its statutory functions or powers; and
- (b) anything RTA does, fails to do or purports to do, pursuant to its statutory functions and powers will be deemed to not be an act or omission of RTA under or in connection with the Contract (including a breach of contract) and will not entitle the Contractor to make any claim against RTA.

2.6 Early warning

- (a) Each party must do all it reasonably can to promptly inform the other of anything of which it becomes aware that is likely to affect the timing, cost or quality of the Services and the parties must then investigate how to avoid or minimise any adverse effect on the Services.
- (b) Paragraph (a) does not change the rights and responsibilities of either party under the Contract, unless they agree in writing to change them.
- (c) Neither party may disclose in any Issue resolution proceedings (including Expert Determination, arbitration or litigation) anything discussed or provided under this clause 2.6.

3. CONTRACT TERM

3.1 Duration

The Contract Term commences on the Commencement Date and expires on the Expiry Date, unless terminated earlier.

3.2 Commencement of Establishment Services

The Contractor must commence provision of the Establishment Services on the Commencement Date.

3.3 Commencement of Services

The Contractor must:

- (a) commence provision of the Services (other than the Establishment Services) on satisfaction or waiver by RTA of the Conditions Precedent; and
- (b) thereafter provide the Services throughout the Contract Term.

3.4 Conditions Precedent

- (a) The Contractor must not:
 - (i) exercise its rights under clause 5 or commence provision of the Establishment Services until the satisfaction or waiver of the Establishment Services Conditions Precedent; or
 - (ii) commence provision of the Services (other than the Establishment Services) until the satisfaction or waiver of the Conditions Precedent.
- (b) RTA may waive any of the Conditions Precedent in its absolute discretion by written notice to the Contractor.

4. THE SERVICES

4.1 Services

- (a) The Services include:
 - (i) all the work specifically referred to in or otherwise contemplated by the Contract;
 - (ii) all items not specifically referred to or described in the Contract which nonetheless are required to complete the Services;
 - (iii) all items referred to in one or more of the Contract Documents or otherwise necessary for the Services to meet the standards required by the Contract but omitted from the Contract Documents (those omitted items are included in the Services unless the context requires otherwise); and
 - (iv) all items of work reasonably inferred from the Contract Documents as necessary to properly execute and complete the Services.
- (b) The Contractor acknowledges that:
 - (i) it is both experienced and expert in the work of the type and scale of the Services;
 - (ii) it has made full allowance in the Establishment Services Fee and the Maintenance Fee for the matters referred to in this clause 4.1.

4.2 Contractor Facilities

The Contractor must supply to RTA the facilities set out in Schedule 6.

5. ACCESS

5.1 RTA grants access

RTA will allow the Contractor and its Subcontractors sufficient access to the Zone to enable the Contractor to carry out the Services on the terms set out in the Contract.

5.2 Access for RTA, its contractors and others

- (a) The access granted to the Zone to the Contractor under the Contract is not exclusive.
- (b) RTA and its employees, contractors and agents may access the Zone at any time, including:
 - (i) for RTA's operational purposes;
 - (ii) for the purpose of inspecting and verifying the Contractor's performance of the Services; and
 - (iii) to perform work which is outside the scope of the Contract.
- (c) RTA may also give approval to other contractors to access the Zone to perform works for third parties.

5.3 Road closure

- (a) RTA may, for specific periods of time, Direct that certain parts of the Assets within the Zone are closed. Where possible, RTA will provide the Contractor with written notice of the location and times of any such closure.
- (b) The Contractor must ensure that during those times the relevant Assets are clean and tidy and that any Plant or Materials are removed. The Contractor must not undertake any Services on any closed Assets during this period.

5.4 Lane Possession

- (a) Where the Contractor proposes to undertake any Services which will or are likely to obstruct or have the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any traffic lane or shoulder of any Road, it must obtain a road occupancy licence in accordance with section 6 of RTA QA Specification M1 PSMC.
- (b) Notwithstanding that the Contractor is entitled to close any traffic lane or shoulder, RTA may at any time Direct the Contractor to temporarily cease any work and to re-open the traffic lane or shoulder of any Road.

5.5 Access to adjoining property and Roads

- (a) The Contractor must obtain all necessary permissions, permits, licences and consents to enter upon any property adjoining the Zone for the purpose of executing the Services.
- (b) The Contractor must use all reasonable endeavours not to interfere with the operation and use of any Roads which are not included in the Assets, including without limitation, any privately owned and operated Roads.

6. CONTRACT REVIEW GROUP

6.1 Structure, purpose and role of the Contract Review Group

- (a) The Contract Review Group will consist of two high level executives from each of RTA and the Contractor.
- (b) The members of the Contract Review Group must not have any role in the day to day management of the Contract.
- (c) The purpose and role of the Contract Review Group is to provide:
 - (i) leadership to the relationship between RTA and the Contractor;
 - (ii) strategic direction to ensure the fulfilment of the Contract Outcomes;
 - (iii) high level review of the Contractor's performance of the Services; and
 - (iv) a forum for resolving those Issues referred to it by the Management Team.
- (d) The Contract Review Group must, in reviewing all matters referred to it by the Management Team, consider the potential benefit or detriment to each party and the fairness of contemplated cost increases or savings.
- (e) The Contract Review Group will consider proposals from the Contractor under clause 13 in accordance with the principles set out in that clause.
- (f) The Contract Review Group may obtain expert assistance, the cost of which will be borne equally by the parties unless the Contract Review Group resolves otherwise.

6.2 Establishment of Contract Review Group

- (a) Each party will appoint and notify the other party of the names of its two Contract Review Group members by 10 October 2008.
- (b) Neither party may object to the person appointed by the other party.
- (c) Each party may replace their appointed Contract Review Group members on 20 Business Days notice with a new member or members of equivalent or higher seniority.
- (d) RTA will nominate one of its appointed Contract Review Group members to be the Contract Review Group Chairperson.

6.3 Meetings of Contract Review Group

- (a) Meetings of the Contract Review Group must be held at intervals not exceeding 6 months or within 10 Business Days of any Contract Review Group member requesting a meeting.
- (b) The Contract Review Group Chairperson will convene and chair meetings of the Contract Review Group.

6.4 Quorum and voting

A quorum for meetings of the Contract Review Group is four members and all resolutions of the Contract Review Group must be unanimous.

6.5 Minutes

- (a) The Contract Review Group Chairperson will produce minutes which record in writing all resolutions of the Contract Review Group within one week of each Contract Review Group meeting.
- (b) Resolutions of the Contract Review Group are not effective until one Contract Review Group member appointed by the Contractor and one Contract Review Group member appointed by RTA have certified the minutes as correct.

6.6 Resolutions

Resolutions of the Contract Review Group are binding on both parties.

6.7 Non-delegation of power

No member of the Contract Review Group may delegate any of the members' rights or duties under this clause 6 except where:

- (a) the proposed delegate is of equivalent or higher seniority; and
- (b) the other members of the Contract Review Group agree in writing to such delegation.

7. MANAGEMENT TEAM

7.1 Structure, purpose and role of the Management Team

- (a) The Management Team will consist of the Contract Manager and the Contractor's Authorised Person.
- (b) The purpose and role of the Management Team is to:
 - (i) implement the resolutions of the Contract Review Group;
 - (ii) prepare agenda items for discussion at meetings of the Contract Review Group;
 - (iii) measure, forecast and report performance to the Contract Review Group and others, as required;
 - (iv) to discuss and review the progress of the Contractor's delivery of the Services and performance against the Performance Criteria and to identify priorities for improvement;
 - (v) review notices submitted by the Contractor under clause 8, if so requested by RTA;
 - (vi) review issues arising out of community relations and community concerns;
 - (vii) review issues arising out of the quality of the Services;
 - (viii) review environmental issues; and
 - (ix) review safety issues.
- (c) The Management Team will evaluate and monitor performance of the Contractor's obligations under the Contract.

7.2 Meetings of Management Team

- (a) Meeting of the Management Team must be held at intervals not exceeding one month or within 5 Business Days of any member of the Management Team requesting a meeting.
- (b) The Contract Manager will convene and chair meetings of the Management Team.
- (c) The parties must decide jointly on participation in Management Team meetings by others concerned with the Services, including Subcontractors, Suppliers, Consultants and if appropriate, persons such as representatives of Authorities, Road users and local community representatives. Participation in meetings does not give the participants any additional rights or responsibilities.
- (d) Each party and any others who participate in the Management Team meetings must meet their own costs for attendance at the meetings and the parties will share equally the other costs.

7.3 Minutes

- (a) The Contract Manager will produce minutes which will record in writing the discussions and resolutions of the Management Team within one week of each Management Team meeting.
- (b) Resolutions of the Management Team are not effective until the Contract Manager and the Contractor's Authorised Person have certified the minutes as correct.

7.4 Resolutions

Resolutions of the Management Team are binding on both parties, except to the extent RTA has under clause 2.2(b) relevantly limited or qualified the Contract Manager's powers.

7.5 Non-delegation of power

No member of the Management Team may delegate any of their duties under this clause 7 except where:

- (a) the proposed delegate is of equivalent or higher seniority; and
- (b) the other member of the Management Team agrees in writing to such delegation.

8. ACCEPTANCE OF RISKS

8.1 Contractor accepts risks

Subject to the express provisions of the Contract, the Contractor accepts responsibility for and the risk of any loss or delay which it suffers or incurs arising out of or in connection with its performance of its obligations under the Contract, including the following risks:

- (a) the performance and cost of all Subcontractors;
- (b) obtaining access to all areas other than the Zone;
- (c) the condition of the Zone and the Assets;
- (d) all information provided or not provided by RTA regarding the Assets, the Zone and the Contractor's obligations under the Contract, including the Information Documents;

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- (e) congestion on approach Roads to the Zone and any other difficulties with obtaining access to and from the Zone;
 - (f) complying with all Laws;
 - (g) the existence, location, condition and availability of Utilities in respect of the Services;
 - (h) compliance with RTA operational requirements (including the Transport Management Centre) and delays in accessing the Zone due to RTA or Transport Management Centre directions regarding traffic control. The requirements of the Transport Management Centre have primacy at all times over the Services;
 - (i) compliance with other Directions of RTA:
 - (i) expressly permitted or allowed by the Contract; or
 - (ii) being the exercise by RTA of any of its functions or powers under any Law;
 - (j) compliance with the requirements of the NSW Police Force and emergency services;
 - (k) providing all Materials, Plant and labour necessary for the Services;
 - (l) industrial issues;
 - (m) foreign exchange movements in any currencies adverse to the Contractor;
 - (n) subject to clause 16.3(d), increases in the costs of labour, plant and Materials required for the performance of the Services;
 - (o) subject to clause 8.2, damage to the Assets caused by third parties; and
 - (p) growth in traffic volumes and loads across the PSMC Network up to the Traffic Growth Ceilings.

8.2 Damage to Assets by third parties

- (a) The Contractor will rectify any damage to the Assets caused by a third party.
- (b) If there is a single event of third party damage to an Asset which requires permanent repair, which will cost the Contractor more than \$10,000 to permanently repair, this clause 8.2 will apply.
- (c) The Contractor must, within 10 Business Days of permanently repairing the damage to the Asset caused by the event described in paragraph (b), notify RTA of the:
 - (i) occurrence of and details of the work undertaken by the Contractor; and
 - (ii) the Contractor's costs of permanent repair, detailing:
 - (A) the direct labour, Material and Plant costs;
 - (B) the cost of Subcontractor and Consultant work; and
 - (C) the Contractor's margin for off-site overhead and profit, being 12% of the costs under subparagraphs (A) and (B); and
 - (iii) the value of the Contractor's claim, which will be the Contractor's costs of repair, less \$10,000.

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- (d) RTA:
 - (i) may, within 20 Business Days of receipt of the notice under paragraph (c), request further information from the Contractor to enable RTA to assess the Contractor's Claim; and
 - (ii) must, within 20 Business Days of receipt of the information requested under subparagraph (d)(i), or within 40 Business Days of receiving the Contractor's notice under paragraph (c) (whichever is the later), notify the Contractor of the amount by which (if any) RTA will pay to compensate the Contractor for the event described in the Contractor's notice under paragraph (c).
 - (e) RTA will not include:
 - (i) any margin for profit or off-site overhead in the costs determined under paragraphs (c)(ii)(A) and (c)(ii)(B); or
 - (ii) any amount in the valuation of the direct labour, Material and Plant costs under paragraph (c)(ii)(A) or of Subcontract work under paragraph (c)(ii)(B) or any amount incurred under paragraph (c)(i) for extra costs, losses or expenses attributable to any default or negligence of the Contractor.
 - (f) If the Contractor does not agree with RTA's determination under paragraph (d), clause 29.1(a) will apply.

8.3 Traffic growth

- (a) The parties agree to measure and assess the impact of growth in traffic volumes and loads on the PSMC Network in accordance with section 7 of RTA QA Specification M2 PSMC.
- (b) If the Contractor's cost of providing the Services in a Contract Year increases as a result of growth in traffic volumes or loads across the PSMC Network exceeding any of the Traffic Growth Ceilings, the Contractor may, within 10 Business Days of the end of the relevant Contract Year, notify RTA of:
 - (i) the extent to which growth in traffic volumes or loads across the PSMC Network has exceeded any of the Traffic Growth Ceilings; and
 - (ii) the Contractor's assessment of the increase in its cost of providing the Services as a result of the growth in traffic volumes or loads across the PSMC Network in excess of any of the Traffic Growth Ceilings.
- (c) RTA:
 - (i) may, within 20 Business Days of receipt of the notice under paragraph (b), request further information from the Contractor to enable RTA to assess the Contractor's claim; and
 - (ii) must, within 20 Business Days of receipt of the information requested under subparagraph (i), or within 40 Business Days of receiving the Contractor's notice under paragraph (b) (whichever is later), assess the Contractor's claim and notify the Contractor of the amount RTA will pay to compensate the Contractor for the event described in the Contractor's notice under paragraph (b).
- (d) If the Contractor does not agree with RTA's determination under paragraph (c), clause 29.1(a) will apply.

8.4 Other events

- (a) If:
 - (i) there is a Change in Law; or
 - (ii) RTA Directs a change to the PSMC Boundary or limits of responsibility within the Zone; or
 - (iii) RTA Directs a change in the composition or type of Assets within the Zone, and the Change in Law or RTA Direction will, in the Contractor's reasonable opinion, increase or decrease the Contractor's cost of providing the Services by more than \$100,000 per annum, then this clause 8.4 will apply.
- (b) The Contractor must, within 20 Business Days of the occurrence of the event described in paragraph (a), notify RTA of the:
 - (i) occurrence of and details of the relevant event; and
 - (ii) the Contractor's assessment of the increase or decrease in the Contractor's cost of providing the Services as a result of the event.
- (c) RTA:
 - (i) may, within 20 Business Days of receipt of the notice under paragraph (b), request further information from the Contractor to enable RTA to assess the Contractor's claim; and
 - (ii) must, within 20 Business Days of receipt of the information requested under subparagraph (i), or within 40 Business Days of receiving the Contractor's notice under paragraph (b) (whichever is later), notify the Contractor of the amount, if any, which RTA will pay to compensate the Contractor or deduct from the Maintenance Fee in the current Contract Year to take into account the increase or decrease in the Contractor's cost as a result of the event described in the Contractor's notice under paragraph (b).
- (d) If RTA determines that it will not pay an amount to the Contractor or make a deduction from the Maintenance Fee, because the impact on the Contractor's cost of providing the Services is less than \$100,000 per annum, the parties may, in the Contract Year in which the event occurs, consider the relevant event under clause 8.5.
- (e) If the event described in paragraph (a) will, in the Contractor's reasonable opinion increase or decrease the Contractor's cost of providing the Services by more than \$100,000 per annum in any subsequent Contract Year:
 - (i) the Contractor must so notify RTA within 20 Business Days of Commencement of the relevant subsequent Contract Year, including the details specified in paragraph (b); and
 - (ii) paragraphs (b) to (d) will reapply as if the Contractor had notified of the event under paragraph (b).

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- (f) RTA may, notwithstanding that it has not received a notice from the Contractor under paragraph (b):
 - (i) determine that an event described in paragraph (a) has increased or decreased the Contractor's cost of providing the Services by more than \$100,000 per annum in any given Contract Year; and
 - (ii) either:
 - (A) notify the Contractor of the amount which RTA will pay to compensate the Contractor or deduct from the Maintenance Fee to take into account the increase or decrease in the Contractor's cost as a result of the event; or
 - (B) request that the Contractor advise RTA in writing of the impact of the event on the Contractor's cost of providing the Services, following which RTA will determine the amount which RTA will pay to compensate the Contractor or deduct from the Maintenance Fee in accordance with subparagraph (A).
 - (g) The Contractor must respond within 10 Business Days of receipt of a request from RTA under paragraph (f)(ii)(B).
 - (h) If the Contractor does not agree with RTA's determination under paragraph (c) or paragraph (f), clause 29.1(a) will apply.

8.5 Annual assessment

- (a) The parties acknowledge and agree that in any given Contract Year:
 - (i) there may be a number of:
 - (A) Changes in Law;
 - (B) RTA Directions to change the PSMC Boundary or limits of responsibility within the Zone; or
 - (C) RTA Directions to change the composition or type of Assets within the Zone;to which clause 8.4 does not apply;
 - (ii) those events listed in subparagraph (i) may either increase or decrease the Contractor's cost of providing the Services; and
 - (iii) it would be impractical to assess the impact of each event on the Contractor's cost of providing the Services as each event arises.
- (b) If the cumulative effect in a given Contract Year of the events listed in paragraph (a)(i) is, in the Contractor's reasonable opinion, an increase in the Contractor's cost of providing the Services of more than \$100,000, this clause 8.5 will apply.
- (c) The Contractor must within 60 Business Days of the end of a given Contract Year notify RTA of the:
 - (i) occurrence and detail of each event described in paragraph (a);
 - (ii) the cost impact of each event (including those events for which there is a decrease in the Contractor's cost in providing the Services);

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- (iii) the Contractor's assessment of the increase in the Contractor's cost of providing the Services as a result of the occurrence of all of the events; and
 - (iv) the Contractor's claim for payment, which will be the difference between the amount referred to in subparagraph (iii) and \$100,000.
- (d) RTA will assess the Contractor's claim in accordance with the provisions of clause 32.

8.6 Mitigation

The Contractor must minimise the effect on the Services of any events listed in clause 8.2(a), 8.3(b), 8.4(a) and 8.5(a).

8.7 Monthly adjustment

The monetary caps specified in clauses 8.2, 8.4 and 8.5 will be adjusted monthly in accordance with the cost adjustment provision set out in Schedule 7.

9. CHANGES

9.1 RTA may Direct Changes

RTA may Direct Changes in writing at any time during the Contract Term, and the Contractor must comply with those Directions.

9.2 Proposed Changes

- (a) If requested by RTA, the Contractor must advise RTA in writing of:
 - (i) the cost and quality implications (if any) of a proposed Change; and
 - (ii) any other effect on the Services or on any matter specified,within the time specified in the request.
- (b) In advising RTA of its effect on the Services, the Contractor acknowledges its responsibility to take all reasonable steps to:
 - (i) carry out any additional work associated with the proposed Change concurrently with other work wherever possible; and
 - (ii) otherwise minimise the effect of the Change on the carrying out of the Services.
- (c) The parties must endeavour to agree the value and effect of a proposed Change.
- (d) The Contractor must not implement any proposed Change until:
 - (i) the parties have agreed on its cost, time and quality implications and other effects (if any) on the Services; or
 - (ii) RTA Directs the Contractor to proceed under clause 9.1.

9.3 Effect of Changes

- (a) The parties must seek to agree the cost and quality implications and other effects (if any) on the Services of a Change Directed by RTA under clause 9.1.

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- (b) If the parties are unable to agree on the matter specified in paragraph (a) within 20 Business Days of RTA's Direction under clause 9.1, RTA will determine the following:
 - (i) if the Change involves additional or increased work, RTA must determine its value as the sum of the following:
 - (A) the additional reasonable direct labour, Material and Plant costs of the Contractor;
 - (B) the additional reasonable cost to the Contractor of Subcontract and Consultant work involved in carrying out the Change; and
 - (C) an additional amount for profit and off-site overhead, being 12% of the costs under subparagraphs (A) and (B); or
 - (ii) if the Change involves decreased or omitted work, RTA must determine its value as that of the work included in the Maintenance Fee or Additional Services Fee as specified in the Contract, or as otherwise as valued by RTA.
 - (c) RTA will not include:
 - (i) any margin for profit or off-site overhead in the costs determined under paragraphs (b)(i)(A), (b)(i)(B) and (b)(ii); or
 - (ii) any amount in the valuation of the direct labour, Material and Plant costs under paragraph (b)(i)(A) or of Subcontract work under paragraph (b)(i)(B) for extra costs, losses or expenses attributable to any default or negligence of the Contractor.
 - (d) RTA will adjust the Maintenance Fee or Additional Service Fee (as relevant) to account for RTA's determination of the value of the Change, including negative adjustments. RTA will take into account the principles set out in Schedule 7 in adjusting the Maintenance Fee.

9.4 Carrying out a Change

In carrying out a Change, the Contractor must:

- (a) carry out any additional work associated with the Change concurrently with other work wherever possible; and
- (b) otherwise minimise the effect of the Change on the carrying out of the Services.

9.5 Innovation not Change

The Contractor acknowledges that any Innovation by the Contractor does not constitute a Change under this clause 9.

9.6 Claim for Change

Regardless of any other provision of the Contract, if the Contractor considers that a Change applies but RTA has not Directed a Change, the Contractor must make its claim for a Change within 10 Business Days from the start of the event giving rise to the Change, or from the time when the event should have become known to the Contractor with reasonable diligence on its part.

9.7 Change for convenience of Contractor

- (a) The Contractor may propose in writing a Change for the Contractor's convenience.
- (b) RTA may approve the Change but is not obliged to do so.
- (c) RTA's approval may be conditional.
- (d) Subject to the conditions of RTA's approval, the other relevant provisions of clause 9 apply to any Change proposed by the Contractor and approved as a Change by RTA.

10. ADDITIONAL SERVICES

10.1 General

The parties acknowledge and agree that during the Contract Term:

- (a) RTA may require works to be undertaken on the Assets within the Zone which are in addition to the Contractor's obligations specified in RTA QA Specification M1 PSMC and RTA QA Specification M2 PSMC;
- (b) RTA may, in its absolute discretion:
 - (i) seek a price from the Contractor to undertake Additional Services;
 - (ii) Direct the Contractor to undertake Additional Services; or
 - (iii) engage another contractor to undertake works in the Zone; and
- (c) RTA is under no obligation to engage the Contractor to undertake Additional Services.

10.2 Additional Services

- (a) RTA may, at any time during the Contract Term, issue to the Contractor:
 - (i) a Work Proposal, outlining the scope of the proposed Additional Services and inviting the Contractor to price those Additional Services; or
 - (ii) a Work Order, Directing the Contractor to carry out Additional Services.
- (b) If RTA Directs in a Work Order that the Additional Services are required urgently, the Contractor must immediately comply with the Direction.

10.3 Work Orders

- (a) The Contractor must not commence the carrying out of Additional Services unless RTA has issued a Work Order.
- (b) RTA may issue a Work Order by email, facsimile, post or verbally. RTA will only issue a Work Order verbally where RTA considers it appropriate to do so and where the work is urgently required. RTA will confirm the Work Order issued verbally in writing as soon as possible.

10.4 Valuation of Additional Services

- (a) This clause will apply if RTA has issued a Work Proposal under clause 10.2(a)(i).

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- (b) The Contractor must within the time specified in a Work Proposal under clause 10.2(a)(i), advise the Contract Manager of:
 - (i) the effect (if any) which the Contractor anticipates that the performance of the Additional Services will have on the Contractor's current Annual Treatment Program and any other matter specified in the Work Proposal;
 - (ii) the Contractor's proposed program for the Additional Services; and
 - (iii) the Contractor's quote for the cost of undertaking the Additional Services.
 - (c) The Contract Manager and the Contractor's Authorised Person must seek to agree within 10 Business Days of the Contractor's notice under paragraph (b):
 - (i) the price for the Additional Services; and
 - (ii) all other terms on which the Contractor will carry out the Additional Services (including the date for completion).
 - (d) RTA will, if the parties agree the terms on which the Contractor will carry out the Additional Services, issue a Work Order.
 - (e) If the parties cannot reach agreement within the time specified in paragraph (c). or such other period as the parties may agree, RTA may seek competitive tenders for the work described in the Work Proposal.

10.5 Valuation of Additional Services following Work Order

- (a) This clause will apply if RTA has issued a Work Order prior to agreeing the price for the Additional Services.
- (b) The Contractor must, within 5 Business Days of completing the Additional Services submit to RTA:
 - (i) details of the work performed;
 - (ii) details of the effect (if any) of the Additional Services on the Contractor's obligations under RTA QA Specification M1 PSMC and RTA QA Specification M2 PSMC;
 - (iii) an itemised list of Plant, labour and Materials used in carrying out the Additional Services, detailing the quantity and unit rate for each item; and
 - (iv) the total costs incurred by the Contractor in performing the Additional Services.
- (c) RTA may verify any cost details given by the Contractor under paragraph (b) by:
 - (i) Directing the Contractor to provide a detailed breakdown of the costs; and
 - (ii) accessing the Contractor's records.
- (d) RTA will determine the value of the Additional Services as the sum of the following:
 - (i) the additional reasonable direct labour, Material and Plant costs of the Contractor;
 - (ii) the additional reasonable cost to the Contractor of Subcontract and Consultant work involved in carrying out the Additional Services; and

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- (iii) an additional amount, for profit and off-site overhead, being 12% of the costs under subparagraphs (i) and (ii).
 - (e) RTA will not include:
 - (i) any margin for profit or off-site overhead in the costs determined under paragraphs (d)(i) and (d)(ii); or
 - (ii) any amount in the valuation of the direct labour, Material and Plant costs under paragraph (d)(i) or of Subcontract work under paragraph (d)(ii) for extra costs, losses or expenses attributable to any default or negligence of the Contractor.
 - (f) RTA will determine the value of the Additional Services within:
 - (i) 10 Business Days of receipt of the Contractor's submission under paragraph (b); or
 - (ii) 5 Business Days of RTA verifying the costs in accordance with paragraph (c),whichever is the later.

10.6 Performance of Additional Services

- (a) The Work Terms:
 - (i) will be incorporated by reference into the terms of the Contract with respect to the Additional Services; and
 - (ii) will govern the carrying out of the Additional Services.
- (b) The terms of the General Conditions will take precedence over the Work Terms, to the extent of any inconsistency.
- (c) The Contractor acknowledges that it must take all reasonable steps to carry out Additional Services concurrently with other work wherever possible and to minimise the effects of the Additional Services on the Services.

10.7 Competitive tenders for Additional Services

- (a) RTA may in its absolute discretion, rather than issuing a Work Proposal or Work Order for Additional Services, seek competitive tenders or otherwise engage a separate contractor to undertake work in the Zone which does not form part of the Contractor's obligations specified in RTA QA Specification M1 PSMC and RTA QA Specification M2 PSMC.
- (b) In those circumstances, RTA may invite the Contractor to prepare the project brief and other technical documentation for the tender by way of a Work Proposal.
- (c) The Contractor may only tender for additional services for which competitive tenders are called if it has not accepted an invitation to prepare the project brief and other technical documents under paragraph (b).

11. LAW, GUIDELINES AND GOVERNMENT REQUIREMENTS

11.1 Law

- (a) The Contractor is responsible for:

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- (i) compliance with all Law, except if only RTA can comply with such Law; and
 - (ii) the giving of all notices necessary to comply with Law including the payment of all fees, charges and other imposts, other than those to be given or paid by RTA under the Contract.
- (b) The Contractor must, during the Contract Term, give to RTA copies of all documents issued by Authorities or service providers, including those evidencing approvals, authorisations and consents in connection with the Services and the Zone. The Contractor must provide the original documents to RTA at the end of the Contract Term.

11.2 Relevant Authorities

- (a) Unless otherwise provided in the Contract, the Contractor must, before carrying out any Services, notify all relevant Authorities whose approval is required for the Services or whose interests may be affected by the carrying out of the Services.
- (b) The Contractor must:
- (i) obtain and maintain all licences, permits, consents or other approvals necessary for the performance of the Services;
 - (ii) give all notices necessary to comply with the requirements of any Law or Authority; and
 - (iii) at its own cost, pay any fees or charges necessary to comply with the requirements of any Law or Authority including any fee or charge imposed in connection with a requirement of an Authority which entails the provision or expansion of services by that Authority.
- (c) The Contractor must give to RTA upon request copies of documents issued to the Contractor by any Authority or to any Authority by the Contractor, in respect of the Services and in particular, any approvals.

11.3 Compliance with codes and guidelines

The Contractor must, at all times, comply with RTA policies and NSW Government Codes of Practice that address principles and standards of behaviour in the construction industry including:

- (a) RTA statement of business ethics; and
- (b) code of practice for procurement.

11.4 Occupational health and safety management

- (a) The Contractor is responsible for and must comply with the requirements of the Contract for occupational health and safety, subject to the express provisions of the *Occupational Health & Safety Act 2000* (NSW) and the *Occupational Health & Safety Regulation 2001* (NSW) (**OH&S Regulation**). This includes without limitation, the NSW Government "Occupational Health and Safety Management Systems Guidelines".
- (b) The Contractor must document, submit to the Contract Manager and implement an Occupational Health and Safety Management Plan which complies with the OH&S Regulation and the NSW Government "Occupational Health and Safety Management Systems Guidelines".

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- (c) The Contractor must systematically manage its occupational health and safety management processes in accordance with the systems, plans, standards and codes specified in the Contract.
 - (d) The Contractor must review and update the Occupational Health and Safety Management Plan so that it remains at all times compliant with Law.
 - (e) In this clause 11.4, "owner", "principal contractor" and "construction work" have the same meaning as in the OH&S Regulation.
 - (f) During any period that the Contractor is in control of any part of the Zone:
 - (i) to the extent that RTA is the owner of the Zone or is authorised by the owner of the Zone to do so, RTA appoints the Contractor as the principal contractor in respect of all construction work carried out in the Zone;
 - (ii) if RTA is not able to validly appoint the Contractor as the principal contractor in respect of any construction work carried out on the Zone, the Contractor must exercise and fulfil the functions and obligations of a principal contractor under the OH&S Regulation as if the Contractor has been validly appointed as the principal contractor in respect of such construction work; and
 - (iii) the Contractor is authorised to exercise such authority as is necessary to enable it to discharge the responsibilities imposed on a principal contractor by the OH&S Regulation.
 - (g) To the extent not prohibited by Law, the Contractor must indemnify RTA against any damage, expense, loss or liability suffered or incurred by RTA arising out of or in connection with the failure of the Contractor to exercise or fulfil the functions and responsibilities it is required to exercise or fulfil as a principal contractor in accordance with clause 11.4 provided that the Contractor's liability to indemnify RTA will be reduced proportionally to the extent that an act or omission of RTA, its employees, contractors or agents may have contributed to the damage, expense, loss or liability.
 - (h) The Contractor must demonstrate to RTA whenever requested that it has met and is meeting at all times its obligations under this clause 11.4.

11.5 Risk Management Plan

- (a) The Contractor must document, submit and implement a Risk Management Plan which must comply with the requirements of Annexure H/2 of RTA QA Specification M4 PSMC.
- (b) The Contractor must demonstrate to RTA whenever requested that it has met and is meeting at all times its obligations under this clause 11.5.

11.6 Industrial relations management

- (a) The Contractor must manage all aspects of industrial relations on the Zone and otherwise in connection with the Contract, and keep RTA informed of industrial relations issues which affect or are likely to affect the carrying out of the Services.
- (b) Subject to the provisions of any Law and the express provisions of the Contract, the Contractor must comply with the NSW Government "Industrial Relations Management Guidelines".

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- (c) The Contractor must document, submit and implement an Industrial Relations Plan which complies with the NSW Government "Industrial Relations Management Guidelines". The Industrial Relations Plan must be consistent with any industrial relations strategy submitted with or in conjunction with the Contractor's Tender and any amendments to that industrial relations strategy.
 - (d) The Contractor must demonstrate to RTA whenever requested that it has met and is meeting at all times its obligations under this clause 11.6.

11.7 Quality management

- (a) The Contractor must document, submit to the Contract Manager and implement the Quality Plan, which must comply with the requirements of RTA QA Specification Q6.
- (b) The Contractor must systematically manage its processes in accordance with the Quality Plan and monitor its own performance and compliance with the systems, processes and procedures specified in the Quality Plan.
- (c) The Contractor must:
 - (i) maintain (and where appropriate update) and implement the Quality Plan in accordance with RTA QA Specification Q6;
 - (ii) submit documentation required by the Contract by the time or times specified in the Quality Plan;
 - (iii) review and update the Contractor's quality management procedures and documentation so that they remain adequate at all times to manage and ensure the quality of the Services complies with the requirements of the Contract;
 - (iv) establish, maintain and keep records of all activities related to the management of quality; and
 - (v) provide sufficient access to the workplace, and to information, records and other relevant documentation, resources (including personnel) and all other things necessary to allow RTA to carry out reviews, surveillance and audit of the Contractor's procedures and conformance with the quality management requirement under the Contract.
- (d) The Contractor must demonstrate to RTA whenever requested that it has met and is meeting at all times its obligations under this clause 11.7.

11.8 Environmental management

- (a) Subject to the provisions of any relevant Law and the express provisions of the Contract, the Contractor must comply with the NSW Government "Environmental Management Systems Guidelines", and the application of best practices as per ISO 14001 Environmental Management System Requirements to avoid or mitigate any detrimental effects on the environment in fulfilling obligations under the Contract.
- (b) The Contractor must document, submit to the Contract Manager and implement an Environmental Management Plan which complies with the NSW Government "Environmental Management Systems Guidelines" and RTA QA Specification G36M.

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- (c) The Contractor must systematically manage its environmental management processes in accordance with the systems, plans, standards and codes specified in the Contract.
 - (d) The Contractor must demonstrate to RTA whenever requested that it has met and is meeting at all times its obligations under this clause 11.8.

11.9 Training management

- (a) Subject to the express provisions of the Contract, the Contractor must comply with the NSW Government "Training Management Guidelines".
- (b) Training management requirements specified in the Contract and the NSW Government "Training Management Guidelines" may be in addition to but are not in substitution for any training obligation of the Contractor under statute, industrial award, enterprise or workplace agreement, or other workplace arrangements approved under Law.
- (c) The Contractor must document and submit a Training Management Plan to the Contract Manager which complies with the NSW Government "Training Management Guidelines".
- (d) The Contractor must systematically manage its training management processes in accordance with the systems, plans, standards and codes specified in the Contract.
- (e) The Contractor must demonstrate to RTA whenever requested that it has met and is meeting at all times its obligations under this clause 11.9.

11.10 Community Relations Management Plan

- (a) The Contractor must document, submit to the Contract Manager and implement a Community Relations Management Plan which must comply with the requirements of RTA QA Specification M1 PSMC.
- (b) The Contractor must demonstrate to RTA whenever requested that it has met and is meeting at all times its obligations under this clause 11.10.

11.11 Aboriginal participation

- (a) The Contractor must document, submit to the Contract Manager and implement an Aboriginal Participation Plan in accordance with the NSW Government "Aboriginal Participation in Construction Implementation Guidelines".
- (b) The Contractor must systematically manage its aboriginal participation processes in accordance with the systems, plans, standards and codes specified in the Contract.
- (c) The Contractor must demonstrate to RTA whenever requested, that it has met and is meeting at all times its obligations under this clause 11.11.

11.12 Authorisation for access to other records

- (a) RTA may make any information concerning the Contractor available to other NSW Government authorities and ministries. This information may include, but is not limited to, any information provided by the Contractor to RTA and any information relating to the Contractor's performance under the Contract.
- (b) Information about the Contractor from any source, including substantiated reports of unsatisfactory performance, may be taken into account by NSW Government

authorities in considering whether to offer the Contractor future opportunities for NSW Government work.

- (c) In making available information under paragraph (a), the Contractor acknowledges that RTA will be entitled to rely on the defence of qualified privilege for the purposes of section 30 of the *Defamation Act 2005* (NSW).
- (d) The Contractor releases and indemnifies RTA from and against any claim in respect of any matter arising out of:
 - (i) information being made available under paragraph (a); and
 - (ii) the use of such information by a recipient of the information.

11.13 Long service levy

Before the Commencement Date, the Contractor must:

- (a) pay to the Building and Construction Industry Long Services Payments Corporation or the Corporation's agent, the amount of the long services levy payable in respect of the construction work under the *Building and Construction Industry Long Service Payments Act 1986* (NSW); and
- (b) produce to RTA the documentary evidence of payment of the levy.

11.14 Media releases and enquiries

The Contractor must comply with sections 7.4 and 7.5 of RTA QA Specification M1 PSMC in relation to:

- (a) any press release or advertisement it wishes to make or place concerning the Contract, RTA or the Services;
- (b) the release for publication in any media of any information, publication, document or article concerning the Contract, RTA or the Services; and
- (c) any media enquiries concerning the Contract, RTA or the Services.

11.15 Registration and licences

- (a) All vehicles and Plant used in performing work in connection with the Contract must be properly registered by the Contractor, if required by Law to be registered.
- (b) The Contractor must ensure that all drivers who operate vehicles and Plant in performing work in connection with the Contract must be properly and appropriately licensed as required by Law to operate the vehicles or Plant.
- (c) Whenever requested by RTA, the Contractor must provide promptly, documentary evidence of compliance with this clause 11.15.

12. SUBCONTRACTORS

12.1 Subcontractor relationships

- (a) The Contractor is solely responsible for all Subcontractors and for their acts and omissions, and for the termination of any Subcontract and replacement of any Subcontractor.

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- (b) The Contractor indemnifies RTA against all claims, action and loss or damage and all other liability arising out of any acts or omissions of Subcontractors.

12.2 Engaging Subcontractors

- (a) The Contractor must not subcontract the whole of the Services, but may subcontract parts of the Services in accordance with this clause 12.2.
- (b) When requested, before engaging any Subcontractors and at any other times, the Contractor must provide to RTA unpriced copies of any Subcontracts and the names and addresses of proposed Subcontractors.
- (c) RTA may object to the appointment of any proposed Subcontractor on reasonable grounds. If RTA objects to any proposed Subcontractor the Contractor must at its own cost propose another Subcontractor.
- (d) For each trade or area of work which is a Prequalified Area of Work the Contractor must use only Subcontractors prequalified in that category. Upon request, RTA will provide to the Contractor a list of prequalified contractors for each specified category.
- (e) If the Contractor terminates a Subcontract, clauses 12.1 and 12.2 will apply to any replacement Subcontract.

12.3 Subcontractor's right to subcontract

- (a) The Contractor may permit a Subcontractor to subcontract part, but not all of its work.
- (b) The Contractor may engage Consultants to assist it in undertaking the Services and may permit a Consultant to subcontract part, but not all, of its works.

12.4 Responsibility for Subcontractors and Consultants

- (a) The Contractor must employ, and must ensure that its Subcontractors and Consultants employ in connection with the Services, only such persons as are careful, skilled and experienced in their respective trades and callings and who are competent to perform any work for which they are engaged.
- (b) RTA may Direct the Contractor to remove from the Zone or from any activity connected with the Services, within such time as RTA may Direct, any person employed or engaged in connection with the Services who, in the opinion of RTA is guilty of misconduct or is incompetent or negligent. Misconduct under this clause includes discourteous behaviour towards a member of the public or other user of an Asset.
- (c) Any person who is the subject of a Direction under paragraph (b) must not be re-employed in the Zone or on activities connected with the Services without the prior written approval of RTA, which approval will not be unreasonably withheld or delayed.
- (d) The Contractor must not allow its employees or Subcontractors to use the Zone or any of the Assets for any purpose other than in connection with the Services or in connection with their rights as members of the public.
- (e) The Contractor must ensure that all workers who may at any time be employed on the Zone are engaged on terms which are no worse than those prescribed by any:
 - (i) relevant Law;

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- (ii) award applicable to the worker; or
 - (iii) determination, judgment or agreement,
concerning the worker's minimum terms of employment.
- (f) The Contractor must include in any Subcontract a clause requiring the Subcontractor to:
- (i) comply with the provisions of paragraph (e);
 - (ii) include clauses to the effect of this clause in that Subcontract or any subsequent Subcontract or consultancy agreement; and
 - (iii) cooperate with and provide access to the Contractor or any auditor appointed pursuant to paragraph (h) all books, ledgers and other records relating to the payment of wages and other benefits to workers engaged by that Subcontractor in performing any part of the Services so as to verify compliance by the Subcontractor with the requirements of paragraph (e).
- (g) The Contractor must enforce the provisions required by paragraph (f) for each and any part of the Services.
- (h) RTA is entitled to inspect all books, ledgers and other records of wages or other payments made to any persons employed by the Contractor on any Services in respect of that employment, to verify compliance by the Contractor with the requirements of paragraph (e). If Directed by RTA, the Contractor must commission a third party auditor (whose identity must first be approved by RTA) to audit the payment of wages and other benefits to all workers engaged on any Services.

12.5 Subcontract provisions

- (a) The Contractor must ensure that each Subcontract which has a value of \$25,000 or more includes the following provisions:
- (i) each Subcontract that requires security must allow or be deemed to allow the Subcontractor the option at any time to provide a performance bond or undertakings in lieu of a cash security or retention monies. To the extent that the Subcontractor provides a performance bond or undertakings, the Contractor must not deduct retention moneys and must release to the Subcontractor any retention moneys or cash security then held;
 - (ii) each Subcontract must include or be deemed to include a provision having the effect that:
 - (A) a party holding security that is in cash or is converted to cash or retention moneys (**security holder**) must immediately deposit the money in a trust account with a bank selected by that party;
 - (B) the moneys so deposited must be held in trust until the security holder or the party that provided the security (**security provider**) is entitled to receive them;
 - (C) notwithstanding any other provision of the Subcontract, the security provider will immediately become entitled to an accounting for and receipt of the trust monies if a liquidator, receiver, controller (as defined in *Corporations Act 2001* (Cth)),

administrator, trustee in bankruptcy or similar officer is appointed to the security holder;

- (iii) each Subcontract must include, or be deemed to include provisions concerning a party's entitlement to be paid interest on overdue payments equivalent to these Contract provisions and must prescribe a rate of interest which is not less than that prescribed in the Contract;
 - (iv) each Subcontract must include, or be deemed to include provisions allowing for alternative Issue resolution except that, in each case, it will not be mandatory for the Subcontractor to pursue the Subcontractor's issue resolution process where the only remedy sought by the Subcontractor is an order that the Contractor pay it an amount that is not disputed to be due and payable under the Subcontract; and
 - (v) each Subcontract must include, or be deemed to include, a provision that requires the Contractor to provide to RTA, before the Subcontractor commences work under the Subcontract, a copy of the provisions equivalent to paragraphs (i) – (iv).
- (b) The Contractor must ensure that a clause equivalent to clause 26.2 is included in:
 - (i) each Subcontract; and
 - (ii) any further contract that any Subcontractor enters into with others for the carrying out of works.
 - (c) The Contractor must, wherever possible, include in all Subcontracts and other contracts an equivalent provision to clause 35.
 - (d) The Contractor must include in all Subcontracts and other contracts a provision to allow novation of that contract to RTA in the circumstances contemplated by clause 34.3.
 - (e) The Contractor must ensure that all Consultants, Subcontractors and Suppliers engaged by the Contractor for the performance of the Contract, comply with the requirements of clause 11.14 and clause 23 .

13. INNOVATION

13.1 Parties' intent

It is the intent of the parties in entering into the Contract that:

- (a) the Contractor will actively pursue Innovations in the delivery of the Services; and
- (b) the parties will share in the benefits of such Innovation in accordance with this clause 13.

13.2 Submissions

- (a) The Contractor may submit in writing to RTA, at its own cost, a detailed proposal for changes to the Services, including changes to Materials and Specifications, which is likely to offer significant benefits (including long-term or repeated benefits) to RTA. The proposal must include (at no cost to RTA) a report on the details, implications and benefits of the proposal.

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- (b) RTA will review and comment on and then pass to the Contract Review Group any submissions under paragraph (a). The Contract Review Group will consider the Contractor's proposal, but is not bound to accept any proposal or proposed changes. RTA will not be liable for the Contract Review Group's consideration of or failure to accept any proposal or proposed changes.

13.3 No adverse effect

The proposal must not include anything which might adversely affect the quality of the Assets or the Services.

13.4 Cost savings

If the Contract Review Group resolves to implement the Contractor's proposal, any actual direct saving in the cost to the Contractor of the Services resulting from the changes will be shared equally. The calculated savings must include the assessed reduction in the cost of the Services to the Contractor, less any costs incurred by RTA in assessing or implementing the changes.

13.5 Acceptance subject to conditions

The Contract Review Group may resolve to accept the proposed changes subject to conditions.

13.6 Contractor responsible

The Contractor must ensure that the changed Services comply with the Contract.

PART B PERFORMANCE MANAGEMENT

14. COMPLIANCE MANAGEMENT AND MONITORING

14.1 ICMS

The Contractor must implement and manage the ICMS.

15. PERFORMANCE AUDIT AND INTERVENTION

15.1 RTA audit

- (a) In addition to any other right or power of RTA under the Contract, the Contract Manager may audit, inspect and carry out surveillance of:
- (i) the Contractor's performance under the Contract including compliance with the Performance Criteria; and
 - (ii) the Contractor's compliance with the systems, processes and procedures specified in the Quality Plan and any requirements of the Contract.
- (b) RTA may carry out audit inspection and surveillance at any time.

15.2 Contractor must assist

The Contractor must:

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- (a) give the Contract Manager and any other person authorised by RTA access to all accounts and records relating to the carrying out of the Services to the extent necessary to enable an audit as contemplated by the Contract;
 - (b) allow the Contract Manager and any other person authorised by RTA to have access to the Contractor's premises and Personnel to the extent necessary to inspect or audit the Contractor's documents;
 - (c) provide the Contract Manager and any other person authorised by RTA with such assistance as they may reasonably require in connection with their inspection or audit, including making the Contractor's documents available and installing and operating any compatible audit software; and
 - (d) supply to the Contract Manager and any other person authorised by RTA, at the reasonable cost of RTA, photocopies or electronic copies of information requested.

PART C FINANCIAL PROVISIONS

16. PAYMENT PROVISIONS

16.1 General

- (a) In consideration for the Contractor carrying out its obligations under the Contract, RTA will pay in accordance with the provisions of the Contract:
 - (i) the Establishment Services Fee, on completion of the Establishment Services;
 - (ii) the Maintenance Fee;
 - (iii) any Additional Services Fee; and
 - (iv) amounts due under clauses 8.2, 8.3, 8.4, 8.5 (if any) or 32 (if any).subject to the Contractor satisfying the requirements of this clause 16 and any right of RTA to withhold payment or to set off any part of the payment in accordance with the Contract.
- (b) Except as expressly provided in the Contract, where the Contractor is obliged to do anything under the Contract:
 - (i) it must do so at no additional cost to RTA; and
 - (ii) the only consideration the Contractor is entitled to is payment of the amounts specified in paragraph (a).

16.2 Maintenance Fee

- (a) The Maintenance Fee comprises:
 - (i) the Fixed Component, which RTA will pay monthly; and
 - (ii) the Performance Component, which (subject to paragraph (c)), RTA will pay to the Contractor monthly if the Monthly Network Compliance Score is less than 75;
- (b) RTA will commence payment of the Fixed Component and Performance Component on satisfaction or waiver of the Conditions Precedent.

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- (c) RTA will pay the Performance Component in the three months following satisfaction or waiver of the Conditions Precedent, regardless of the Monthly Network Compliance Score.

16.3 Deductions and set off

- (a) RTA may deduct from any payment of the Maintenance Fee, the Additional Services Fee or any other payment under this Contract any debt due or other amount payable by the Contractor to RTA or to which RTA is entitled to deduct under the Contract or any other contract between RTA and the Contractor as long as the Contract Manager issues a certificate with respect to that payment which notifies the Contractor of its liability to have the amount in question deducted.
- (b) Without limiting paragraph (a) RTA may withhold from the Maintenance Fee the value of work not undertaken by the Contractor, as determined by RTA under section 4 of RTA QA Specification M2 PSMC.
- (c) The Contractor may claim for payment of the amount withheld under paragraph (b) once the Contractor has provided to the Contract Manager:
 - (i) a supplementary program (in a form satisfactory to the Contract Manager) showing how the Contractor will undertake the work for which RTA has made the deduction; and
 - (ii) such evidence as is required by the Contract Manager demonstrating that the work has been undertaken in accordance with the supplementary program.
- (d) The Maintenance Fee will be adjusted monthly in accordance with the cost adjustment provision set out in Schedule 7.

16.4 Payment Claims and payment

- (a) The Contractor must submit a Payment Claim to RTA:
 - (i) on completion of the Establishment Services; and
 - (ii) on the first day of each month of the Contract Term after completion of the Establishment Services in respect of:
 - (A) the Services performed to the 24th day of the previous month; and
 - (B) any amounts due to the Contractor under clauses 8.2, 8.3, 8.4, 8.5 or 32.
- (b) The Contractor must submit Payment Claims:
 - (i) in such form as is acceptable to RTA;
 - (ii) supported by any information reasonably required by the Contract Manager; and
 - (iii) accompanied by:
 - (A) all relevant calculations and other information required for assessment of the Payment Claim, including but not limited to the component of the Maintenance Fee that applies to the cost of bitumen;

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- (B) the Contractor's monthly Integrated Contract Management System compliance report detailing the Monthly Network Compliance Score as required by section 3.5.2 of RTA QA Specification M1 PSMC; and
 - (C) a statutory declaration executed not before the date of the Payment Claim in the form of Schedule 4 relating to the payment of employees, subcontractors, suppliers and consultants, workers compensation insurance premiums and payroll tax payments, which meet the requirements of the *Industrial Relations Act 1996* (NSW), *Pay Roll Tax Act 2007* (NSW), *Workers Compensation Act 1987* (NSW) and all other relevant legislation.
 - (c) Payment Claims for Services (other than Additional Services and Establishment Services) must state:
 - (i) the total amount of payments made under the Contract with respect to Services for the Contract Year in which the Payment Claim is made; and
 - (ii) the Contractor's calculation of the Monthly Network Compliance Score.
 - (d) Payment Claims for Additional Services must:
 - (i) identify the Additional Services to which the Payment Claim relates; and
 - (ii) indicate the amounts which the Contractor claims in relation to the Additional Services calculated in accordance with the requirements of the Work Terms;
 - (e) The Contractor may not include the value of unfixed Material in a Payment Claim for Additional Services (and RTA is under no obligation to pay such value) unless:
 - (i) the Contractor:
 - (A) has provided to RTA at the same time as the Payment Claim under paragraph (d) an unconditional undertaking in a form satisfactory to RTA for an amount equal to the Payment Claim for the unfixed Materials; and
 - (B) gives the Contract Manager such evidence as may be required by the Contract Manager that title to the unfixed Materials will vest in RTA on payment;
 - (ii) the Materials are clearly marked as the property of RTA and are in the Zone or available for immediate delivery to the Zone; and
 - (iii) the Materials are properly stored in a place approved by the Contract Manager.
 - (f) Upon payment of the Payment Schedule which includes unfixed Materials, title in the unfixed Materials will vest in RTA.
 - (g) If the Contractor provides an unconditional undertaking for payment for unfixed Materials, RTA must release the unconditional undertaking to the Contractor within 5 Business Days of the Materials;
 - (i) being incorporated into the Assets; and
 - (ii) complying with the requirements of the Contract.

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- (h) RTA will, within 10 Business Days after receipt of a Payment Claim (including the documents and information referred to in paragraphs (b), (c) and (d) above) issue to the Contractor a Payment Schedule. The Payment Schedule must identify the Payment Claim to which it relates. If a Payment Schedule shows an amount less than the claimed amount (excluding payments already made), the Payment Schedule must state why the amount is less.
 - (i) RTA will, within 10 Business Days of issuing the Payment Schedule referred to in paragraph (h) above or the satisfaction of conditions in paragraphs (b), (c), (d) and (e) (whichever is the later), pay to the Contractor the amount specified in the Payment Schedule as payable by RTA.

16.5 Payment on account

- (a) A payment made under the Contract does not prejudice the right of either party to dispute the amount properly due and payable. If the amount determined to be due and payable differs from that paid, the difference between the amount paid and the amount which was properly due and payable will be payable or repayable, as the case may be, as a debt due.
- (b) No payment by RTA will be evidence of the value of work, an admission of liability or that the work has been executed satisfactorily or meets any standard of fitness for purpose which the Contractor has agreed to achieve under the Contract, but will be a payment on account only.

16.6 Correction of Payment Schedule

The Contract Manager may at any time correct any error which has been discovered in a Payment Schedule or in any payment of the Establishment Services Fee, the Maintenance Fee or the Additional Services Fee.

16.7 Interest on overdue monies

Interest at the Default Rate is payable on any monies due under the Contract which remain unpaid after the date upon which they should have been paid. Interest is payable from but excluding the date upon which payment should have been made up to and including the date of payment.

16.8 Goods and Services Tax

- (a) Words defined in the GST law have the same meaning in clauses about GST, unless it is clear that a different meaning is intended.
- (b) Unless otherwise expressly stated in the Contract, all prices, rates or other sums payable or for which payment is to be made to the Contractor under or in accordance with the Contract, will be stated as inclusive of GST.
- (c) No additional amount on account of GST is payable by RTA in respect of any taxable supply made to it under or in connection with the Contract. All amounts payable reflect the GST inclusive market value of the taxable supply.
- (d) Any contract entered into by a party to the Contract with a third party which involves supplies being made, the cost of which will affect the cost of any supplies made under or in connection with the Contract, must include a clause including equivalent terms to paragraph (b) and (c).
- (e) RTA will issue a tax invoice for each taxable supply it makes to the Contractor without request.

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- (f) RTA will issue to the Contractor a recipient created tax invoice (**RCTI**) for each taxable supply (other than an excluded supply) made by the Contractor to RTA under or in connection with the Contract and will issue an adjustment note for any adjustment event. The parties may agree in writing from time to time which supplies are excluded supplies.
 - (g) The Contractor must not issue a tax invoice in respect of any supply it makes to RTA other than for an excluded supply. The Contractor must give RTA a tax invoice for an excluded supply at or before the time the Contractor invoices RTA for that supply.
 - (h) Each party must immediately notify the other party if it ceases to be registered for GST or it ceases to comply with any of the requirements relating to the creation of RCTIs.
 - (i) Each party acknowledges and warrants that at the time of entering into the Contract, it is registered for GST.
 - (j) RTA will not issue a document that will otherwise be an RCTI, on or after the date when the Contractor or the Australian Tax Office notifies RTA that either the RTA or the Contractor does not comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.
 - (k) If the Contract requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (**reimbursable expense**) suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party must be the amount of the reimbursable expense net of input tax credits (if any) to which the other party (or its representative number) is entitled in respect of the reimbursable expense.
 - (l) If RTA makes any supply to the Contractor as a consequence of any matter arising under or in connection with the Contract, the Contractor must pay to RTA on demand in addition to the consideration an amount equal to any GST payable in relation to that supply.
 - (m) If the Contractor does not quote its ABN in its tender or on its Payment Claims or invoices, or the Contractor does not otherwise advise RTA of its ABN relating to the service, RTA will withhold tax from payments in accordance with the *A New Tax System (Pay As You Go) Act 1999* (Cth).

PART D CARE OF WORK, INDEMNITIES AND INSURANCE

17. CARE OF PEOPLE, PROPERTY AND THE ENVIRONMENT

17.1 Contractor to prevent damage

- (a) The Contractor must, in carrying out the Services:
 - (i) prevent personal injury or death, or loss or damage to the Assets and the physical works undertaken by the Contractor as part of the Services (including temporary works) (other than to the extent the loss or damage to the Assets is a proper and necessary consequence of the performance of the Services);
 - (ii) prevent loss or damage to adjoining other properties and the environment;
 - (iii) locate and take care of existing Utilities;

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- (iv) repair or make good loss or damage to the Assets and, the environment arising out of carrying out the Services (other than to the extent the loss or damage to the Assets is a proper and necessary consequence of the performance of the Services); and
 - (v) bear the cost of repairing, or making good, loss or damage to adjoining and other properties and the environment arising out of carrying out the Services.
- (b) If urgent action is required to avoid death, injury, loss or damage and the Contractor does not take necessary action immediately when RTA requests it, RTA may take the action (without relieving the Contractor of its obligations), at the Contractor's cost with RTA's costs being recoverable as a deduction from the Maintenance Fee.
- (c) The Contractor is responsible for the care of and must provide all storage and other protection necessary to preserve the condition of:
- (i) any thing entrusted to the Contractor by RTA for the purpose of carrying out any Services;
 - (ii) any thing brought into the Zone by any person for the purpose of carrying out the Services;
 - (iii) the Assets during the carrying out of the Services; and
 - (iv) all Plant.
- (d) If loss or damage occurs to anything and occurs while the Contractor is responsible for its care under paragraph (a) and (c), the Contractor must at its own cost promptly make good the loss or damage except where the loss or damage is a consequence, without fault or omission on the part of the Contractor, of:
- (i) an Excepted Risk; or
 - (ii) an event described in paragraphs (a) to (c) of the definition of Force Majeure Event.

17.2 Safety and protection of persons and property

- (a) The Contractor must, in carrying out the Services:
- (i) give priority to the safety of motorists, pedestrians and any other persons or vehicles using the Assets or otherwise affected by the Services;
 - (ii) minimise the impact of the Services on motorists, pedestrians and other users of the Assets;
 - (iii) coordinate its activities so as to ensure that no unnecessary interference is caused to members of the public or the operations of RTA or other Authorities with operations on or in the vicinity of any Assets;
 - (iv) provide all things and take all measures necessary to protect people and property; and
 - (v) prevent nuisance and unreasonable noise and disturbance.
- (b) Subject to the powers and directions of any Authority, the Contractor is responsible for the control, direction and protection of all traffic directly affected by the

performance of the Services so as to minimise the effect of the Contractor's operations on the free and safe flow of traffic on the Roads.

- (c) The Contractor will not make any claim against RTA if it suffers any interference, loss or damage due to any act or omission by any Authority other than RTA.

18. INDEMNITIES

18.1 General indemnity

- (a) The Contractor is liable for and indemnifies RTA against:
- (i) loss of, loss of use of, destruction or damage to property of RTA, including the Assets and existing property in or upon which the Contractor is carrying out the Services; and
 - (ii) claims by any person against RTA in respect to personal injury, illness, disease or death or loss of, loss of use of, destruction or damage to any property,
- arising out of or as a consequence of the Contractor carrying out or failing to carry out the Services.
- (b) The Contractor's liability to indemnify RTA is reduced proportionately to the extent that an Excepted Risk contributes to the loss, damage, destruction, death, disease, illness or injury.

18.2 Intellectual Property indemnity

The Contractor must indemnify RTA against any cost, expense, loss or other liability relating to any action, suit, claim, demand or proceeding relating to any infringement or alleged infringement of any Intellectual Property Right, in each case arising out of or as a consequence of the carrying out of or a breach by the Contractor of the Contractor's obligations.

18.3 Environmental indemnity

The Contractor must defend and indemnify RTA against any and all claims, losses, liabilities, damages and expenses whenever made or incurred (and including without limitation, compensation, fines, penalties, loss of income to RTA, reduction in value of any land, investigation costs, clean-up costs and any other actions necessary or desirable pursuant to any Environmental Law and all legal fees and expenses and consultant's fees, including those arising by reason of any of the above or an action against the Contractor under this indemnity) arising out of or in connection with a Hazardous Discharge or Environmental Event which occurs as a result of any act or omission of the Contractor or any of its employees, agents or contractors.

18.4 Product Liability indemnity

The Contractor must indemnify RTA against any liability of RTA to any person arising out of the failure of any product, materials or equipment supplied by the Contractor either directly or through a Subcontractor and irrespective of whether the failure is caused by design, manufacture, construction or installation.

18.5 Survival of indemnities

- (a) The indemnities in the Contract survive the expiry or termination of the Contract.

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- (b) A party may recover a payment under an indemnity in the Contract before it makes payment in respect of which the indemnity is given.

19. INSURANCE

19.1 Insurances to be provided by RTA

- (a) RTA has effected an insurance policy or policies to cover RTA, the Contractor and all Subcontractors employed from time to time in relation to the Services for their respective rights, interests and liabilities with respect to:
 - (i) Contract Works– material damage

liability for loss or damage referred to in clause 18.1(a)(i) including loss or damage to Materials (excluding constructional Plant, motor vehicles, appliances and things (including scaffolding, formwork and the like), clothing, tools and sundry equipment) of the Contractor or any Subcontractor used in or in relation to the carrying out of the Services or entrusted to the Contractor by RTA for that purpose, but not forming or intended to form part of the physical work undertaken by the Contractor as part of the Services; and
 - (ii) third party liability

liabilities to third parties of the type set out in clause 18.1(a)(ii) and subject to the maximum limits of liability set out in Exhibit – insurance terms.
- (b) RTA may in its discretion have other insureds named or included in the policy or policies referred to in paragraph (a), including any other government entity with an interest in the Services or the Zone.
- (c) RTA will maintain Contract works material damage and third party liability insurance policies until expiry of the Contract Term.
- (d) The Contractor must contact RTA's insurance broker (as nominated in writing to the Contractor) before the earlier of:
 - (i) 10 Business Days after the Commencement Date; or
 - (ii) the Contractor commencing any part of the Services,to provide all details reasonably requested for the purposes of the insurances referred to in paragraph (a).
- (e) The Contractor acknowledges that extracts of the policy terms have been exhibited to the Contractor prior to the Commencement Date and are attached as an exhibit. Full copies of the policy terms are available for inspection by arrangement with RTA's insurance broker.
- (f) The insurance cover under paragraph (a) is subject to exclusions. These are set out in the policy terms referred to in paragraph (a).
- (g) The Contractor will be responsible for paying or bearing all excesses in relation to insured matters under any policy referred to in clause paragraph (a) in accordance with the policy terms. The Contractor may effect its own insurance to cover the amount of excess.
- (h) The Contractor acknowledges that:

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- (i) the insurances referred to in clause paragraph (a) have been obtained at RTA's cost; and
 - (ii) the Contractor will not be entitled to payment of any allowance for the cost of obtaining such insurances or any additional insurance cover it considers necessary in relation to the subject matter of that insurance.
- (i) The obtaining of insurance by RTA in accordance with this clause will not reduce, vary or otherwise affect the Contractor's liabilities and obligations pursuant to clause 18, warranties given or otherwise under the Contract or in connection with the Services.
- (j) If there is a claim for significant damage or destruction under the policy of insurance referred to in paragraph (a)(i) (as determined by RTA acting reasonably):
- (i) all settlement amounts must be paid directly to RTA;
 - (ii) RTA may decide to have the physical works the subject of the Services reinstated, or may decide not to proceed with the physical works the subject of the Services, without creating any default by RTA under the Contract; and
 - (iii) the Contractor must reinstate the physical works the subject of the Services if Directed by RTA and except as otherwise provided in the Contract may only make a Claim for payment of reinstatement of the physical works the subject of the Services up to the amount of any insurance settlement.

19.2 Insurances provided by Contractor

- (a) The Contractor must effect and maintain (or cause to be effected and maintained) and pay all premiums for:
- (i) workers compensation and related liability insurance in accordance with the requirements of the *Workers Compensation Act 1987* (NSW), as required by Law and where possible, extended to indemnify RTA against statutory liability to persons employed by the Contractor; and
 - (ii) a professional indemnity policy of insurance to cover liability for breach of professional duty (whether in contract or otherwise) arising out of any negligence, whether in relation to errors in design, documentation, supervision or other professional duties of the Contractor (whether in contract or otherwise) with a limit of indemnity each claim and in the annual aggregate of not less than \$20 million, extended to include cover for any breach of all such professional duties carried out on behalf of the Contractor by Subcontractors, suppliers or consultants; and
 - (iii) public liability or plant and motor vehicle liability insurance covering third party property damage arising from or in connection with the use of registered and unregistered plant and motor vehicles and third party injury or death arising from or in connection with the use of unregistered plant and motor vehicles, with a minimum limit of indemnity of \$20 million each occurrence insuring RTA (for principal's liability only), the Contractor, its employees and all Subcontractors employed from time to time in relation to the Services for their respective rights and interests to cover their liabilities to third parties in connection with the use of each motor vehicle in relation to the Contract.

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- (b) The Contractor must ensure that every Subcontractor, Supplier and Consultant is insured at all times for workers compensation and related liability in accordance with the requirements of the *Workers Compensation Act 1987* (NSW).
 - (c) The Contractor must ensure that each policy required to be effected and maintained by the Contractor or its Subcontractors, Suppliers and Consultants under the Contract or Subcontracts is in effect for the Contract Term, except for the professional indemnity policy which must be maintained for the Contract Term and 7 years after the expiry or termination of the Contract.
 - (d) All policies (other than statutory policies) to be effected by the Contractor must require the insurer to notify RTA at the same time as the insurer receives or gives any notice concerning the policy, and at least 7 days before any proposed cancellation of the policy.
 - (e) If the Contractor fails to comply with paragraph (a), RTA may effect and maintain that insurance and pay the necessary premiums. RTA may recover from the Contractor the cost of the premiums and the RTA's reasonable costs of effecting and maintaining the insurance, as a debt due by the Contractor.

19.3 Other insurance requirements

- (a) Any other insurances required by the Contract Review Group will be taken out by either the Contractor or RTA as directed by the Contract Review Group.
- (b) The effecting or approval of any or all insurance as required under the Contract will not in any way limit the liabilities or obligations of the Contractor or RTA under other provisions of the Contract.
- (c) The Contractor must:
 - (i) ensure that in respect of each insurance required to be effected or taken out as required by clause 19.2 by the Contractor or any Subcontractor, Supplier or Consultant, it:
 - (A) does not do anything which prejudices any insurance;
 - (B) if necessary, rectifies anything which might prejudice any insurance;
 - (C) reinstates an insurance policy if it lapses;
 - (D) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of RTA;
 - (E) immediately notifies RTA of any event which may result in an insurance policy lapsing or being cancelled;
 - (F) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance;
 - (ii) ensure that any insurance required to provide coverage to Subcontractors acknowledges that the same coverage applies to suppliers and consultants;
 - (iii) ensure that any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and

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- (iv) ensure that a notice to the insurer by one insured will be deemed to be a notice by all insured parties.

19.4 Notices from or to the insurer

The Contractor must, as soon as practicable after receiving any notice from the insurer that is:

- (a) a notice of cancellation relevant to the Contract; or
 - (b) any other notice relevant to the Contract under or in relation to the policy,
- inform RTA in writing that the notice has been given or served on the Contractor.

19.5 Cross liabilities

- (a) Where any insurance (other than a statutory insurance policy) under the Contract is effected by the Contractor 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 policy.

19.6 Insurance claim procedures

- (a) The Contractor and RTA must, as relevant to the Contract:
 - (i) provide full particulars of any occurrence likely to give rise to a claim under any insurance policy effected as required by the Contract or of any 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, either party 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 either party under the policies of insurance in respect of any loss, destruction or damage.

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- (c) The Contractor must take such steps as are necessary or appropriate to ensure that a Subcontractor, Supplier or Consultant (as applicable) will, in respect to an event or claim of like nature arising out of or relating to the operations or responsibilities of the Subcontractor, Supplier or Consultant (as applicable) take in relation to RTA similar action to that which the Contractor is required to take under this paragraph (c).

PART E ADMINISTRATION

20. PERSONNEL

20.1 Requirements for Personnel

- (a) The Contractor must engage Personnel who:
 - (i) are appropriately qualified, competent and experienced in the provision of the type of services required under the Contract; and
 - (ii) hold and maintain all necessary licences and registrations (if any).
- (b) The Contractor must not permit a person appointed in respect of the Contract to undertake any other assignment which would conflict with the Contractor's obligations under the Contract or RTA's interests generally.
- (c) The Contractor's responsibility for the performance of the Service and for the performance of its Personnel is not altered in any way by this clause 20 or by anything done in accordance with this clause 20.
- (d) The Contractor must replace any member of its team involved in carrying out the Services who in the reasonable opinion of RTA does not fulfil the criteria set out in paragraph (a).

20.2 Key Personnel

The Contractor must:

- (a) employ the Key Personnel in the jobs specified in Schedule 3;
- (b) ensure that its Subcontractors employ the Key Personnel in the jobs specified in Schedule 3;
- (c) if no name has been specified for a particular position, promptly employ, or ensure that its Subcontractors promptly employ (as applicable), in that position a person:
 - (i) possessing at least the experience, ability and expertise required in relation to the relevant job, as set out in the "Position Description Attributes" column of the table set out in Schedule 3;
 - (ii) approved by the Contract Manager (such approval not to be unreasonably withheld);
- (d) subject to paragraph (e), not replace, or permit its Subcontractors to replace, any Key Person without the prior written approval of the Contract Manager; and
- (e) if any Key Person dies, becomes seriously ill, or resigns from the employment of the Contractor or a Subcontractor (as the case may be), replace, or ensure that the relevant Subcontractor replaces, him or her with a person:

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- (i) possessing at least the experience, ability and expertise required in relation to the relevant job, as set out in the "Position Description Attributes" column of the table set out in Schedule 3; and
 - (ii) approved by the Contract Manager, which approval must not be unreasonably withheld, (except in the case of the Contractor's Authorised Person, in which case RTA may withhold its approval in its absolute discretion).

21. PERFORMANCE BOND

21.1 Security

- (a) The Contractor must upon execution of the Contract provide Security of \$5 million in the form of one or more Performance Bonds.
- (b) The Contractor bears the costs (including stamp duty or other taxes) of and incidental to providing the Security.

21.2 Availability of Security

- (a) RTA may have recourse to any Security provided by the Contractor under the Contract:
 - (i) to recover any debt due to RTA in terms of the Contract;
 - (ii) whenever RTA reasonably considers that it may be entitled to payment of moneys by the Contractor under or in consequence of the Contract;
 - (iii) whenever RTA is entitled to reimbursement of any moneys paid to others on behalf of the Contractor under the Contract; and
 - (iv) upon termination of the Contract for default by the Contractor.
- (b) At any time, RTA may only recover under any Performance Bond an amount equal to the amount to which it is entitled at that time or, where that amount is unknown, an amount equal to RTA's reasonable estimate at that time of the amount to which it is entitled.

22. ASSISTANCE BY CONTRACTOR

22.1 RTA's legal and public obligations

The Contractor must provide all reasonable assistance to RTA and its agents in seeking to meet its legal and public obligations.

22.2 Public and Ministerial inquiries

The Contractor must provide all reasonable advice, assistance and documentation to enable RTA to respond to any governmental inquiry.

23. CONFIDENTIALITY

23.1 Confidentiality

- (a) Except to enable the efficient performance of the Services, the Contractor will not, and will ensure that any persons employed by it do not:
 - (i) disclose to any person any information; or
 - (ii) publish any photographs, texts, documents, articles, advertisements or any other information,

relating to the Contract, the Services or the Zone without obtaining RTA's prior written consent.
- (b) If requested by RTA, the Contractor will execute a confidentiality agreement on terms reasonably required by RTA, in relation to any information obtained for the purposes of the Contract or the Services.
- (c) This clause 23.1 does not apply to any information that:
 - (i) is in or enters the public domain, except through disclosure contrary to the Contract; or
 - (ii) was made available to the Contractor by a person who is or was not under any obligation of confidence in relation to that information.
- (d) The obligations of confidentiality set out in this clause 23.1 do not apply to the extent that the Contractor is required by any applicable Law, the requirement of any relevant Authority or the rules of any stock exchange to disclose any information, provided the Contractor:
 - (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) disclose only that portion of information which it is legally required to disclose.
- (e) RTA may make information concerning the Contractor available to other NSW government authorities and ministries, including information provided by the Contractor to RTA and information relating to the Contractor's performance under the Contract.
- (f) The Contractor:
 - (i) acknowledges that RTA will disclose information on the Contract under section 15A(2) of the *Freedom of Information Act 1989* (NSW);
 - (ii) must provide RTA with details of any Related Body Corporate or any other private sector entity in which the Contractor has an interest that will be involved in performing any of the Contractor's obligations under the Contract or that will receive a benefit under the Contract; and
 - (iii) agrees that the obligation under paragraph (f)(ii) is a continuing obligation under the Contract.

PART F WARRANTIES

24. WARRANTIES

24.1 General warranties

The Contractor represents and warrants that:

- (a) **(status)** it is a company limited by shares under the *Corporations Act 2001* (Cth);
- (b) **(power)** it has full legal capacity and power:
 - (i) to own its property and assets and to carry on its business; and
 - (ii) to enter into the Contract and to carry out the transactions that it contemplates;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into the Contract and to carry out the transactions that it contemplates;
- (d) **(authorisations)** it holds each authorisation that is necessary or desirable:
 - (i) to execute the Contract and to carry out the transactions that it contemplates; and
 - (ii) to ensure that the Contract is legal, valid, binding and admissible in evidence,and it is complying with any conditions to which any of these authorisations is subject;
- (e) **(document effective)** the Contract constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and Laws affecting creditors' rights generally);
- (f) **(no contravention)** neither its execution of the Contract, nor the carrying out by it of the transactions that it contemplates, does or will:
 - (i) contravene any Law to which it or any of its property is subject or any order of any Authority that is binding on it or any of its property;
 - (ii) contravene any authorisation;
 - (iii) contravene any undertaking or instrument binding on it or any of its property; or
 - (iv) contravenes its constitution; and
- (g) **(no trust)** it is not entering into the Contract as trustee of any trust or settlement.

24.2 Contractor's warranties

The Contractor represents and warrants that:

- (a) it has the skill, competence, experience and capability to perform the Services;
- (b) it has examined and properly and carefully checked:

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- (i) the Specifications;
 - (ii) all other documents and information made available to the Contractor prior to the Commencement Date;
 - (iii) all information relevant to the risks, contingencies and other circumstances having an effect on the Contractor's offer and which was obtainable by the making of reasonable enquiries,

and satisfied itself that:

- (iv) the Specifications adequately and appropriately describes the Services in sufficient detail to enable the Contractor to perform its obligations; and
- (v) the Establishment Services Fee and the Maintenance Fee cover the cost of complying with its obligations under the Contract and of all matters and things necessary for the due and proper performance of the Contract,

and the Contractor acknowledges and agrees that the failure by it to do all or any of the things listed above does not relieve the Contractor from its liability to perform the Contract in accordance with the terms of the Contract;

- (c) it has inspected the Assets, the Zone and the surrounding conditions and accepts the condition of those of the Assets and has allowed for the fact that the Assets are constantly used by the public for pedestrian and vehicular traffic;
- (d) it has examined and properly and carefully checked the documents comprising the Contract and satisfied itself that:
 - (i) the Contract adequately and appropriately describes the Services in sufficient detail to enable the Contractor to fulfil its obligations under the Contract; and
 - (ii) the Services can be carried out so that the Contractor will meet the Performance Criteria; and
- (e) all data collected by or on behalf of the Contractor and delivered to RTA for the purposes of the Contract is accurate and complies with the requirements of the Specifications.

24.3 Non-merger of warranties

- (a) The warranties made by the Contractor in this clause 24 with respect to the Specifications are repeated whenever a Change is made to the Specifications.
- (b) The warranties contained in clause 24 survive and do not merge irrespective of any change or amendment to the Contract or its component documents.

24.4 Collusive arrangements

The Contractor warrants and represents to RTA and agrees with RTA that it is a fundamental condition of the Contract that:

- (a) the Contractor has no knowledge of the tender price of any other tenderer for the Contract;
- (b) except as disclosed in its tender, and by agreement in writing with RTA, it has not entered into any contract, arrangement or understanding to pay or allow any money directly or indirectly to a trade or industry association or to or on behalf of

any other tenderer in relation to its tender or the Contract, nor paid or allowed any money on that account, nor will it pay or allow any money on that account; and

- (c) if the Contractor pays to a trade association, industry association or another tenderer or pays to anyone on behalf of a trade association, industry association or another tenderer any money in breach of paragraph (b), the Contractor must immediately give RTA written notice of such an event and such money is deemed to be held on trust for and becomes immediately payable to RTA. The Contractor must use its best endeavours to recover the money and pay it to RTA. If it fails to do so within the time specified in a notice by RTA to the Contractor or otherwise (in the absence of a notice) within a reasonable time, RTA will be entitled to withhold, deduct or set off from any payment due to the Contractor on any account an equivalent sum or make a demand against the Security provided under clause 21.

24.5 Reliance

The Contractor acknowledges that RTA has executed the Contract and agreed to take part in the transactions that it contemplates in reliance on the representations and warranties that are made or repeated in this clause 24.

24.6 Conflict of interest

The Contractor must:

- (a) disclose the full particulars of any actual, potential or possible conflict of interest which arises or may arise in connection with the Contract, whether that conflict concerns the Contractor or any person employed or retained by the Contractor for or in connection with the provision of the Services;
- (b) not allow itself to be placed in a position of conflict of interest or duty in regard to any of its rights or obligations under the Contract (without the prior consent of RTA); and
- (c) ensure that the Contractor's Authorised Person and its other officers, agents and employees also comply with the requirements of paragraphs (a) and (b) when acting in connection with the Contract.

PART G INTELLECTUAL PROPERTY

25. INTELLECTUAL PROPERTY

25.1 Licence to RTA

The Contractor grants RTA an irrevocable, non-exclusive, royalty free licence to use for any purpose the Intellectual Property Rights created in any document, matter or thing which was created or written in the course of the Contractor's performance of the Contract.

PART H LIABILITY

26. LIABILITY

26.1 Limitation of liability

- (a) Subject to paragraphs (b) and (c), the Contractor's aggregate liability to RTA for all liability arising out of, or in any way in connection with the Contract, whether

arising in contract, in tort (including negligence), in equity, by operation of Law or otherwise, is limited to an amount equal to the Maintenance Fee payable for the Contract Term.

- (b) Neither party is liable to the other with respect to indirect or consequential loss or damage, loss of revenue, loss of profit or anticipated profit, loss of patronage or loss arising from business interruption arising out of, or in any way in connection with the Contract, whether arising in contract, in tort (including negligence), in equity, by operation of Law or otherwise.
- (c) Paragraphs (a) and (b) will not limit the Contractor's liability:
 - (i) in respect of liability which:
 - (A) cannot be limited at Law;
 - (B) arising under the indemnities in clause 18;
 - (C) is due to the Contractor's wilful misconduct, fraud or criminal conduct; or
 - (ii) where (ignoring the application of paragraphs (a) and (b)) the event or events giving rise to the liability occur in circumstances in which any policy of insurance required to be effected or maintained by RTA or the Contractor in accordance with the Contract will respond to a claim for indemnification in respect of the loss or liability arising from that event or events or would have responded had the Contractor:
 - (A) effected the insurances required to be effected or maintained by the Contractor in accordance with the Contract;
 - (B) diligently pursued a claim on the insurance; or
 - (C) complied with the terms of the policy of insurance.

26.2 Civil Liability Act

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 the Contract regardless of how such rights, obligations or liabilities are sought to be enforced.

PART I SUSPENSION AND FORCE MAJEURE

27. SUSPENSION

27.1 Contract Manager's power to suspend Services

- (a) Where suspension of all or part of the Services becomes necessary:
 - (i) because of an act, omission or default of:
 - (A) RTA or an employee of RTA;
 - (B) the Contractor or an employee or agent of the Contractor; or
 - (C) a Subcontractor or an employee or agent of that Subcontractor;
- or:

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- (ii) for the safety or protection of any person or property,
the Contract Manager may Direct the Contractor to suspend part or all of the Services until such time as the Contract Manager thinks fit.
 - (b) If the Contract Manager exercises the right in paragraph (a), the Contractor must:
 - (i) immediately cease performance of all or part of the Services as Directed by the Contract Manager;
 - (ii) if RTA requires, clean up Plant and Materials in the area of the Zone; and
 - (iii) comply with any other RTA Direction.
 - (c) Except as provided by paragraph (d), nothing in this clause limits or affects the Contractor's liability and obligations under any Environmental Law or for the protection and safety of any person or property which may be affected by the Contractor's acts or omissions or acts or omissions for which the Contractor is responsible.
 - (d) The Contractor is not liable for any failure to carry out any activity suspended under this clause during the suspension period nominated by the Contract Manager.
 - (e) The Contractor must resume carrying out the Services when Directed to do so by the Contract Manager.
 - (f) If the need for suspension arises from RTA's own act or omission, then provided that the Contractor has taken all reasonable steps to minimise the costs, the Contractor will be entitled to, as an addition to the Maintenance Fee, its reasonable and direct site and off-site costs of the suspension, unavoidably incurred.
 - (g) The Contractor has no other remedies in connection with the suspension.

28. FORCE MAJEURE

28.1 Notification

- (a) If the Affected Party alleges or wishes to claim that a Force Majeure Event has occurred it must promptly give the other party notice of the Force Majeure Event as soon as the Affected Party becomes aware of the occurrence of the Force Majeure Event.
- (b) As soon as reasonably practicable after giving notice under paragraph (a), if the Affected Party is the Contractor, the Contractor must give RTA (progressively if necessary) full particulars of relevant matters pertaining to the Force Majeure Event including:
 - (i) the nature of the Force Majeure Event;
 - (ii) the obligations affected;
 - (iii) the action that the Contractor has taken and/or proposes to take to remedy, overcome or mitigate the situation;
 - (iv) an estimate of the time during which the Contractor will be unable to carry out the affected obligations due to the Force Majeure Event;

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- (v) an estimate of the costs that the Contractor will incur to remedy, overcome or mitigate the situation; and
 - (vi) all insurance moneys to which the Contractor believes it will be entitled in making good damage caused by the Force Majeure Event.
- (c) After giving notice under paragraph (a) and, if the Affected Party is the Contractor, paragraph (b), the Contractor must continue to keep the Contract Manager informed of all relevant information pertaining to the Force Majeure Event.

28.2 Meeting

The parties must meet within 5 Business Days of delivery of a notice under clause 28.1(a) to determine:

- (a) whether a Force Majeure Event has occurred;
- (b) the extent to which the Force Majeure Event is covered by insurance effected under this Contract; and
- (c) the estimated duration of the Force Majeure Event.

28.3 Suspension of obligations

- (a) If a Force Majeure Event occurs and the Affected Party gives notice under clause 28.1(a), then:
 - (i) the Affected Party's obligations under the Contract (other than this clause 28.3) which are affected by the Force Majeure Event will be suspended, but only to the extent and for so long as the Force Majeure Event prevents or delays the Affected Party from performing those obligations; and
 - (ii) no default notice may be given under clause 34 in respect of a breach of such obligations during the period of suspension.
- (b) Upon the Affected Party becoming able to recommence performing its obligations which were suspended under paragraph (a)(i), subject to a reasonable period in order to remobilise, the Affected Party must recommence the performance of its obligations.

28.4 Payments

Nothing in this clause 28 will oblige RTA to pay the Establishment Services Fee, the Maintenance Fee or Additional Services Fee with respect to those Services which are not performed due to a Force Majeure Event.

28.5 Best endeavours to mitigate effect

During the period of suspension under clause 28.3, the Affected Party must use its best endeavours to overcome or mitigate the effects of the Force Majeure Event. This may include incurring reasonable expenditure, rescheduling resources or implementing appropriate temporary measures.

28.6 Alternative arrangements

During the period of suspension under clause 28.3, RTA may make alternative arrangements for the performance of any suspended obligations of the Contractor (without incurring any liability to the Contractor).

28.7 Cessation of Force Majeure Event

The Affected Party must notify the other party immediately after it ceases to be prevented or delayed from performing its obligations as a result of a Force Majeure Event.

28.8 No financial relief to the Contractor

RTA will not be obliged to provide any financial relief to the Contractor during the period of suspension, to the extent of the suspension.

28.9 No compensation to RTA

The Contractor will not be liable to compensate RTA for any costs or losses which RTA incurs during the period of suspension in respect of the suspended obligations.

PART J ISSUE RESOLUTION

29. NOTIFICATION OF ISSUES

29.1 Notification

- (a) The Contractor may dispute an assessment, determination or Direction of RTA, by giving notice to RTA of an Issue within 28 days of the assessment, determination or Direction.
- (b) Either party may give notice to the other of an Issue (excluding an Issue referred to in paragraph (a) but including a claim by RTA) about the meaning or effect of the Contract, or about any matter arising under, out of or in any way connected with the Contract, within 28 days of becoming aware of the Issue.

29.2 Issue resolution process mandatory

The parties must follow the Issue resolution procedure in clauses 29, 30 and 31 before either party commences proceedings or takes similar action.

29.3 Late notification of Issue

If RTA or the Contractor (as applicable) gives notice of an Issue but not within the time provided by clause 29 and it is resolved in favour of the party giving notice of the Issue, that party will not be entitled to interest on any amount involved in the Issue for the period before notice of the Issue was given.

29.4 RTA's liability

- (a) RTA is not liable to pay damages (whether in contract, for negligence or otherwise) for making an incorrect assessment, determination or instruction. However, the Contractor will be entitled to the amount determined by an agreed Alternative Issue Resolution Procedure or a court.
- (b) RTA's assessments, determinations or instructions may, subject to the Contract, be reviewed and revised in any Alternative Issue Resolution Procedure or court proceedings which might follow this Issue resolution procedure.

29.5 Urgent relief

This Issue resolution procedure does not prevent a party from seeking an urgent declaration or injunction from a court.

30. ISSUE RESOLUTION PROCESS

30.1 Escalated Issues resolution process

If a Party gives notice of an Issue under clause 29.1, the parties must follow the following process:

- (a) the Contractor's Authorised Person and the Contract Manager must meet within 5 Business Days of notice of the Issue;
- (b) if the Contractor's Authorised Person and the Contract Manager cannot resolve the Issue within 10 Business Day of notice of the Issue, the Contract Review Group must seek to resolve the Issue at its next meeting.

30.2 Alternative Issue Resolution Procedure

- (a) The parties may agree at any time after notice of an Issue is given under clause 29.1 to engage in an Alternative Issue Resolution Procedure in respect of the Issue.
- (b) An agreement to engage in an Alternative Issue Resolution Procedure must specify:
 - (i) whether the decision, finding, determination, result or agreed outcome of the Alternative Issue Resolution Procedure will be final and binding on the parties within any agreed monetary limit;
 - (ii) that the Alternative Issue Resolution Procedure may, by agreement between the parties, be varied or extended from time to time to include fewer or additional processes; or
 - (iii) that if the Alternative Issue Resolution Procedure has not produced a decision, finding, result or agreed outcome of the Issue in question within a specified period of time, either party may commence court proceedings in respect of the Issue.
- (c) If the parties have agreed that the Alternative Issue Resolution Procedure is to be final and binding on the parties to some extent and that procedure produces a decision, determination, result or agreed outcome of the Issue, neither party may commence, conduct or continue court proceedings in respect of that Issue to that extent.
- (d) If the Alternative Issue Resolution Procedure engaged by the parties under paragraph (b) uses Expert Determination then unless otherwise agreed, clause 31 will apply to the Expert Determination.
- (e) If the parties have not agreed to engage in an Alternative Issue Resolution Procedure under paragraph (a) within 5 Business Days after the Contract Review Group has failed to resolve the Issue, then the parties will be deemed to have agreed to engage in Expert Determination under clause 31.

30.3 Parties to perform

During the period in which the Issue is being resolved under clauses 29 to 31 the parties must continue to perform their obligations under the Contract.

31. EXPERT DETERMINATION

31.1 Appointment of Expert

- (a) If an Issue is to be referred to Expert Determination under clause 30, the parties must endeavour to agree on the Expert to be engaged. If they cannot agree within 20 Business Days of agreement under clause 30.2(a) or deemed agreement under clause 30.2(e), the Chair of the NSW Chapter of the Institute of Arbitrators and Mediators Australia will nominate the Expert (on the application of either party). The Chair of the NSW Chapter of the Institute of Arbitrators and Mediators Australia must not nominate:
 - (i) an employee of RTA or the Contractor;
 - (ii) a person who has been connected with the Services or the Contract; or
 - (iii) a person who RTA and the Contractor have not been able to agree on.
- (b) Where the person to be the Expert has been agreed or nominated, RTA on behalf of both parties must engage the Expert by letter of engagement (copied to the Contractor) setting out:
 - (i) the Issue referred to the Expert for determination;
 - (ii) the Expert's fees;
 - (iii) the procedure for Expert Determination in Schedule 5; and
 - (iv) any other matters which are relevant to the engagement.
- (c) If the person nominated as Expert is no longer able to fulfil the role of Expert, paragraphs (a) and (b) will apply to the replacement Expert.

31.2 Procedure

- (a) RTA and the Contractor must share equally the fees and out-of-pocket expenses of the Expert for the determination and bear their own costs.
- (b) The parties are bound by the procedure for Expert Determination as set out in Schedule 5.
- (c) In answer to any Issue referred to the Expert by a party, the other party may raise any defence, set-off or cross claim.

31.3 Determination

- (a) If the Expert determines that one party must pay the other an aggregated amount exceeding \$500,000 or the Expert's determination involves a finding which does not involve paying a sum of money, then either party may commence litigation in respect of the determination, but only within 56 days after receiving the determination.
- (b) Unless a party has a right to commence litigation under paragraph (a):
 - (i) the parties must treat each determination of the Expert as final and binding and give effect to it; and
 - (ii) if the Expert determines that one party owes the other money, that party must pay the money within 28 days.

32. CLAIM RESOLUTION

32.1 Annual elimination of retrospective claims

- (a) The Contractor must provide to RTA, within 60 Business Days of the end of each Contract Year:
 - (i) all claims for payment of money under or in respect of the Contract (whether under clause 16.4 or otherwise); and
 - (ii) all information required to be provided under clause 8.5.
- (b) RTA may, within 30 Business Days of receipt of all claims, request further information from the Contractor required by RTA to properly assess the claims.
- (c) RTA must, within:
 - (i) 60 Business Days after receipt of the Contractor's claim and the information referred to in paragraph (a); or
 - (ii) 20 Business Days after the receipt of all information requested under paragraph (b),whichever is the later, assess any claim referred to in paragraph (a)(i) in accordance with the requirements of the Contract (including, where relevant in accordance with clause 16) and determine the amount (if any) RTA will pay to the Contractor.
- (d) Following completion of the procedures set out in paragraph (c), any further claim under the Contract by the Contractor in relation to the relevant Contract Year will be time barred and the Contractor will not be entitled to make any such claim against RTA.
- (e) If the Contractor does not agree with RTA's assessment under paragraph (b), the parties agree that any such disagreement may be resolved in accordance with the Issue resolution procedure set out in clauses 29 to 31.

PART K STEP-IN AND TERMINATION

33. RTA STEP-IN

33.1 Notice to remedy breach

If the Contractor breaches an obligation under the Contract, RTA may in writing Direct the Contractor in writing to remedy the breach and specify the time and date by which the breach must be remedied, if the breach is capable of being remedied.

33.2 RTA step-in

If:

- (a) the Contractor fails to comply with a notice served under clause 33.1; or
- (b) RTA reasonably believes that action must be taken to discharge its duty as an Authority,

RTA may remedy (or procure the remedy) of the default or perform (or procure performance of) such action.

33.3 Suspension of Contractor's obligations

If RTA exercises its rights under clause 33.2, the Contractor's obligations under the Contract are suspended to the extent and for such period as the Contractor is prevented from performing such obligations by RTA exercising its step-in right.

33.4 Contractor must assist RTA

If RTA exercises its step-in rights under clause 33.2, the Contractor must assist RTA to ensure RTA is able to exercise its step-in rights effectively and expeditiously, including giving RTA or its nominees access to the Contractor's Plant and/or other documents and materials produced by the Contractor.

33.5 Step-in rights cease

(a) If RTA exercises its step-in rights, RTA may, after giving reasonable prior notice to the Contractor, cease to exercise those rights.

(b) RTA 's step-in rights will cease once the relevant breach has been remedied.

33.6 RTA not required to remedy breach

The Contractor acknowledges and agrees that RTA is not obliged to remedy any breach, or to overcome or mitigate any risk or risk consequences, in respect of which RTA exercises its step-in right.

33.7 Contractor to compensate RTA

The Contractor must pay to RTA as a debt due and payable any costs expenses or other losses incurred by RTA arising out of or in connection with the exercise of its step-in rights under this clause 33.

33.8 No payments by RTA

RTA will have no liability to the Contractor arising out of or in connection with the exercise by RTA of its step-in rights under this clause 33.

33.9 RTA may suspend Contractor's authorisation

If RTA issues a notice to the Contractor under clause 33.1, RTA may immediately by written notice to the Contractor cancel any authorisation granted by RTA to the Contractor other than an authorisation required to enable the Contractor to remedy the breach.

33.10 No prejudice to other rights

Nothing in this clause 33 prejudices RTA's other rights under the Contract with respect to the Contractor's default.

34. TERMINATION FOR CONTRACTOR DEFAULT OR INSOLVENCY

34.1 Termination for Contractor's Default

(a) RTA may terminate the Contractor's employment under the Contract for Contractor's Default or Contractor's Insolvency by giving notice, as set out in this clause 34.

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- (b) In the case of Contractor's Default, RTA must first give notice to the Contractor that it has 7 Business Days after the notice is given to the Contractor to remedy the Contractor's Default.
 - (c) If the Contractor fails to give RTA a notice containing clear evidence that it has remedied a Contractor's Default, or fails to propose steps reasonably acceptable to RTA to remedy a Contractor's Default, RTA may give the Contractor a notice terminating its employment under the Contract.
 - (d) Nothing in this clause 34 affects or negates RTA's common law rights to terminate or for damages.

34.2 Termination for Contractor's Insolvency

In the case of Contractor's Insolvency, RTA may give the Contractor a notice terminating its employment under the Contract.

34.3 Consequences of termination

If RTA terminates the Contractor's employment under this clause 34, it may at its sole discretion employ others to complete the Services and the following will then apply:

- (a) The Contractor must leave the Zone as soon as reasonably practicable and remove all Materials it has brought onto the Zone, but must leave any Materials required by RTA to have the Services completed.
- (b) The Contractor must assign to RTA the Contractor's rights and benefits in all its contracts concerning the Services, warranties and performance bonds, bank guarantees, insurance bonds, other security of a similar nature or purpose and retention held by the Contractor under these contracts, with effect from the date of termination of its employment under the Contract.
- (c) The Contractor must consent to a novation to RTA or its nominees of all Subcontracts and its other contracts concerning the Services, as required by RTA and must procure at the time of entering into each Subcontract and other contracts, the consent in writing of all of its Subcontractors, suppliers and consultants to the novation. RTA may at any time make payments and may deduct, withhold or set off any amount to be paid under the novated contracts from amounts otherwise payable to the Contractor or from any security given on the Contractor's behalf.
- (d) The Contractor must do everything and sign all documents necessary to give effect to this clause 34, and it irrevocably appoints RTA as its attorney to do this in its name if it fails to do so.
- (e) If the cost of appointing others to complete the Services exceeds the amount that would have been paid to the Contractor to complete the Services, then the difference will be a debt due by the Contractor to RTA.
- (f) RTA may make provisional assessments of the amounts payable to RTA under paragraph (e) and may demand them under the Security.

35. TERMINATION FOR CONVENIENCE

35.1 RTA may terminate Contract for convenience

RTA may terminate the Contract, by giving notice with effect from the date stated in the notice, for its convenience and without the need to give reasons.

35.2 Contractor's obligations

- (a) The Contractor must comply with any Directions of RTA to wind down and stop work.
- (b) The Contractor must leave the Zone by the date stated in the termination notice and remove any temporary work it had brought to the Zone for completing the Services, except for those items identified in the termination notice as to be retained on the Zone.

35.3 Payments on termination for convenience

- (a) After termination under clause 35.1, subject to its rights under the Contract, including any right of set-off, RTA must pay the Contractor:
 - (i) the value completed for all Services carried out (as determined under clause 16.4) to the date the termination notice takes effect, after taking into account previous payments and any deductions, retentions or set-offs;
 - (ii) the cost of Materials reasonably ordered by the Contractor for the Services which it is legally liable to accept, but only if on payment these unfixed Materials become the property of RTA, free of any Encumbrances;
 - (iii) the reasonable, direct costs of removal of any temporary work and other things from the Zone incurred by the Contractor, but only if the Contractor complies with a strict duty to mitigate costs;
 - (iv) an amount of 2% of the unpaid portion (after taking into account the amount payable under paragraph (a)(i)) of the Maintenance Fee, if the Contract is terminated after 31 October 2008; and
 - (v) costs reasonably incurred by the Contractor in the expectation of completing the Services and not included in any other payment by RTA.
- (b) RTA must return the Security, subject to its rights under the Contract.
- (c) The payments referred to in paragraph (a) are in full compensation for termination under this clause 35, and the Contractor has no claim for damages or other entitlement whether under the Contract or otherwise.

36. TERMINATION FOR RTA DEFAULT

36.1 Contractor may terminate

- (a) If RTA fails to pay the Contractor any amount in accordance with the Contract which is not in Issue, or commits any fundamental breach of the Contract, then the Contractor may give notice requiring RTA to remedy the default within 28 days after receiving the notice.
- (b) If RTA fails to remedy the default, or fails to propose steps reasonably acceptable to the Contractor to do so, then the Contractor may issue a notice terminating the Contract. Clause 35.3 will then apply and RTA must pay the Contractor the applicable amounts referred to in clause 35.3(a) as its sole remedy and in full compensation for RTA's breach.

36.2 Sole remedy

The Contractor has no other right to terminate the Contract, under the common law or otherwise.

37. TERMINATION FOR CONTINUED FORCE MAJEURE

37.1 RTA may terminate

If the Contractor is rendered wholly or partially unable to carry out its major obligations under the Contract by a Force Majeure Event for a period of more than 60 Business Days, the Contract Review Group will meet to identify any alternate viable means to provide the suspended Services and failing an alternate means being agreed within 20 Business Days of the end of the period referred to above, RTA may terminate the Contract immediately by written notice.

PART L GENERAL

38. NOTICES

38.1 How to give a notice

A notice, consent or other communication under this deed is only effective if it is:

- (a) in writing, signed by or on behalf of the party giving it;
- (b) addressed to the party to whom it is to be given; and
- (c) either:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that party's address; or
 - (ii) sent by fax to that party's fax number and the machine from which it is sent produces a report that states that it was sent in full.

38.2 When a notice is given

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is delivered or sent by fax:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - (ii) 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
- (b) if it is sent by mail:
 - (i) within Australia – 3 Business Days after posting; or
 - (ii) to or from a place outside Australia – 7 Business Days after posting.
- (c) if it is delivered or sent by email:

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- (i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - (ii) 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.

38.3 Address for notices

Each party's address and fax number are as set out below or as the party notifies the other Party.

RTA

Address: RTA Sydney Project Services
Level 9
27 – 31 Argyle Street,
Parramatta NSW 2150

Fax number: (02) 8849-2823
Attention: Contract Manager

Service Provider

Address: 1 Unwin Street
Rosehill NSW 2142

Fax number: (02) 9897 4311
Attention: Contractor's Authorised Person

39. AMENDMENT

The Contract may only be amended, supplemented, replaced or novated by another document signed by each of the parties.

40. ASSIGNMENT

Neither party may assign or subcontract the performance of any rights or obligations under the Contract without the prior written consent of the other (which must not be unreasonably withheld or delayed).

41. GENERAL

41.1 Governing law

The Contract is governed by the laws of New South Wales and both parties submit irrevocably to the non-exclusive jurisdiction of the courts of New South Wales.

41.2 Survival of terms

The invalidity or unenforceability of any part or provision of the Contract does not affect the enforceability of any other part or provision of the Contract and the invalid or unenforceable part is severable.

41.3 Relationship of parties

- (a) Except as expressly provided in this clause, the Contract 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 the parties, or confer a right in favour of either of the parties to enter into any commitment on behalf of the other or otherwise to act as its agent.
- (b) Each of the parties is an independent entity, and for the purposes of the Contract, the officers, employees, agents or subcontractors of each party will not be deemed to be officers, agents or subcontractors of the other, unless deemed otherwise by Law and without limiting the generality of this clause each party will pay all costs associated with its own offices and employees including any fringe benefits tax liability attaching to the grant of any fringe benefit to such officers and employees in respect of their appointment.

41.4 Liability for expenses, duty, taxes and other imposts

The Contractor must pay any duty, taxes or other imposts in respect of the Contract or payable in connection with the performance of the Services.

41.5 Attorneys

Each person who executes the Contract on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

41.6 Giving effect to the Contract

RTA and the Contractor must do anything (including execute any document) and must ensure that its employees and agents do anything (including execute any document) that the other party may reasonably require to give full effect to the Contract.

41.7 Waiver of rights

Waiver or relaxation partly or wholly of any of the terms of the Contract will:

- (a) be effective only if in writing and signed by each party;
- (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 the Contract.

41.8 Operation of the Contract

The Contract applies to work under the Contract, whether the work under the Contract is undertaken before, on or after the Commencement Date.

41.9 Consents

Subject to any express provision in the Contract to the contrary, a party may conditionally or unconditionally give or withhold any consent to be given under the Contract.

41.10 Inconsistency with other documents

- (a) The various documents comprising the Contract from time to time are intended to be complementary and what is required by or contained in one of them is as binding as if required or contained in all of them.

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- (b) If the Contractor discovers any inconsistency, ambiguity, omission or discrepancy between or within the Specification and any other document prepared for the purpose of executing the Services, it must notify the Contract Manager in writing of the inconsistency, ambiguity, omission or discrepancy.
 - (c) If an inconsistency, ambiguity, omission or discrepancy is discovered and brought to the attention of the Contract Manager, or is discovered by the Contract Manager, the Contract Manager:
 - (i) must inform the Contractor as to the interpretation the Contract Manager believes should be followed by the parties;
 - (ii) may, if the inconsistency, ambiguity, omission or discrepancy can be resolved by altering or amending any part of the Contract, either make the required alteration or amendment or Direct that the alteration or amendment be made in accordance with the relevant provisions of the Contract.
 - (d) Where the inconsistency, ambiguity, omission or discrepancy is not resolved by the application of the principle in paragraph (c), the following order of precedence applies:
 - (i) the General Conditions;
 - (ii) Work Terms; and
 - (iii) Specifications.

41.11 Counterparts

The Contract may consist of a number of counterparts and if so the counterparts taken together constitute one and the same document.

42. INTERPRETATION

42.1 Definitions

In the Contract:

Aboriginal Participation Plan means the plan that complies with the requirement of clause 11.11.

Additional Services means those services which do not form part of the services specified in RTA QA Specification M1 PSMC and RTA QA Specification M2 PSMC and which the Contractor must carry out in accordance with clause 10.

Additional Services Fee is the amount determined by RTA under clause 10 as payable to the Contractor for carrying out Additional Services.

Affected Party means a party affected, or which alleges it is affected, by a Force Majeure Event.

Alternative Issue Resolution Procedure means a procedure for the resolution on an Issue, apart from court proceedings, to be engaged by agreement of the parties under clause 30. Such procedures may include, without limitation:

- (a) Expert Determination;
- (b) mediation; and

(c) arbitration under the *Commercial Arbitration Act 1984* (NSW).

Annual Treatment Program means the program of major pavement treatments planned for a Contract Year, described in section 3.1.9 of RTA QA Specification M2 PSMC.

Approved means unconditionally approved by RTA and **Approval** has a corresponding meaning.

Assets means the physical assets of the PSMC Network within the Zone as listed in Annexure A to RTA QA Specification M4 PSMC.

Authority means any government or government department, local government, council, government or statutory authority, administrative or judicial body or tribunal, agency, minister, statutory corporation or instrumentality or any person (whether autonomous or not) who is charged with the administration of a law which has a right to give any consent or impose any requirements in respect to the Services.

Business Day means a day which is not a Saturday, Sunday or public holiday in New South Wales or 27, 28, 29, 30 or 31 December.

Business Outcomes means the business outcomes described in section 2.5.3 of RTA QA Specification M1 PSMC.

Change means a change to the Services including additions, increases, omissions and deductions to and from the Services, including a change to:

- (a) the Performance Criteria; and
- (b) the Maintenance Intervention Requirements and Maintenance Rectification Requirements,

but does not include Directions contemplated by clauses 2.1(c), 8.4(a) or 8.5(a).

Change in Law means (if it takes effect after the Commencement Date) a change in an existing Law or a new Law, compliance with which:

- (a) has a direct effect on the Contractor carrying out the Services;
- (b) directly results in an increase or decrease in the Contractor's costs of carrying out the Services,

but excludes a change in an existing Law or new Law:

- (c) with respect to income tax on taxable income (as that term is used in the *Income Tax Assessment Act 1936* (Cth) or which is related to the calculation of taxable income;
- (d) which directly results in an increase or decrease in the category of costs dealt with in Schedule 7.

Commencement Date means 11 September 2008.

Community Outcomes means the community outcomes described in section 2.5.2 of RTA QA Specification M1 PSMC.

Community Relations Management Plan means the plan that complies with the requirements of clause 11.10.

Condition Precedent means each of the following:

- (a) the Contractor has provided to RTA:
 - (i) copies of the Contractor's insurance policies required under clause 19.2;
 - (ii) Security as required by clause 21; and
 - (iii) a Parent Company Guarantee and Indemnity executed by an entity and in a form acceptable to RTA;
- (b) RTA has approved:
 - (i) the insurers and terms of the Contractor's insurances required under clause 19.2; and
 - (ii) the form of Performance Bond and the institution providing the Performance Bond;
- (c) the Contractor has complied with its obligations under clause 19.1(d);
- (d) the parties have agreed the Initial Values in accordance with sections 5.2.2 and 5.2.4 of RTA QA Specification M2 PSMC;
- (e) the Contract Review Group has been constituted in accordance with clause 6;
- (f) the Contractor has completed the Establishment Services;
- (g) the Contractor has provided the pre-commencement inspection report referred to in section 3.7 of RTA QA Specification M1 PSMC by the date specified therein; and
- (h) 24 October 2008 has passed.

Consultant means a consultant engaged by the Contractor to design parts of the Services or to provide other professional services. It includes a consultant whose contract with RTA is novated to the Contractor.

Contract means, at any time the current version of this document and its schedules, annexures and exhibits and includes any amendment to any of them made in accordance with this document.

Contract Documents means all documents referred to in the definition of "Contract".

Contract Manager means the person appointed as such by RTA pursuant to clause 2.2(b).

Contract Outcomes has the meaning set out in the recitals.

Contract Review Group means the group established under clause 6.1.

Contract Review Group Chairperson means the person under clause 6.2(d).

Contract Term means the period specified in clause 3.1.

Contract Year means:

- (a) the period commencing on 25 October 2008 and expiring on 24 October 2009; and
- (b) each subsequent period commencing on 25 October and expiring on 24 October in the following year.

Contractor's Authorised Person means the person appointed to act for the Contractor under clause 2.2(a).

Contractor's Default means a substantial breach of the Contract by the Contractor, including, without limitation, any of the following:

- (a) abandoning the carrying out of the Services;
- (b) suspending progress of the carrying out of the Services, in whole or in part without the written agreement of RTA, except for suspension under clause 27.1(a)(i)(A);
- (c) failing to comply with a Direction in writing or confirmed in writing by RTA;
- (d) failing to carry out the Services with professional skill and care and competence;
- (e) failing to comply with its obligations under clause 12.4(g);
- (f) failing to maintain any registration or licence required by Law to carry on activities required under the Contract;
- (g) failing to provide Security as required under clause 21; or
- (h) failing to effect and maintain insurance policies as required under the Contract; and
- (i) in any Contract Year, the Monthly Network Compliance Score exceeds 75 on three occasions.

Contractor's Insolvency means any of the following applying to the Contractor:

- (a) insolvency;
- (b) the Contractor indicates that it does not have the resources to perform the Contract;
- (c) an application for winding up is made which is not stayed within 10 Business Days;
- (d) a winding-up order is made;
- (e) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed;
- (f) a mortgagee enters into possession of any property of the Contractor;
- (g) notice is given of a meeting of creditors for the purposes of a deed of arrangement; or
- (h) any actions having a similar effect are taken.

Contractor's Tender means the tender issued by the Contractor to RTA dated 26 June 2008 in response to the Request for Tender.

Days means calendar days.

Default Rate means the rate as determined by the Uniform Civil Procedure Rules 2005 on unpaid judgements for the period in which the amount remains unpaid.

Defect means an undesirable condition that has visible or measurable evidence of failure and may require rectification or further investigation, including any condition that is likely to become a Hazard (as reasonably determined by the Contractor or RTA) before the next scheduled or required inspection.

Defect Management System means a system for recording the details of a Defect and the management of treatment of the Defect from identification to rectification which forms part of the Operational Performance Management Plan as described in Annexure H/2 of RTA QA Specification M4 PSMC.

Direction includes a direction, agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement of RTA or Contract Manager and **Direct** has a corresponding meaning.

Emergency or Emergencies means one or more event which requires urgent action to protect life, property, the environment, or an occasion when emergency services (police, fire brigade, ambulance or state emergency services) take control of Assets. An Emergency need not arise from a Defect, whether at the level where a Defect is require to be rectified or otherwise.

Encumbrance means any mortgage, charge, lien, title retention, trust, power or other encumbrance.

Environmental Event means:

- (a) non-compliance with or the violation of any Environmental Law; or
- (b) an offence under any Environmental Law.

Environmental Law means any Law relating to the Environment (as defined in the *Contaminated Land Management Act 1997* (NSW)), building, planning, health, safety or occupational health and safety and obligations under the common law.

Establishment Services means those Services described in Schedule 2.

Establishment Services Conditions Precedent means the conditions precedent in paragraphs (a), (b) and (c) of the definition of Condition Precedent.

Establishment Services Fee means the amount payable to the Contractor for the performance of the Establishment Services, as set out in Schedule 1.

Excepted Risk means any of the following:

- (a) any negligent act or omission of RTA, the Contract Manager or the employees, consultants or agents of RTA;
- (b) war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Authority; or
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or the Contractor's employees or agents.

Exceptional Circumstances means a situation where the Contractor is genuinely unable to respond to Defects and the situation is:

- (a) beyond the reasonable control of the Contractor; and
- (b) has not resulted from the Contractor breaching a term of the Contract.

Expert means a person engaged to determine Issues under clause 31.

Expert Determination means the process of determination of an Issue by an Expert under clause 31.

Expiry Date means 24 October 2018.

Fixed Component means the part of the Maintenance Fee so described in Schedule 1 as may be adjusted in accordance with the Contract.

Force Majeure Event means each of the following events:

- (a) earthquake, cyclone, natural disaster, landslide, mudslide, fire and explosion;
- (b) a flood which might be expected to occur once or less in every 50 years;
- (c) a "terrorist act" (as defined in section 5 of the *Terrorism Insurance Act 2003* (Cth) as at the date of the Contract);
- (d) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped powers, martial law or confiscation by order of any Authority;
- (e) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;

which:

- (f) is beyond the reasonable control of the Affected Party; and
- (g) prevents or delays the Affected Party from performing any of its obligations under the Contract where that cause or the consequences of the cause:
 - (i) has not resulted from the Affected Party breaching a term of the Contract; and
 - (ii) if the Affected Party is the Contractor, could not have been prevented, avoided, remedied or overcome by the Contractor or its Subcontractors taking those steps which a prudent, experienced and competent contractor would have taken.

General Conditions means clauses 1 to 42 of the Contract.

GST means the same as "GST" means in the GST Law.

GST Law means the same as "GST Law" means in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guarantor means the guarantor under the Parent Company Guarantee and Indemnity.

Hazard means a Defect that introduces risks to Road users that has been assessed as requiring control and remedy.

Hazardous Discharge means any emission, spill, leak, release, escape or discharge into or upon:

- (a) the air;
- (b) any soil;
- (c) any improvements;
- (d) any surface water or ground water;

(e) any Asset,

of any Waste, other than Hazardous Discharge permitted by an Environmental Law.

Incident means an occurrence or event which involves a potential for damage to the Assets and requires a response by the Contractor.

Indicator Measure means a measure which indicates the Contractor's performance which must be reported to RTA, but for which no target performance criterion has been established.

Industrial Relations Plan means the plan that complies with the requirements of clause 11.6.

Information Document means any information, data or document (in any format or medium including in electronic form and whether oral or written):

- (a) issued or made available, by or on behalf of, RTA to the Contractor in connection with the Request for Tender or the Contract and which at the time of issue (or being made available) was expressly stated or classified to be an "information document";
- (b) issued or made available, by or on behalf, of RTA to the Contractor in connection with the Request for Tender or the Contract, but which did not form part of the Request for Tender (regardless of whether it was expressly classified or stated to be an "Information Document");
- (c) referred to, or incorporated by reference, in information, data or a document referred to in paragraphs (a) and (b), unless such information, data or document is otherwise expressly stated to form part of the Contract,
whether issued or made available:
 - (i) on, before or after the date of submission of the Contractor's Tender; or
 - (ii) on, before or after the date of execution of the Contract other than any information, data or document which RTA is obliged by the terms of the Contract to provide to the Contractor and the Contractor is expressly obliged by the terms of the Contract to rely on.

Initial Value means each value stated in the row entitled "Initial (2008)" in the tables contained in sections 5.2.2 and 5.2.4 of RTA QA Specification M2 PSMC.

Innovation means the introduction by the Contractor of an improved technique or system, new technology or some other improvement in respect of the Services or the Assets which could not reasonably have been expected by RTA to result from the Services.

Insurances mean the insurances required to be effected under the Contract.

Integrated Contract Management System or **ICMS** means the management system described in section 3 of RTA QA Specification M1 PSMC.

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

- (a) all rights in all applications to register these rights;

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

Issue means any issue, dispute or difference raised by either party under clause 29.

Key Personnel means the Personnel specified in Schedule 3.

Law means:

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the Services are being carried out;
- (b) certificates, licences, consents, permits, approval, judgments, orders, directions and requirements of relevant Authorities;
- (c) all applicable standards, guidelines and codes of practice issued by the NSW government or by other parties;
- (d) obligations under the common law and in equity; and
- (e) fees and charges payable in connection with the foregoing.

Maintenance Fee means the amount payable to the Contractor for the performance of the Services, comprising the Fixed Component and the Performance Component, as set out in Schedule 1 and as may be adjusted in accordance with the Contract.

Maintenance Intervention Requirements means the documents exhibited to the Contract as Exhibits M20, M30, M40, M50 and Exhibit M60.

Maintenance Rectification Requirements means the documents exhibited to the Contract as Exhibits M200, M300, M400, M500 and M600.

Management Performance Measure or **MPM** means the measure of Contract performance as described in RTA QA Specification M2 PSMC, as may be varied by the Contract Review Group.

Management Team means the group established under clause 6.1.

Materials means any raw or manufactured material, goods or things (other than Plant) required for use in providing the Services.

Monthly Network Compliance Score means the score calculated in accordance with section 3.5 of RTA QA Specification M1 PSMC.

NSW Government Codes of Practice means any document issued by the NSW Government, including but not limited to the code of practice for procurement issued on 18 January 2005, and any documents adding to or replacing those documents from time to time.

Occupational Health and Safety Management Plan means the plan that complies with the requirements of clause 11.4.

Operational Performance Measure or **OPM** means the measure of Contract performance as described in RTA QA Specification M1 PSMC, as may be varied by the Contract Review Group

Parent Company Guarantee and Indemnity means an agreement whereby the Guarantor:

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- (a) guarantees the payment of any unpaid amounts of money due and payable under the Contract by the Contractor to RTA;
 - (b) indemnifies RTA against all costs, losses, liabilities and expenses that RTA incurs as a result of the Contractor's failure to pay RTA amounts due and payable under the Contract;
 - (c) is obliged to perform any of the Contractor's obligations under this Contract in accordance with the Contract if:
 - (i) the Contractor fails to perform an obligation or obligations under the Contract; and
 - (ii) RTA gives the parent company written notice of the event in subparagraph (i).

Pavement Performance Measure or PPM means the measure of Contract performance as described in RTA QA Specification M2 PSMC, as may be varied by the Contract Review Group.

Payment Claim means a claim for payment of the Establishment Services Fee, the Maintenance Fee and any Additional Services Fee as referred to in clause 16.4.

Payment Schedule means a payment schedule containing RTA's assessment of a Payment Claim and stating the amount RTA proposes to pay as the Scheduled Amount, as referred to in clause 16.4.

Performance Bond means an unconditional undertaking in RTA's approved form and given by a bank approved by RTA and licensed under the provisions of the *Banking Act 1959* (Cth) (as amended) or other financial institution approved of by RTA.

Performance Component means that part of the Maintenance Fee so described in Schedule 1 as may be adjusted in accordance with the Contract.

Performance Criteria means, depending on the context:

- (a) the Management Performance Measures; and/or
- (b) the Pavement Performance Measures; and/or
- (c) the Operational Performance Measures.

Personnel means:

- (a) officers, employees, agents or subcontractors of the Contractor; and
- (b) officers, employees or agents of those subcontractors, engaged to or who provide any part of the Services.

Plant means all plant, equipment and facilities used or required for performing the Services (irrespective of ownership) other than plant, equipment and facilities of RTA.

Prequalified Areas of Work means Asphalt Paving category A2 and Traffic Control category G.

PSMC Boundary means the boundary of the Zone as shown in Annexure A/5 to RTA QA Specification M4 PSMC.

PSMC Network means the network of roads described in Annexure A/1 of RTA QA Specification M4 PSMC.

Quality Plan means the overall plan to assure the quality of the Services to be prepared and updated as and when required in accordance with clause 11.7 of the General Conditions and the Specifications.

Related Body Corporate has the meaning set out in section 50 of the *Corporations Act 2001* (Cth).

Request for Tender or **RFT** means the request for tender issued by RTA on 28 February 2008.

Risk Management Plan means the plan that complies with the requirements of clause 11.5.

Road has the same meaning as given to it by the *Roads Act 1993* (NSW);

Road Occupancy Licence means a licence issued in accordance with section 6 of RTA QA Specification M1 PSMC and RTA QA Specification G11.

Routine Maintenance means the Services the Contractor must perform to ensure compliance with the Operational Performance Measures.

RTA QA Specification G10 PSMC means the document exhibited to the Contract as Exhibit G10 entitled "Control of Traffic".

RTA QA Specification G36M means the document exhibited to the Contract as Exhibit G36M entitled "Environmental Protection".

RTA QA Specification M1 PSMC means the document exhibited to the Contract as Exhibit M1 entitled "General Network Management Requirements".

RTA QA Specification M2 PSMC means the document exhibited to the Contract as Exhibit M2 entitled "Network Performance Management Requirements".

RTA QA Specification M4 PSMC means the document exhibited to the Contract as Exhibit M4 entitled "Annexures to RTA Specifications M1 PSMC and M2 PSMC".

RTA QA Specification M100 PSMC means the document exhibited to the Contract as Exhibit M100 entitled "Pavement Design Principles and Requirements".

RTA QA Specification Q6 means the document exhibited to the Contract as Exhibit Q6 entitled "Quality Management Systems (Type 6)".

Scheduled Amount means the amount of payment (if any) stated in a Payment Schedule, that RTA proposes to make in relation to a Payment Claim as referred to in clause 16.4.

Security means the Performance Bonds to be provided by the Contractor described in clause 21.1.

Services means all the work and services that the Contractor is required to perform under the Contract, including the Establishment Services and Additional Services.

Specifications means all documents in the list of Exhibits except for the RTA standard drawings and the extract of insurance terms.

Subcontract means a contract between the Contractor and a Subcontractor.

Subcontractor means an entity engaged by the Contractor to carry out part of the Services, other than a Consultant or a Supplier.

Sub-network means the subsidiary groupings of Assets in the PSMC Network identified in Annexure A/1 of RTA QA Specification M4 PSMC.

Supplier means an entity engaged by the Contractor to supply part of the Services.

Tendered Annual Treatment Program means the annual treatments program set out in schedule 8 which includes the following:

- (a) Annual Treatment Program Summary;
- (b) Annual Treatment Program (Quantities)- Sub Network 1 Principal Routes;
- (c) Annual Treatment Program (Quantities)- Sub Network 2 Primary Roads;
- (d) Annual Treatment Program (Quantities)- Sub Network 3 Secondary Roads; and
- (e) Annual Treatment Program (Quantities)- Sub Network 4 Minor;

Traffic Growth Ceilings means each of the ceilings for traffic growth specified in section 7 of RTA QA Specification M2 PSMC.

Traffic Management Plan means a plan for the management of traffic described in RTA Specification G10 section 1.3.

Transport Management Centre or **TCM** means the branch of RTA that manages traffic and transport on the NSW road network, located at 25 Garden Street, Eveleigh NSW, 1430 or any other address it may be located at from time to time.

Utility means any utility including water, electricity, gas, fuel, telephone, drainage, sewerage and electronic communications service.

Waste includes any Asset to be removed and/or dispersed of in the course of performing the Services together with any extraneous by-products of the Services including but not limited to:

- (a) trade waste, being any matter or thing, whether solid, liquid or gaseous or a combination of solids, liquids and gases (or any of them), which is of a kind that comprises refuse from any industrial, chemical, trade, commercial or business process or operation, including any building or demolition work;
- (b) garbage, being all refuse other than trade waste and effluent;
- (c) any flammable materials, explosives, radioactive materials, hazardous or toxic substances, asbestos or any material containing asbestos or similar or related materials;
- (d) any emission into the air of any impurity as defined in the *Protection of the Environment Operations Act 1997* (NSW);
- (e) any chemical waste, whether declared or not, as defined in the *Environmentally Hazardous Chemicals Act 1985* (NSW);
- (f) any waste as defined in the *Protection of the Environment Operations Act 1997* (NSW);
- (g) any other substance or material as so characterised or listed or defined and regulated by any Environmental Law; and
- (h) effluent, being any matter or thing, whether solid or liquid or a combination of solids and liquids, which is of a kind that may be removed from a septic tank,

septic closet, chemical closet, sullage pit or grease trap, or from any holding tank or other container forming part of or used in connection with a septic tank, septic closet, chemical closet, sullage pit or grease trap.

Work Order means an order to carry out Additional Services, the form of which is set out in Annexure A.

Work Proposal means a request for pricing of Additional Services, the form of which is set out in Annexure B.

Work Terms means the terms that will govern the carrying out of Additional Services, as set out in Annexure C.

Zone means the geographic region labelled "PSMC Zone" shown as within the PSMC Boundary in that diagram in Annexure A/5 of RTA QA Specification M4 PSMC including the PSMC Network.

Zone Conditions means any physical conditions of the Zone (including sub-surface conditions but excluding weather conditions or physical conditions which are a consequence of weather conditions) encountered in the execution of the Services.

42.2 Rules for interpreting this document

- (a) Headings are for convenience only and do not affect interpretation. The following rules also apply in interpreting the Contract, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislations 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 party includes a permitted substitute or a permitted assign of that party;
 - (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 unfettered discretion, not limited by implications; and
 - (vi) anything (including a right, obligation or concept) includes each part of it.
- (c) Any reference to currency is a reference to Australian dollars, unless stated otherwise.
- (d) No rule of construction applies to the interpretation of the Contract to the disadvantage of one party on the basis that the party prepared it.
- (e) A decision of the Contract Manager includes a direction, determination, approval, authorisation, consent, agreement, recommendation or requirement of the Contract Manager.

42.3 Business Days

If the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by the Contract, falls on a non-Business Day, then the time for giving the notice, issuing the certificate, making the payment or doing the other act will be deemed to be on the next Business Day.

42.4 Joint and several liability

- (a) The obligations of the Contractor, if more than one person, under the Contract, are joint and several and each person constituting the Contractor acknowledges and agrees that it will be responsible for the acts and omissions (including breaches of the Contract) of the other as if those acts or omissions were its own.
- (b) The rights of the Contractor, if more than one person, under the Contract (including the right to payment) jointly benefit each person constituting the Contractor (and not severally or jointly and severally).
- (c) A payment by RTA under the Contract to an account nominated in writing by the Contractor, or failing such nomination, to any one or more persons constituting the Contractor, will be deemed to be payment to all persons constituting the Contractor.
- (d) The Contractor may not exercise any right under the Contract unless that right is exercised concurrently by all persons constituting the Contractor.

42.5 Ambiguous terms

- (a) If the Contract Manager considers, or the Contractor's Authorised Person notifies the Contract Manager in writing it considers that there is an ambiguity, discrepancy or inconsistency in, or between, the documents comprising the Contract, the Contract Manager must direct the interpretation of the Contract which the Contractor must follow.
- (b) In giving a direction in accordance with paragraph (a), the Contract Manager is not required to determine whether or not there is an ambiguity or discrepancy or inconsistency in, or between, the documents comprising the Contract.
- (c) Any direction the Contract Manager gives in accordance with paragraph (a):
 - (i) does not in any way lessen or otherwise affect:
 - (A) the Contractor's obligations under the Contract or according to law;
 - (B) RTA's rights against the Contractor, whether under the Contract or according to Law; and
 - (ii) must, in respect of the notice given by the Contractor's Authorised Person under paragraph (a), be given within 20 Business Days of receipt of that notice.

Schedule 1

FEES

No.	Description	Amount
1.	Maintenance Fee- Fixed Component	\$ 2,635,050.00 per month
2.	Maintenance Fee- Performance Component	\$ 292,783.00 per month
3.	Establishment Fee	\$550,000.00

Schedule 2

ESTABLISHMENT SERVICES

1. Establishment Services

The Contractor must establish the ICMS for the execution of the Services:

- (a) to comply with the requirements of section 3 of RTA QA Specification M1 PSMC;
- (b) in accordance with the process specified in this Schedule 2; and
- (c) by no later than 24 October 2008.

1.1 Preparation of ICMS

The Contractor must prepare and submit each element of the ICMS (including each Contract Plan) to the Contract Manager in a manner and at a rate which will give the Contract Manager a reasonable opportunity to review the submitted element of the ICMS within the 10 Business Day period referred to in clause 1.3(a) below.

1.2 Contract Manager may review ICMS

- (a) The Contract Manager may:
 - (i) review any element of the ICMS submitted by the Contractor;
 - (ii) within 10 Business Days of the Contractor submitting the relevant element of the ICMS indicate that such element of the ICMS is:
 - (A) not rejected;
 - (B) not rejected subject to comments (if in the reasonable opinion of the Contract Manager, the Contractor must make changes to make the element of the ICMS comply with the requirements of the Contract) and provide reasons for the comments; or
 - (C) rejected, if in the reasonable opinion of the Contract Manager, the element of the ICMS does not comply with the requirements of the Contract, and provide reasons for the rejections.
- (b) The Contractor must within 5 Business Days of receipt of notice from the Contract Manager that any element of the ICMS is:
 - (i) rejected; or
 - (ii) not rejected subject to comments,

submit the amended element of the ICMS to the Contract Manager (taking into account, as relevant any comments of the Contract Manager) and the provisions of this Schedule 2 will reapply to the amended elements of the ICMS.
- (c) The Contract Manager's exercise (or failure to exercise) any of its rights under this Schedule 2 and will not preclude RTA from subsequently asserting that an element of the ICMS does not comply with the requirements of the Contract (even if the Contract Manager previously gave a notice under clause 1.2(a)(ii)(A) or 1.2(a)(ii)(B) above in respect of the element of the ICMS).

-
- (d) The Contractor must, for the purpose of review under this Schedule 2 and if requested by the Contract Manager;
 - (i) make available to the Contract Manager all relevant records held by the Contractor in relation to the element of the ICMS; and
 - (ii) provide all reasonable assistance to the Contract Manager during the review including attending reviews and meetings.

1.3 No obligation to review

RTA and the Contractor acknowledge and agree that:

- (a) the Contract Manager owes no duty to the Contractor:
 - (i) to review an element of the ICMS for errors or compliance with the requirements of the Contract; or
 - (ii) in any review of an element of the ICMS that does undertake; or
 - (iii) to consult with the Contractor or make any comments regarding any element of the ICMS; and
- (b) the Contract Manager's review or rejection of, or consultation, or comments or any other Direction, act or omission with respect to any element of the ICMS (including any failure by the Contract Manager to review, reject, consult or comment regarding any element of the ICMS) will not lessen or otherwise affect:
 - (i) the Contractor's obligations or liability under the Contract or according to Law;
 - (ii) RTA rights against the Contractor under the Contract or according to Law.

1.4 Completion

- (a) The Establishment Services will be completed once:
 - (i) the Contractor has submitted each element of the ICMS to the Contract Manager; and
 - (ii) the Contract Manager has indicated under clause 1.2 that each element of the ICMS is not rejected.

Schedule 3

KEY PERSONNEL

No.	Name	Position	Reference	Position Description Attributes
1.	[REDACTED]	Contractor's Authorised Person		<ul style="list-style-type: none"> • Demonstrated ability in liaising and building relationships with key stakeholders • Leadership ability and people management skills • High level of verbal and written communication and interpersonal skills • Well developed financial planning and budgeting skills • Knowledge of construction, surfacing and maintenance industry • Understanding of asset management principles and practices
2.	[REDACTED] [REDACTED]	Contract Review Board members		<ul style="list-style-type: none"> • High level of verbal and written communication skills • High level negotiation skills • Demonstrated ability in liaising and building relationships with key stakeholders
3.	[REDACTED]	ICMS Manager	(section 3 of RTA QA Specification M1 PSMC)	<ul style="list-style-type: none"> • Extensive experience in the safety, health and environmental related activities as applied to the road construction maintenance industry • Demonstrated experience in the design, development, implementation and maintenance of management systems to Australian and international standards • Demonstrated experience in change management and continuous improvement methodologies

				<ul style="list-style-type: none"> • Well developed conceptual, analytical and planning skills • Demonstrated organisational and time management skills
4.	██████████	Traffic management manager	(section 6 of RTA QA Specification M1 PSMC)	<ul style="list-style-type: none"> • Experience in traffic management planning in high volume environments • Knowledge and experience in the road maintenance or construction industry • Demonstrated ability in liaising and building relationships • High level of verbal and written communication and interpersonal skills
5.		Community relations manager	(section 7 of RTA QA Specification M1 PSMC)	<ul style="list-style-type: none"> • Experienced in consultation with community groups, lobbyist groups or senior customer service role • Demonstrated ability in liaising and building relationships with stakeholders • Leadership ability and people management skills • Significant high level negotiating skills • Highly developed organisational skills
6.		Environmental Manager	(to manage compliance with section 2.7 of RTA QA Specification M2 PSMC)	<ul style="list-style-type: none"> • Strong experience in a similar role, preferably in the civil construction industry • Well developed verbal and written communication skills • Excellent professional knowledge of all legislation, Australian standards, codes of practice, regulations and systems applicable to road maintenance and construction
7.	██████████ ██████████	Operations manager	(to oversee the overall operation to ensure compliance	<ul style="list-style-type: none"> • Strong project management experience • Understanding of asset management principles and

			with the Specifications)	<p>practices</p> <ul style="list-style-type: none"> • Understanding of road maintenance, construction and surfacings practice • Well developed verbal and written communication skills • Well developed conceptual, analytical and planning skills • Leadership ability and people management skills
8.	██████████	Asset management manager	(to manage compliance with section 3 of RTA QA Specification M2 PSMC)	<ul style="list-style-type: none"> • Extensive experience in pavement design and modelling related field with both policy and implementation experience • High level communication and leadership skills • Capacity to review and develop new policies and procedures that will support the effective and efficient management of the project deliverables • Capacity to resolve pavement maintenance and rehabilitation problems based on analysis of complex data and issues

Schedule 4

STATUTORY DECLARATION

RTA Form No 592 (Modified)	Schedule
Statutory Declaration	
I, _____ of _____	Insert name of Declarant
_____ do solemnly and sincerely declare that:	Insert address
1. I am a representative of _____ ("NOP") in the Office Bearer capacity of _____	Insert name of Contractor and ABN if applicable
2. The NOP is a party to an alliance agreement with the Roads & Traffic Authority in respect of the PSMC North East Sydney Network ("Contract").	insert position title of Declarant
3. Attached to and forming part of this declaration is a Subcontractor's Statement given by the NOP in its capacity as 'Subcontractor' (as that term is defined in the <i>Workers Compensation Act 1987</i> , <i>Pay-roll Tax Act 2007</i> and <i>Industrial Relations Act 1996</i>) which is a written statement:	Insert name of Contract
a. under the <i>Workers Compensation Act 1987</i> , section 175B, in the form and providing the detail required by that legislation;	
b. under the <i>Pay-roll Tax Act 2007</i> , schedule 2 section 18, in the form and providing the detail required by that legislation; and	
c. under the <i>Industrial Relations Act 1996</i> , section 127, in the form and providing the detail required by that legislation.	
4. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.	
5. All Subcontractors have been paid all amounts payable to them by the NOP for work or services done or goods or materials supplied in connection with the Contract during the period noted in clause 9.	
6. If the NOP has Subcontractors and the subcontract price exceeds \$25,000 at commencement, the NOP has received from each of those Subcontractors a statutory declaration and Subcontractor's Statement in equivalent terms to this declaration (made no earlier than 10 Business Days before the date of this declaration).	
7. All statutory declarations and Subcontractor's Statements received by the NOP from Subcontractors referred to in clause 6 were:	
a. given to the NOP in its capacity as 'Principal Contractor' as defined in the <i>Workers Compensation Act 1987</i> , the <i>Pay-roll Tax Act 2007</i> and the <i>Industrial Relations Act 1996</i> ('Acts'); and	
b. given by the Subcontractors in their capacity as 'Subcontractors' as defined in the Acts.	
8. I am not aware of anything that would contradict the statements made in the statutory declarations and Subcontractor's Statements provided to the NOP by its Subcontractors.	
9. The period of the Contract covered by this declaration and the attached Subcontractor's Statement is from _____ to _____.	

10. The NOP is not, under any law, insolvent or unable to pay its debts as and when they fall due.
11. All Subcontractor security held in the form of cash and all cash retentions from payments to Subcontractors are held in trust by the NOP. The cash security and retentions are held in trust for whichever party is entitled to receive them, until it is paid in favour of that party.
12. The NOP is maintaining complete records to account for the cash security and cash retentions referred to in clause 11. The records are available to the relevant Subcontractors and to RTA on request.

Insert the relevant payment period

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

Declared at _____ (*place where declaration made*)

on _____ (*date of declaration*) by

Signature of person making the declaration

Before me: _____

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

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

SUBCONTRACTOR'S STATEMENT
REGARDING WORKERS COMPENSATION, PAY-ROLL TAX
AND REMUNERATION (Note 1)

Workers Compensation	Pay-roll tax	Remuneration
s175B <i>Workers Compensation Act 1987</i> (NSW)	Schedule 2, Part 5, ss 17-20. <i>Payroll Tax Act 2007</i> s127 <i>Industrial Relations Act 1996</i>	

Sub Contractor: _____ ABN: _____

(Business name)

of _____

(Address of subcontractor)

has entered into a contract with _____ *(Note 2)*

(Business name of principal contractor)

ABN: _____ For work between: ____ / ____ / ____ and ____ / ____ / ____ *(Note 3)*

Date

Date

and/or Payment Claim Details: _____ *(Note 4)*

Nature of contract work: _____ *(Note 5)*

DECLARATION

I, _____ a Director of / a person authorised by the subcontractor on whose behalf this

(delete as appropriate)

declaration is made, hereby state that the abovementioned subcontractor:

Is either

A sole trader or partnership without workers or subcontractors *(Note 6)*.

OR

Has and will maintain in force valid workers compensation insurance,
policy _____

(Policy

Number)

attached held with _____ as indicated on the
(Insurance Company)

Certificate of Currency dated _____, in respect of work done in
connection with the contract, during any period of the contract and has paid all

workers compensation insurance premiums payable in connection with the contract
(Note 7).

Is Is not also a principal contractor in connection with the work under contract (Note
8).

Has Has not been given a written statement by subcontractors in connection with the
work.

Is Is not required to be registered as an employer under the *Pay-roll Tax Act*
2007 _____

(Pay-roll tax client No.)

Has paid all pay-roll tax due in respect of employees who performed the work for the principal
contractor, as required at the date of this statement (Note 9).

Has paid all remuneration payable to relevant employees, for work done under the contract
during the period outlined above (Note 10).

Signature _____ **Full Name** _____

(please print)

Position/Title _____ Dated _____

WARNING

- Any subcontractor, who knowingly provides a principal contractor with a written statement that is false, is guilty of an offence (Maximum penalty 100 units or \$11,000).
- Any written statement will not relieve the principal contractor of liability if, at the time the written statement was provided, the principal contractor believed the written statement to be false.
- The principal contractor must retain a copy of any written statement for a period of not less than five years (Pay-roll tax), six years (Remuneration) or seven years (Workers compensation).
- **This statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987***

NOTES

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2, Part 5, ss 17-20 *Payroll Tax Act 2007* (NSW) and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, pay-roll tax and remuneration payable by the subcontractor.
2. For the purpose of this statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity), referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal.
3. In order to meet the requirements of s127 *Industrial Relations Act 1996* (NSW), a statement in relation to remuneration must state the period to which the statement relates.

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

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

4. Payment claim details – Where a subcontractor has entered into a payment schedule with a principal contractor they must identify the period or payment to which the statement applies.
5. An accurate description of the work covered by the contract must be included.
6. In completing the statement, a subcontractor declares that they are a sole trader or partnership without workers or subcontractors and is not required to hold workers compensation insurance.
7. In completing the statement, a subcontractor declares that workers compensation premiums payable up to and including the date(s) on the statement have been paid, and all premiums owing during the term of the contract will be paid.
8. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out work. If your business falls within this category you should also obtain statements from your subcontractors.
9. In completing the statement, a subcontractor declares that all pay-roll tax payable relating to work undertaken as part of the contract has been paid.

-
10. In completing the statement, a subcontractor declares that all remuneration payable has been paid.

It is noted that definitions of employer, employee, remuneration, and specific provisions for employers of outworkers in the clothing trades are as defined in s127A of the *Industrial Relations Act 1996* (NSW).

11. Failure to complete this statement may result in the principal contractor withholding any payment due to the subcontractor. Any penalty for late payment under the contract does not apply to any payment withheld under this subsection. Subcontractors may wish to keep a copy of the statement for their own records.

For more information, please visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987* (NSW), the *Pay-roll Tax Act 2007* (NSW) and the *Industrial Relations Act 1996* (NSW) can be found at www.legislation.nsw.gov.au.

Schedule 5

PROCEDURE FOR EXPERT DETERMINATION

1. Determination of Issues

- (a) The Expert must determine for each Issue the following questions, to the extent they are applicable to the Issue:
 - (i) Whether an event, act or omission which gives the claimant a right:
 - (A) under the Contract or otherwise in law (whether or not there is a right to compensation); or
 - (B) for damages for breach of contract.
 - (ii) If so:
 - (A) what is the event, act or omission?
 - (B) on what date did the event, act or omission occur?
 - (C) what is the legal right which gives rise to the liability to compensation or resolution otherwise of the Issue?
 - (D) is that right extinguished, barred or reduced by any provision of the Contract, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?
 - (iii) In light of the answers to paragraph (i) and (ii) above:
 - (A) what compensation, if any, is payable from one party to the other and when did it become payable?
 - (B) applying the rate of interest specified in the Contract, what interest, if any, is payable when the Expert determines that compensation?
 - (C) if compensation is not claimed, what otherwise is the resolution of the Issue?
- (b) The Expert must determine for each Issue any other questions identified or required by the parties, having regard to the nature of the Issue.

2. Procedure for submissions to the Expert

- (a) The Referring Party must make a submission in respect to an Issue within 15 Business Days after the date of the letter of engagement referred to in clause 31.1(b) of the General Conditions. This submission may include cross claims.
- (b) The Responding Party must:
 - (i) respond within 15 Business Days of receiving a copy of that submission; or
 - (ii) inform the Referring Party that has referred the Issue that it requires a longer period (due to the nature and complexity of the Issue and the

volume of the submission) and follow the procedure set out in paragraph (e) below.

- (c) The Referring Party may reply to the response of the Responding Party:
 - (i) within 15 Business Days of receiving a copy of that submission; or
 - (ii) inform the Responding Party that has referred the Issue that it requires a longer period (due to the nature and complexity of the Issue and the volume of the submission) and follow the procedure set out in paragraph (e) below

but must not raise new matters.

- (d) The Responding Party may comment on the reply by the Referring Party:
 - (i) within 15 Business Days of receiving a copy of that submission; or
 - (ii) inform the Referring Party that has referred the Issue that it requires a longer period (due to the nature and complexity of the Issue and the volume of the submission) and follow the procedure set out in paragraph (e) below

but must not raise new matters.

- (e) If the parties do not agree on the longer period required by a party preparing the submissions:
 - (i) the Expert will set a specified time within which the party requiring a longer period must submit to the Expert reasons for requiring the longer period; and
 - (ii) the Expert will promptly determine any extra time permitted.
- (f) The Expert must ignore any submission, response, reply or comment not made within the time given in this clause 2, unless the RTA or the Contractor agree otherwise.

3. Content of submissions or responses

A submission or response must include:

- (a) a statement of the facts upon which the party relies in relation to the Issue;
- (b) a statement of the party's contentions in relation to each matter in Issue; and
- (c) a document stating the names and the titles or positions of the persons who that party intends will appear before or meet with the Expert.

4. Request for further information

- (a) The Expert may request further information from either party provided:
 - (i) the request is in writing;
 - (ii) the request has a time limit for response;
 - (iii) a copy of the request is given to the other party at the same time;
 - (iv) a copy of the response is given to the other party as soon as the Expert receives it; and

(iii) the other party is given a reasonable opportunity to comment on the response.

(b) All submissions, responses, replies, requests and comments must be in writing.

5. Conference

(a) The Expert may request a conference with RTA and the Contractor in writing, setting out the matters to be discussed.

(b) The parties agree that such a conference is not to be a hearing or an arbitration.

6. Role of Expert

(a) The Expert:

(i) will determine the times and places at which any such meeting or hearing will be held;

(ii) acts as an Expert and not as an arbitrator, and the provisions of the *Commercial Arbitration Act 1984* (NSW) will have no application to the Expert's determination;

(iii) must not be bound by the rules of evidence;

(iv) may take such steps as the Expert considers necessary to protect the confidentiality of any Contract Documents; and

(v) must make its determination on the basis of the submission of the parties including documents and witness statement, and the Expert's own expertise.

(b) The Expert must issue a certificate in the form the Expert considers appropriate:

(i) within 16 weeks after the date of letter of engagement referred to in clause 31.1(b) of the General Conditions (or as otherwise agreed by the parties);

(ii) stating the Expert's determination and reasons, which may include directions requiring:

(A) a party to pay a sum of money to the other Party;

(B) a party to pay interest on any such sum;

(C) a party to pay the other party's costs of complying with the Expert Determination; and

(D) a party to do any other act or thing, or to refrain from doing any act or thing, as the Expert considers desirable to resolve the Issue.

(c) If the certificate issued by the Expert contains:

(i) a clerical mistake;

(ii) an error arising from an accidental slip or omission;

(iii) a material miscalculation of figures;

(iv) a mistake in the description of any person, matter or thing; or

(v) a defect of form,
then the Expert must correct the certificate.

Schedule 6

CONTRACTOR FACILITIES

1. A maximum of 5 RTA staff will be located at the Contractor's operations management office.
2. The Contractor must supply the following for those staff:
 - (a) workstations with appropriate space for laptop computers with docking stations, separate keyboard, mouse and monitor;
 - (b) office chairs with padded seat and back support (adjustable seat height and back support positions) and with swivel base with five castors to Australian Standards;
 - (c) lockable filing cabinets with four drawers;
 - (d) shelving for books and other reference materials;
 - (e) layout table for plans – minimum of one for each group;
 - (f) storage cupboard or similar for personal protective equipment (wet weather clothing, hard hats, boots etc); and
 - (g) power, telephone and broadband internet access for each workstation;
3. The RTA will supply computers, multifunction printer and associated equipment.
4. RTA staff will be entitled to share all other amenities at the Contractor's operations management office.

Schedule 7

COST ADJUSTMENT FORMULA

1. Maintenance Fee — general

- 1.1 The Maintenance Fee will be cost adjusted in accordance with this Schedule 7.
- 1.2 In each payment claim, the Contractor will nominate the quantity of bitumen used during the period of the payment claim, and the component of the Maintenance Fee which constitutes the Contractor's cost of supplying bitumen.
- 1.3 The component so nominated will be adjusted using the cost adjustment formula in section 4 of this Schedule 7.
- 1.4 The remaining component of the Maintenance Fee will be adjusted using the cost adjustment formula in section 3 of this Schedule 7.
- 1.5 RTA may determine an adjustment to the Maintenance Fee under clause 9 of the General Conditions to take into account a Change. In these circumstances, RTA will:
- (a) determine the value of the adjustment, in accordance with clause 9.3(b) and 9.3(c) of the General Conditions;
 - (b) determine the value of the adjustment which if, applied in the month in which the Contractor submitted its tender, would (after application of the costs adjustments under sections 2 and 3) result in the Contractor's entitlement equalling the value determined under clause 9.3;
 - (c) adjust the Maintenance Fee under clause 9.3(d) by the amount calculated under paragraph (b) above. The purpose of this is to ensure that the Contractor is not overly compensated or penalised for a Change by the cost adjustment process.

2. Method of cost adjustment

- 2.1 The method of adjustment of the Maintenance Fee is as follows (in the order set out below):
- (a) on the last day of each month of the Contract Term, multiply the relevant component of the Maintenance Fee by the costs adjustment factor in section 3 or 4;
 - (b) if the net costs adjustment factor is positive, add the result to the relevant component of the Maintenance Fee or the monetary cap; and
 - (c) if the net costs adjustment factor is negative, subtract the result from the relevant component of the Maintenance Fee or the monetary cap.

3. Costs adjustment formula

- 3.1 The costs adjustment factor is determined by the following formula:

$$C = r \left(\frac{Rn}{Ro} \times \frac{Xn - Xo}{100 + Xo} + \frac{Rn}{Ro} \times \frac{Yn - Yo}{100 + Yo} \right) + \left(\frac{Rn - Ro}{Ro} \right)$$

Where

C = costs adjustment factor

r	=	0.4
Rn	=	road and bridge construction index number, which is the Division E Construction, Road and Bridge Construction index as published by the Australian Bureau of Statistics (Reference No. 4121) applicable to the calendar month during the Contract Term immediately preceding the last calendar month in which the work the subject of the relevant Payment Claim was carried out.
Ro	=	road and bridge construction index number, which is the Division E Construction, Road and Bridge Construction index as published by the Australian Bureau of Statistics (Reference No. 4121) applicable to the calendar month preceding the calendar month in which the Contractor submitted its tender.
Xn	=	current payroll tax rate, which is the rate per centum payable on wages under New South Wales legislation imposing payroll tax applicable to the calendar month immediately preceding the last calendar month in which the work the subject of the relevant Payment Claim was carried out.
Xo	=	base payroll tax rate, which is the rate per centum payable on wages under New South Wales legislation imposing payroll tax applicable as at the calendar month immediately preceding the calendar month in which the Contractor submitted its tender.
Yn	=	current worker's compensation premium rate, which is the most current rate shown in Table A Division E Subdivision 41 of the <i>Worker's Compensation Act 1987</i> (NSW), Insurance Premiums Order for Road and Bridge Construction (Group 412 Class 412100) applicable as at the calendar month immediately preceding the last calendar month in which the work the subject of the relevant Payment Schedule was carried out.
Yo	=	Base Worker's Compensation Premium Rate, which is the rate shown in Table A Division E Subdivision 41 of the <i>Worker's Compensation Act 1987</i> (NSW), Insurance Premiums Order for Road and Bridge Construction (Group 412 Class 412100) applicable on the first day of the calendar month immediately preceding the calendar month in which the Contractor submitted its tender.

NOTE: Rates published by Australian Bureau of Statistics are for quarterly periods and the rate for the calendar month will be the rate for the quarter containing that calendar month.

3.2 The index numbers referred to in this schedule as being published by the Australian Bureau of Statistics are the numbers as first published for a particular month by the Australian Bureau of Statistics. For the purposes of this schedule, those numbers are not subject to alteration following publication of revised, amended or corrected numbers.

3.3 If an index for cost adjustment used under clause 3.1 is:

- (a) discontinued, the parties must consult in good faith to determine a replacement index which reflects the intent of the discontinued index; or
- (b) revised, altered or amended, the parties must consult in good faith to determine:
 - (i) the impact of the revision, alteration or amendment;
 - (ii) whether a new index is required; and
 - (iii) if a new index is required, the new index.

4. Cost adjustment for the supply of bitumen

4.1 The Maintenance Fee will be subject to adjustments for variations in the cost of bitumen purchased by the Contractor for the performance of the Services.

4.2 The formula in this clause 4 will apply to the component of the Maintenance Fee nominated by the Contractor in its Payment Claim.

4.3 Any cost adjustment under this section 4 will be calculated from the formula:–

$$D = (C - B) \times A$$

where–

A = the quantity of bitumen derived from –

1. The calculation of residual bitumen at 15 degrees Centigrade where the product is sprayed bituminous surfacing or a tack coat.
2. The approved design binder content where the product is asphalt.
3. The approved residual binder content where the product is a bituminous slurry surfacing.

B = the price of class 170 bitumen applicable on the last day of the month immediately preceding the month during which the tenders closed;

C = the price of class 170 bitumen on the last day of the month immediately preceding the month during which the work is performed; and

D = the applicable cost adjustment for this payment claim.

The price of class 170 bitumen will be the average of the prices for the suppliers contracted to supply the RTA on its panel contract for the Supply of Bitumen and Related Products.

5. Cost adjustment — monetary caps

5.1 Each monetary cap referred to in clauses 8.2, 8.4 and 8.5 of the General Conditions will be adjusted in accordance with this section 5.

5.2 The method of adjustment is as follows (in the order set out below):

- (a) on the last day of each month of the Contract Term, multiply the monetary cap by the costs adjustment factor in section 3;
- (b) if the net costs adjustment factor is positive, add the result to the monetary cap;
and
- (c) if the net costs adjustment factor is negative, subtract the result from the monetary cap.

Schedule 8

TENDERED ANNUAL TREATMENT PROGRAM

Annual Treatment Program - Summary

**Project: North East Sydney
Performance Specified Maintenance Contract (PSMC)**

Contract no: 07.2593.0002

Year	Resealing (Spray Sealing) (m ²)	Asphaltic Concrete Resurfacing (AC) =< 50mm depth (m ²)	Thin Rehabilitation (AC) 50 - 120 mm depth (m ²)	Thick Rehabilitation (AC) 120 - 200 mm depth (m ²)	Reconstruction (AC) > 200 mm (m ²)	Concrete Slab Replacement (m ²)	Concrete Slab Stabilisation (m ²)	AC Intersection Resurfacing (Number)
1						6,000	10,000	54
2						6,000	10,000	54
3						6,000	10,000	54
4						6,000	10,000	54
5						6,000	10,000	54
6						6,000	10,000	54
7						6,000	10,000	54
8						6,000	10,000	53
9						6,000	10,000	53
10						6,000	10,000	17
TOTAL						60,000	100,000	501
Cost								

Annual Treatment Program (Quantities). Sub Network 1. Principal Routes.

**Project: North East Sydney
Performance Specified Maintenance Contract (PSMC)**

Contract no: 07.2593.0002

Year	Resealing (Spray Sealing) (m ²)	Asphaltic Concrete Resurfacing (AC) =< 50mm depth (m ²)	Thin Rehabilitation (AC) 50 - 120 mm depth (m ²)	Thick Rehabilitation (AC) 120 - 200 mm depth (m ²)	Reconstruction (AC) > 200 mm (m ²)	Concrete Slab Replacement (m ²)	Concrete Slab Stabilisation (m ²)	AC Intersection Resurfacing (Number)
1						1,200	2,500	5
2						1,200	2,500	5
3						1,200	2,500	5
4						1,200	2,500	5
5						1,200	2,500	5
6						1,200	2,500	5
7						1,200	2,500	5
8						1,200	2,500	5
9						1,200	2,500	5
10						1,200	2,500	2
TOTAL						12,000	25,000	47
Unit Cost								
Cost								

Annual Treatment Program (Quantities). Sub Network 2. Primary Roads

**Project: North East Sydney
Performance Specified Maintenance Contract (PSMC)**

Contract no: 07.2593.0002

Primary Roads - Sub Network 2

Year	Resealing (Spray Sealing) (m ²)	Asphaltic Concrete Resurfacing (AC) =< 50mm depth (m ²)	Thin Rehabilitation (AC) 50 - 120 mm depth (m ²)	Thick Rehabilitation (AC) 120 - 200 mm depth (m ²)	Reconstruction (AC) > 200 mm (m ²)	Concrete Slab Replacement (m ²)	Concrete Slab Stabilisation (m ²)	AC Intersection Resurfacing (Number)
1						2,600	4,000	23
2						2,600	4,000	23
3						2,600	4,000	23
4						2,600	4,000	23
5						2,600	4,000	23
6						2,600	4,000	23
7						2,600	4,000	23
8						2,600	4,000	23
9						2,600	4,000	23
10						2,600	4,000	7
TOTAL						26,000	40,000	214
Unit Cost								
Cost								

Annual Treatment Program (Quantities). Sub Network 3. Secondary Roads

Project: North East Sydney
Performance Specified Maintenance Contract (PSMC)

Contract no: 07.2593.0002

Secondary Roads - Sub Network 3

Year	Resealing (Spray Sealing) (m ²)	Asphaltic Concrete Resurfacing (AC) =< 50mm depth (m ²)	Thin Rehabilitation (AC) 50 - 120 mm depth (m ²)	Thick Rehabilitation (AC) 120 - 200 mm depth (m ²)	Reconstruction (AC) > 200 mm (m ²)	Concrete Slab Replacement (m ²)	Concrete Slab Stabilisation (m ²)	AC Intersection Resurfacing (Number)
1						2,200	3,500	25
2						2,200	3,500	25
3						2,200	3,500	25
4						2,200	3,500	25
5						2,200	3,500	25
6						2,200	3,500	25
7						2,200	3,500	25
8						2,200	3,500	25
9						2,200	3,500	25
10						2,200	3,500	8
TOTAL						22,000	35,000	233
Unit Cost								
Cost								

Annual Treatment Program (Quantities). Sub Network 4. Minor Roads.

Project: North East Sydney
Performance Specified Maintenance Contract (PSMC)

Contract no: 07.2593.0002

Minor Roads - Sub Network 4

Year	Resealing (Spray Sealing) (m ²)	Asphaltic Concrete Resurfacing (AC) =< 50mm depth (m ²)	Thin Rehabilitation (AC) 50 - 120 mm depth (m ²)	Thick Rehabilitation (AC) 120 - 200 mm depth (m ²)	Reconstruction (AC) > 200 mm (m ²)	Concrete Slab Replacement (m ²)	Concrete Slab Stabilisation (m ²)	AC Intersection Resurfacing (Number)
1						0	0	1
2						0	0	1
3						0	0	1
4						0	0	1
5						0	0	1
6						0	0	1
7						0	0	1
8						0	0	0
9						0	0	0
10						0	0	0
TOTAL						0	0	7
Unit Cost								
Cost								

EXECUTED as a deed.

**SIGNED for ROADS AND TRAFFIC
AUTHORITY OF NEW SOUTH WALES,**
by its duly authorised delegate, in the
presence of:

Signature of agent

Signature of witness

Name

Name

**EXECUTED by DOWNER EDI WORKS
PTY LTD ABN 66 008 709 608** in
accordance with s127 of the *Corporations
Act 2001* (Cth):

Signature of director

Signature of director/secretary

Name:

Name:

Annexure A

WORK ORDER

Annexure B

WORK PROPOSAL

Annexure C

WORK TERMS

List of Exhibits

GENERAL SPECIFICATIONS

- G10 Control of Traffic
- G11 Road Occupancy Provisions
- G22 Occupational Health and Safety
- G36M Environmental Protection (Management system)

QUALITY SYSTEM SPECIFICATIONS

- Q6 Quality Management System (Type 6)

NETWORK MANAGEMENT SPECIFICATIONS

- M1 General Network Management Requirements
- M2 Network Performance Management Requirements
- M3 Calculation of Pavement Performance Measures
- M4 Annexures to RTA Specifications M1 PSMC and M2 PSMC
- M100 Pavement Design Principles and Requirements

MAINTENANCE SPECIFICATIONS – OPERATIONAL PERFORMANCE MEASURES

- M20 PSMC Maintenance Intervention Requirements (Pavement)
- M30 PSMC Maintenance Intervention Requirements (Corridor)
- M40 PSMC Maintenance Intervention Requirements (Operating Assets)
- M50 PSMC Maintenance Intervention Requirements (Drainage)
- M60 PSMC Maintenance Intervention Requirements (Traffic Facilities)
- M200 Maintenance Rectification Requirements (Pavement)
- M300 Maintenance Rectification Requirements (Corridor)
- M400 Maintenance Rectification Requirements (Operating Assets)
- M500 Maintenance Rectification Requirements (Drainage)
- M600 Maintenance Rectification Requirements (Traffic Facilities)

MAINTENANCE SPECIFICATIONS – GENERAL

- M120 Concrete Pavement Repair Practice
- M210 Crack Sealing (Bituminous Surface)
- M215 Routing and Sealing of Cracks (Concrete Pavement)
- M220 Repair of Joint Seals in Concrete Pavement
- M224 Repair of Surface Spalls in Concrete Pavement
- M230 Cross Stitching of Cracks and Joints (Concrete Pavement)
- M235 Pressure Grouting for Slab Jacking/Stabilisation
- M238 Injected Expanding Foam Slab Jacking/Stabilisation
- M250 Heavy Patching (Flexible Pavement)
- M270 Slab Replacement (Concrete Pavement)
- M290 Pavement Reconstruction (Bound and Unbound Material)
- M317 Landscape Maintenance
- M318 Landscape Restoration
- M525 Shoulder Grading
- M620 Maintenance of Road Safety Barrier Systems
- M700 Bridge and Tunnel – Routine Maintenance

ROADWORKS SPECIFICATIONS

- R11 Stormwater Drainage
- R15 Kerbs and Getters
- R32 Subsurface Drainage – Materials
- R33 Trench Drains
- R37 Intra-Pavement Drains

- R38 Edge Drains
- R49 Construction of Verges
- R50 Stabilisation of Earthworks
- R53 Concrete (for General Use), Mortar and Grout
- R55 Rock Filled Gabions & Mattresses
- R71 Unbound and Modified Pavement Course
- R73 Heavily Bound Pavement Course (Plant Mixed using Slow Setting Binders)
- R75 In Situ Pavement Recycling by Deep-Lift Cementitious Stabilisation
- R82 Lean-Mix Concrete Subbase
- R83 Jointed Concrete Base
- R84 Continuously Reinforced Concrete Base
- R90 Roller Compacted Concrete Subbase
- R101 Cold Milling of Asphalt, Base Course and Cement Concrete
- R103 High Pressure Waterblasting of Bituminous Seals
- R106 Sprayed Bituminous Surfacing (with Cutback Bitumen)
- R107 Sprayed Bituminous Surfacing (with Polymer Modified Binder)
- R109 Bituminous Slurry Surfacing
- R110 Coloured Surface Coatings for Bus Lanes and Cycleways
- R111 Sprayed Bituminous Surfacing (with Bitumen Emulsion)
- R112 Sprayed Bituminous Surfacing (for Enrichment & Rejuvenation)
- R113 Sprayed Bituminous Surfacing (with Fibre Reinforcement)
- R116 Asphalt (Dense Graded and Open Graded)
- R121 Stone Mastic Asphalt
- R123 Thin Open Graded Asphalt Surfacing
- R131 Guide Posts
- R132 Safety Barrier Systems
- R142 Retroreflective Raised Pavement Markers
- R143 Signposting
- R145 Pavement Marking (Performance-Based)
- R161 Fencing
- R173 General Concrete Paving
- R178 Vegetation
- R271 Design & Construction of Noise Walls
- R421 Measurement of Longitudinal Line Markings by Mobile Reflectometer.
- R422 Measurement of Roughness, Rutting and Texture by Laser Profilometer
- R423 Measurement of Surface Friction by Sideways force Coefficient Routine Investigation Machine (SCRIM)
- R424 Measurement of Surface Cracking by RoadCrack
- R425 Measurement of Deflection by Falling Weight Deflectometer (FWD)
- R426 Measurement of Traffic Volume and Classification at permanent installations

BRIDGEWORKS SPECIFICATIONS

- B204 Welding of Bridges and Other Road Structures
- B220 Protective Treatment of Steelwork.
- B240 Supply of Bolts Nuts Screws and Washers
- B241 Manufacture and Supply of Minor Steel Items
- B246 Manufacture and Supply of Minor Aluminium Items
- B264 Erection of Barrier Railings and Minor Components

MATERIALS SPECIFICATIONS

- 3051 Unbound and Modified Base And Sub-Base Materials For Surfaced Road Pavements
- 3052 Material to be Bound (MTBB) for Base and Sub-Base Materials for Surfaced Road Pavements
- 3053 Quicklime
- 3054 Hydrated Lime

- 3061 Bound and Unbound Material for Pavement Repairs
- 3151 Cover Aggregate for Sprayed Bituminous Surfacing
- 3201 Concrete Supply for Maintenance
- 3202 Wax Emulsion Concrete Curing Compound
- 3204 Preformed Joint Fillers for Concrete Road Pavements and Structures
- 3211 Portland and Blended Cements
- 3221 Roller Compacted Concrete
- 3252 Polymer Modified Binder
- 3253 Bitumen for Pavements
- 3254 Bitumen Emulsion
- 3256 Comminuted Scrap Rubber
- 3258 Aggregate Precoating Agent (for Bitumen)
- 3259 Bitumen Adhesion Agent (for Bitumen)
- 3261 Cutback Bitumen
- 3266 Coldmix Asphalt
- 3268 Aggregate Precoating Agent (for Polymer Modified Binder)
- 3269 Bitumen Adhesion Agent (for Polymer Modified Binder)
- 3351 Road Marking Paint
- 3353 Glass Beads (for Application to Road Marking Materials)
- 3354 Adhesives for Raised Pavement Marker Installation
- 3359 Profile Thermoplastic Road Marking Material
- 3360 Two Part Cold Applied Road Marking Material
- 3385 Barrier Boards
- 3400 Manufacture and Delivery of Road Signs
- 3411 Supply of Guide Posts Timber
- 3412 Supply of Guide Posts Non-Timber
- 3553 Seamless Tubular Filter Fabric
- 3555 Drainage Pipe (slotted fibre-reinforced concrete)

RTA STANDARD DRAWINGS

RSD RTA Standard Drawings

EXTRACT OF INSURANCE POLICY TERMS

Insurance Terms

PSMC- Work Order



PSMC WORK ORDER

TO: [CONTRACTOR]

1. RTA and Contractor have agreed that the Contractor will carry out the Additional Services under the Contract as described in this Work Order.
2. This Work Order consists of:
 - (a) the Work Order Information set out in schedule 1; and
 - (b) the Work Order Documents described in schedule 1 and set out in the Exhibits.
3. This Work Order is effective from the date specified in the Work Order Information.

.....
Signed for Roads and Traffic Authority of NSW
by the Contract Manager

Schedule 1

WORK ORDER INFORMATION

1. This Schedule 1 forms part of the Work Order.
2. Any capitalised words have the meaning set out in the Work Terms.

No.	Item	Details		Work Terms clause reference
Dates and times, Site and description of the Works				
1.	Date			N/A
2.	Work Order number			N/A
3.	Site			13.1
4.	Description of the Works			1.1
5.	Completion Date and times	Time period for possession of the Site:	13.1
		Completion Date	
		Milestones 1	Description: Time period for possession of the Site: Completion Date:	
		Milestones 2	Description: Time period for possession of the Site: Completion Date:	
		Milestones 3	Description: Time period for possession of the Site: Completion Date:	

No.	Item	Details	Work Terms clause reference																
Documents																			
6.	Work Order Documents	<table border="1"> <thead> <tr> <th data-bbox="587 409 1054 461">Title</th> <th data-bbox="1054 409 1302 461">Exhibit number</th> </tr> </thead> <tbody> <tr> <td data-bbox="587 461 1054 584">RTA QA Specification M1 PSMC sections 3.0, 4.1, 4.4, 4.5, 4.6, 6.0, 7.0, 8.0 and 9.0</td> <td data-bbox="1054 461 1302 584">N/A</td> </tr> <tr> <td data-bbox="587 584 1054 674">RTA QA Specification M2 PSMC sections 2.1, 2.9 and 2.10.</td> <td data-bbox="1054 584 1302 674">N/A</td> </tr> <tr> <td data-bbox="587 674 1054 763">RTA QA Specifications Q6, G10, G11, G22 and G36M</td> <td data-bbox="1054 674 1302 763">N/A</td> </tr> <tr> <td data-bbox="587 763 1054 824">Pricing form</td> <td data-bbox="1054 763 1302 824">1</td> </tr> <tr> <td data-bbox="587 824 1054 884"></td> <td data-bbox="1054 824 1302 884"></td> </tr> <tr> <td data-bbox="587 884 1054 945"></td> <td data-bbox="1054 884 1302 945"></td> </tr> <tr> <td data-bbox="587 945 1054 1003">[RTA to insert]</td> <td data-bbox="1054 945 1302 1003">[RTA to insert]</td> </tr> </tbody> </table>	Title	Exhibit number	RTA QA Specification M1 PSMC sections 3.0, 4.1, 4.4, 4.5, 4.6, 6.0, 7.0, 8.0 and 9.0	N/A	RTA QA Specification M2 PSMC sections 2.1, 2.9 and 2.10.	N/A	RTA QA Specifications Q6, G10, G11, G22 and G36M	N/A	Pricing form	1					[RTA to insert]	[RTA to insert]	13.1,
Title	Exhibit number																		
RTA QA Specification M1 PSMC sections 3.0, 4.1, 4.4, 4.5, 4.6, 6.0, 7.0, 8.0 and 9.0	N/A																		
RTA QA Specification M2 PSMC sections 2.1, 2.9 and 2.10.	N/A																		
RTA QA Specifications Q6, G10, G11, G22 and G36M	N/A																		
Pricing form	1																		
[RTA to insert]	[RTA to insert]																		
7.	Number of copies of Contractor's Documents to be provided to RTA: Copies (5 applies if not filled in)	4.4(a)																
Scope of Activities (Design and Construct)																			
8.	Extent of Design by the Contractor	<table border="1"> <tbody> <tr> <td data-bbox="587 1232 1090 1570">All necessary design for or in respect of the Works not already performed by RTA, as described in RTA's Documents including but not limited to all design development, documentation and coordination of the design of the various engineering and architectural disciplines, workshop detailing and finalisation of the Design in all respects, in accordance with the Work Order Documents.</td> <td data-bbox="1090 1232 1302 1570">(No applies if not filled in)</td> </tr> <tr> <td data-bbox="587 1570 1090 1697">Under no circumstance may the Contractor change RTA's design without RTA's prior written approval.</td> <td data-bbox="1090 1570 1302 1697">Yes</td> </tr> </tbody> </table>	All necessary design for or in respect of the Works not already performed by RTA, as described in RTA's Documents including but not limited to all design development, documentation and coordination of the design of the various engineering and architectural disciplines, workshop detailing and finalisation of the Design in all respects, in accordance with the Work Order Documents.	(No applies if not filled in)	Under no circumstance may the Contractor change RTA's design without RTA's prior written approval.	Yes	4, 13.1												
All necessary design for or in respect of the Works not already performed by RTA, as described in RTA's Documents including but not limited to all design development, documentation and coordination of the design of the various engineering and architectural disciplines, workshop detailing and finalisation of the Design in all respects, in accordance with the Work Order Documents.	(No applies if not filled in)																		
Under no circumstance may the Contractor change RTA's design without RTA's prior written approval.	Yes																		
9.	Building Code of Australia applies to:	The Design in the Contractor's Documents	No 4.2(a), 4.3(d),																

No.	Item	Details	Work Terms clause reference
		The Materials used in the construction of the Works	No 5.2(a)
10.	Responsibility for Design	Is the Contractor to assume responsibility for design carried out by RTA before the date of Work Order and does clause 4.3 apply?	(No applies if not filled in) 4.3
Payments			
11.	Additional Services Fee	\$..... (To be calculated in accordance with the pricing form (if any) set out in Exhibit 1.) Basis of payment is: (Lump sum / Schedule of Rates / Schedule of Rates and lump sum)	13.1 8.2(b)
12.	Type of Payment	Monthly Progress Payment/Milestone Payment (Monthly Progress Payment applies if not filled in)	8.5(b)
Miscellaneous			
13.	Working Hours		2.6
14.	Community consultation and advertisements	Requirements: [RTA to insert]	2.7
Insurance			
15.	Additional insurance	Requirements: [RTA to insert]	3.2

Exhibit 1

PRICING FORM

Work Proposal number: (if N/A write "N/A")

Work Order number:

Pay item	Description	Basis of payment	Quantity	Unit of Measure	Rate	Surcharge Applicable	Amount
Total Value:							
GST component:							

Contractor's Authorised Person

I hereby offer our price for the subject work as detailed in the referenced Work Proposal and summarised in the schedule above

.....

Signature

Date

Contract Manager

The price offered for the subject work is accepted, and a Work Order (as referenced) is hereby issued

.....

Signature

Date

PSMC- Work Proposal



PSMC WORK PROPOSAL

TO: [CONTRACTOR]

1. RTA proposes that the Contractor carry out Additional Services under the Contract as described in this Work Proposal.
2. Once agreed, RTA will issue a Work Order with the same reference number. The Work Order will be effective from the date specified in the Work Order Information.
3. This Work Proposal consists of:
 - (a) the proposed Work Order Information set out in schedule 1; and
 - (b) the proposed Work Order Documents.
4. The closing date for submitting a price is [**Contract Manager to insert date**].
5. The Contractor must provide the following documents in addition to the Pricing Form: [**Program, project plans, amendments to Quality Plan etc**]

.....

- I hereby request that a price be submitted for the subject work by the specified Closing Date above.

Signed for Roads and Traffic Authority of NSW

by the Contract Manager

- I confirm the receipt of the Work Proposal and hereby submit our price for work the subject of this Work Proposal.

- I agree to provide the Additional Services the subject of this Work Proposal for the price in Exhibit 1.

Signed for the Contractor

by the Contractor's Authorised Person

.....

Schedule 1

PROPOSED WORK ORDER INFORMATION

1. This Schedule 1 forms part of the Work Proposal.
2. Any capitalised words have the meaning set out in the Work Terms.

No.	Item	Details		Work Terms clause reference
Dates and times, Site and description of the Works				
1.	Date			N/A
2.	Proposed Work Order number			N/A
3.	Site			13.1
4.	Description of the Works			1.1
5.	Completion Date and times	Time period for possession of the Site:	13.1
		Completion Date	
		Milestones 1	Description: Time period for possession of the Site: Completion Date:	
		Milestones 2	Description: Time period for possession of the Site: Completion Date:	
		Milestones 3	Description: Time period for possession of the Site: Completion Date:	

No.	Item	Details	Work Terms clause reference																
Documents																			
6.	Proposed Work Order Documents	<table border="1"> <thead> <tr> <th data-bbox="588 412 1053 456">Title</th> <th data-bbox="1053 412 1302 456">Exhibit number</th> </tr> </thead> <tbody> <tr> <td data-bbox="588 456 1053 584">RTA QA Specification M1 PSMC sections 3.0, 4.1, 4.4, 4.5, 4.6, 6.0, 7.0, 8.0 and 9.0</td> <td data-bbox="1053 456 1302 584">2</td> </tr> <tr> <td data-bbox="588 584 1053 674">RTA QA Specification M2 PSMC sections 2.1, 2.9 and 2.10</td> <td data-bbox="1053 584 1302 674">3</td> </tr> <tr> <td data-bbox="588 674 1053 763">RTA QA Specifications Q6, G10, G11, G22 and G36M</td> <td data-bbox="1053 674 1302 763">4</td> </tr> <tr> <td data-bbox="588 763 1053 819">Pricing form</td> <td data-bbox="1053 763 1302 819">1</td> </tr> <tr> <td data-bbox="588 819 1053 887"></td> <td data-bbox="1053 819 1302 887"></td> </tr> <tr> <td data-bbox="588 887 1053 954"></td> <td data-bbox="1053 887 1302 954"></td> </tr> <tr> <td data-bbox="588 954 1053 999">[RTA to insert]</td> <td data-bbox="1053 954 1302 999">[RTA to insert]</td> </tr> </tbody> </table>	Title	Exhibit number	RTA QA Specification M1 PSMC sections 3.0, 4.1, 4.4, 4.5, 4.6, 6.0, 7.0, 8.0 and 9.0	2	RTA QA Specification M2 PSMC sections 2.1, 2.9 and 2.10	3	RTA QA Specifications Q6, G10, G11, G22 and G36M	4	Pricing form	1					[RTA to insert]	[RTA to insert]	13.1,
Title	Exhibit number																		
RTA QA Specification M1 PSMC sections 3.0, 4.1, 4.4, 4.5, 4.6, 6.0, 7.0, 8.0 and 9.0	2																		
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RTA QA Specifications Q6, G10, G11, G22 and G36M	4																		
Pricing form	1																		
[RTA to insert]	[RTA to insert]																		
7.	Number of copies of Contractor's Documents to be provided to RTA: Copies (5 applies if not filled in)	4.4(a)																
Scope of Activities (Design and Construct)																			
8.	Extent of Design by the Contractor	<p>All necessary design for or in respect of the Works not already performed by RTA, as described in RTA's Documents including but not limited to all design development, documentation and coordination of the design of the various engineering and architectural disciplines, workshop detailing and finalisation of the Design in all respects, in accordance with the Work Order Documents.</p> <p>Under no circumstance may the Contractor change RTA's design without RTA's prior written approval.</p>	<p>(No applies if not filled in)</p> <p>Yes</p>	4, 13.1															
9.	Building Code of Australia applies to:	The Design in the Contractor's Documents	No	4.2(a), 4.3(d),															

No.	Item	Details	Work Terms clause reference
		The Materials used in the construction of the Works	No 5.2(a)
10.	Responsibility for Design	Is the Contractor to assume responsibility for design carried out by RTA before the date of Work Order and does clause 4.3 apply?	(No applies if not filled in) 4.3
Payments			
11.	Additional Services Fee	Basis of payment is: (Lump sum / Schedule of Rates / Schedule of Rates and lump sum)	13.1, 8.2(b)
12.	Type of Payment	Monthly Progress Payment/Milestone Payment (Monthly Progress Payment applies if not filled in)	8.5(b)
Miscellaneous			
13.	Working Hours		2.6
14.	Community consultation and advertisements	Requirements: [RTA to insert]	2.7
Insurance			
15.	Additional insurance	Requirements: [RTA to insert]	3.2

Exhibit 1

PRICING FORM

Proposed Work Order number:

Pay item	Description	Basis of payment	Quantity	Unit of Measure	Rate	Surcharge Applicable	Amount
Total Value:							
GST component:							

Contractor's Authorised Person

- I hereby offer our price for the subject work as detailed in the referenced Work Proposal and summarised in the schedule above.

.....

Signature

Date

Contract Manager

- The price offered for the subject work is accepted, and a Work Order (as referenced) is hereby issued.

.....

Signature

Date

PSMC- Work Terms



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PSMC- Work Terms

1. SCOPE OF WORK, TEMPORARY WORK AND WORK METHODS

1.1 The Works

The scope of the Works is described in the Work Order and this document (as applicable), and includes:

- (a) all the work specifically referred to in or otherwise contemplated by the Work Order Documents;
- (b) all items not specifically referred to or described in the Work Order Documents which nonetheless are required to complete the Works and achieve the effective and efficient use and operation of the Works;
- (c) all items referred to in one or more of the Work Order Documents or otherwise necessary for the Works to be fit for the purposes required by the Work Order but omitted from other Work Order Documents (those omitted items are included in the scope of the Works, unless the context requires otherwise); and
- (d) all items of work reasonably inferred from the Work Order Documents as necessary to properly execute and complete the Works.

1.2 Contractor Acknowledgement

The Contractor acknowledges that it has made full allowance in the Additional Services Fee for the matters referred to in clause 1.1.

1.3 Temporary Work

The Contractor must carry out and be responsible for all Temporary Work, carry out, perform, provide and do everything necessary including all ancillary or other work for or in connection with the Design and construction of the Works, subject to the following:

- (a) RTA may Direct the Contractor at any time to use a particular method or type of Temporary Work and the Contractor must comply with RTA's Direction;
- (b) subject to paragraph (a), if RTA's Direction directly causes the Contractor to incur necessarily and unavoidably any extra costs when compared with the costs the Contractor would have incurred had RTA not given the Direction, the Contractor may be entitled to those extra costs, and an extension of time under clause 6.1 (if applicable); and
- (c) if the need for the instruction in paragraph (a) arises from the Contractor's own act or omission, then the Contractor is not entitled to those extra costs or extensions of time.

1.4 Work methods

The Contractor is free to use any work method, subject to the following:

- (a) The Contractor is solely responsible for all work methods, whether specified in the Contract or not.
- (b) The Contractor warrants that it has undertaken all necessary investigation and inquiry to satisfy itself that all work methods specified in the Work Order or which

the Contractor otherwise proposes to use are appropriate for the purposes of the Work Terms.

- (c) If a particular work method is specified in the Work Terms, the Contractor must use it.
- (d) If a particular work method is specified in the Work Terms but it is not possible to use that method, the Contractor must use another method without entitlement to extra cost or an extension of time.
- (e) If a particular work method for which the Contractor is responsible is impractical and the Contractor, with or without the Direction of RTA, uses another work method by necessity to complete the Works, the Contractor is not entitled to an extension of time or extra cost.
- (f) RTA may Direct the Contractor at any time to use a particular work method.
- (g) Subject to sub-paragraphs (d) and (e) above, if RTA's Direction directly causes the Contractor to incur necessarily and unavoidably any extra costs when compared with the costs the Contractor would have incurred had RTA not given the Direction, the Contractor is entitled to those extra costs as an addition to the Additional Services Fee (if it demonstrates to the reasonable satisfaction of RTA that it incurred such extra costs) and may be entitled to an extension of time under clause 6.1 (if applicable).

1.5 Quality

- (a) The Contractor must perform the Work under the Work Terms in accordance with all the requisite standards required under the Contract.
- (b) The Contractor must, prior to commencing the Works, demonstrate to the RTA's reasonable satisfaction that the Contractor has in place an appropriate quality system for the Works (including any changes to the Quality Plan required for the particular Works).

2. TIME MANAGEMENT, WORKS PROGRAM, COMMUNITY CONSULTATION

2.1 Time management

- (a) The Contractor must commence Design and construction of the Works on Site in accordance with the Works Program (or the contractual program as referred to in clause 2.2, as applicable,).
- (b) The Contractor must carry out Design and construction of the Works in accordance with Scheduled Progress.
- (c) Whenever requested, the Contractor must demonstrate to RTA that it is achieving Scheduled Progress.
- (d) If the Contractor is not achieving Scheduled Progress, RTA may instruct the Contractor to take all reasonable steps to achieve Scheduled Progress, at the Contractor's cost.
- (e) The parties acknowledge that an instruction under paragraph (d) is not a Direction to accelerate.

2.2 Works Program

- (a) The Contractor must submit to RTA a program which complies with clause 2.3 within 14 days of the date of the Work Order.
- (b) Until the Contractor provides this program complying with clause 2.3, the program submitted by the Contractor in response to the Work Proposal will be the contractual program, if RTA so advises the Contractor in writing.
- (c) RTA need not respond to the Contractor about the program submitted. If RTA raises no objection and the program submitted by the Contractor under this clause 2.2 complies with clause 2.3, it becomes the Works Program.
- (d) If the program does not comply with clause 2.3, the Contractor must promptly and in any event within 10 Business Days of being notified by RTA of the non-compliance, submit to RTA a further program complying with the requirements for the Works Program in clause 2.3.
- (e) The Contractor must update and resubmit the Works Program when directed by RTA acting reasonably, taking into account:
 - (i) actual progress;
 - (ii) any changed circumstances; and
 - (iii) the effects of delays and approved extensions of time.

2.3 Requirements of Works Program

The Works Program must comply with the following requirements:

- (a) show the dates of, or, in the case of future activities and events, the dates for commencement and completion of Design and construction activities, other significant events, Milestones and the Works and also include Completion Dates;
- (b) reflect Scheduled Progress and be consistent with all constraints on access, performance and co-ordination;
- (c) show the logical relationship between activities and events shown in the program, identify time leads and lags, resource and other constraints and the sequence of activities which constitute the critical path or critical paths;
- (d) show the dates when the Contractor will require information, documents, materials or instructions from RTA and the dates when the Contractor will provide information or documents to RTA. These dates are to be consistent with dates which RTA could reasonably have anticipated at the date of the Work Order that this information, documents, materials and instructions would be required and provided; and
- (e) be in such form and include such detail as RTA reasonably requires and be accurate, comprehensive and complete in all respects.

2.4 Form and provision to RTA

- (a) When requested by RTA, the Contractor must provide the Works Program in an electronic form to RTA. The electronic form of the Works Program must be accessible and clearly show the requirements listed in this clause 2.
- (b) The software used by the Contractor to create the Works Program must be acceptable to RTA.

2.5 Extension of time and Works Program

- (a) The Contractor will not be entitled to Claim an extension of time under clause 6.1 or otherwise, until the Contractor has submitted to RTA a Works Program in conformance with clause 2.3, notwithstanding the references to the contractual program in clauses 2.1(a), 2.2(a) and 2.2(b).
- (b) The Works Program submitted in respect of a Claim for an extension of time must be the Works Program current (as adjusted under clause 2.2(e)) at the time of the event or events giving rise to the Claim.
- (c) All extension of time Claims must show how the Contractor has been or will be delayed in reaching Completion, by specific reference to an activity or activities on the then current (as adjusted under clause 2.2(e)) critical path or paths of the Works Program.
- (d) Provision of the Works Program does not relieve the Contractor of any of its obligations under the Contract.

2.6 Working hours

Despite any other provision in the Work Terms, the Contractor must only perform Works during the working hours set out in Work Order Information item 13.

2.7 Community consultation

The Contractor must undertake all community consultation and/or advertising as set out in Work Order Information item 14.

3. INSURANCE

3.1 RTA's insurance

- (a) RTA has effected an insurance policy or policies to cover RTA, the Contract and all Subcontractors employed from time to time in relation to the Works in accordance with clause 19.1 of the General Conditions.
- (b) RTA may in its discretion have other insureds named or included in the policy or policies referred to in clause 3.1(a), including any other government entity with an interest in the Works or the Site.
- (c) The policy or policies will be maintained by RTA until the issue of the Final Payment Schedule.
- (d) Before the earlier of:
 - (i) 10 Business Days after the Date of the Contract; or
 - (ii) the Contractor commencing to carry out any part of the Works,the Contractor must contact the insurance broker nominated in writing to the Contractor as RTA's insurance broker and must provide to that person all details reasonably requested for the purpose of the insurances referred to in clause 3.1.
- (e) The Contractor acknowledges that extracts of the policy terms have been exhibited to the Contractor prior to the date of the Work Order and are attached as Schedule 2. Full copies of the policy terms are available for inspection by arrangement with RTA's insurance broker.

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- (f) The insurance cover under clause 3.1(a) is subject to exclusions. These are set out in the policy terms referred to in clause 3.1(e) and include Excepted Risks.
 - (g) The Contractor will be responsible for paying or bearing all excesses in relation to insured matters under any policy referred to in clause 3.1(a) in accordance with the policy terms. The Contractor may effect its own insurance to cover the amount of any excess.
 - (h) The Contractor acknowledges that:
 - (i) the insurances referred to in clause 3.1(a) have been obtained at RTA's cost; and
 - (ii) the Contractor will not be entitled to payment of any allowance for the cost of obtaining such insurances or any additional insurance cover it considers necessary in relation to the subject matter of that insurance.
 - (i) The obtaining of insurance by RTA in accordance with this clause will not reduce, vary, or otherwise affect the Contractor's liabilities and obligations pursuant to clause 19 of the General Conditions, warranties given or otherwise under the Contract or in connection with the Works.
 - (j) If there is a claim for significant damage or destruction under the Works policy of insurance (as determined by RTA, acting reasonably):
 - (i) all settlement amounts must be paid by the insurer directly to RTA;
 - (ii) RTA may decide to have the Works reinstated, or may decide not to proceed with the Works, without creating any default by RTA under the Contract; and
 - (iii) the Contractor must reinstate the Works if instructed to by RTA and except as otherwise provided in the Contract may only make a Claim for payment for reinstatement of the Works up to the amount of any insurance settlement.

3.2 Additional insurance

The Contractor must effect such other insurance as required by RTA and specified in Work Order Information item 15.

4. DESIGN

4.1 Ambiguities

- (a) The Contractor, in addition to any responsibility to check RTA's Documents under clause 4.3 (if applicable), must check the Work Order Documents and notify RTA of any ambiguities, inconsistencies or discrepancies at least 15 Business Days before the Contractor proposes to use them for Design or construction (including procurement, manufacture or fabrication of any part of the Works) or for other purposes under the Work Terms.
- (b) RTA must resolve any ambiguities, inconsistencies or discrepancies in the Work Order Documents which are notified by the Contractor to RTA for resolution.
- (c) Subject to paragraph (d), if the resolution in paragraph (b) results in the Contractor incurring increased or reduced costs than the Contractor should reasonably have anticipated at the date of the Work Order, the Additional Services Fee must be

adjusted by the difference in costs agreed or valued under the procedures in clause 9 of the General Conditions. In the assessment of what the Contractor should reasonably have anticipated (as referred to above) regard must be had to the provisions of the Work Terms, in particular clause 1, and to whether the ambiguity, inconsistency or discrepancy was (or should have been) reasonably apparent to the Contractor at the date of the Work Order.

- (d) If the Contractor fails to take the steps required in paragraph (a), and a Change is instructed by RTA due to any ambiguity, inconsistency or discrepancy:
 - (i) the Contractor will not be entitled to costs for delay or the cost of any aborted work (including Design) resulting from the Change under the Contract; except that
 - (ii) if clause 4.3 is not applicable, the Contractor will be entitled to the reasonable and unavoidable cost of any aborted work (including Design) if the ambiguity, inconsistency or discrepancy is included in RTA's Documents forming part of the Work Order Documents.

4.2 Contractor's documents

- (a) The Contractor must carry out all necessary design to complete Design of the Works (whether or not it is responsible under clause 4.3(a) for RTA's design in RTA's Documents) and so produce Contractor's Documents which meet the requirements of all of the following:
 - (i) the Work Terms and General Conditions;
 - (ii) RTA Directions;
 - (iii) Law;
 - (iv) the Building Code of Australia (if applicable in Work Order Information item 9), and relevant Australian Standards; and
 - (v) good industry standards applicable to the Works.
- (b) The Contractor acknowledges that the Contractor must not change RTA's design in RTA's Documents without RTA's prior written approval. Whenever requested by RTA, the Contractor must promptly confirm in writing that Contractor's Documents are consistent with and comply with RTA's Documents and other relevant Contract Documents. If RTA's design is required to be changed (with RTA's prior written approval), the Change must be dealt with under the procedures in clause 9 of the General Conditions.
- (c) The Contractor must produce Contractor's Documents which will ensure that the Works and every part of them are fit for the purposes required by the Contract. This responsibility is reduced to the extent that the Contractor's Documents are not fit because of design work by RTA for which RTA retains responsibility.
- (d) The requirements of paragraph (c) are not reduced or affected by any Changes.

4.3 Adopting RTA's Documents

- (a) If Work Order Information item 10 specifies that the Contractor must accept full responsibility for design carried out by RTA before the date of the Work Order, then before submitting Contractor's Documents to RTA in accordance with clause 4.4 the Contractor (at its own cost) must:

-
- (i) check, and notify RTA of details (together with appropriate supporting documents) of any Fault in RTA's Documents;
 - (ii) amend the documents to correct the Faults so that, on Completion, the Works and every part will be fit for the purposes required by the Contract; and
 - (iii) accept and adopt RTA's Documents as if the Contractor prepared them so that they (amended by the Contractor as necessary) become Contractor's Documents when submitted under clause 4.4.
- (b) Subject to any provisions of the Contract which provide for change to RTA's Documents and clause 4.1, RTA must instruct a Change if the Contractor notifies RTA of a Fault in RTA's Documents and RTA requires a change to the Works as a result.
- (c) If RTA's Documents adopted by the Contractor contain a Fault not notified to RTA by the Contractor in accordance with clause 4.3(a):
- (i) the Contractor will be responsible for, and not entitled to payment for delays or the cost of any aborted work arising out of the Fault; and
 - (ii) the value of any Change RTA instructs as a result of the Fault must not include the cost of such delays or aborted work.
- (d) The Contractor acknowledges that:
- (i) RTA's design is incomplete and may contain Faults or conflict with Law or the Building Code of Australia (if applicable in Work Order Information item 9) or other codes or standards which the Contractor is required to comply with under the Contract;
 - (ii) RTA makes no representation concerning RTA's design and the Contractor is not entitled to rely on the completeness or accuracy of RTA's design; and
 - (iii) RTA relies on the Contractor to identify and remedy Faults in RTA's Documents.

4.4 Submitting Contractor's Documents

- (a) The Contractor must submit Contractor's Documents (as developed progressively and in stages, but so that each part is complete and in sufficient detail to explain what is proposed) to RTA at least 14 Business Days before the date the Contractor proposes to use them for construction (including procurement, manufacture or fabrication) of any part of the Works. The Contractor must provide the number of copies of the Contractor's Documents specified in Work Order Information item 7 when submitting Contractor's Documents.
- (b) To the extent specified in the Contract, the Contractor must undertake design review and consider the Design with those persons specified in the Work Order Documents, or those persons identified by RTA, including those involved in using or occupying any part of the Works as end users. The Contractor must carry out such design review and consideration with RTA and those other persons, and develop the Design and Contractor's Documents using the outcomes of this review and consideration. The Contractor must then submit to RTA for its consideration any necessary amendments to RTA's Documents proposed by the Contractor, including those arising out of the design review and consideration, prior to the Contractor submitting Contractor's Documents, as referred to in paragraph (a).

-
- (c) RTA need not respond to the Contractor about the Contractor's Documents submitted.
 - (d) If RTA objects to the Contractor's Documents, the Contractor must take the objections into account and discuss them with RTA. The Contractor must correct any Fault in the Contractor's Documents.
 - (e) Notwithstanding the design review and consideration by others under this clause 4.4, the Contractor remains fully responsible for all Contractor's Documents.
 - (f) Nothing RTA does or omits to do in connection with this clause 4.4 makes RTA liable for Contractor's Documents, or prevents RTA from relying on or enforcing a right, under the Contract or otherwise.

5. CONSTRUCTION

5.1 Setting out the Works

- (a) The Contractor must set out and construct the Works at the locations and levels specified in or required by the Work Order Documents.
- (b) The Contractor may request in writing from RTA any necessary additional information to be provided by RTA relating to setting out the Works not included in the Work Order Documents. The Contractor must make the request at least 10 Business Days prior to the date the Contractor proposes to use the information for set out for construction of the part of the Works to which the information applies. As soon as practicable, RTA must provide any additional information which it has or can reasonably obtain.
- (c) While carrying out the Works, if the Contractor discovers or is made aware of any error in the location, level, dimension or alignment of the Works:
 - (i) the Contractor must notify RTA;
 - (ii) RTA need not respond to the Contractor about any error;
 - (iii) RTA may instruct the Contractor regarding necessary rectification work and the Contractor must comply;
 - (iv) the Contractor must rectify any error to ensure that the Works comply with the Contract; and
 - (v) if an error occurs because of RTA's design for which RTA retains responsibility and causes the Contractor to incur necessarily and unavoidably any extra costs, the Contractor may be entitled to those extra costs and an extension of time under clause 6.1.
- (d) The Contractor must give RTA a copy of a survey showing the Works as constructed on the Site, including the relationship of the Works to any relevant property boundaries, easements, (including any right of way) and improvements on the Site.
- (e) If requested in writing by the Contractor, RTA may agree (but is not obliged to do so) by notice in writing that certain matters can be excluded from the survey. The survey must be performed by a registered surveyor or other surveyor to whom RTA has no objection.

5.2 Construction

- (a) The Contractor must supply all Materials and construct the Works in accordance with all of the following:
 - (i) any requirements under the Contract;
 - (ii) the Contractor's Documents;
 - (iii) Directions concerning the Works;
 - (iv) Law;
 - (v) the Building Code of Australia (if applicable in Work Order Information item 9), and relevant Australian Standards; and
 - (vi) good industry standards applicable to the Works.
- (b) The Contractor must comply with this clause 5.2 and ensure that the Works and every part of them are fit for the purposes required by the Contract. This responsibility is reduced to the extent that the Works are not fit because of design work by RTA for which RTA retains responsibility.
- (c) The provisions of paragraph (b) are not reduced or affected by any Changes.

5.3 Testing

- (a) The Contractor must:
 - (i) Test (at its own cost) all parts of the Works specified in the Contract to be Tested;
 - (ii) give RTA the opportunity to witness the Tests by giving reasonable notice; and
 - (iii) make the results available to RTA.
- (b) RTA may instruct the Contractor at any time to Test any part of the Works. RTA must pay for the Tests (as an addition to the Additional Services Fee) if the results of the Tests show full compliance with the Contract. Otherwise, the Contractor must pay.
- (c) The Contractor must repeat the Tests (at its own cost) of all parts of the Works where Defects have been found, until the results of these Tests, as reported in writing to RTA, confirm that all Defects have been made good and that the Works comply with the Contract.

5.4 Defects

- (a) The Contractor must identify and promptly make good all Defects so that the Works comply with the Contract. This requirement does not affect any other remedy or right of RTA.
- (b) At any time before Completion, RTA may instruct the Contractor to make good Defects within the time specified in a Defect Notice issued by RTA.
- (c) If the Contractor fails to make good the Defects in the time specified in the Defect Notice, RTA may have the Defects made good by others and then:

-
- (i) the cost will be a debt due to RTA and may be deducted from the Maintenance Fee or the Additional Services Fee, unless a Change applies under paragraph (e); and
 - (ii) the Contractor will be responsible for the work involved in making good the Defects as if the Contractor had performed the work.
- (d) Nothing in this clause 5.4:
- (i) reduces the Contractor's warranties and other liabilities and obligations under the Contract; or
 - (ii) affects RTA's common law right of damages.
- (e) If at any time before Completion the Contractor becomes aware of any defect which results from design or other work or actions for which it is not responsible, it must:
- (i) promptly notify RTA; and
 - (ii) make good the defect as a Change under clause 9 of the General Conditions, if instructed to by RTA.

5.5 Acceptance with Defects not made good

- (a) RTA, in its absolute discretion (and at any time, whether before or after Completion), may accept that specific Defects defined by RTA need not be made good.
- (b) Before RTA does so:
 - (i) RTA may propose deductions from the Maintenance Fee or the Additional Services Fee, and any terms it requires;
 - (ii) if the Contractor agrees with the deductions and the terms, the Maintenance Fee or Additional Services Fee will be adjusted accordingly; or
 - (iii) if the Contractor agrees with the terms but not with the proposed deductions, clauses 9.3(b), 9.3(c) and 9.3(d) of the General Conditions will apply.
- (c) If the parties do not agree in writing on RTA's terms, the Contractor must make good the Defects defined by RTA.
- (d) The Contractor remains liable for Defects whether known or not known at the time RTA accepts that Defects defined by RTA in paragraph (c) above need not be made good under this clause 5.5.

6. EXTENSIONS OF TIME AND DELAY

6.1 Extensions of time

- (a) If the Contractor is, or will be delayed in reaching Completion, the Contractor will be entitled to an extension of time for Completion for the number of days assessed by RTA, if the Contractor satisfies RTA that all the following conditions apply:

-
- (i) subject to paragraph (ii), the cause of the delay was not an event or circumstance for which the Contractor accepts the risk of delay under the General Conditions or the Specifications;
 - (ii) the cause of the delay was otherwise beyond the control of the Contractor (including an act, default or omission of RTA including a Direction contemplated by clause 9.1 of the General Conditions and the Contractor has not contributed in any way to the delay;
 - (iii) the Contractor has taken all reasonable steps to avoid and minimise the delay and its effects;
 - (iv) the Contractor has given to RTA each of the notices required under clauses paragraphs (b) and (c);
 - (v) the delay occurred to an activity or activities on a critical path of the then current Works Program, as provided for in clauses 2.1 to 2.4, and the Contractor has submitted this Works Program with the notice required under paragraph (c).
- (b) The Contractor must give RTA notice of the delay, its cause, relevant facts, and its expected impact, as soon as practicable after the delay commenced.
 - (c) Within 10 Business Days of commencement of the delay, the Contractor must give RTA notice of the extension of time claimed, together with the information required under clause 2.5(c) and other information sufficient for RTA to assess the Claim. If the delay continues for more than 10 Business Days, the Contractor must give a further notice every 10 Business Days thereafter, until after the delay ends, if the Contractor wishes to claim a further extension of time, together with further information of the kind required by this clause 6.1.
 - (d) An extension of time is only given for delays occurring on days on which the Contractor usually carries out work under the Work Order.
 - (e) When concurrent events cause a delay in reaching Completion and one or more of the events is within the control of the Contractor, then to the extent that the events are concurrent, the Contractor will not be entitled to an extension of time for Completion notwithstanding that another cause of the delay is such that the Contractor would have had an entitlement to an extension of time.
 - (f) RTA may in its absolute discretion for the benefit of RTA extend the time for Completion at any time and for any reason, whether or not the Contractor has Claimed an extension of time. The Contractor is not entitled to an extension of time for Completion under this paragraph (f) unless RTA exercises its discretion to extend the time for Completion.

6.2 Delays caused by RTA

- (a) The Contractor acknowledges and agrees that there may be acts or omissions of RTA or a breach of the Contract by RTA which may cause the Contractor delay, disruption or interference to the carrying out of the Works.
- (b) The Contractor's only remedy for delay, disruption or interference of any nature whatsoever caused by RTA (including for breach of Contract), whether under the Contract, at law or otherwise, is an extension of time for Completion of the Works under clause 6.1.

6.3 Delay to Completion

- (a) If the Contractor fails to achieve Completion by the Completion Date as required by clause 9, the Contractor acknowledges that this will be taken into account in the calculation of the Monthly Network Compliance Score.
- (b) The provisions of this clause 6.3 apply to a failure by the Contractor to achieve Completion by the Completion Date, in respect of the Works and in respect of any Milestones.

7. SUSPENSION

7.1 RTA's suspension

- (a) In addition to RTA's rights under the General Conditions, RTA may instruct the Contractor to suspend progress of the Works and Temporary Work, and the Contractor must comply.
- (b) The Contractor must resume carrying out the Works and Temporary Work when instructed to by RTA.
- (c) If the need for the suspension arises from RTA's own act or omission, then the Contractor will be entitled to:
 - (i) any extension of time granted under clause 6.1; and
 - (ii) (as an addition to the Additional Services Fee) its reasonable, direct Site and off-Site costs of the suspension, unavoidably incurred, having taken all reasonable steps to minimise the costs.
- (d) The Contractor has no other remedies in connection with the suspension.

7.2 Contractor's suspension

- (a) The Contractor may suspend work for or in connection with the Work Order if RTA:
 - (i) has both:
 - (A) become liable to pay the Contractor the full amount of a Payment Claim for the Additional Services Fee made in accordance with clause 16.4 of the General Conditions (excluding payments already made); and
 - (B) failed to pay it within the time prescribed by clause 16.4 of the General Conditions,
 - or
 - (ii) fails to pay the amount of a determination by an adjudicator under the *Building and Construction Industry Security of Payment Act 1999* (NSW).
- (b) Before it suspends work under this clause 7.2, the Contractor must give RTA at least 2 Business Days notice of its intention to do so. The Contractor may suspend work on expiry of the 2 Business Days if it has still not been paid.
- (c) The Contractor must resume all work within 3 Business Days of having been paid the amount referred to in clause 7.2(a).

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- (d) If the Contractor elects to suspend work under this clause 7.2, then it may be entitled to an extension of time under clause 6.1.

8. ADDITIONAL SERVICES FEE

8.1 The Additional Services Fee

The Additional Services Fee, and the rates and/or lump sums it includes, are not adjusted for rise or fall in the cost of labour or Materials provided by the Contractor, or for new, changed or increased taxes, duties or other imposts.

8.2 Schedules of Rates

- (a) At the date of the Work Order, quantities in a Schedule of Rates are estimated only, and RTA does not guarantee either the estimated quantities or the descriptions of the items.
- (b) If Work Order Information item 11 indicates that a Schedule of Rates applies, the Additional Services Fee is the sum of the products of the quantities and the relevant rate for each item in the Schedule of Rates, plus all lump sums (if any). Before an item is completed, the estimated quantity will be used in the calculation of the Additional Services Fee. After an item is completed, the actual quantity measured in accordance with the Contract will be used in the calculation of the Additional Services Fee.
- (c) The Contractor is entitled to payment of the Additional Services Fee calculated for actual quantities measured in accordance with the Work Terms.

8.3 Provisional Quantities

If RTA instructs the Contractor to carry out work which is the subject of a Provisional Quantity and that instruction requires the Contractor to carry out a greater or lesser quantity of work than the Provisional Quantity, including that no work the subject of the Provisional Quantity will be carried out, the Additional Services Fee must be adjusted by the amount calculated by multiplying the work order rate applicable to the Provisional Quantity work by the difference between the Provisional Quantity and the quantity of work carried out.

8.4 Entitlements

- (a) Except as otherwise expressly stated under the Work Terms or the General Conditions, the Additional Services Fee is only to be increased if required under any of the following clauses:
- (i) clause 1.3 (Temporary Work);
 - (ii) clause 1.4 (Work methods);
 - (iii) clause 4.1 (Ambiguities);
 - (iv) clause 5.3 (Testing);
 - (v) clause 7.1 (RTA's suspension);
 - (vi) clause 8.1 (The Additional Services Fee - Schedule of Rates);
 - (vii) clause 8.3 (The Additional Services Fee - Provisional Quantities);
 - (viii) clause 9 of the General Conditions (Changes); and

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- (ix) clause 16.7 of the General Conditions (Interest on overdue monies).
 - (b) The Additional Services Fee may be decreased if required by the Work Terms. Clauses that allow decreases in the Additional Services Fee include:
 - (i) clause 4.1 (Ambiguities);
 - (ii) clause 5.4 (Defects);
 - (iii) clause 5.5 (Acceptance with Defects not made good);
 - (iv) clause 8.2(Additional Services Fee - Schedule of Rates);
 - (v) clause 8.3 (Additional Services Fee - Provisional Quantities); and
 - (vi) clause 9.3 (After Completion).
 - (c) The Contractor is not entitled to any other payments related to the subject matter of the Work Order, under the Contract or otherwise, except:
 - (i) under clause 11.3;
 - (ii) for breach of the Contract; or
 - (iii) where this exclusion is not permitted by law.

8.5 Payment Claims

- (a) The Contractor must make Payment Claims for Additional Services under clause 16.4 of the General Conditions based on the Value Completed and as specified in this clause 8.5.
- (b) If Work Order Information item 12 specifies payment by Milestone Payment, then the Contractor may only make a Payment Claim under clause 16.4 of the General Conditions for the value of a Milestone on its Completion. If Work Order Information item 12 specifies payment by Milestone Payment and monthly Progress Payment, then the Contractor must make a Payment Claim in accordance with this paragraph (b) for Milestone Payments and paragraph (a) otherwise.
- (c) The Contractor must submit Payment Claims under clause 16.4 of the General Conditions in the form of Schedule 1 (Payment Claim Worksheet), or in such other form to which RTA agrees.
- (d) A Payment Claim under clause 16.4 of the General Conditions must:
 - (i) identify the work and Materials to which the Payment Claim relates; and
 - (ii) indicate the amount of the Progress Payment that the Contractor claims to be due for the work done to which the payment relates, in accordance with clause 8.5(a), after allowing for payments already made, as the Value Completed.
- (e) The Contractor warrants for itself and for and on behalf of Subcontractors and Suppliers that no Encumbrance exists over any Materials incorporated into the Works by the Contractor. If the Contract or the Contractor's employment under the Work Terms is terminated by RTA, the Contractor must ensure that RTA, in respect of any unfixed Materials for which payment has been made or which have been appropriated to the Contract, may enter upon any premises where the Materials are stored and take possession of these Materials.

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- (f) For work carried out and allowed in each Payment Claim, the following applies in calculating the Value Completed:
 - (i) For completed work covered by a lump sum:
 - (A) The Contractor may claim a lump sum by instalments with each Payment Claim under clause 16.4 of the General Conditions calculated in accordance with Schedule 1. The total of the lump sum instalments must never exceed the total of the lump sum.
 - (B) The subtotal of "Value Completed \$" amounts is recorded.
 - (ii) For work covered by a Schedule of Rates:
 - (A) The Contractor may claim for work covered by a Schedule of Rates as it is actually carried out (measured in accordance with the Contract), in accordance with Schedule 1.
 - (B) The subtotal of "Value Completed \$" of work for all Schedule of Rates items is recorded.
 - (iii) The Value Completed at the time of the Payment Claim under clause 16.4 of the General Conditions is the sum of the values of work completed (and subtotal "Value Completed \$" amounts) calculated under sub-paragraphs (i) and (ii) above.

8.6 Final payment

- (a) The Contractor must submit a Final Payment Claim under clause 16.4 of the General Conditions within 13 weeks after achieving Completion of the whole of the Works. The Final Payment Claim must include any Claim not previously claimed in a Payment Claim, and which is then permitted under clause 8.5, being a Claim agreed to by RTA or if not agreed, having been determined in accordance with the General Conditions.
- (b) Within 10 Business Days of receiving the Final Payment Claim (or, if the Contractor has not submitted a Final Payment Claim, within 15 weeks after achieving Completion of the whole of the Works), RTA must give the Contractor a Final Payment Schedule stating the amount payable by one party to the other and where the Contractor has submitted a Final Payment Claim, complying with the relevant provisions of clause 16.4 of the General Conditions.
- (c) Any payments by the Contractor to RTA in accordance with the Final Payment Schedule must be made within a further 10 Business Days after it is issued.
- (d) Any other Claim not previously brought which the Contractor is then entitled under the Contract to bring must be made (separate from the Final Payment Claim) within 13 weeks after achieving Completion of the whole of the Works. Otherwise it is barred. If RTA agrees to a Claim involving money under this clause 8.6(d), RTA will make payment within 20 Business Days of such agreement or of it being determined in accordance with the Contract.
- (e) The issue of the Final Payment Schedule is conclusive evidence that all necessary increases to the Additional Services Fee or to any other entitlement of the Contractor have been made, except for those required by:
 - (i) arithmetical error; or

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- (ii) valuation of Change in accordance with clause 9 of the General Conditions, relating to a Claim made in accordance with paragraph (d) above; and
 - (iii) resolution under clauses 29 to 31 of the General Conditions (as applicable) of any Claim made in accordance with paragraph (d).
- (f) The Contractor's liability under the Contract or otherwise is not affected by the issue of the Final Payment Schedule. The Contractor's liability continues until any limitation period under statute expires.

9. COMPLETION

9.1 Early use

- (a) Before the Contractor achieves Completion, RTA (and anyone authorised by RTA) may use or occupy (but is not obligated to) any part of the Works which is sufficiently complete, or the whole of the Works and then:
 - (i) the Contractor's responsibilities are not affected except if RTA (or anyone authorised by it to use or occupy any part of the Works) causes the Contractor's work to be hindered; and
 - (ii) RTA becomes responsible for any additional insurance required.
- (b) If RTA requires to use or occupy any part or the whole of the Works before the Contractor achieves Completion, as provided in paragraph (a) above, RTA must give not less than 15 Business Days' notice in writing to the Contractor that RTA will be using or occupying a part or parts, or the whole of the Works and must specify those parts, or that the whole of the Works is, to be so used or occupied.
- (c) The Contractor must do everything necessary to provide to RTA promptly, but in any event no later than 15 Business Days after receipt of the notice in paragraph (b) above, all documents and other things relevant to the parts to be used or occupied as are listed in the second paragraph of the definition of Completion, and to otherwise provide full assistance and cooperation to RTA (and anyone authorised by RTA) in the use and occupation of the Works.

9.2 Completion

- (a) The Contractor must achieve Completion by the Completion Date.
- (b) When the parties agree that Completion has been achieved, each party acting reasonably, RTA must give the Contractor a notice stating the Actual Completion Date.

9.3 After Completion

- (a) At any time after Completion:
 - (i) RTA may instruct the Contractor to make good Defects within the time specified in a Defect Notice;
 - (ii) if the Contractor fails to make good the Defects in the time specified in the Defect Notice, the provisions of clauses 5.4(c) and 5.4(d) will apply; and
 - (iii) RTA may instruct a Change in connection with any Defect instead of requiring the Defect to be made good under clause 5.4(b).

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- (b) This clause 9.3 does not reduce the Contractor's liability, whether arising under the Contract or otherwise. The Contractor's liability continues until any limitation period under statute expires.
 - (c) This clause 9.3 does not affect RTA's rights under clause 5.5.

10. TERMINATION BY RTA

10.1 Termination for Contractor's Work Order Default

- (a) RTA may terminate the Contractor's employment under the Work Order for Contractor's Work Order Default by giving notice, as set out in this clause 10.
- (b) In the case of Contractor's Work Order Default, RTA must first give notice to the Contractor that it has 7 Business Days after the notice is given to the Contractor to remedy the Contractor's Work Order Default.
- (c) If the Contractor fails to give RTA a notice containing clear evidence that it has remedied a Contractor's Work Order Default, or fails to propose steps reasonably acceptable to RTA to remedy a Contractor's Work Order Default, RTA may give the Contractor a notice terminating its employment under the Work Order, specifying the Work Order number.
- (d) Nothing in this clause 10 affects or negates RTA's common law rights to terminate or for damages.
- (e) Nothing in this clause 10 affects the Contractor's rights to perform its other obligations under the Contract that is separate from its obligation under this Work Term.

10.2 Consequences of termination

If RTA terminates the Contractor's employment under the Work Order under this clause 10, it may at its sole discretion employ others to complete the Works the subject of a Work Order and the following will then apply:

- (a) The Contractor must leave the Site as soon as reasonably practicable and remove all Materials it has brought onto the Site, but must leave any Materials required by RTA to have the Works completed.
- (b) The Contractor must assign to RTA the Contractor's rights and benefits in all its contracts concerning the Works, warranties and bank guarantees, insurance bonds, other security of a similar nature or purpose and retention held by the Contractor, with effect from the date of termination of its employment under the Work Order.
- (c) The Contractor must consent to a novation to RTA or its nominees of all Subcontracts and its other contracts concerning the Works, as required by RTA and must procure at the time of entering into each Subcontract and other contracts, the consent in writing of all of its Subcontractors, Suppliers and Consultants to the novation. RTA may at any time make payments and may deduct, withhold or set off any amount to be paid under the novated contracts from amounts otherwise payable to the Contractor or from any Security.
- (d) The Contractor must do everything and sign all documents necessary to give effect to this clause, and it irrevocably appoints RTA as its attorney to do this in its name if it fails to do so.

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- (e) If, the cost of appointing others to complete the Works exceeds the amount that would have been paid to the Contractor to complete the Works, then the difference will be a debt due by the Contractor to RTA.
 - (f) RTA may make provisional assessments of the amounts payable to RTA under paragraph (e) and may demand them under the Security given by the Contractor to RTA under the Contract.

11. TERMINATION BY RTA FOR CONVENIENCE

11.1 RTA may terminate Work Order for convenience

RTA may terminate the Work Order, by giving notice with effect from the date stated in the notice, for its convenience and without the need to give reasons.

11.2 Contractor's obligations

- (a) The Contractor must comply with any Directions of RTA to wind down and stop work.
- (b) The Contractor must leave the Site as soon as reasonably practicable and remove all Materials it has brought onto the Site, but must leave any Materials required by RTA to have the Works completed.

11.3 Payments on termination for convenience

- (a) After termination under clause 11.1, subject to its rights under the Contract, including any right of set-off, RTA must pay the Contractor:
 - (i) the Value Completed for all Works carried out (as determined under clause 8) to the date the termination notice takes effect, after taking into account previous payments and any deductions, retentions or set-offs;
 - (ii) the cost of Materials reasonably ordered by the Contractor for the Works which it is legally liable to accept, but only if on payment these unfixed Materials become the property of RTA, free of any Encumbrances;
 - (iii) the reasonable, direct costs of removal of any Temporary Works and other things from the Site incurred by the Contractor, but only if the Contractor complies with a strict duty to mitigate costs;
 - (iv) an amount of 2% of the unpaid portion (after taking into account the amount payable under paragraph (a)(i)) of the Additional Services Fee; and
 - (v) costs reasonably incurred by the Contractor in the expectation of completing the Works and not included in any other payment by RTA.
- (b) The payments referred to in paragraph (a) are in full compensation for termination under this clause 11, and the Contractor has no claim for damages or other entitlement whether under the Contract or otherwise.

12. TERMINATION UNDER THE CONTRACT

12.1 Termination

If the Contract is terminated under clauses 34, 35 or 37 of the General Conditions, all Work Orders are terminated with effect at the date of termination of the Contract, and the relevant clauses of the General Conditions will apply.

13. INTERPRETATION

13.1 Definitions

Unless otherwise specified, capitalised terms in this document have the meaning set out in the General Conditions. The following definitions also apply in this document:

Actual Completion Date means the date on which Completion of the Works or of a Milestone (as applicable) is achieved by the Contractor.

Additional Services Fee means the price specified in Work Order Information item 11 which is the agreed price for performing the Works, subject to adjustment in accordance with the Contract.

Claim means a claimed entitlement of the Contractor under or arising out of or connected with the Work Terms, in tort, in equity, under any statute, or otherwise. It includes a claimed entitlement to an extension of time or for breach of the Work Terms by RTA.

Completion mean the state of the Works or a Milestone (as applicable) being complete, except for Defects not known. This includes, without limitation:

- (a) the supply to RTA of all Subcontractor's warranties, operating and maintenance manuals, licences, access codes, as-built drawings or work-as-executed drawings;
- (b) certificates, authorisations, approvals and consents from relevant Authorities and service providers;
- (c) those certificates required for the occupation, use and maintenance of the Works; and
- (d) all other documents, Testing, training and other requirements specified in the Contract.

Completion Date means the date (or the last day of the period) specified in Work Order Information item 5 on, or by which, the Contractor must achieve Completion of the Works or of a Milestone (as applicable), as may be adjusted under clause 6.1.

Contractor's Work Order Default means a substantial breach of the Work Order by the Contractor, including, without limitation, any of the following:

- (a) abandoning the carrying out of the Works;
- (b) suspending progress of the carrying out of the Works in whole or part without the written agreement of RTA, except for suspension under clause 7;
- (c) significantly failing to achieve Scheduled Progress; or
- (d) failing to complete the Works by the Date for Completion.

Contractor's Documents means:

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- (a) drawings, specifications, calculations and other documents and information, meeting the requirements of clause 4.2, which the Contractor must produce to Design and construct the Works in accordance with the Contract; and
 - (b) documents which become Contractor's Documents under the Contract, including RTA's Documents checked, accepted and adopted under clause 4.3.

Defect means an error, omission, shrinkage, blemish in appearance or other fault in the Works or which affects the Works, which results from a failure of the Contractor to comply with the Contract.

Defect Notice means a notice issued by RTA under clause 5.4(b) or 9.3(a) instructing that specified Defects be made good within a given period.

Design means the design of the Works to be carried out by the Contractor, including the completion of any of RTA's design work which is described in RTA's Documents, to the extent specified in Work Order Information item 8; Designed, the Design, and other derivatives of Design have a corresponding meaning.

end users means persons to be involved in using or occupying any part of the Works, as referred to in clause 4.4(b).

Fault means ambiguity, inconsistency, discrepancy, omission, error or other fault.

Final Payment Claim means a Payment Claim given by the Contractor to RTA under clause 8.6(a).

Final Payment Schedule means a Payment Schedule given by RTA to the Contractor under clause 8.6(b).

General Conditions means clauses 1 to 42 of the Performance Specified Maintenance Contract entered into on or about 11 September 2008 between RTA and the Contractor.

Milestone means a part of the Works specified as such in Work Order Information item 5.

Milestone Payment means a payment to the Contractor on Completion of a Milestone.

Progress Payment means a payment by RTA in response to a Payment Claim, on account of the Additional Services Fee.

Provisional Quantity means the quantity of an item of work which is specified in the Work Order, but the quantity of which or whether that item of work will actually be required is not known definitively at the date of the Work Order.

RTA's Documents means the design and other documents prepared by RTA for the Work Order and provided to the Contractor at the date of the Work Order and included in the Work Order Documents, and any modified or further such documents later provided by RTA to the Contractor for the Work Order.

Schedule of Rates means any schedule in the Work Terms stated to be a Schedule of Rates, and which shows rates payable for carrying out items of work described in the schedule.

Scheduled Progress means the rate of progress to be achieved by the Contractor in Designing and constructing the Works, such that the Contractor is proceeding with due expedition and without undue delay (other than a delay for which the Completion Date is adjusted under the Work Terms), so that it will (or is likely to) complete the Works and all Milestones by their respective Completion Dates.

Site means the lands and other places to be made available by RTA to the Contractor for the purpose of executing the Works, and including any existing buildings, services or other improvements, as specified in Work Order Information item 3.

Temporary Work means temporary structures, amenities, physical services and other work, including Materials, Plant and equipment used in or in relation to the carrying out of the Works but not forming part of the Works.

Test means to examine, inspect, measure, prove and trial, including opening up of any part covered up, if necessary. Testing and other derivatives of Test have a corresponding meaning.

Value Completed means the value of work (including Design) carried out by the Contractor and incorporated into the Works, as referred to in clause 8.5.

Work Order means the document which is addressed to the Contractor, Work Order Information as its Schedule 1, and RTA's Documents as its Exhibits, the terms of which is incorporated into the Work Terms.

Work Order Information means the information regarding a specific Work Order as set out in Schedule 1 to that Work Order, the terms of which forms part of that Work Order.

Work Terms means this document and Schedule 1.

Work Order Documents means all documents listed in Work Order Information Item 6.

Works means the work to be Designed and constructed by the Contractor, as referred to in clause 1.1 to 1.5, including all work and items of the type referred to in clause 1.1 and Changes, but excluding Temporary Work; it means the Works as a whole and also any part of the Works unless stated otherwise or the context requires otherwise.

Works Program means the program described in clause 2.

Schedule 1

ADDITIONAL SERVICES FEE PAYMENT CLAIM WORKSHEET

1. Information

The Contractor: Name:
 ABN:
 PSMC Work Order no:

2. Where the Work Order includes a schedule of prices for work covered by a lump sum

Item No.	Description of work	Quantity	Unit	Rate*	Value Completed \$*
Total Value Completed for schedule of prices:					

3. Where the Work Order includes a Schedule of Rates

Pay Item	Description of work	Quantity	Unit	Rate*	Value Completed \$*
Total Value Completed for Schedule of Rates:					

4. Materials

Pay Item	Description of work	Quantity	Unit	Rate*	Value Completed \$*
Total Value Completed for Materials:					

* Amounts and rates are GST exclusive

Total Value Completed \$	
GST	

Total Value Completed including GST	
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* Amounts and rates are GST exclusive

Schedule 2

EXTRACT OF POLICY TERMS

ROADS AND TRAFFIC AUTHORITY OF NSW

Three Year Principal Contract Works

SUMMARY

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

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

Issued through:

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

Telephone 61 2 9253 8407
Facsimile 61 2 9253 7106

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

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

Signed for and on behalf of the Insurers

Section 1 Contract Works & Section 2 Third Party

Insurers and Proportions

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

* Excess Third Party insurances are annually renewable.

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Important Notice

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

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

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

Aon Risk Services Australia Limited
Sydney

Schedule

Sections 1 and 2

Insured

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

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

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

- (a) any principal or owner or agent of the Principal; or joint venture partner or alliance partner;
- (b) any construction manager or project manager;
- (c) any contractor or sub-contractor of any tier;
- (d) any architect, engineer or other consultant for their onsite activities only;
- (e) any lessor, financier, mortgagee or trustee;
- (f) any government body;
- (g) any other party with an insurable interest in the Contract(s);
- (h) It shall be noted that the architect, engineer or other consultant referred to in d. above shall not be construed as any other Insured

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

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

all for their respective rights and interests.

Business and Activities of the Insured

Principally but not limited to:

- civil contractors, designers, consultants, suppliers, project and construction managers, maintenance contractors;
- plant and equipment owners, operators and hirers, lessees and lessors;
- road traffic authority, which includes, property owners and occupiers, lessees and lessors;
- and all incidental and associated operations, trades and activities.

Period of Insurance

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

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

Maximum defects liability period

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

Insured Contracts Sections 1 & 2

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

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

Geographical Limits

Section 1 Material Damage

Anywhere in Australia

Section 2 Third Party Liability

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

Sums Insured

Section 1 Material Damage

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

A\$50,000,000 any one Occurrence

This Sum Insured applies in excess of the Excesses

Limits of Liability

Section 2 Third Party Liability

A\$200,000,000 any one occurrence unlimited to the number of occurrences during the period of insurance but limited to **A\$200,000,000** in the annual aggregate during each 12 month period during the period of insurance arising from products liability.

Such limits of liability apply in excess of the excesses.

Excesses

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

Insuring Clauses

Section 1

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

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

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

Section 2

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

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

happening:

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

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

In addition to any indemnity:

- (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 1

1. **Consequential Loss**

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

2. **Wear and Tear**

Damage directly caused by:

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

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

3. **Defects (LEG2/96)**

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

4. **Aircraft or Watercraft**

Aircraft or Watercraft or plant and equipment permanently mounted thereon.

5. **Disappearance or Shortage**

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

6. **Money**

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

7. **Transits Outside of Australia**

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

8. **Electronic Data Exclusion**

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

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

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

10. **Vegetation**

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

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

Exclusions Applicable to Section 2

1. **Employer's Liability**

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

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

2. **Industrial Awards**

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

3. **Aircraft and Watercraft**

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

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

4. **Vehicles**

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

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

5. **Loss of Use**

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

6. Products and Work Performed

Liability for:

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

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

7. Professional Liability

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

- (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.

Exclusions Applicable to Sections 1 & 2

1. **Nuclear Risks**

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

- (a) ionising, radiations or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel;
- (b) for the purpose of this General Exclusion 1 (a) only, combustion shall include any self-sustaining process of nuclear fission;
- (c) nuclear weapons materials.

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

2. **War and Terrorism**

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

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

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

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

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

3. **Contractors & subcontractors construction plant and equipment**

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

Conditions Applicable to Sections 1 & 2

1. Escalation (section 1 only)

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

2. Claims Procedure (section 1 only)

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

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

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

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

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

4. Limits of Liability

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

(b) (i) Section 1 – Material Loss or Damage
The liability of the Insurers under Section 1 for any one Event at any one Worksite shall not exceed the Limits of Liability and the accumulative amounts of the Sub-limits of Liability stated in the Schedule.

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

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

5. Application of Excess

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

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

(b) Non-aggregation of Excesses

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

- (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.

6. Insurers' Rights

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

7. Subrogation and Settlement of Claims

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

8. Multiple Insureds Clause

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

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

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

9. Notices

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

10. Insolvency or Bankruptcy

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

11. Hold Harmless Agreements

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

12. Jurisdiction and Service of Proceedings

The Insurers agree that:

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

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

13. Cancellation/Non-renewal

- (a) **By the Insurers**
The Insurers may cancel this Policy for any of the reasons set forth in Section 60 of the Commonwealth Insurance Contracts Act 1984 by serving on the Named Insured sixty (60) days notice in accordance with Section 59 of that Act, in which case the Insured will be entitled to a pro-rata refund of the Premium.
- (b) **By the Named Insured**
The Named Insured (on behalf of itself and all other Insureds (unless otherwise specified) may cancel any Section of this Policy or cancel cover in respect of any Contract or Insured Property at any time by giving notice in writing to the Insurers.
- (c) **Run-off Cover:**
Notwithstanding the Period of Insurance, in the event of cancellation by either the Insurers or the Named Insured or non-renewal of this Policy, at the Named Insured's option, the insurance by this Policy shall continue for each Contract or Insured Property until:
 - (i) expiration of the Construction Period and Defects Liability Period; or
 - (ii) the Named Insured formally advises the Insurers that the Contracts have been insured elsewhere;whichever occurs first.

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

14. Alterations in Material Fact/Error or Omission

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

15. Progress Payments (applicable to Section 1 only)

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

16. Engagement of Loss Adjusters

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

17. **Loss Payee (Section 1 only)**

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

18. **Currency**

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

19. **Difference In Conditions Cover**

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

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

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

20. **Leading Insurer**

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

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

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

21. **Referral Contracts**

Where any Contract

Exceeds \$50,000,000 any one contact site or
construction period exceeds 48 months or
tunnelling component exceeds \$20,000,000 and

And the subject of referral to insurers for special acceptance

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

22. **Other Insurance**

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

Extensions to Section 1

The following Extensions apply to this Policy

1. Additional Costs and Expenses

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

(a) Removal of Debris and Other Costs

(i) Debris

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

(ii) Temporary Protection

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

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

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

(iii) Shoring, Propping and Other Costs

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

(b) Expediting Expenses

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

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

(c) Search and Locate Costs

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

- (i) the cost of hiring, operating and transporting apparatus, the cost of operation;

- (ii) the cost of all associated earthworks;

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

(d) Professionals' Fees

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

(e) Mitigation Expenses

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

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

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

(f) Claims Preparation Costs

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

(g) Government and other Fees

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

(h) Civil Authority

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

2. Terrorism Cover

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

Definitions

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

Definitions/Interpretation to All Sections of this Policy

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

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

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

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

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

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

- (a) the entering into of each Contract; or
 - (b) the commencement date of the Period of Insurance;
- whichever is the later, until the completion of the Construction Period.

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

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

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

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

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

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

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

Indemnity Value means:

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

Insured means:

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

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

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

Insured Property:

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

- (ii) **Existing Structures** being existing structures, plant, contents and real property of every description. Existing Structures are specifically excluded under Section 1 of this Policy unless an amount is specified against this item in the Schedule.
- (iii) Property defined in clauses (i) shall refer to property owned by the Insured or for which they are responsible or have assumed responsibility prior to any Event for which a claim may be made hereunder, or for which the Insured has agreed to insure, or in which the Insured otherwise has an insurable interest.

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

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

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

If as a result of Damage it becomes necessary to repeat any test, trial or to carry out subsequent test(s) and/or trial(s), the Insurers will bear the cost of any such repeated and/or subsequent test(s) or trial(s). Performance Testing that exceeds the maximum period stated in the Schedule will only be covered subject to the prior approval of the Insurers.

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

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

Reinstatement Value means:

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

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

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

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

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

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

Singular/Plural

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

Headings

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

Definitions/Interpretations Specific to Section 2

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

Advertising Injury means:

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

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

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

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

Personal Injury includes:

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

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

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

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

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

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



**PERFORMANCE SPECIFIED MAINTENANCE
CONTRACT**

SYDNEY – NORTH EAST

**EXHIBIT INSURANCE
TERMS**

ROADS AND TRAFFIC AUTHORITY OF NSW

Three Year Principal Contract Works

SUMMARY

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

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

Issued through:

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

Telephone 61 2 9253 8407
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In consideration of the Named Insured having paid or agreed to pay the Premium, the Insurers agree to indemnify the Insured in the manner and to the extent provided herein, subject always to the Limits and Sub-limits of Liability, Conditions, Exclusions and other terms of this Policy.

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

Signed for and on behalf of the Insurers

Section 1 Contract Works & Section 2 Third Party

Insurers and Proportions

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

* Excess Third Party insurances are annually renewable.

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Important Notice

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

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

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

Aon Risk Services Australia Limited
Sydney

Schedule

Sections 1 and 2

Insured

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

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

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

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

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

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

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

all for their respective rights and interests.

Business and Activities of the Insured

Principally but not limited to:

- civil contractors, designers, consultants, suppliers, project and construction managers, maintenance contractors;
 - plant and equipment owners, operators and hirers, lessees and lessors;
 - road traffic authority, which includes, property owners and occupiers, lessees and lessors;
- and all incidental and associated operations, trades and activities.

Period of Insurance

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

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

Maximum defects liability period

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

Insured Contracts Sections 1 & 2

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

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

Geographical Limits

Section 1 Material Damage

Anywhere in Australia

Section 2 Third Party Liability

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

Sums Insured

Section 1 Material Damage

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

A\$50,000,000 any one Occurrence

This Sum Insured applies in excess of the Excesses

Limits of Liability

Section 2 Third Party Liability

A\$200,000,000 any one occurrence unlimited to the number of occurrences during the period of insurance but limited to **A\$200,000,000** in the annual aggregate during each 12 month period during the period of insurance arising from products liability.

Such limits of liability apply in excess of the excesses.

Excesses

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

Insuring Clauses

Section 1

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

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

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

Section 2

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

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

happening:

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

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

In addition to any indemnity:

- (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 1

1. **Consequential Loss**

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

2. **Wear and Tear**

Damage directly caused by:

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

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

3. **Defects (LEG2/96)**

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

4. **Aircraft or Watercraft**

Aircraft or Watercraft or plant and equipment permanently mounted thereon.

5. **Disappearance or Shortage**

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

6. **Money**

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

7. **Transits Outside of Australia**

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

8. **Electronic Data Exclusion**

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

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

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

10. **Vegetation**

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

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

Exclusions Applicable to Section 2

1. **Employer's Liability**

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

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

2. **Industrial Awards**

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

3. **Aircraft and Watercraft**

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

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

4. **Vehicles**

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

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

5. **Loss of Use**

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

6. Products and Work Performed

Liability for:

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

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

7. Professional Liability

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

- (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.

Exclusions Applicable to Sections 1 & 2

1. **Nuclear Risks**

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

- (a) ionising, radiations or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel;
- (b) for the purpose of this General Exclusion 1 (a) only, combustion shall include any self-sustaining process of nuclear fission;
- (c) nuclear weapons materials.

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

2. **War and Terrorism**

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

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

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

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

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

3. **Contractors & subcontractors construction plant and equipment**

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

Conditions Applicable to Sections 1 & 2

1. Escalation (section 1 only)

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

2. Claims Procedure (section 1 only)

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

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

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

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

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

4. Limits of Liability

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

(b) (i) Section 1 – Material Loss or Damage
The liability of the Insurers under Section 1 for any one Event at any one Worksite shall not exceed the Limits of Liability and the accumulative amounts of the Sub-limits of Liability stated in the Schedule.

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

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

5. Application of Excess

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

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

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

- (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.

6. Insurers' Rights

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

7. Subrogation and Settlement of Claims

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

8. Multiple Insureds Clause

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

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

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

9. Notices

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

10. Insolvency or Bankruptcy

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

11. Hold Harmless Agreements

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

12. Jurisdiction and Service of Proceedings

The Insurers agree that:

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

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

13. Cancellation/Non-renewal

- (a) By the Insurers
The Insurers may cancel this Policy for any of the reasons set forth in Section 60 of the Commonwealth Insurance Contracts Act 1984 by serving on the Named Insured sixty (60) days notice in accordance with Section 59 of that Act, in which case the Insured will be entitled to a pro-rata refund of the Premium.
- (b) By the Named Insured
The Named Insured (on behalf of itself and all other Insureds (unless otherwise specified) may cancel any Section of this Policy or cancel cover in respect of any Contract or Insured Property at any time by giving notice in writing to the Insurers.
- (c) Run-off Cover:
Notwithstanding the Period of Insurance, in the event of cancellation by either the Insurers or the Named Insured or non-renewal of this Policy, at the Named Insured's option, the insurance by this Policy shall continue for each Contract or Insured Property until:
 - (i) expiration of the Construction Period and Defects Liability Period; or
 - (ii) the Named Insured formally advises the Insurers that the Contracts have been insured elsewhere; whichever occurs first.

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

14. Alterations in Material Fact/Error or Omission

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

15. Progress Payments (applicable to Section 1 only)

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

16. Engagement of Loss Adjusters

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

17. Loss Payee (Section 1 only)

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

18. Currency

(a) All monetary amounts expressed in this Policy are in Australian dollars. The Premium and losses shall be paid in Australian dollars or as otherwise agreed between the Insurers and the Insured.

(b) For the purposes of this Policy, the Insurers agree to the Named Insured's normal practice of converting currency to Australian dollars in accordance with the Insured's accounting practices.

19. Difference In Conditions Cover

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

(a) In the event of the Insured being indemnified by an Underlying Insurance in respect of a claim for which indemnity is available under this Master Policy, the insurance afforded by this Policy shall be excess insurance over the applicable limit of indemnity of the Underlying Insurance.

(b) Coverage under this Master Policy shall not apply unless and until a claim for payment is made under the Underlying Insurance up to the amount of the Underlying Limit which, save for the limit of indemnity of the Underlying Insurance, would be covered by this Master Policy.

(c) If such Underlying Insurance provides indemnity to the Insured by virtue of its scope of cover, definitions or conditions in respect of loss, damage, legal liability, costs and expenses which are not provided under the terms, Conditions and Exceptions of this Master Policy, then this Master Policy shall provide such indemnity to the same extent as provided by the Underlying Insurance.

(d) Should any such Underlying Insurance, by virtue of its scope of cover, definitions, deductibles or excesses, conditions or limits of indemnity, not indemnify the Insured in whole or in part in respect of a loss, damage, liability, costs or expenses indemnifiable under this Master Policy, this Master Policy will provide indemnity to the extent that such indemnity is not provided by the terms and conditions of such Underlying Insurance. For the purpose of clarity, it is intended that indemnity by this Policy extends to cover losses not covered under the Underlying Insurance by virtue of the fact that such Underlying Insurance has a higher deductible or excess than the Excess under this Master Policy.

(e) In the event that the Insured cannot obtain an admission of liability from the insurer of an Underlying Insurance and/or Underlying Insurance fails or is reasonably likely not to indemnify the Insured, then the Insurers of this Master Policy shall be obligated to indemnify the Insured.

(f) The provisions of this clause are subject always to the terms, Conditions and Exclusions of this Master Policy, except as provided under (c) above.

(g) In the event of cancellation of an Underlying Insurance or reduction or exhaustion of the limits of indemnity thereunder, this Master Policy shall:

- (i) in the event of reduction, pay in excess of the reduced Underlying Limit;
- (ii) in the event of cancellation or exhaustion, continue in force as Underlying Insurance.

(h) Appeals

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

20. **Leading Insurer**

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

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

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

21. **Referral Contracts**

Where any Contract

Exceeds \$50,000,000 any one contact site or
construction period exceeds 48 months or
tunnelling component exceeds \$20,000,000 and

And the subject of referral to insurers for special acceptance

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

22. **Other Insurance**

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

Extensions to Section 1

The following Extensions apply to this Policy

1. Additional Costs and Expenses

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

(a) Removal of Debris and Other Costs

(i) Debris

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

(ii) Temporary Protection

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

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

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

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

(iii) Shoring, Propping and Other Costs

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

(b) Expediting Expenses

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

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

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

(iii) overtime or penalty rates of wages and other related allowances and payments;

(iv) hire of additional labour, plant, equipment, materials, expertise or services;

(v) reasonable and necessary changes in the method of construction, the cost of earlier than usual delivery or manufacture and/or costs of purchasing resources;

(vi) accommodation and boarding costs (including meals and other costs associated therewith);

(vii) additional administrative and/or overhead expenses.

(c) Search and Locate Costs

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

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

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

(d) Professionals' Fees

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

(e) Mitigation Expenses

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

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

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

(f) Claims Preparation Costs

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

(g) Government and other Fees

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

(h) Civil Authority

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

2. Terrorism Cover

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

Definitions

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

Definitions/Interpretation to All Sections of this Policy

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

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

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

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

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

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

- (a) the entering into of each Contract; or
 - (b) the commencement date of the Period of Insurance;
- whichever is the later, until the completion of the Construction Period.

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

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

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

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

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

Electronic Data means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes

programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

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

Indemnity Value means:

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

Insured means:

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

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

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

Insured Property:

- (i) **Contract Works** means property of every description used or to be used in part of or incidental to or having any connection whatsoever with the Insured Operations. It shall include but not be limited to:
 - (a) the whole of the works, whether permanent or temporary works, structures, materials and supplies including free supplied materials;
 - (b) temporary buildings, camp buildings and all other Project buildings and their contents;

- (c) formwork, falsework, scaffolding, access platforms, hoardings, mouldings, and the like, whether the foregoing be consumable or reusable;
 - (d) consumables, drawings and other documents, plant and improvements;
 - (e) but excluding Construction Plant and Equipment not specified above.
- (ii) **Existing Structures** being existing structures, plant, contents and real property of every description. Existing Structures are specifically excluded under Section 1 of this Policy unless an amount is specified against this item in the Schedule.
- (iii) Property defined in clauses (i) shall refer to property owned by the Insured or for which they are responsible or have assumed responsibility prior to any Event for which a claim may be made hereunder, or for which the Insured has agreed to insure, or in which the Insured otherwise has an insurable interest.

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

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

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

If as a result of Damage it becomes necessary to repeat any test, trial or to carry out subsequent test(s) and/or trial(s), the Insurers will bear the cost of any such repeated and/or subsequent test(s) or trial(s). Performance Testing that exceeds the maximum period stated in the Schedule will only be covered subject to the prior approval of the Insurers.

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

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

Reinstatement Value means:

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

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

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

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

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

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

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

Singular/Plural

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

Headings

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

Definitions/Interpretations Specific to Section 2

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

Advertising Injury means:

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

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

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

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

Personal Injury includes:

- (i) bodily injury, illness, disease, disability, shock, fright, loss of consortium, loss of amenities, mental anguish or mental injury, including any resultant death;
- (ii) false arrest, false imprisonment, wrongful detention, malicious prosecution and humiliation;
- (iii) the publication or utterance of libel or slander, or of other defamatory or derogatory material, or a publication or utterance in violation of any individual's right of privacy except:

- (a) when the first such publication or utterance is related to any publication or utterance made prior to the commencement of this Policy; or
 - (b) when any such publication or utterance is made in the course of or is related to advertising, broadcasting, telecasting or publishing activities conducted by or on behalf of the Insured;
- (iv) nuisance, wrongful entry or wrongful eviction or other invasion of the right to private occupancy;
- (v) assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing or eliminating danger to persons or property.

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

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

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

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

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

Daily Work Record

Crew / Gang Code	Ganger / Leading Hand

Day / Date	Time Range	
	From	To

Job Details			Location			Work Accomplishment			Warranty Check Required (Yes / No)	Comments / Traffic Control Plan (TCP) Number
Job	Activity Code / Pay Item	Defect, Work Order, Incident or Complaint Number (if applicable)	Road Number	Segment Number	Local Identifier / Chainage (Optional)	Work Done	Unit of Measure	Hours Worked (Optional)		
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										

Non-Conformances and Work Verification (WV) Checks						
Activity	WV (Yes / No)	Procedure Reference	Verified by	Compliance (Y/N)	Explanation for Variance or Non Conformance	NCR Number

Statement of Conformance	Observations <small>(Incidents, Accidents, Defects, Complaints, etc)</small>
<p>I certify that the work recorded on this Daily Running Sheet has been conducted in accordance with the Quality, OHS&R and Environmental requirements of our documented Management System and the relevant Contract Specifications, with the exception of the Nonconformances listed.</p> <p>Certified by: _____ <small style="margin-left: 40px;">Name</small> <small>Position</small></p>	<div style="border: 1px solid black; height: 100px;"></div>

Pricing Form

General Details RTA Contract Manager: Contractor's Authorised Person: Road No. Road Name:	PF
	References
	WP
	WO

Schedule							
Pay Item	Description of Work	Basis of Payment	Quantity	Unit of Measure	Rate	Surcharge Applicable	Amount

	Total Value of Work Order:
	GST Component:

Contractor's Authorised Person

I hereby offer our price for the subject work as detailed in the referenced Work Proposal form and summarised in the Schedule above.

Signature _____ Date _____

RTA Contract Manager

The price offered for the subject work is accepted, and a Work Order (as referenced) is hereby issued.

Signature _____ Date _____