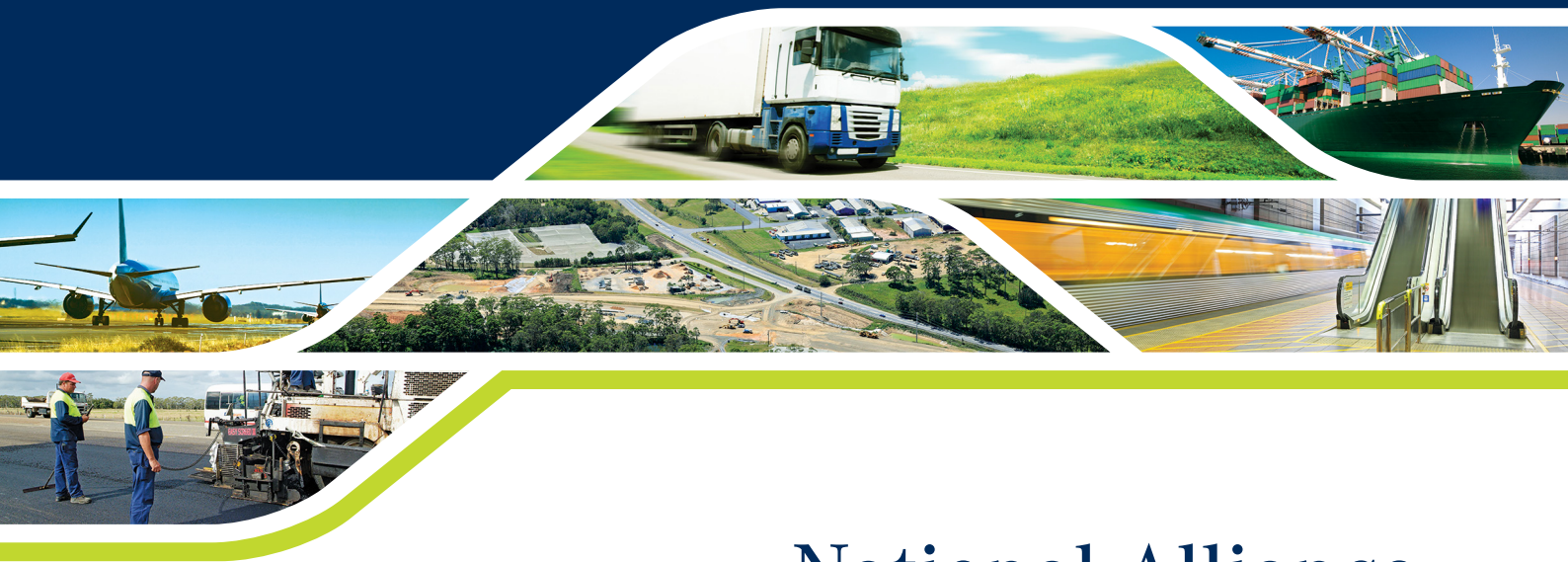




Australian Government

Department of Infrastructure and Regional Development



National Alliance Contracting Guidelines

Jurisdictional Requirements

September 2015



Australian Government

Department of Infrastructure and Regional Development

National Alliance Contracting Guidelines

Jurisdictional Requirements

September 2015

Document Updates

This Guide will be updated from time to time to reflect evolving best practices and lessons learned.

Document change	Date
National Guide published	July 2011
Republished with updates to other documents in the series	September 2015

© Commonwealth of Australia 2015
ISBN 978-1-925216-77-6
September 2015/INFRA2613

Ownership of intellectual property rights in this publication

Unless otherwise noted, copyright (and any other intellectual property rights, if any) in this publication is owned by the Commonwealth of Australia (referred to below as the Commonwealth).

Disclaimer

The material contained in this publication is made available on the understanding that the Commonwealth is not providing professional advice, and that users exercise their own skill and care with respect to its use, and seek independent advice if necessary.

The Commonwealth makes no representations or warranties as to the contents or accuracy of the information contained in this publication. To the extent permitted by law, the Commonwealth disclaims liability to any person or organisation in respect of anything done, or omitted to be done, in reliance upon information contained in this publication.

Creative Commons licence

With the exception of (a) the Coat of Arms; (b) the Department of Infrastructure and Regional Development's photos and graphics, copyright in this publication is licensed under a Creative Commons Attribution 3.0 Australia Licence.

Creative Commons Attribution 3.0 Australia Licence is a standard form licence agreement that allows you to copy, communicate and adapt this publication provided that you attribute the work to the Commonwealth and abide by the other licence terms.

A summary of the licence terms is available from <http://creativecommons.org/licenses/by/3.0/au/deed.en>.

The full licence terms are available from <http://creativecommons.org/licenses/by/3.0/au/legalcode>.

This publication should be attributed in the following way: © Commonwealth of Australia 2015, National Alliance Contracting Guidelines – Jurisdictional Requirements

Use of the Coat of Arms

The Department of the Prime Minister and Cabinet sets the terms under which the Coat of Arms is used. Please refer to the Department's Commonwealth Coat of Arms and Government Branding web page <http://www.dpmc.gov.au/pmc/about-pmc/core-priorities/guidelines-and-procedures-other-agencies> and in particular, the *Commonwealth Coat of Arms Information and Guidelines* publication.

Contact us

This publication is available in PDF format. All other rights are reserved, including in relation to any Departmental logos or trade marks which may exist. For enquiries regarding the licence and any use of this publication, please contact:

Director - Publishing and Communications, Communications Branch
Department of Infrastructure and Regional Development
GPO Box 594, Canberra ACT 2601 Australia
Email: publishing@infrastructure.gov.au
Website: www.infrastructure.gov.au

Note

Governments in each jurisdiction will have their own individual approval processes for capital investment projects, as well as policies (e.g. probity) and legislation that will impact on all capital works delivery. These over-arching jurisdictional requirements are precedent to the alliance practices covered in this document.

Acknowledgement

This Guidance Note is based on the guidance note of the same name prepared under the sponsorship of the Inter-Jurisdictional Alliances Steering Committee with membership from:

- Department of Treasury and Finance, Victoria (Chair)
- Treasury, New South Wales
- Treasury, Queensland
- Department of Treasury and Finance, Western Australia
- Department of Infrastructure and Regional Development, Australian Government

Table of Contents

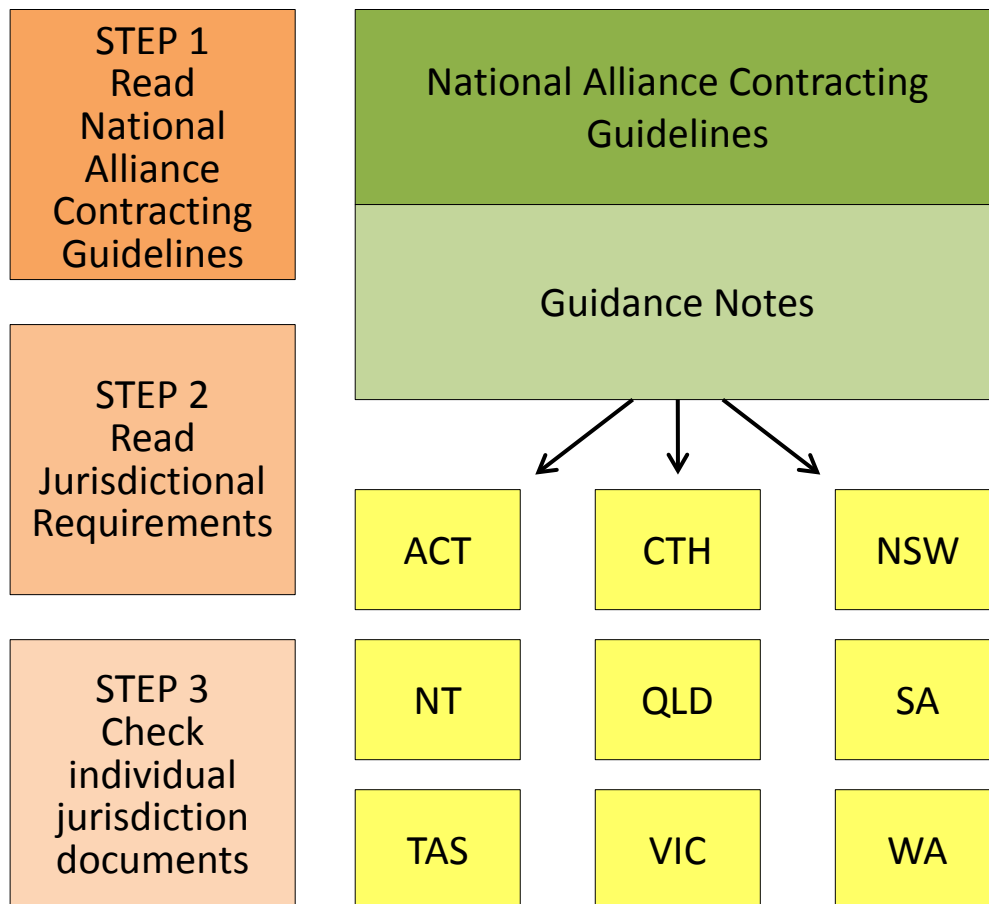
1	Introduction	6
2	Commonwealth requirements	7
2.1	Policy Principles	7
2.2	Commonwealth Government Insurance Authorities	7
2.3	Amendments to Template 1: Model PAA for the Commonwealth	7
3	New South Wales requirements	8
3.1	Policy Principles	8
3.2	New South Wales Government Insurance Authorities	8
3.3	Amendments to Template 1: Model PAA for New South Wales	9
4	Victoria requirements	15
4.1	Policy principles	15
4.2	Victorian Government Insurance Authorities	15
4.3	Amendments to Template 1: Model PAA for Victoria	17
5	Queensland requirements	18
5.1	Policy principles	18
5.2	Queensland Government Insurance Authorities	18
5.3	Amendments to Template 1: Model PAA for Queensland	20
6	Western Australia requirements	25
6.1	Policy principles	25
6.2	Western Australian Government Insurance Authorities	25
6.3	Amendments to Template 1: Model PAA for Western Australia	26
7	South Australia requirements	30
7.1	Policy principles	30
7.2	South Australian Government Insurance Authorities	30
7.3	Amendments to Template 1: Model PAA for South Australia	30
8	Tasmania requirements	31
8.1	Policy principles	31
8.2	Tasmanian Government Insurance Authorities	31
8.3	Amendments to Template 1: Model PAA for Tasmania	31
9	Northern Territory requirements	39
9.1	Policy principles	39
9.2	Northern Territory Government Insurance Authorities	39
9.3	Amendments to Template 1: Model PAA for Northern Territory	39
10	Australian Capital Territory requirements	40
10.1	Policy principles	40
10.2	Australian Capital Territory Government Insurance Authorities	40
10.3	Amendments to Template 1: Model PAA for the ACT	40

1 Introduction

The National Alliance Contracting Policy Principles and Guidelines have been finalised and endorsed by the Council of Australian Government's Infrastructure Working Group as an agreed framework for the delivery of alliance contract projects.

The guidelines set a framework for the procurement of alliance contracts on a national basis, and apply across state, territory, and Commonwealth arrangements. These guidelines represent a high level of uniformity across jurisdictions. However, specific requirements of individual jurisdictions, where different or in addition to the guidelines, are detailed in this document. These jurisdictional requirements will need to be read in conjunction with the national guidelines in order to understand how specific jurisdictional practices differ from the National Alliance Contracting Policy and Guidelines. Individual jurisdictions will be responsible for updating their respective sections of this document to ensure its currency.

National Alliance Contracting Documents



2 Commonwealth requirements

2.1 Policy Principles

The Australian Government uses a range of procurement methods for delivery of capital projects. Alliancing is appropriate for major complex infrastructure projects when incremental value for money can be demonstrated over other alternatives.

Delivery of alliance contracts under Commonwealth arrangements is subject to additional, relevant Government approvals and approved necessary amendments that will be advised on application.

2.2 Commonwealth Government Insurance Authorities

Agencies are required to contact the Department of Finance for further information regarding Government and Insurance Authorities.

2.3 Amendments to Template 1: Model PAA for the Commonwealth

Agencies are required to contact the Department of Finance for further information regarding the Commonwealth PAA Model.

3 New South Wales requirements

3.1 Policy Principles

NSW is currently considering whether there are any departures from the policy principles for use in NSW. Any agency considering using the alliance contracting method should consult with NSW Treasury for the latest advice.

3.2 New South Wales Government Insurance Authorities

The NSW Self Insurance Corporation (NSW SICorp) is the statutory authority established by the NSW Self Insurance Corporation Act 2004 to manage the Government's self insurance scheme known as the NSW Treasury Managed Fund. NSW SICorp operates as a branch of NSW Treasury and is responsible to the NSW Treasurer.

NSW SICorp utilises a wholly outsourced provider model. The current model has five claims management contracts, and separate actuarial, reinsurance and risk management contracts.

Main functions

SICorp's main functions are:

- the administration of the Treasury Managed Fund (TMF), which provides cover for all insurance exposures faced by general government sector budget dependent agencies in New South Wales (other than compulsory third party insurance); and provides cover for all insurance exposures faced by other public sector agencies who choose to join the TMF;
- the management of liabilities from a number of closed schemes. The closed schemes are the Governmental Workers' Compensation Account, the Transport Accidents Compensation Fund, the Pre-managed Fund Reserve and the Rail Infrastructure Corporation;
- the collection and analysis of data provided by TMF claims managers; systems management of the TMF data warehouse; provision of reporting functions to member agencies and monitoring of claims providers; and provision of financial statements and budget estimates;
- provide insurance policy advice to all stakeholders on behalf of the NSW Government; and
- advise member agencies and claims managers on scope of coverage available.

Scope of cover

The Contract of Coverage dictates the New South Wales Government's response to the TMF agencies when loss or damage is suffered. The TMF provides unlimited cover worldwide in respect of:

- Workers' Compensation as per NSW statute;
- liability, including, but not limited to, public liability, products liability, professional indemnity, directors/officers liability and medical negligence;
- property (full replacement, new for old, and consequential loss);
- motor vehicle; and

- miscellaneous losses, notably, due to employee dishonesty, personal accident and protection for overseas travel.

The extent of cover provided under the TMF's Contract of Coverage is unique to TMF agencies. Exposures not included are:

- illegal activities;
- wear and tear, and inherent vice; and
- pollution (not being sudden and accidental pollution).

The TMF is protected from catastrophic losses by a wide-ranging reinsurance program.

Risk Management

The TMF scheme is designed to financially reward agencies that manage risk and to penalise those that do not. This principle provides a fundamental incentive for agencies to seek to understand and manage the organisational systems and processes that lead to the wide range of unwanted outcomes which, in this environment, become evident in the form of claims against the Fund. The TMF has a range of risk management resources to support agencies.

Insurance Advisor

The SICorp Insurance Advisor role encompasses:

- to advise and support TMF agencies participating in Alliance Contracting;
- SICorp personnel and contracted service providers are available to assist and advise with regard to contractual requirements, indemnity wordings and risk assessments;
- provide agencies with advice on recommended deductibles, insurable risk limits and indemnities;
- SICorp's risk services provider can where required refer agencies to third-party providers;
- SICorp as a branch of Treasury is able to weigh the potential insurable and financial risk against the need for contract delivery and Alliance outcomes;
- assist agencies to ensure that contract deliverables do not adversely impact the Government; and
- SICorp's reinsurance broker can access the international reinsurance market and niche market providers.

3.3 Amendments to Template 1: Model PAA for New South Wales

1 Clause 1.1 of Agreement

- (a) The definition of 'Aboriginal Heritage' in clause 1.1 of the Agreement is to be amended by deleting the reference to "*Aboriginal Heritage Act 2006* (Vic)" in the definition and replacing it with "*Environmental Planning and Assessment Act 1979* (NSW), the *National Parks and Wildlife Act 1974* (NSW), the *Heritage Act 1977* (NSW), the *National Trust of Australia Act 1990* (NSW) or the *Mining Act 1992* (NSW)".
- (b) The definition of 'Act of Parliament' in clause 1.1 of the Agreement is to be amended by deleting the reference to "Victoria" in the definition and replacing it with "New South Wales".

- (c) A new definition of 'BCISPA' is to be inserted into clause 1.1 of the Agreement following the definition of 'Authorisation' as follows:

BCISPA

the *Building and Construction Industry Security of Payment Act 1999* (NSW).

- (d) The definition of 'Industrial Relations Principles' in clause 1.1 of the Agreement is to be deleted in its entirety.
- (e) The definition of 'Native Title Laws' in clause 1.1 of the Agreement is to be amended by deleting the reference to "*Land Titles Validation Act 1994* (Vic)" in the definition and replacing it with "*Native Title (New South Wales) Act 1994* (NSW)".
- (f) The definition of 'SoP Act' in clause 1.1 of the Agreement is to be deleted in its entirety.
- (g) The definition of 'Statutory Requirements' in clause 1.1 of the Agreement is to be amended by deleting the words ", the Victorian Code and the Industrial Relations Principles".
- (h) The definition of 'Victorian Code' in clause 1.1 of the Agreement is to be deleted in its entirety.

2 Clause 1.8 of Agreement

Clause 1.8 of the Agreement is to be deleted in its entirety and replaced with the following clause:

"1.8 Exclusion of the Civil Liability Act 2002 (NSW)

Except as provided in clause 20.3 and to the extent permitted by Statutory Requirements, the Participants agree to exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any rights, obligations and liabilities of the NOPs under or in connection with this Agreement, whether for breach of contract, negligence or otherwise."

3 Clause 4.4(c) of Agreement

Clause 4.4(c) of the Agreement is to be amended by replacing the word "Victoria" with "New South Wales".

4 Clause 15.4 of Agreement

Clause 15.4 of the Agreement is to be deleted in its entirety and replaced with the following clause:

"15.4 Compliance with the Code and the Guidelines

- (a) Each of the Participants must, and must ensure that all of its Subcontractors and, in the case of each of the NOPs only, its Related Bodies Corporate, comply with the Code and the Guidelines.
- (b) The Participants acknowledge and agree that compliance with the Code and the Guidelines does not relieve the Participants from responsibility to perform their

obligations under this Agreement or from any liability for any Defect in the Works arising from compliance by the Participants with the Code and the Guidelines.

- (c) Where any amendment to this Agreement under clause 30.5 is proposed by the Participants or the ALT, and that amendment would affect compliance with the Code and Guidelines by the Participants in accordance with this clause 15.4, the ALT must submit a report to the Government of the Commonwealth of Australia specifying the extent to which the Participants' compliance with the Code and the Guidelines will be affected.
- (d) Each of the Participants must maintain adequate records of compliance with the Code and the Guidelines by:
 - (1) that Participant;
 - (2) that Participant's Subcontractors; and
 - (3) in the case of each of the NOPs only, its Related Bodies Corporate.
- (e) If the NOPs do not comply with the requirements of the Code or the Guidelines in the performance of this Agreement such that a sanction is applied by the Minister for Employment and Workplace Relations, the Code Monitoring Group (as referred to in the Code and the Guidelines) or the Government of the Commonwealth of Australia, without prejudice to any rights that would otherwise accrue, the Minister for Employment and Workplace Relations, the Code Monitoring Group and the Government of the Commonwealth of Australia are entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the NOPs or a Related Body Corporate of the NOPs in respect of work funded by the Government of the Commonwealth of Australia or any Government Agency.
- (f) While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders, the Participants may give preference to Subcontractors that have demonstrated commitment to:
 - (1) adding and/or retaining trainees and apprentices;
 - (2) increasing the participation of women in all aspects of the industry; or
 - (3) promoting employment and training opportunities for indigenous Australians in regions where significant indigenous populations exist.
- (g) A Subcontractor in relation to the Project must not be engaged where:
 - (1) the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations; or
 - (2) the Subcontractor has had a judicial decision against them relating to employee entitlements (not including decisions under appeal) and has not paid the claim.
- (h) Each of the Participants must and must ensure that its Subcontractors and, in the case of each of the NOPs only, its Related Bodies Corporate, provide the Government of the Commonwealth of Australia or any person authorised by the Government of the Commonwealth of Australia, including a person occupying a position in the Office of the Australian Building and Construction Commissioner (as referred to in the Code and the Guidelines), with access to:
 - (1) inspect the Works and the Construction Plant;
 - (2) inspect and copy any record relevant to the Project and Works the subject of this Agreement; and
 - (3) interview any person,as is necessary to demonstrate their compliance with the Code and the Guidelines.
- (i) Each of the Participants and, in respect of each of the NOPs only, its Related Bodies Corporate, must comply with a request from the Government of the Commonwealth of Australia or any person authorised by the Government of the Commonwealth of Australia, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, in person, by fax or by post.

- (j) For the avoidance of doubt, clause 15.4(h) applies in relation to the NOPs' new privately funded construction projects (as defined by section 3.4.1 of the Guidelines).
- (k) The Participants must ensure that all Subcontracts impose obligations on the Subcontractors equivalent to the obligations set out under clauses 15.4(a) to 15.4(j) (inclusive).".

5 Clause 15.9(a) of Agreement

Clause 15.9(a) of the Agreement is to be amended by deleting the words “, the Victorian Code and the Industrial Relations Principles”.

6 Clause 15.10 of Agreement

Clause 15.10 is to be deleted in its entirety and replaced with the following clause:

“15.10 Principal Contractor

- (a) [***Non-Owner Participant 1/Non-Owner Participant 2***] (the **Principal Contractor**) will be:
 - (1) appointed as the principal contractor in respect of the Site for the purposes of the *Occupational Health and Safety Regulations 2001* (NSW) (**OH&S Regulations**); and
 - (2) given all necessary authority to allow it to discharge the responsibilities imposed on a principal contractor by the OH&S Regulations.
- (b) The Principal Contractor will complete all forms and take any other action required to accept its appointment.
- (c) The Principal Contractor must discharge and perform its responsibilities and functions as a principal contractor in respect of the performance of the Works under the OH&S Regulations.
- (d) Each Participant will, when accessing any Site:
 - (1) comply with directions given by the Principal Contractor in its capacity as principal contractor under the OH&S Regulations; and
 - (2) ensure its Related Bodies Corporate do likewise.”.

7 Building and Construction Industry Security of Payment Act 2002 (Vic), Clause 16.8

Clause 16.8 of the Agreement is to be deleted in its entirety and replaced with the following clause:

“16.8 Building and Construction Industry Security of Payment Act 1999 (NSW)

- (a) The NOPs must:
 - (1) promptly give the Project Owner a copy of any notice that a NOP receives from a Subcontractor; and

- (2) ensure that each Subcontractor promptly gives the Project Owner and the NOPs a copy of any notice that the Subcontractor receives from another party, under sections 15, 16 or 24 of the BCISPA.
- (b) If the Project Owner becomes aware that the Subcontractor is entitled to suspend any works or services (which forms part of the Works) under sections 15, 16 or 24 of the BCISPA, the Project Owner may (at its absolute discretion) pay the Subcontractor such money as is or may be owing to the Subcontractor in respect of works or services forming part of the Works. Any amount paid by the Project Owner will be a Reimbursable Cost and the Project Owner is not liable to pay the NOP for the work performed by the Subcontractor the subject of the payment.
- (c) For the purposes of this clause 16.8, a reference to:
 - (1) a Subcontractor includes any person engaged by a NOP, its subcontractors or any other person to carry out works or services which form part of the Works; and
 - (2) works or services refers to all or any part of the Works a NOP is or may be required to execute or provide under this Agreement and includes equipment, services (including design work), Materials and Construction Plant.”.

8 Clause 17.5 of Agreement

Clause 17.5 of the Agreement is to be amended by replacing the word “Victoria” with “New South Wales” in both the heading and text of the clause.

9 Clause 30.2 of Agreement

Clauses 30.2(a) and (b) of the Agreement are to be amended by replacing the word “Victoria” with “New South Wales”.

10 Clause 30.15 of Agreement

Clause 30.15 of the Agreement is to be amended by replacing the word “Victoria” with “New South Wales”.

11 Schedule 8, clause 2 of Agreement

Clause 2 of Schedule 8 of the Agreement is to be amended by inserting the following new clauses 2(f) and 2(g) at the end of the clause:

- “(f) It is a condition precedent to payment under clause 2(c) of this Schedule that each NOP must submit to the Project Owner, as soon as practicable after the end of each Month during the Term:
 - (1) a statutory declaration from an authorised employee of the NOP who is in a position to know the facts declared stating that all amounts and other entitlements payable to or on behalf of the NOP’s Subcontractors and employees in respect of the Works for that Month of the Term;

- (2) a statement comprising the statement under section 127 of the *Industrial Relations Act 1996* (NSW) in the form and providing the detail required by that legislation;
 - (3) a statement comprising the statement under Schedule 2 Part 5 of the *Pay-roll Tax Act 2007* (NSW) in the form and providing the detail required by that legislation; and
 - (4) a statement comprising the statement under section 175B of the *Workers Compensation Act 1987* (NSW) in the form and providing the detail required by that legislation.
- (g) Each NOP must provide any further information and assistance reasonably requested by the Project Owner (or the Project Owner's independent advisor) for the purposes set out in clause 2(b) of this Schedule."

12 Schedule 15, clause 13.1 of Agreement

Clause 13.1 of Schedule 15 of the Agreement is amended by replacing the references to "Victoria" with "New South Wales".

4 Victoria requirements

4.1 Policy principles

These policy principles were approved by the Victorian Government in July 2010 to apply to alliance contracting in the government sector. It applies to all government-owned entities, including the general government sector (e.g. departments) and government business enterprises.

4.2 Victorian Government Insurance Authorities

The Victorian Managed Insurance Authority is a statutory authority established under the Victorian Managed Insurance Authority Act 1996 (VMIA Act). The authority acts as insurer for Victorian government departments and *participating bodies*¹ and has a broader charter allowing it to provide insurance and risk management services to all Victorian government agencies.

The VMIA has a mandated role to provide risk management advice to the Government.² When VMIA provides agencies with such advice, it does so on the basis of a *best-for-state* approach. This means that VMIA provides such advice in consideration of the Government's capacity to retain risks as distinct from merely the requirement to transfer such risks to the commercial insurance market. This approach means that any insurance program may not necessarily need to be the sole means by which risks can be transferred. This approach is underpinned by the need to ensure that the procurement of insurance for the Alliance achieves Value-for-Money for the Government by not passing on those risks where the Government would be better able to retain the risk.

The scope of the VMIA services

Broadly:

- For government departments and participating bodies ('clients')
 - act as an Insurance Adviser in Alliance projects (at the choice of the client);
 - provide insurance products where the client is the sole insured covered or where the client has obligated itself pursuant to a Project Alliance Agreement ('PAA') to insure all parties within an Alliance (clients are mandated by the VMIA Act to use VMIA); and
 - in defined circumstances, as would be set out in Ministerial Directions that may be issued from time to time pursuant to section 25A of the VMIA Act, may provide Alliance professional indemnity insurance to bodies (Government and private) within a project alliance.
- For Victorian agencies not departments and not participating bodies ('non-client')
 - act as an Insurance Adviser in Alliance projects (at the choice of the 'non-client'); and
 - in an advisory role it can ensure the project's Broker has acquired the most suitable insurance cover for the Alliance but it cannot insure nor become

¹ As defined in Part 1, 3 Definitions of the Victorian Managed Insurance Act 1996.

² As per Part 2, Section 6 (e) of the Victorian Managed Insurance Act 1996.

involved in insurance placements if the entity is not a client (VMIA Act S.4 or S.25A).

VMIA in the role of Insurance Adviser

The VMIA is able to undertake the role of Insurance Adviser to the Alliance and can provide support to the Risk Adviser where required (including input into the Project Risk Analysis Workshop). The VMIA can be retained by all Victorian government agencies on a fee for service basis in the role of Insurance Adviser.

The key activities of the VMIA as Insurance Adviser to defined VMIA clients are as follows:

- assist with Project Risk Analysis;
- inform the allocation of risks within the alliance framework;
- articulate a best-for-state approach to insurances in the alliance expression of interest and RFP;
- assist the project Owner to articulate the approach to Owner-arranged Insurance versus Non-Owner Participant Arranged Insurance;
- develop the Underwriting Submission for placement either with VMIA or the commercial insurance market;
- review insurances of Non-Owner Participants;
- finalise and confirm agreed insurance arrangements for the alliance; and
- provide ongoing support to the alliance in relation to claims, premium adjustments and policy changes.

Where the VMIA is providing assistance as Insurance Adviser to non-VMIA clients, in addition to the above the VMIA would also:

- advise on the selection of the Insurance Broker;
- provide an independent assessment of the Insurance Program for the alliance and Non Owner Participants;
- review insurance documentation for the alliance and Non Owner Participants including policy wordings and schedules; and
- advise the Government and the alliance on claims handling protocols and on the resolution of any claims

The VMIA has an important role in providing impartial and independent advice to Victorian State Government clients involved in alliances. The VMIA recognises the inevitable tension that exists between an insurance program that maximises the good faith behaviour of Non-Owner Participants and optimises the transfer of potentially insurable risks by the alliance. By providing expert insurance and risk advisory services to State Government clients, the VMIA will be working to increase the transparency of decision making in relation to insurance procurement and aiding the skills of government personnel in alliance related insurance matters.

VMIA providing insurance products

Should the VMIA provide insurance products to the VMIA client, in its capacity as the Government's insurer, the VMIA would charge appropriate premiums in relation to those required policies commensurate with the risk being transferred.

In relation to non-clients, the VMIA can offer an independent advisory service to ensure that the Alliance selects an insurance program that achieves outcomes of best-for-state and Value-for-Money. The VMIA would advise on the suitability of the insurance program including the individual policy terms and conditions.

The VMIA would not be able to provide insurances to non-clients and any request to do so would need to be actioned in accordance with the provisions of the VMIA Act.

4.3 Amendments to Template 1: Model PAA for Victoria

5 Queensland requirements

5.1 Policy principles

The National Alliance Contracting Policy Principles are applicable to Queensland Government projects, with the following State specific requirements.

Application to Government Departments and Agencies

In Queensland, the policy applies to alliance contracting for the general government sector. For convenience, the reference to agencies is used in the policy to mean departments and other government units and non-profit organisations controlled and financed by the government.

Applicable State Policies and Guidelines

In Queensland, the applicable policy and guidelines are alliance-specific guidelines published by the Treasury and Office of Coordinator-General, as well as other government policies and guidelines which are not specific to any one procurement mechanism – for example, policies and guidelines pertaining to probity, business case development etc, published as part of the Project Assurance framework, State Procurement Policy or Capital Works Management Framework.

Section 1.3 – Minister for responsible for Alliance Policy and Guidelines

In Queensland, the Minister responsible for the Alliance Policy and Guidelines is the Treasurer and Minister for State Development and Trade.

Section 2.1 – Relevant Policy and Guidelines

For note 10 in section 2.1, the relevant guidelines for Queensland are the National PPP Guidelines and the Project Assurance Framework.

Section 3.2 – Approval for departure from price competition

The endorsement required for such a departure would be from the Portfolio Minister and the Treasurer and Minister for State Development and Trade.

Figure 1 – Approving authority at different stages of an alliance project

In Queensland, the following parties would be responsible for providing approvals at the relevant stages of an alliance project:

- Funding and/or project approvals – Portfolio Minister and CBRC
- Approval to start market engagement and release tender documentation – Agency CEO
- Approval to Execute Agreement – Executive Council

5.2 Queensland Government Insurance Authorities

The Queensland Government Insurance Fund (QGIF) is a managed insurance fund located within Queensland Treasury. The operation of QGIF focuses on assisting insured agencies to manage their property and liability risks more effectively.

QGIF's role

QGIF's primary role is that of the insurer of Queensland Government departments and selected statutory bodies. The QGIF operation is based on an insurance company

model, which means that insurance risk is underwritten to ensure that sufficient funds are available to meet the cost of claims. QGIF is responsible for the setting of insurance premiums and terms, the management of claims and the provision of insurance advice to insured agencies.

QGIF offers eight classes of insurance to departments and eligible statutory bodies. Departments and eligible statutory bodies have a responsibility to insure risk exposures that they have with QGIF, provided that the risk exposure is one that can be insured under one of the eight classes of insurance that are available. Government-owned corporations are not eligible to insure with QGIF and nor does QGIF provide insurance to any other non-State Government entities.

In its role as an insurer, QGIF underwrites risk exposure, issues insurance policies, invoices its insured agencies for premium and provides advice on insurance risk exposures. QGIF also manages claims that are made by the insured agencies seeking indemnity under their QGIF insurance policy for:

- cost of claims against them by third parties for damages or compensation;
- loss of or damage to insured property; and
- additional cost resulting from loss or damage to insured property, and personal accident and illness benefits for specified persons.

The management of a claim continues until it is resolved, all payments made, recoveries effected and the file closed. QGIF, as the claim manager, has the objective of managing claims so that the best outcomes available are achieved for the State of Queensland.

QGIF has an insurance advisory role across the whole of Government and a risk management support role for its insured agencies.

Insurance policy

The insurance policy issued by QGIF covers eight insurance classes from which an insured agency can select the insurance cover it requires. The policy provides insured agencies with cover for claims involving:

- property loss or damage;
- business interruption;
- general liability;
- professional indemnity;
- health litigation;
- personal accident for volunteers and Board members;
- aviation; and
- marine.

Not all types of insurance are available from QGIF. QGIF does not provide Motor Vehicle, Travel or Construction insurances nor compulsory insurances such as Compulsory Third Party (CTP) and Workers Compensation.

Participation

QGIF is in effect a self-insurance scheme of Government departments and eligible statutory authorities. It is not available to either Government-owned corporations or entities outside of the Queensland Government.

It is compulsory for all Government departments to participate in QGIF. Participation by statutory authorities is optional; however, their participation is subject to Queensland Treasury approval.

QGIF was established to cover the assets and liabilities of the State of Queensland but it is important to note that the policy cannot be extended to cover any non-State

Government entities. In circumstances where an insured agency participates as a joint venture/alliance partner with a non-State Government entity then QGIF will be unable to offer any insurance coverage to the joint venture/alliance.

QGIF's role is to provide advice to the Queensland Government on its insurance needs but QGIF does not act in an advisory capacity to Alliances or Joint Ventures. QGIF does not operate on a fee for service basis.

5.3 Amendments to Template 1: Model PAA for Queensland

1 Clause 1.1 of Agreement

- (a) The definition of 'Aboriginal Heritage' in clause 1.1 of the Agreement is to be amended by deleting the reference to "*Aboriginal Heritage Act 2006 (Vic)*" in the definition and replacing it with "*Aboriginal Cultural Heritage Act 2003 (Qld)* or the *Torres Strait Islander Cultural Heritage Act 2003 (Qld)*".
- (b) The definition of 'Act of Parliament' in clause 1.1 of the Agreement is to be amended by deleting the reference to "Victoria" in the definition and replacing it with "Queensland".
- (c) A new definition of 'BCIP Act' is to be inserted into clause 1.1 of the Agreement following the definition of 'Authorisation' as follows:

BCIP Act	<i>the Building and Construction Industry Payments Act 2004 (Qld).</i>
-----------------	--

- (d) The definition of 'Industrial Relations Principles' in clause 1.1 of the Agreement is to be deleted in its entirety.
- (e) The definition of 'Native Title Laws' in clause 1.1 of the Agreement is to be amended by deleting the reference to "*Land Titles Validation Act 1994 (Vic)*" in the definition and replacing it with "*Native Title (Queensland) Act 1984 (Qld)*".
- (f) The definition of 'SoP Act' in clause 1.1 of the Agreement is to be deleted in its entirety.
- (g) The definition of 'Statutory Requirements' in clause 1.1 of the Agreement is to be amended by deleting the words ", the Victorian Code and the Industrial Relations Principles".
- (h) The definition of 'Victorian Code' in clause 1.1 of the Agreement is to be deleted in its entirety.

2 Clause 1.8 of Agreement

Clause 1.8 of the Agreement is to be deleted in its entirety.

3 Clause 4.4(c) of Agreement

Clause 4.4(c) of the Agreement is to be amended by replacing the word "Victoria" with "Queensland".

4 Clause 15.4 of Agreement

Clause 15.4 of the Agreement is to be deleted in its entirety and replaced with the following clause:

"15.4 Compliance with the Code and the Guidelines

- (a) Each of the Participants must, and must ensure that all of its Subcontractors and, in the case of each of the NOPs only, its Related Bodies Corporate, comply with the Code and the Guidelines.

- (b) The Participants acknowledge and agree that compliance with the Code and the Guidelines does not relieve the Participants from responsibility to perform their obligations under this Agreement or from any liability for any Defect in the Works arising from compliance by the Participants with the Code and the Guidelines.
- (c) Where any amendment to this Agreement under clause 30.5 is proposed by the Participants or the ALT, and that amendment would affect compliance with the Code and Guidelines by the Participants in accordance with this clause 15.4, the ALT must submit a report to the Government of the Commonwealth of Australia specifying the extent to which the Participants' compliance with the Code and the Guidelines will be affected.
- (d) Each of the Participants must maintain adequate records of compliance with the Code and the Guidelines by:
 - (1) that Participant;
 - (2) that Participant's Subcontractors; and
 - (3) in the case of each of the NOPs only, its Related Bodies Corporate.
- (e) If the NOPs do not comply with the requirements of the Code or the Guidelines in the performance of this Agreement such that a sanction is applied by the Minister for Employment and Workplace Relations, the Code Monitoring Group (as referred to in the Code and the Guidelines) or the Government of the Commonwealth of Australia, without prejudice to any rights that would otherwise accrue, the Minister for Employment and Workplace Relations, the Code Monitoring Group and the Government of the Commonwealth of Australia are entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the NOPs or a Related Body Corporate of the NOPs in respect of work funded by the Government of the Commonwealth of Australia or any Government Agency.
- (f) While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders, the Participants may give preference to Subcontractors that have demonstrated commitment to:
 - (1) adding and/or retaining trainees and apprentices;
 - (2) increasing the participation of women in all aspects of the industry; or
 - (3) promoting employment and training opportunities for indigenous Australians in regions where significant indigenous populations exist.
- (g) A Subcontractor in relation to the Project must not be engaged where:
 - (1) the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations; or
 - (2) the Subcontractor has had a judicial decision against them relating to employee entitlements (not including decisions under appeal) and has not paid the claim.
- (h) Each of the Participants must and must ensure that its Subcontractors and, in the case of each of the NOPs only, its Related Bodies Corporate, provide the Government of the Commonwealth of Australia or any person authorised by the Government of the Commonwealth of Australia, including a person occupying a position in the Office of the Australian Building and Construction Commissioner (as referred to in the Code and the Guidelines), with access to:
 - (1) inspect the Works and the Construction Plant;
 - (2) inspect and copy any record relevant to the Project and Works the subject of this Agreement; and
 - (3) interview any person,as is necessary to demonstrate their compliance with the Code and the Guidelines.
- (i) Each of the Participants and, in respect of each of the NOPs only, its Related Bodies Corporate, must comply with a request from the Government of the Commonwealth of Australia or any person authorised by the Government of the Commonwealth of Australia, including a person occupying a position in the Office of the Australian Building and

Construction Commissioner, to produce a specified document within a specified period, in person, by fax or by post.

- (j) For the avoidance of doubt, clause 15.4(h) applies in relation to the NOPs' new privately funded construction projects (as defined by section 3.4.1 of the Guidelines).
- (k) The Participants must ensure that all Subcontracts impose obligations on the Subcontractors equivalent to the obligations set out under clauses 15.4(a) to 15.4(j) (inclusive)."

5 Clause 15.9(a) of Agreement

Clause 15.9(a) of the Agreement is to be amended by deleting the words ", the Victorian Code and the Industrial Relations Principles".

6 Clause 15.10 of Agreement

Clause 15.10 is to be deleted in its entirety and replaced with the following clause:

"15.10 Principal Contractor

- (a) **[Non-Owner Participant 1/Non-Owner Participant 2]** (the **Principal Contractor**) will be:
 - (1) appointed as the principal contractor in respect of the Site for the purposes of the *Workplace Health and Safety Act 1995* (Qld) (**WHS Act**); and
 - (2) given all necessary authority to allow it to discharge the responsibilities imposed on a principal contractor by the WHS Act.
- (b) The Principal Contractor will complete all forms and take any other action required to accept its appointment.
- (c) The Principal Contractor must discharge and perform its responsibilities and functions as a principal contractor in respect of the performance of the Works under the WHS Act.
- (d) Each Participant will, when accessing any Site:
 - (1) comply with directions given by the Principal Contractor in its capacity as principal contractor under the WHS Act; and
 - (2) ensure its Related Bodies Corporate do likewise."

7 Clause 16.8 of Agreement

Clause 16.8 of the Agreement is to be deleted in its entirety and replaced with the following clause:

"16.8 Building and Construction Industry Payments Act 2004 (Qld)

- (a) The NOPs must:
 - (1) promptly give the Project Owner a copy of any notice that a NOP receives from a Subcontractor; and
 - (2) ensure that each Subcontractor promptly gives the Project Owner and the NOPs a copy of any notice that the Subcontractor receives from another party, under sections 19, 20 or 30 of the BCIP Act.

- (b) If the Project Owner becomes aware that the Subcontractor is entitled to suspend any works or services (which forms part of the Works) under section 33 of the BCIP Act, the Project Owner may (at its absolute discretion) pay the Subcontractor such money as is or may be owing to the Subcontractor in respect of works or services forming part of the Works. Any amount paid by the Project Owner will be a Reimbursable Cost and the Project Owner is not liable to pay the NOP for the work performed by the Subcontractor the subject of the payment.
- (c) If a Participant applies for adjudication of a payment dispute under the BCIP Act, the Authorised Nominating Authority for the purposes of section 21 of the BCIP Act is The Queensland Chapter of The Institute of Arbitrators and Mediators Australia.
- (d) For the purposes of this clause 16.8, a reference to:
 - (1) a Subcontractor includes any person engaged by a NOP, its subcontractors or any other person to carry out works or services which form part of the Works; and
 - (2) works or services refers to all or any part of the Works a NOP is or may be required to execute or provide under this Agreement and includes equipment, services (including design work), Materials and Construction Plant.”.

8 Clause 17.5 of Agreement

Clause 17.5 of the Agreement is to be amended by replacing the word “Victoria” with “Queensland” in both the heading and text of the clause.

9 Clause 30.2 of Agreement

Clauses 30.2(a) and (b) of the Agreement are to be amended by replacing the word “Victoria” with “Queensland”.

10 Clause 30.15 of Agreement

Clause 30.15 of the Agreement is to be amended by replacing the word “Victoria” with “Queensland”.

11 Schedule 15, clause 13.1 of Agreement

Clause 13.1 of Schedule 15 of the Agreement is amended by replacing references to “Victoria” with “Queensland”.

6 Western Australia requirements

6.1 Policy principles

The Western Australian Government is currently incorporating these Policy Principles into its revised Strategic Asset Management Framework (SAMF), the suite of policy statements and guidelines that is mandatory for whole-of-life asset management in the Western Australian General Government sector. The Policy Principles will be modified as required to reflect Western Australian approval processes, the SAMF asset management life cycle phases and the SAMF format.

6.2 Western Australian Government Insurance Authorities

The Government of Western Australia adopted a Managed Fund approach to administer all insurable risks of its public authorities who are RiskCover Fund members (agencies) on a self-insurance basis. The RiskCover Fund is underwritten by the Crown and is managed by the Insurance Commission of Western Australia (RiskCover Division) on behalf of the Government of Western Australia and its participating state government agencies.

The Insurance Commission of Western Australia Act 1986 authorises the Insurance Commission (RiskCover Division) to:

- manage and administer insurance and risk management arrangements on behalf of Western Australian public authorities;
- provide services, facilities and advice to public authorities in respect of the management of claims against them or against funds maintained or administered by them under any written law; and
- provide advice to Government on matters relating to insurance and risk management.

Up to this point, RiskCover participating agencies have had limited involvement in alliance contracting and consequently there has been little call on RiskCover to provide services in relation to such arrangements. RiskCover's enabling legislation does not allow it to issue policies of insurance covering alliance projects, or any insurance covering non government entities.

The services RiskCover is able to offer in relation to alliance contracting are thus limited to providing insurance and risk management advice to participating state government agencies, which would include assistance:

- by way of the facilitation of a risk analysis of contracting options (i.e. alliance, design and construct, PPP etc);
- with project risk analysis, the development of risk management strategies and the implementation of a risk management framework;
- with determining the best insurance options for the Government including participating agencies' consideration of Owner Arranged Insurance versus Non Owner Participant Arranged Insurance and Alliance Arranged Insurance options;
- with the review of insurances of Non Owner Participants for the participating agency;
- with the review of insurance documentation for the Alliance for the participating agency; and
- with the selection of an insurance broker if required.

6.3 Amendments to Template 1: Model PAA for Western Australia

1 Definitions, Clause 1.1

- (a) The definition of 'Aboriginal Heritage' in clause 1.1 of the Agreement is to be amended by deleting the reference to "Aboriginal Heritage Act 2006 (Vic)" in the definition and replacing it with "Aboriginal Heritage Act 1972 (WA)".
- (b) The definition of 'Act of Parliament' in clause 1.1 of the Agreement is to be amended by deleting the reference to "Victoria" in the definition and replacing it with "Western Australia".
- (c) A new definition of 'CCA' is to be inserted into clause 1.1 of the Agreement following the definition of 'Business Day' as follows:

CCA	the <i>Construction Contracts Act 2004</i> (WA).
------------	--

- (d) The definition of 'Industrial Relations Principles' in clause 1.1 of the Agreement is to be deleted in its entirety.
- (e) The definition of 'Native Title Laws' in clause 1.1 of the Agreement is to be amended by deleting the reference to "Land Titles Validation Act 1994 (Vic)" in the definition and replacing it with "Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA), the Aboriginal Heritage Act 1972 (WA)".
- (f) The definition of 'SoP Act' in clause 1.1 of the Agreement is to be deleted in its entirety.
- (g) The definition of 'Statutory Requirements' in clause 1.1 of the Agreement is to be amended by deleting the words ", the Victorian Code and the Industrial Relations Principles".
- (h) The definition of 'Victorian Code' in clause 1.1 of the Agreement is to be deleted in its entirety.

2 Clause 1.8 of Agreement

Clause 1.8 of the Agreement is to be deleted in its entirety and replaced with the following clause:

"1.8 Exclusion of the Civil Liability Act 2002 (WA)

Except as provided in clause 20.3 and to the extent permitted by Statutory Requirements, the Participants agree that Part 1F of the *Civil Liability Act 2002* (WA) has no operation in relation to the obligations of the NOPs under this Agreement."

3 Clause 4.4(c) of Agreement

Clause 4.4(c) of the Agreement is to be amended by replacing the word "Victoria" with "Western Australia".

4 Clause 15.4 of Agreement

Clause 15.4 of the Agreement is to be deleted in its entirety and replaced with the following clause:

“15.4 Compliance with the Code and the Guidelines

- (a) Each of the Participants must, and must ensure that all of its Subcontractors and, in the case of each of the NOPs only, its Related Bodies Corporate, comply with the Code and the Guidelines.
- (b) The Participants acknowledge and agree that compliance with the Code and the Guidelines does not relieve the Participants from responsibility to perform their obligations under this Agreement or from any liability for any Defect in the Works arising from compliance by the Participants with the Code and the Guidelines.
- (c) Where any amendment to this Agreement under clause 30.5 is proposed by the Participants or the ALT, and that amendment would affect compliance with the Code and Guidelines by the Participants in accordance with this clause 15.4, the ALT must submit a report to the Government of the Commonwealth of Australia specifying the extent to which the Participants' compliance with the Code and the Guidelines will be affected.
- (d) Each of the Participants must maintain adequate records of compliance with the Code and the Guidelines by:
 - (1) that Participant;
 - (2) that Participant's Subcontractors; and
 - (3) in the case of each of the NOPs only, its Related Bodies Corporate.
- (e) If the NOPs do not comply with the requirements of the Code or the Guidelines in the performance of this Agreement such that a sanction is applied by the Minister for Employment and Workplace Relations, the Code Monitoring Group (as referred to in the Code and the Guidelines) or the Government of the Commonwealth of Australia, without prejudice to any rights that would otherwise accrue, the Minister for Employment and Workplace Relations, the Code Monitoring Group and the Government of the Commonwealth of Australia are entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the NOPs or a Related Body Corporate of the NOPs in respect of work funded by the Government of the Commonwealth of Australia or any Government Agency.
- (f) While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders, the Participants may give preference to Subcontractors that have demonstrated commitment to:
 - (1) adding and/or retaining trainees and apprentices;
 - (2) increasing the participation of women in all aspects of the industry; or
 - (3) promoting employment and training opportunities for indigenous Australians in regions where significant indigenous populations exist.
- (g) A Subcontractor in relation to the Project must not be engaged where:
 - (1) the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations; or
 - (2) the Subcontractor has had a judicial decision against them relating to employee entitlements (not including decisions under appeal) and has not paid the claim.
- (h) Each of the Participants must and must ensure that its Subcontractors and, in the case of each of the NOPs only, its Related Bodies Corporate, provide the Government of the Commonwealth of Australia or any person authorised by the Government of the Commonwealth of Australia, including a person occupying a position in the Office of the Australian Building and Construction Commissioner (as referred to in the Code and the Guidelines), with access to:
 - (1) inspect the Works and the Construction Plant;

- (2) inspect and copy any record relevant to the Project and Works the subject of this Agreement; and
 - (3) interview any person,
- as is necessary to demonstrate their compliance with the Code and the Guidelines.
- (i) Each of the Participants and, in respect of each of the NOPs only, its Related Bodies Corporate, must comply with a request from the Government of the Commonwealth of Australia or any person authorised by the Government of the Commonwealth of Australia, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, in person, by fax or by post.
 - (j) For the avoidance of doubt, clause 15.4(h) applies in relation to the NOPs' new privately funded construction projects (as defined by section 3.4.1 of the Guidelines).
 - (k) The Participants must ensure that all Subcontracts impose obligations on the Subcontractors equivalent to the obligations set out under clauses 15.4(a) to 15.4(j) (inclusive).".

5 Clause 15.9(a) of Agreement

Clause 15.9(a) of the Agreement is to be amended by deleting the words “, the Victorian Code and the Industrial Relations Principles”.

6 Clause 15.10 of Agreement

Clause 15.10 of the Agreement is to be deleted in its entirety and clauses 15.11 and 15.12 of the Agreement are to be re-numbered and amended accordingly.

7 Clause 16.8 of Agreement

Clause 16.8 of the Agreement is to be deleted in its entirety and replaced with the following clause:

“16.8 Construction Contracts Act 2004 (WA)

- (a) The NOPs must:
 - (1) promptly give the Project Owner a copy of any notice that a NOP receives from a Subcontractor; and
 - (2) ensure that each Subcontractor promptly gives the Project Owner and the NOPs a copy of any notice that the Subcontractor receives from another party, under sections 42 or 43 of the CCA.
- (b) If the Project Owner becomes aware that the Subcontractor is entitled to suspend any works or services (which forms part of the Works) under section 42 of the CCA, the Project Owner may (at its absolute discretion) pay the Subcontractor such money as is or may be owing to the Subcontractor in respect of works or services forming part of the Works. Any amount paid by the Project Owner will be a Reimbursable Cost and the Project Owner is not liable to pay the NOP for the work performed by the Subcontractor the subject of the payment.
- (c) If a Participant applies for adjudication of a payment dispute under the CCA, the prescribed appointer for the purposes of section 26(1)(c) of the CCA is The Western Australian Chapter of The Institute of Arbitrators and Mediators Australia.
- (d) For the purposes of this clause 16.8, a reference to:

- (1) a Subcontractor includes any person engaged by a NOP, its subcontractors or any other person to carry out works or services which form part of the Works; and
- (2) works or services refers to all or any part of the Works a NOP is or may be required to execute or provide under this Agreement and includes equipment, services (including design work), Materials and Construction Plant.”.

8 Clause 17.5 of Agreement

Clause 17.5 of the Agreement is to be amended by replacing the word “Victoria” with “Western Australia” in both the heading and text of the clause.

9 Clause 30.2 of Agreement

Clauses 30.2(a) and (b) of the Agreement are to be amended by replacing the word “Victoria” with “Western Australia”.

10 Clause 30.15 of Agreement

Clause 30.15 of the Agreement is to be amended by replacing the word “Victoria” with “Western Australia”.

11 Schedule 15, clause 13.1 of Agreement

Clause 13.1 of Schedule 15 of the Agreement is amended by replacing the references to “Victoria” with “Western Australia”.

7 South Australia requirements

7.1 Policy principles

South Australia uses a range of procurement methods for delivery of capital projects, not limited to alliances. The use of alliancing is appropriate for major complex infrastructure projects when it can be demonstrated that an alliance approach will deliver incremental value for money over other alternatives.

The use of alliance contracting for the procurement of infrastructure in South Australia is subject to normal approval processes for infrastructure procurement as described in the Department of the Premier and Cabinet Circular 28 (PC028), *Construction Procurement Policy: Project Implementation Process* and Treasurer's Instruction 17 *Evaluation and Approvals to Proceed with Public Sector Initiatives*.

Where possible under these policies and in the context of achieving overall value for money, preference is given to infrastructure procurement methods that encourage early definition of client requirements early input of building industry skills, where they can enhance constructability and minimise exposure to construction risk allocated between parties once project parameters have been sufficiently defined.

The principles and practices described in the National Alliance Contracting Guidelines are adaptable for use in South Australia in alliance contracting and other forms of relationship contracting showing characteristics of alliances for the procurement of major infrastructure and related services. However, in all cases use of the guidelines should be subject to evaluation against contracting principles jointly agreed by the Department of Treasury and Finance (DTF) and the Department for Transport, Energy and Infrastructure (DTEI).

As with all South Australian Government contracting arrangements, where transfer of risk and legal liability is involved, agencies need to liaise with SAICORP, the insurance division of the South Australian Government Financing Authority and the Crown Solicitors Office in the development of any contracts prior to State Procurement Board and/or Cabinet approval. Agencies must also have regard to the DTF *Guidelines for the Limitation of Liability of Suppliers, Consultants and Contractors*.

7.2 South Australian Government Insurance Authorities

Please refer to the insurance-specific information contained within 7.1 above.

7.3 Amendments to Template 1: Model PAA for South Australia

Agencies are advised to contact Department of Treasury and Finance (DTF) and the Department for Transport, Energy and Infrastructure (DTEI) for case-by-case advice on changes required to the model PAA.

8 Tasmania requirements

8.1 Policy principles

The National Alliance Policy Principles are broadly consistent with the Tasmanian Government purchasing principles. Where variations from the standard procurement processes contained in the Treasurer's Instructions are required, exemptions may need to be sought and/or approved, and do not appear to present any significant conflict with the mandatory purchasing requirements described in the Treasurer's Instructions. On this basis, subject to relevant Government approvals and approved necessary amendments, these principles should be applied in any alliance contracting undertaken by Tasmanian Government Agencies.

8.2 Tasmanian Government Insurance Authorities

The Tasmanian Government operates a self-insurance fund, the Tasmanian Risk Management Fund, to administer identified insurable risks of inner-Budget agencies who are Fund members. The Fund is administered by the Department of Treasury and Finance and provides cover for:

- personal injury - workers' compensation, personal accident;
- legal liability - public (general), directors and officers, product, professional indemnity and medical liability;
- property - building and contents, business interruption, fraud/fidelity, marine hull, motor vehicle and transit; and
- travel.

The Fund retains the services of a Fund Administration Agent to administer claims and provide advice in relation to claims management and insurance requirements.

The Fund does not provide liability or other types of cover for work done under a capital works contract. Building contractors for State Government works are required to purchase Public Liability Insurance and Insurance of the Works through policies organised by the Department of Treasury and Finance with the Fund's Administration Agent. Consultants wishing to do work for government agencies are required to maintain their own public liability and professional indemnity insurance.

The Fund's participating agencies have had limited involvement in alliance contracting and there has been no call to provide services in relation to such arrangements. The current policies under which the Fund is administered do not presently allow it to provide cover for alliance projects or to non-government entities.

Through the retention of the Fund Administration Agent, the services able to be offered in relation to alliance contracting are limited to providing insurance advice to participating government agencies.

8.3 Amendments to Template 1: Model PAA for Tasmania

1 Clause 1.1 of Agreement

- (a) The definition of 'Aboriginal Heritage' in clause 1.1 of the Agreement is to be amended by deleting the reference to "*Aboriginal Heritage Act 2006* (Vic)" in the definition and replacing it with "*Aboriginal Relics Act 1975* (Tas)".
- (b) The definition of 'Act of Parliament' in clause 1.1 of the Agreement is to be amended by deleting the references to "Victoria" in the definition and replacing them with "Tasmania".
- (c) The definition of 'Industry Relations Principles' in clause 1.1 of the Agreement is to be deleted in its entirety.
- (d) The definition of 'Native Title Laws' in clause 1.1 of the Agreement is to be amended by deleting the reference to "*Land Titles Validation Act 1994* (Vic)" in the definition and replacing it with "*Native Title (Tasmania) Act 1994* (Tas), the *Aboriginal Lands Act 1995* (Tas)",.
- (e) The definition of 'SoP Act' in clause 1.1 of the Agreement is to be amended by deleting the references to the "*Building and Construction Industry Security of Payment Act 2002* (Vic)" and replacing it with the "*Building and Construction Industry Security of Payment Act 2009* (Tas)".
- (f) The definition of 'Statutory Requirements' in clause 1.1 of the Agreement is to be amended by deleting the words ", the Victorian Code and the Industrial Relations Principles".
- (g) The definition of 'Victorian Code' in clause 1.1 of the Agreement is to be deleted in its entirety.

2 Clause 1.8 of Agreement

Clause 1.8 of the Agreement is to be deleted in its entirety and replaced with the following clause:

"1.8 Exclusion of the Civil Liability Act 2002 (Tas)

Except as provided in clause 20.3 and to the extent permitted by Statutory Requirements, the Participants agree to exclude the operation of Part 9A of the *Civil Liability Act 2002* (Tas) and any equivalent statutory provisions in any other state or territory, in relation to any rights, obligations and liabilities of the NOPs under or in connection with this Agreement, whether for breach of contract, negligence or otherwise."

3 Clause 4.4(c) of Agreement

Clause 4.4(c) of the Agreement is to be amended by replacing the word "Victoria" with "Tasmania".

4 Clause 15.4 of Agreement

Clause 15.4 of the Agreement is to be deleted in its entirety and replaced with the following clause:

“15.4 Compliance with Code and the Guidelines

- (a) Each of the Participants must, and must ensure that all of its Subcontractors and, in the case of each of the NOPs only, its Related Bodies Corporate, comply with the Code, the Tasmanian Annexure to the Code (“Tasmanian Annexure”) and the Guidelines. A copy of the Tasmanian Annexure is available from the Buying for Government section of the Purchasing website at www.purchasing.tas.gov.au under the heading “Resources/Publications”.
- (b) The Participants acknowledge and agree that compliance with the Code, the Tasmanian Annexure and the Guidelines does not relieve the Participants from responsibility to perform their obligations under this Agreement or from any liability for any Defect in the Works arising from compliance by the Participants with the Code, the Tasmanian Annexure and the Guidelines.
- (c) Where any amendment to this Agreement under clause 20.5 is proposed by the Participants or the ALT, and that amendment would affect compliance with the Code, the Tasmanian Annexure and the Guidelines by the Participants in accordance with this clause 15.4, the ALT must submit a report to the Government of the Commonwealth of Australia specifying the extent to which the Participants’ compliance with the Code, the Tasmanian Annexure and the Guidelines will be affected.
- (d) Each of the Participants must maintain adequate records of compliance with the Code, the Tasmanian Annexure and the Guidelines by:
 - (1) that Participant;
 - (2) that Participant’s Subcontractors; and
 - (3) in the case of each of the NOPs only, its Related Bodies Corporate.
- (e) If the NOPs do not comply with the requirements of the Code, the Tasmanian Annexure or the Guidelines in the performance of this Agreement such that a sanction is applied by the Minister for Employment and Workplace Relations, the Code Monitoring Group (as referred to in the Code and the Guidelines), the Government of the Commonwealth of Australia or the Government of Tasmania, without prejudice to any rights that would otherwise accrue, the Minister for Employment and Workplace Relations, the Code Monitoring Group, the Government of the Commonwealth of Australia and the Government of Tasmania are entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the NOPs or a Related Body Corporate of the NOPs in respect of work funded by the Government of the Commonwealth of Australia, the Government of Tasmania or any Government Agency.
- (f) While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders, the Participants may give preference to Subcontractors that have demonstrated commitment to:
 - (1) adding and/or retaining trainees and apprentices;
 - (2) increasing the participation of women in all aspects of the industry; or
 - (3) promoting employment and training opportunities for indigenous Australians in regions where significant indigenous populations exist.

- (g) A Subcontractor in relation to the Project must not be engaged where:
- (1) the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations or the Government of Tasmania; or
 - (2) the Subcontractor has had a judicial decision against them relating to employee entitlements (not including decisions under appeal) and has not paid the claim.
- (h) Each of the Participants must and must ensure that its Subcontractors and, in the case of each of the NOPs only, its Related Bodies Corporate, provide the Government of the Commonwealth of Australia and the Government of Tasmania or any person authorised by them, including a person occupying a position in the Office of the Australian Building and Construction Commissioner (as referred to in the Code and the Guidelines), with access to:
- (1) inspect the Works and the Construction Plan;
 - (2) inspect and copy any record relevant to the Project and Works the subject of this Agreement ;and
 - (3) interview any person,
- as is necessary to demonstrate their compliance with the Code, the Tasmanian Annexure and the Guidelines.
- (i) Each of the Participants and, in respect of each of the NOPs only, its Related Bodies Corporate, must comply with a request from the Government of the Commonwealth of Australia or the Government of Tasmania or any person authorised by them, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, in person, by fax or by post.
- (j) For the avoidance of doubt, clause 15.4(h) applies in relation to the NOPs' new privately funded construction projects (as defined by section 3.4.1 of the Guidelines).
- (k) The Participants must ensure that all Subcontracts impose obligations on the Subcontractors equivalent to the obligations set out under clauses 15.4(a) to 15.4(j) (inclusive)."

5 Clause 15.9(a) of Agreement

Clause 15.9(a) of the Agreement is to be amended by deleting the words “, the Victorian Code and the Industrial Relations Principles”.

6 Clause 15.10 of Agreement

Clause 15.10 is to be deleted in its entirety and replaced with the following clause:

“15.10 Principal Contractor

- (a) **[Non-Owner Participant 1/Non-Owner Participant 2]** (the **Principal Contractor**) will be:

- (1) appointed as the person responsible for management and control of the Site ("Principal Contractor") for the purposes of discharging the duties and objectives imposed on any such person under the *Workplace Health and Safety Act 1995* and the *Workplace Health and Safety Regulations 1998* (OH&S Act and Regulations); and
 - (2) given all necessary authority to allow it to discharge the responsibilities imposed on a Principal Contractor by the OH&S Act and Regulations.
- (b) The Principal Contractor will complete all forms and take any other action required to accept its appointment.
 - (c) The Principal Contractor must discharge and perform its responsibilities and functions in respect of the performance of the Works under the OH&S Act and Regulations.
 - (d) Each Participant will, when accessing any Site:
 - (1) comply with directions given by the Principal Contractor when exercising its duties and obligations under the OH&S Act and Regulations; and
 - (2) ensure its Related Bodies Corporate do likewise."

7 Building and Construction Industry Security of Payment Act 2002 (Vic), Clause 16.8

Clause 16.8 of the Agreement is to be deleted in its entirety and replaced with the following clause:

"16.8 Building and Construction Industry Security of Payment Act 2009 (Tas)

- (a) The NOPs must:
 - (1) promptly give the Project Owner a copy of any notice that a NOP receives from a Subcontractor; and
 - (2) ensure that each Subcontractor promptly gives the Project Owner and the NOPs a copy of any notice that the Subcontractor receives from another party, under the SoP Act.
- (b) If the Project Owner becomes aware that the Subcontractor is entitled to suspend any works or services (which forms part of the Works) under the SoP Act, the Project Owner may (at its absolute discretion) pay the Subcontractor such money as is or may be owing to the Subcontractor in respect of works or services forming part of the Works. Any amount paid by the Project Owner will be a Reimbursable Cost and the Project Owner is not liable to pay the NOP for the work performed by the Subcontractor the subject of the payment.
- (c) For the purposes of this clause 16.8, a reference to:
 - (1) a Subcontractor includes any person engaged by a NOP, its subcontractors or any other person to carry out works or services which form part of the Works; and
 - (2) works or services refers to all or any part of the Works a NOP is or may be required to execute or provide under this Agreement and includes equipment, services (including design work), Materials and Construction Plant."

8 Clause 17.5 of Agreement

Clause 17.5 of the Agreement is to be amended by replacing the word “Victoria” with “Tasmania” in both the heading and text of the clause.

9 Clause 29.2 of Agreement

Clause 29.2(a) of the Agreement is amended by replacing the word “Victoria” with “Tasmania”. Clause 29.2(b) of the Agreement is amended by replacing the word and brackets “[exclusive/non-exclusive]” with “exclusive”.

10 Clause 29.11 of Agreement

- (a) Clause 29.11(a) of the Agreement is to be amended by the addition of the following words to the beginning of that clause:

“(a) Subject to clause 29.11(c), ...”.

- (b) Clause 29.11 of the Agreement is to be further amended by the addition of the following new clauses 29.11(c) and (d):

“(c) Despite any confidentiality or intellectual property right subsisting in this Agreement or a schedule, appendix, annexure or attachment to it, or any proposal or tender document giving rise to it, either party may publish all or any part of it without reference to the other.

- (d) Nothing in this clause derogates from a party’s obligations under the *Personal Information Protection Act 2004* (Tas) or the *Privacy Act 1988* (Cwlth).”

11 Clause 29.15 of Agreement

Clause 29.15 of the Agreement is amended by replacing the word “Victoria” with “Tasmania”.

12 Additional clauses of Agreement

After clause 29, the following new clauses will be added:

- (1) **Clause 30 - Asbestos**

After Clause 29, the following new Clause 30 is added:

- “30.1 The Participants must ensure that asbestos is not used as part of or for the purposes of carrying out the work under the Agree*ment.
- 30.2 Before commencing on the Site any work under the Agreement, the Participants must check the Site’s asbestos register (being the “register” described in Division 9 of the Workplace Health and Safety Regulations 1998 and hereafter referred to as the “Register”) and have regard to the presence or presumed presence of any recorded asbestos containing materials. If one is not available, it must be assumed that no assessment of asbestos containing materials has been undertaken.
- 30.3 If the Register states that it is presumed that asbestos materials are present, no validation sampling will have been conducted. Therefore, before commencing on the Site any work under the Agreement, the Participants will be required to conduct all necessary validation sampling of materials.
- 30.4 If asbestos containing materials (identified in the Register) are removed, the Participants must ensure that the Register is updated by ensuring that copies of all documentation relating to any validation, interference or removal work are included in the Register.
- 30.5 If asbestos containing material or material suspected of containing asbestos is discovered on the Site, the NOP must:
- (a) stop work in the immediate area;
 - (b) advise the Project Owner, and Workplace Standards Tasmania by phoning: 1300 366 322 (inside Tasmania) or (03) 6233 7657 (outside Tasmania) or by emailing: wstinfo@justice.tas.gov.au; and
 - (c) await instructions from the Project Owner.
- 30.6 A NOP must not, as part of or for the purposes of carrying out the work under the Agreement, undertake asbestos removal, repair, renovation or demolition work, other than in accordance with the requirements of the Workplace Health and Safety Act 1995 and the Workplace Health and Safety Regulations 1998.
- 30.7 A NOP must obtain the necessary approvals before commencing any work under the Agreement on or with products that contain asbestos and evidence of approval must be presented to the Project Owner before commencing work.
- 30.8 Where a NOP removes, repairs and/or renovates products containing asbestos as part of or for the purposes of carrying out the work under the Agreement, it must do so in accordance with Division 9 of the Workplace Health and Safety Regulations 1998 and the Code of Practice for the Safe Removal of Asbestos, 2nd Edition (NOHSC:2002 (2005)).”

(2) **Clause 31 – Operation of a Scheme**

31.1 **Scheme**

For the purposes of this clause 31, “Scheme” means a scheme in force under the *Professional Standards Act 2005* (Tas) or other similar legislation, for limiting the occupational liability of members of an occupational association.

31.2 **No Scheme in force**

If no Scheme applies to a NOP, the NOP waives all present and future rights, as against the Project Owner, to claim any limitation of liability provided by any future Scheme, in relation to future legal liability, claims or proceedings arising from, or attributable to, the NOP carrying out the work under the Agreement including a wrongful (including negligent) act or omission.

31.3 **Scheme in force**

If a Scheme applies to a NOP at any time during the Agreement, then:

- (a) subject to Clause 31.3(b), the level of the NOP's liability under this Agreement will be limited by the Scheme; and
- (b) if required by the Project Owner, the NOP will immediately obtain an approval, under Section 27 of the *Professional Standards Act 2005*, or as otherwise provided for, for a level of liability under the Scheme not lower than the level required by the Project Owner as part of the Project Owner's acceptance of the tender submitted by the Agreement to complete the works under the Agreement.
- (3) **Clause 32 – Australian Government Building and Construction OHS Accreditation Scheme**

Each NOP must maintain accreditation under the Australian Government Building and Construction OHS Accreditation Scheme (in this clause the "Scheme") established by the Building and Construction Industry Improvement Act 2005, while carrying out the work under the Agreement. Each NOP must comply with all conditions of Scheme accreditation."

13 Schedule 15, clause 13.1 of Agreement

- (a) Clause 13.1 of Schedule 15 of the Agreement is amended by replacing the reference to "Victoria" with "Tasmania".
- (b) Clause 13.1 of Schedule 15 of the Agreement is further amended by replacing the words and brackets "[exclusive/non-exclusive]" with "exclusive".

9 Northern Territory requirements

9.1 Policy principles

Procurement by alliance contracting will need to comply with the Northern Territory Government's legislative framework for procurement, including the *Procurement Act*, Procurement Regulations and Procurement Directions. In particular requirements in relation to Local Development and Value Adding, including Industry Participation Plans and Indigenous Development Plans, will need to be included in the tender and contract documents.

Where tenders or proposals are sought based on non-price criteria only, exemptions under section 5 of the Procurement Act may need to be sought and obtained.

As the use of conditions for Alliance contracting depart from the NTG standard suite of conditions, they will require approval from the Procurement Policy Unit in the Department of Business and Employment prior to being issued to tender.

9.2 Northern Territory Government Insurance Authorities

The Northern Territory Government is generally self insured, however where alliancing contracting is used advice should be sought from the Northern Territory Treasury on insurance arrangements for the alliance.

9.3 Amendments to Template 1: Model PAA for Northern Territory

Agreements used by the Northern Territory Government need to contain the following standard Northern Territory Government clauses:

- GST;
- Privacy; and
- 30 day payment and interest (where applicable).

All clauses are available from the Procurement Policy Unit in the Department of Business and Employment or by contacting the Solicitor for the Northern Territory.

It is noted that any indemnities contained in the contract conditions given by the Northern Territory Government in favour of third parties will require approval under the *Financial Management Act*.

10.1 Policy principles

Any procurement conducted by way of alliance contracting would need to be consistent with the Australian Capital Territory's legislative and policy framework for procurement, including the *Government Procurement Act 2001*, *Government Procurement Regulation 2007* and Procurement Policy Circulars. Subject to relevant Government approvals and necessary amendments, the principles would be applied in any alliance contracting undertaken by the ACT.

10.2 Amendments to Template 1: Model PAA for the ACT

The ACT Insurance Authority (ACTIA) is a statutory authority under the *Insurance Authority Act 2005* (the Act). The Authority is responsible to the Treasurer and commenced operations in April 2001.

The functions of ACTIA are specified in Section 8 of the Act and include:

- carrying on the business of insurer of Territory risks;
- insuring of Territory risks with other entities;
- managing claims in relation to Territory risks;
- promoting good risk management practices; and
- giving advice to the Minister about insurance and the management of Territory risks.

ACTIA manages a fund, established to finance the cost of insurable risk for ACT Government agencies, excluding workers' compensation risks.

All government directorates and statutory authorities, unless exempted by the Treasurer, are insured with ACTIA.

ACTIA is financed through risk-based levies that reflect the asset holdings and liability risks faced by each ACT agency. The levies are set to generate sufficient funds such that ACTIA's internal funds and its overlying insurances will be able to meet all claims incurred during the current year, even if those claims are not paid until a subsequent year.

ACTIA provides a range of insurance products to agencies including cover for Public Liability, Property, Medical Malpractice, and Professional Indemnity. Each agency meets the cost of claims below the level of an agreed deductible or excess. ACTIA purchases reinsurance cover to protect the Territory against large claims or losses, or a series of such events. ACTIA's self-insured retentions are reviewed annually to ensure an appropriate balance between risk transferred and risk retained.

The ACT Government generally utilises Principal arranged insurance for works and requires appropriate levels of other insurances to be held by the contractor. The ACTIA would be consulted with respect to advice on insurances for any alliance arrangement.

10.3 Amendments to Template 1: Model PAA for the ACT

1 Clause 1.1 of Agreement

- (a) The definition of 'Aboriginal Heritage' in clause 1.1 of the Agreement is to be amended by deleting the reference to "*Aboriginal Heritage Act 2006* (Vic)" in the definition and replacing it with "*Heritage Act 2004* (ACT), *Tree Protection Act 2005* (ACT) and *Planning and Development Act 2007* (ACT)".
- (b) The definition of 'Act of Parliament' in clause 1.1 of the Agreement is to be amended by deleting the reference to "State of Victoria" in the definition and replacing it with "Australian Capital Territory".
- (c) A new definition of 'BCISPA' is to be inserted into clause 1.1 of the Agreement following the definition of 'Authorisation' as follows:
BCISPA - the *Building and Construction Industry (Security of Payment) Act 2009* (ACT).
- (d) The definition of 'Industrial Relations Principles' in clause 1.1 of the Agreement is to be deleted in its entirety.
- (e) The definition of 'Native Title Laws' in clause 1.1 of the Agreement is to be amended by deleting the reference to "Land Titles Validation Act 1994 (Vic)" in the definition and replacing it with "Native Title Act 1994 (ACT)".
- (f) The definition of 'SoP Act' in clause 1.1 of the Agreement is to be deleted in its entirety.
- (g) The definition of 'Statutory Requirements' in clause 1.1 of the Agreement is to be amended by deleting the words ", the Victorian Code and the Industrial Relations Principles".
- (h) The definition of 'Victorian Code' in clause 1.1 of the Agreement is to be deleted in its entirety.

2 Clause 1.8 of Agreement

Clause 1.8 of the Agreement is to be deleted in its entirety and replaced with the following clause:

1.8 Exclusion of the Civil Law (Wrongs) Act 2002 (ACT)

Except as provided in clause 20.3 and to the extent permitted by Statutory Requirements, the Participants agree to exclude the operation of Chapter 7A of the *Civil Law (Wrongs) Act 2002* (ACT) in relation to any rights, obligations and liabilities of the NOPs under or in connection with this Agreement, whether for breach of contract, negligence or otherwise.

3 Clause 4.4(c) of Agreement

Clause 4.4(c) of the Agreement is to be amended by replacing the word "Victoria" with "Australian Capital Territory".

4 Clause 15.4 of Agreement

Clause 15.4 of the Agreement is to be deleted in its entirety and replaced with the following clause:

"15.4 Compliance with the Code and the Guidelines

- (a) Each of the Participants must, and must ensure that all of its Subcontractors and, in the case of each of the NOPs only, its Related Bodies Corporate, comply with the Code and the Guidelines.
- (b) The Participants acknowledge and agree that compliance with the Code and the Guidelines does not relieve the Participants from responsibility to perform their obligations under this Agreement or from any liability for any Defect in the Works arising from compliance by the Participants with the Code and the Guidelines.
- (c) Where any amendment to this Agreement under clause 30.5 is proposed by the Participants or the ALT, and that amendment would affect compliance with the Code and Guidelines by the Participants in accordance with this clause 15.4, the ALT must submit a report to the Government of the Commonwealth of Australia specifying the extent to which the Participants' compliance with the Code and the Guidelines will be affected.

- (d) Each of the Participants must maintain adequate records of compliance with the Code and the Guidelines by:
 - (1) that Participant;
 - (2) that Participant's Subcontractors; and
 - (3) in the case of each of the NOPs only, its Related Bodies Corporate.
- (e) If the NOPs do not comply with the requirements of the Code or the Guidelines in the performance of this Agreement such that a sanction is applied by the Minister for Employment and Workplace Relations, the Code Monitoring Group (as referred to in the Code and the Guidelines) or the Government of the Commonwealth of Australia, without prejudice to any rights that would otherwise accrue, the Minister for Employment and Workplace Relations, the Code Monitoring Group and the Government of the Commonwealth of Australia are entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the NOPs or a Related Body Corporate of the NOPs in respect of work funded by the Government of the Commonwealth of Australia or any Government Agency.
- (f) While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders, the Participants may give preference to Subcontractors that have demonstrated commitment to:
 - (1) adding and/or retaining trainees and apprentices;
 - (2) increasing the participation of women in all aspects of the industry; or
 - (3) promoting employment and training opportunities for indigenous Australians in regions where significant indigenous populations exist.
- (g) A Subcontractor in relation to the Project must not be engaged where:
 - (1) the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations; or
 - (2) the Subcontractor has had a judicial decision against them relating to employee entitlements (not including decisions under appeal) and has not paid the claim.
- (h) Each of the Participants must and must ensure that its Subcontractors and, in the case of each of the NOPs only, its Related Bodies Corporate, provide the Government of the Commonwealth of Australia or any person authorised by the Government of the Commonwealth of Australia, including a person occupying a position in the Office of the Australian Building and Construction Commissioner (as referred to in the Code and the Guidelines), with access to:
 - (1) inspect the Works and the Construction Plant;
 - (2) inspect and copy any record relevant to the Project and Works the subject of this Agreement; and
 - (3) interview any person,
 as is necessary to demonstrate their compliance with the Code and the Guidelines.
- (i) Each of the Participants and, in respect of each of the NOPs only, its Related Bodies Corporate, must comply with a request from the Government of the Commonwealth of Australia or any person authorised by the Government of the Commonwealth of Australia, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, in person, by fax or by post.
- (j) For the avoidance of doubt, clause 15.4(h) applies in relation to the NOPs' new privately funded construction projects (as defined by section 3.4.1 of the Guidelines).
- (k) The Participants must ensure that all Subcontracts impose obligations on the Subcontractors equivalent to the obligations set out under clauses 15.4(a) to 15.4(j) (inclusive)."

5 Clause 15.9(a) of Agreement

Clause 15.9(a) of the Agreement is to be amended by deleting the words “, the Victorian Code and the Industrial Relations Principles”.

6 Clause 15.10 of Agreement

Clause 15.10 is to be deleted in its entirety and replaced with the following clause:

“15.10 Principal Contractor

- (a) **[Non-Owner Participant 1/Non-Owner Participant 2]** (the **Principal Contractor**) will be:
- (1) appointed as the “person in control” of the Site (“Principal Contractor”) for the purposes of discharging the duties and objectives imposed on any such person under the *Work Safety Act 2008* (ACT) and the *Work Safety Regulation 2009* (ACT) (OH&S Act and Regulations); and
 - (2) given all necessary authority to allow it to discharge the responsibilities imposed on a Principal Contractor by the OH&S Act and Regulations.
- (b) The Principal Contractor will complete all forms and take any other action required to accept its appointment.
- (c) The Principal Contractor must discharge and perform its responsibilities and functions in respect of the performance of the Works under the OH&S Act and Regulations.
- (d) Each Participant will, when accessing any Site:
- (3) comply with directions given by the Principal Contractor when exercising its duties and obligations under the OH&S Act and Regulations; and
 - (4) ensure its Related Bodies Corporate do likewise.

7 Clause 16.8 - Building and Construction Industry (Security of Payment) Act 2009 (ACT)

Clause 16.8 of the Agreement is to be deleted in its entirety and replaced with the following clause:

“16.8 Building and Construction Industry (Security of Payment) Act 2009 (ACT)

- (a) The NOPs must:
- (1) promptly give the Project Owner a copy of any notice that a NOP receives from a Subcontractor; and
 - (2) ensure that each Subcontractor promptly gives the Project Owner and the NOPs a copy of any notice that the Subcontractor receives from another party, under sections 17, 18 or 26 of the BCISPA.
- (b) If the Project Owner becomes aware that the Subcontractor is entitled to suspend any works or services (which forms part of the Works) under sections 17, 18 or 26 of the

BCISPA, the Project Owner may (at its absolute discretion) pay the Subcontractor such money as is or may be owing to the Subcontractor in respect of works or services forming part of the Works. Any amount paid by the Project Owner will be a Reimbursable Cost and the Project Owner is not liable to pay the NOP for the work performed by the Subcontractor the subject of the payment.

- (c) For the purposes of this clause 16.8, a reference to:
- (1) a Subcontractor includes any person engaged by a NOP, its subcontractors or any other person to carry out works or services which form part of the Works; and
 - (2) works or services refers to all or any part of the Works a NOP is or may be required to execute or provide under this Agreement and includes equipment, services (including design work), Materials and Construction Plant."

8 Clause 17.5 of Agreement

Clause 17.5 of the Agreement is to be amended by replacing the word "Victoria" with "Australian Capital Territory" in both the heading and text of the clause.

9 Clause 30.2 of Agreement

Clauses 30.2(a) and (b) of the Agreement are to be amended by replacing the word "Victoria" with "Australian Capital Territory".

10 Clause 30.15 of Agreement

Clause 30.15 of the Agreement is to be amended by replacing the word "Victoria" with "Australian Capital Territory".

11 Schedule 15, clause 13.1 of Agreement

Clause 13.1 of Schedule 15 of the Agreement is amended by replacing the references to "Victoria" with "the Australian Capital Territory".

