

# **APP & Hyder TEAMING AGREEMENT**

**Airport Link, Northern Busways and Airport Roundabout Projects**

**Independent Verifier and Financiers' Engineer Services**

**Rev 9 23 July 2008**

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## APP & Hyder TEAMING AGREEMENT

THIS AGREEMENT is dated 25 July 2008

### BETWEEN

APP Corporation Pty Limited (ABN 29 003 764 770) of APP House, 53 Berry Street, North Sydney NSW 2060 ("APP")

Hyder Consulting Pty Limited (ABN 76 104 485 289) of Level 5, 141 Walker St, North Sydney, NSW 2060 ("Hyder")

each a "Party" and collectively the "Parties".

### RECITALS:

- A. APP and Hyder have agreed to form an integrated project team coordinated by APP to provide Independent Verifier, Sub-ordinate Independent Verifier and Financiers' Engineer Services for the Airport Link, Northern Busways and EWAG Airport Roundabout Projects ("Project").
- B. APP and Hyder now wish to regulate their rights and obligations in relation to the provision of those services to the Client in accordance with the terms and conditions contained in this Agreement.

### OPERATIVE PROVISIONS:

#### 1. INTERPRETATION

- 1.1 When used in this Agreement, the following terms will have the following meanings unless the context requires otherwise:

"Agreement" means this Teaming Agreement together with all attachments, schedules and other documents annexed to it and/or incorporated by reference;

"Association" means the team of APP and Hyder formed in accordance with this Agreement for the purpose of delivering the Services to the Client for the Project;

"Business Day" means a day that the major banks are open for business in Sydney but shall exclude any Saturday, Sunday or public holiday;

"Client" means BrisConnections, The State and Financiers and all other parties entitled to the benefit of the Services under the Head Contract;

"Confidential Information" means the confidential or proprietary information to which Clause 21.5 applies;

"Head Contract" means the final executed versions of the Independent Verifier Agreement, Deed of Appointment of Financiers' Engineer and Subordinate Independent Verifier Deed of Appointment and all schedules, annexures exhibits and documents attached to or incorporated by reference. The Head Contract shall, where the context so admits, include any addition, deletion or variation to those documents which may be ordered by or agreed with the Client from time to time in accordance with the terms of those documents;

"Intellectual Property" or "IP" means all copyright (including moral rights) and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, confidential information (including trade secrets and know how), other technical information, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

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“IPT” has the meaning given to that term in Clause 6.7.

“**Management Committee**” means the board of management nominated by the Parties to control, manage and supervise the affairs of the Association in accordance with the Agreement.

“**Project Director**” means the person from time to time appointed by the Management Committee pursuant to Clause 9.2 of this Agreement.

“**Project Insurance**” means the project specific insurances taken out by APP (which name Hyder as an insured) under the terms of the Head Contract

“**Related Body Corporate**” has the meaning given in s50 of the *Corporations Act 2001*;

“**Services**” means all of the services to be performed by APP under the Head Contract between APP and the Client (as amended from time to time);

“**Work Packages**” means a particular identifiable package of work necessary to complete the Services, and “**Work Package**” means one of them as applicable.

1.2 In this Agreement headings are for convenience only and will not affect interpretation and except to the extent that the context otherwise requires:

- (a) words denoting the singular denote the plural and vice versa;
- (b) words denoting individuals (or persons) include corporations and entities and vice versa;
- (c) words denoting any gender include all genders;
- (d) references to recitals, Clauses, sub-clauses and schedules are references to recitals, clauses, sub-clauses and schedules to this Agreement;
- (e) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Agreement or any part of it;
- (f) a reference to a statute or other law includes regulations and other instruments under and consolidation, amendment, re-enactment or replacement of any of them; and
- (g) a reference to any instrument (including this Agreement) includes a reference to any variation, replacement, amendment, assignment or novation of that instrument.

## 2. OBJECTS

2.1 The Parties hereby agree to associate and cooperate as a team to facilitate the performance of the Services and the terms of this Agreement. This Association is strictly limited to performance of the Services and this Agreement. Otherwise, each of the Parties may carry on its separate business for its sole benefit.

2.2 In order to fulfil the objectives referred to in this Clause, each Party must:

- (a) co-operate and take reasonable steps to ensure that APP successfully fulfills the requirements of the Head Contract;
  - (b) not use Confidential Information in a way which damages or is reasonably likely to damage the Association;
  - (c) not unreasonably delay an action, approval, direction, determination or decision required of the Party;
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- (d) make approvals or decisions that are required of the Party in good faith and in the best interest of the Association and the Project (subject to Management Committee Approval);
  - (e) advise the other Party of all directions and instructions received from the Client;
  - (f) attend all meetings of the Management Committee; and
  - (g) be fair and equitable in the Party's activities and dealings with each other Party.
- 2.3 Subject to Clause 2.1, the Parties agree that they will use their reasonable endeavours to ensure that the affairs and operations of the Association are conducted in an efficient and profitable manner and in accordance with good and sound business practice. The Parties further agree that they will conduct themselves in a professional manner calculated to lead to a satisfactory commercial relationship and will co-operate and negotiate with each other in good faith and in accordance with the provisions of the Agreement.

### **3. RELATIONSHIP OF THE PARTIES**

- 3.1 Nothing contained in this Agreement shall be construed to create a partnership between the Parties or give rise to any agency relationship except as specifically necessary and set forth in this Agreement for performance of the Services. Nothing contained in this Agreement shall render any Party liable for any debts or obligations of the other Party, except as expressly stated in this Agreement, or in any event for debts and obligations unrelated to the Association.
- 3.2 Nothing in this Agreement shall authorise either of the Parties to pledge the credit of or incur liabilities or obligations binding upon the other Party except as expressly stated in this Agreement.

### **4. TERM**

- 4.1 This Agreement and the Association hereby created, shall remain in effect for such period of time as necessary for the Association to carry out the Services (estimated to be 6 years from Project commencement), for APP to receive full and final payment of all amounts owed to APP under the Head Contract, to make appropriate provision for and to meet all actual and contingent liabilities of the Association in relation to the Services, and otherwise to carry out the terms and provisions of this Agreement, or until earlier terminated in accordance with this Agreement.

### **5. LOCATION OF ASSOCIATION**

- 5.1 The Parties will conduct the Services in accordance with this Agreement at their respective places of business and otherwise as required by the Head Contract.

### **6. INTERESTS OF THE PARTIES**

- 6.1 The Parties agree that APP has and shall continue to conduct all negotiations with regard to the Head Contract and that APP shall enter into the Head Contract with the Client.
- 6.2 APP as a party to the Head Contract shall be responsible for overall management and administration of the Head Contract and the Association.
- 6.3 Upon the award of the Head Contract to APP, the Parties shall be responsible for the execution, completion and delivery of the Services in accordance with the requirements for the Services in that Head Contract and this Agreement.
- 6.4 Each of the Parties acknowledges the terms of the Head Contract, and shall deliver the Services allocated to it under this Agreement so that APP is in compliance with its obligations in the Head Contract. Hyder agrees to carry out the Hyder Services so that they meet the requirements of the Head Contract. Despite this the Parties agree that Hyder's sole duty of care is to APP and that Hyder do not owe any duty of care directly to the Client.
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- 6.5 Subject to the determination of the Management Committee, the Parties will execute the Services in accordance with this Agreement and the relevant requirements for those Services under the Head Contract. The Parties will form an integrated project team (“IPT”) to execute and deliver the Services. The IPT will be selected on a “best for Project” basis by the Management Committee and shall be managed and controlled by the Management Committee in accordance with this Agreement.
- 6.6 Each Party will provide appropriately experienced and qualified personnel for inclusion in the IPT, and will ensure that any of its personnel who provide services as part of the IPT is properly experienced and qualified for the services assigned to him/her.
- 6.7 The Management Committee and the Independent Verifier Representative shall manage and control all aspects of the Services, subject to compliance by APP under the Head Contract, in accordance with this Agreement and shall allocate work items to the Parties and to individual personnel as part of the IPT at their discretion in accordance with this Agreement.
- 6.8 A Party’s responsibility for the Services or any Work Package or part thereof assigned to it by the Management Committee shall include:
- (a) the execution, completion and maintenance of the relevant Services in accordance with the relevant requirements for those Services under the Head Contract by the Party or its approved sub-contractors;
  - (b) the management of any sub-contractor(s) with whom the Party is required to enter into in relation to the relevant Services (the Association will not enter into subcontracts);
  - (c) strict liability to the other Party and the Client for the performance of their sub-contractor and the performance by the sub-contractor of any duties owed by the sub-contractor to the other Party and the Client;
  - (d) sole responsibility and liability for any obligations or duties owed by that Party or the Association to the Party’s sub-contractors; and
  - (e) best endeavours to achieve the performance, subject to the terms of this Agreement, of all the obligations of APP under the Head Contract with regard to the relevant Services so as to enable full compliance with the Head Contract including (without limitation) giving to the Project Manager information in relation to the relevant Services so as to enable all notices and other contractual communications to be given by the Project Director within the time(s) prescribed by the Head Contract.

## 7. MANAGEMENT COMMITTEE

- 7.1 A Management Committee shall be established composed of four (4) principal representatives, two appointed by Hyder and two appointed by APP, with each representative having one vote (the Chairman will not have any casting vote). Each Party shall also name an alternate representative. The representatives appointed by each Party shall be officers or senior employees of their companies. APP’s representative shall be the Chairman of the Management Committee. Until written notice of any changes is given as hereinafter provided, the representatives and alternates are as follows:

APP Ian Maxted (Chairman)  
Jeff Sharp  
Alternate Andy Gorey

Hyder Mike Wilke  
Greg Steele  
Alternate: Jamie Alonsa

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- 7.2 Each Party may change its representative and alternate on the Management Committee at any time by giving written notice to that effect to the other Party.
- 7.3 Regular meetings of the Management Committee will be held at such intervals and times as deemed appropriate by the Chairman of the Committee for the needs of the Project work but not less often than quarterly. In addition, any member of the Committee may call a special meeting of the Committee at any time by giving written notice at least five (5) working days prior to the meeting, unless such period of notice is reduced or waived by all representatives of the Parties. Notice of all meetings shall also be given to the Independent Verifier's Representative Unless the Management Committee shall otherwise decide with respect to a particular meeting, regular and special meetings shall be held at APP's office. The representatives or alternates of each Party and the Independent Verifier's Representative may attend Management Committee meetings. The Management Committee shall consider any matter submitted by any of its members or the Independent Verifier's Representative .
- 7.4 A Management Committee meeting may be conducted by telephone without prior notice in an emergency, and this method may also be used when such procedure would be expedient for matters needing prompt attention.
- 7.5 All action taken at any meeting shall be recorded in the minutes of the Management Committee, which shall be maintained by the Chairman of the Committee. The Chairman will provide copies of all minutes and resolutions to all representatives and the Project Director within seven (7) days of the date of the meeting.
- 7.6 The Independent Verifier's Representative shall be present and, at the request of any Management Committee member, shall invite any other senior member of the IPT or Project staff to be present in person or by telephone conference at meetings of the Management Committee. The Independent Verifier's Representative shall present a report of current operations at each Committee meeting (except where the Committee requests otherwise) and shall otherwise participate, personally or through other senior members of the Project staff, in Committee discussions which the Committee members determine as necessary or appropriate.
- 7.7 For any meeting of the Management Committee, a quorum shall be comprised of two (2) representatives, one representative from each of the Parties. All decisions, determinations, approvals, consents, or other actions shall be determined by the Management Committee and implemented at the direction of the Chairman. In the event that the Management Committee is unable to reach a unanimous decision within two days of an issue for decision being raised at a Management Committee meeting, then the Chairman of the Management Committee meeting shall, after consultation with the Independent Verifier's Representative, escalate the matter to the Regional Managing Director of Hyder and the Chairman of APP for resolution.

## **8. MANAGEMENT COMMITTEE AUTHORITY**

- 8.1 The primary purpose of the Management Committee is to ensure that the contractual and commercial rights and entitlements of the Parties as described in this Agreement are realised and protected in accordance with this Agreement. Accordingly, the Independent Verifier's Representative shall report quarterly (or at intervals otherwise agreed by the Management Committee) to the Management Committee the status of the work required under the Head Contract including compliance with those contracted obligations, resourcing issues, forecast costs, projected margins and risk assessment and management issues in relation to the Services.
- 8.2 The Management Committee shall also cause to be created written policies and procedures for the execution of the work under the Head Contract and ensure that the Independent Verifier's Representative and IPT establish and comply with those written policies and procedures and shall review and supervise the operation of the Association, the performance of the Services, the activities of the Independent Verifier's Representative and any other matters relating to the Project.
- 8.3 The Management Committee shall have full authority to:
- (a) receive, disburse, deposit, handle and control funds received from the Client or otherwise in respect of the Project in accordance with this Agreement, including without limitation making payments as required under this Agreement;
  - (b) monitor performance of the Head Contract in relation to the approved budget then in effect;
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- (c) determine and obtain insurance coverage for the Parties in the event a Party does not comply with any obligation to provide insurance under this Agreement or the Head Contract (the cost of any such insurance will be reimbursed by the defaulting Party);
- (d) control the Association joint bank account.
- (e) approve all amendments or variations to the Head Contract as agreed with the Client, or grant approval to the Independent Verifier's Representative to do so; and
- (f) take all other actions required for performance of the Head Contract and the conduct of business of the Association as provided for in this Agreement.

## **9. KEY PROJECT PERSONNEL**

- 9.1 Each Party shall provide to the Project sufficient personnel to perform the Work Packages in accordance with the Head Contract and assigned to that Party under this Agreement. No Party shall withdraw any key personnel (i.e. committed to/scheduled for assignment on the Project) without the consent of the Management Committee, which consent shall not be unreasonably withheld subject to the ensuring APP is not put in breach of the Head Contract. Each Party will replace personnel so withdrawn with personnel having experience and qualifications commensurate with the assignment.
  - 9.2 Subject to Clause 8 (Management Committee Authority) and compliance by APP under the Head Contract, the general supervision and management of the work required by the Head Contract shall be under the general charge and control of the Independent Verifier. The Independent Verifier's Representative shall be nominated by APP and, subject to approval of the Management Committee, appointed by the Management Committee, and shall be given such powers, duties, and responsibilities as may be required to enable him/her to properly perform the duties entrusted to him/her, to the end that work may be performed properly and expeditiously. APP shall be responsible for providing replacement Independent Verifier's Representative as required in accordance with this Agreement unless otherwise agreed by the Management Committee.
  - 9.3 The Management Committee's policies and procedures may address the manner and method by which the Independent Verifier's Representative shall administer the performance of the work contemplated by the Head Contract, and the Independent Verifier's Representative shall comply with all such policies and procedures and all directions given subject to compliance by APP under the Head Contract by the Management Committee. In the absence of an applicable Management Committee policy or procedure directing otherwise, the Independent Verifier's Representative shall have general authority to act on behalf of the Parties to complete the Services subject to compliance by APP under the Head Contract. All actions of the Independent Verifier's Representative undertaken in accordance with the policy guidelines of the Management Committee, oral or written, shall be conclusively deemed to be the action of the Association.
  - 9.4 The Independent Verifier's Representative's responsibility and authority shall include but not necessarily be limited to the following:
    - (a) To review, oversee, and coordinate all activities of the Head Contract and the Project;
    - (b) To represent the Parties in their day-to-day dealings with the Client in accordance with the Head Contract and the policies and procedures of the Management Committee;
    - (c) Approve, subject to Management Committee approval, all changes in the scope of the Head Contract and/or the Project;
    - (d) Approve or arrange for the approval by the Client of all changes in the scope of the Head Contract and/or the Project;
    - (e) Approve any subcontracts to be entered into by the Parties for the Project;
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- (f) Subject to Management Committee approval, review and approve any change in the budget for the performance of the Head Contract;
- (g) To monitor the Project in relation to the Head Contract, the Project schedule, and the Project budget;
- (h) To report to the Management Committee in accordance with Clause 8.1;
- (i) To evaluate and identify potential problems in the performance of the Head Contract and their causes, and to initiate appropriate remedial measures;
- (j) To ensure that any scope or other changes in the Head Contract are determined in advance of performance, and that all steps are taken in compliance with the Head Contract to ensure payment for increased scope and other changes;
- (k) To inform the Management Committee of Project progress; and
- (l) To recommend the magnitude and timing of payments referred to in Attachment I having regard to forecast costs and risk assessments for the Project and the Services.

## **10. LIABILITY AND INDEMNITY**

- 10.1 Save to the extent the loss is indemnified by a Project Insurance, APP agrees to indemnify Hyder from and against any liability, cost, or expense caused by any breach of this Agreement or negligent act, error or omission by APP or its employees or subcontractors.
- 10.2 Save to the extent the loss is indemnified by a Project Insurance and subject to Clause 10.3, Hyder agrees to indemnify APP from and against any liability, cost, or expense caused by any breach of this Agreement or negligent act, error or omission by Hyder or its employees or subcontractors.
- 10.3 The aggregate liability of Hyder, its employees, sub-consultants and related bodies corporate to APP arising out of or in connection with or relating in any manner to the performance or non-performance of obligations in connection with the Project, this Agreement, or the performance or non-performance of the Services whether based in contract, tort (including negligence), equity, statute, by way of indemnity or contribution, warranty or guarantee or otherwise, is limited to:
  - (i) in respect of all claims for which Hyder is entitled to be indemnified under a Project Insurance (as defined in the Head Contract), the amount for which Hyder is entitled to be so indemnified under the Project Insurance; and
  - (ii) twenty million dollars (\$20,000,000) in respect of all claims other than claims for which the Hyder is entitled to be indemnified under the Project PI Insurance,
- 10.4 The Parties agree that Hyder owes no duty of care in relation to the Project other than to APP. For the avoidance of doubt the Parties agree that Hyder owes no duty of care to the Client..

## **11. INSURANCE**

- 11.1 APP shall comply with its obligations under the Head Contract to procure and continuously maintain Project Insurance. APP must provide to Hyder certificates of currency, with respect to the Project Insurances effected and maintained by APP in accordance with this Clause and provide such other information as Hyder may reasonably request from time to time. APP shall advise Hyder immediately of any change to the Project Insurance
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- 11.2 The Parties shall each pay half of any deductible payable on any Project Insurance regardless of fault.
- 11.3 Hyder shall from the date of this Agreement take out and maintain with a reputable insurance company the following insurances:
- (a) workers compensation insurance in accordance with the requirements of Law; and
  - (b) public liability policy, where required.
- 11.4 Hyder must provide to APP certificates of currency, with respect to the insurances effected and maintained by Hyder in accordance with this Clause 11 upon request from time to time by APP and prior to the renewal of each policy.
- 11.5 Hyder must keep:
- The workers compensation insurance and public liability insurance (if applicable) current until it ceases to perform the Services;
- 11.6 The requirement to effect and maintain insurance in this Clause 11 does not limit the liability or other obligations of Hyder under this Agreement.

## **12. VARIATIONS**

- 12.1 The Parties acknowledge that variations to the Services required under the Head Contract may be required and approved by the Client from time to time. If any such variation is required or agreed by APP, the Parties acknowledge that consequential amendments to the Work Packages will be required and agree to negotiate in good faith any such amendments consistently with the principles underlying the fee structure in this Agreement. The Parties agree that the Independent Verifier's Representative will conduct negotiations in the first instance in consultation with the Management Committee taking into account the Party's responsibility for the Work Package.
- 12.2 The Parties agree that APP will negotiate with the Client with regard to the terms of any variation under the Head Contract. The terms of any variation under the Head Contract will be agreed by the Management Committee before agreement is reached with the Client. The Parties will negotiate in good faith any amendment to this Agreement required by an amendment to the Head Contract.
- 12.3 If a Party considers at any time that the dates set out in the Head Contract cannot be met for any reason whatsoever, the Parties shall convene a meeting of the Management Committee to agree on remedial action and communication to the Client. The decision to request an extension of time may only be taken by the Management Committee.

## **13. BASIS OF COMPENSATION PAYMENT AND JOINT PROJECT BANK ACCOUNT**

- 13.1 The final effective basis of compensation and payment by the Client to the Association for the Services shall be set forth in the Head Contract.
- 13.2 For all Services provided by the Parties, the financial arrangements and principles as set out in Attachment 1 will apply and the Parties agree to be comply in full with those financial arrangements and principles.
- 13.3 Each Party shall provide to the Independent Verifier's Representative an invoice (in a form approved by the Management Committee) together with adequate documentation to substantiate such invoice on a monthly basis setting out a statement of that part of the Head Contract fee in respect of the relevant Work Package which that Party considers to be due in accordance with the terms of the Head Contract. Notwithstanding this invoicing process, the entitlement of the Parties to receive payments will be made in accordance with Attachment 1.
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- 13.4 In the event of disallowance by the Client of any direct or indirect costs submitted by any Party to the Independent Verifier's Representative in respect of its Work Package, and subsequent to every reasonable effort being made to cause the Client to find such costs to be allowable, the amount disallowed shall be absorbed by the Party incurring such costs, and the amount paid or to be paid thereon in respect of that Work Package in accordance with Attachment 1 shall be adjusted appropriately to reflect such amounts disallowed, except as may otherwise be agreed by the Management Committee.
- 13.5 Each Party shall be responsible for maintaining, at its own cost, separate books of accounts and records pertinent to its operations in connection with its Work Packages and its calculation of the amounts payable under the Head Contract in respect of those Work Packages. Such books and records relating to salary, the number of hours individuals performed services, and out-of-pocket expenses which are reimbursable by the Client shall be subject to audit on reasonable notice at all reasonable times, by the other Party or the Client.
- 13.6 Within thirty (30) days following receipt by APP of a claim from Hyder, APP shall distribute to Hyder the amount of such payment to which Hyder shall be entitled pursuant to Attachment 1.
- 13.7 the Parties shall open a bank account with an Australian trading bank determined by the Parties in the name of the Association.
- 13.8 All moneys invoiced by APP in relation to the Project and received by APP shall be immediately deposited to the credit of the bank account.
- 13.9 All cheques or other negotiable instruments drawn on the bank account shall be signed by at least one authorized signatory of each of the Parties.
- 13.10 APP and Hyder may nominate alternate cheque signatories but in no case shall cheques be authorized and countersigned by two alternative nominees of any of APP and Hyder.
- 13.11 The Parties shall operate the bank account such that it does not go into overdraft.

#### **14. RECORDS**

- 14.1 All financial, technical and other records of the Parties with regard to the Services shall be kept and preserved as required by law and the Head Contract and for such longer periods as the Management Committee may designate. The financial records of the Association shall be maintained at the APP office. Billings will be prepared on a monthly basis from data furnished by each Party. Reports of financial transactions will be furnished to each Party on a quarterly basis by APP.

#### **15. DISTRIBUTION OF ASSETS**

- 15.1 Upon completion of the Head Contract or termination of this Agreement, any assets jointly owned by the Parties of any kind will be liquidated and the proceeds distributed equally to the Parties or other more equitable means of distribution as determined by the Management Committee.
- 15.2 Upon completion of the Head Contract or termination of this Agreement, sufficient reserves, as determined by the Management Committee, shall be established for known or reasonably anticipated contingencies not theretofore discharged. Thereafter, any Operating Surplus shall be distributed or paid by the parties as the case may be in accordance with Attachment 1. When funds set aside as reserves are no longer required for such purpose, then such funds shall be similarly distributed.
- 15.3 In the event that after completion of the Project and distribution of assets as provided in this Clause 15, any claim is asserted or legal action commenced by the Client or any third party against the Association or one or more of the Parties in connection with any matter arising under the Head Contract or associated with the Project, including but not limited to latent defects or personal injury claims, the provisions of this Agreement shall continue to apply with respect to such claim or action. The foregoing provisions of this Clause 15 and Clause 10 shall survive expiration or termination of this Agreement.
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## 16. SUBCONTRACTING AND ASSIGNMENT

- 16.1 All subcontracts and other agreements with respect to the services or supplies to be provided for the performance of a Work Package or portions of work to be performed pursuant to a Work Package under the Head Contract shall be executed in the name of the Party nominated by this Agreement as being responsible for the completion of such Work Package or as determined by the Management Committee, unless the Client requires otherwise.
- 16.2 A Party entering into a subcontract referred to in the foregoing Subsection 16.1 shall ensure that all such subcontracts contain an express provision requiring that Party and all its subcontractors to immediately assign and novate all its subcontracts to the other Party in the event that that this Agreement is terminated.
- 16.3 Neither this Agreement nor any interest nor obligation of any Party herein, including any interest in funds belonging to or which may accrue to the Association, or any interest in any bank account of the Association, or in any property of any kind employed or used in connection with the Head Contract, may be assigned, pledged, transferred, subcontracted, or hypothecated by any Party without the prior written consent of the other Party.

## 17. INSOLVENCY AND DEFAULT

- 17.1 This Agreement shall automatically terminate upon the first to occur of the following events:

- (a) termination of the Head Contract;
- (b) the Head Contract and all of the Services for the Project being completed; or
- (c) the mutual agreement of the Parties.

- 17.2 In the event that:

- (a) an order is made or an effective resolution is passed for the winding up or dissolution without winding up of a Party (otherwise than for the purposes of a solvent reconstruction or amalgamation) and remains in effect for a continuous period of 30 days;
- (b) a receiver, receiver and manager, administrator, or like official is appointed over the whole or a substantial part of the undertaking or property of a Party and the appointment remains in effect for a continuous period of 30 days;
- (c) a holder of an encumbrance takes possession of the whole or any substantial part of the undertaking and property of a Party and such encumbrance holder remains in possession for a continuous period of 30 days;
- (d) a Party has committed a material breach of any of its obligations under this Agreement which is not remedied (or, if not capable of remedy, not reasonably compensated for) within 30 days after written notice of the breach has been given to it by the other Party; or

the other Party ("Non-Defaulting Party") is entitled to terminate this Agreement immediately upon notice in writing to the Party to which one or more of the above events applies ("Defaulting Party").

- 17.3 Upon termination of this Agreement in accordance with Clause 17.1 and receipt of all amounts due under the Head Contract, APP shall account to Hyder for any amounts payable to Hyder in accordance with this Agreement up to the date of termination. In the event that the amounts chargeable to any Party exceeds any sums due to that Party, the relevant Party shall promptly pay the shortfall to the other Party.
- 17.4 Upon termination of this Agreement in accordance with Clause 17.2:
- (a) such termination shall be without prejudice to the rights of the Non-Defaulting Party to recover from the Defaulting Party any damages incurred as a result of its failure to fulfil any of its obligations hereunder;
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(b) the following shall occur:

- (i) the Defaulting Party shall immediately turn over to the Non-Defaulting Party all plans, specifications, drawings, and other documents relating to the Head Contract which it has on hand or subject to its control, whether prepared by such Party for its own use, or by others, so as to permit the Non-Defaulting Party to use these documents to continue the work under the Head Contract;
- (ii) the Non-Defaulting Party may retain for the performance of the Head Contract all equipment and materials purchased therefore and all assets owned by either Party at the time of the default until the completion and handing over of the Services;
- (iii) the Non-Defaulting Party may take control of the Association Bank Account and the Defaulting Party hereby irrevocably authorises the Non-Defaulting Party to do any act in relation to the Association Bank Account in that circumstance;
- (iv) neither the Defaulting Party, nor its successors and receivers or other legal representatives shall have any interest in any profits resulting from their performance of the work under the Head Contract after the date of termination of this Agreement;
- (v) the Defaulting Party, its successors and receivers or other legal representatives shall execute all deeds and documents and do all things necessary or expedient to facilitate the exercise of such rights;
- (vi) the Defaulting Party shall not be entitled to receive any amount in respect of its Work Package under this Agreement until the costs of completing the Services and any damages for delay in completion or disruption to the Services, have been ascertained and the amount thereof has been certified by the Independent Verifier's Representative. If such amount exceeds the sum which would have been payable to the Defaulting Party on due completion of the Work Package, then the Defaulting Party shall not be entitled to any payment and shall pay to the Non-Defaulting Party the amount of the excess which shall be deemed to be a debt due and owing by the Defaulting Party to the Non-Defaulting Party and shall be recoverable accordingly.

(c) the Defaulting Party shall remain liable for its share of any losses sustained by the Association with respect to the performance of the Head Contract, as determined pursuant to the terms and conditions of this Agreement;

## 18. NOTICES.

18.1 Any notice which is required or permitted to be given under any provision of this Agreement shall be given in writing and shall be delivered either in person or by registered or certified mail or by facsimile, and shall be deemed effective if and when received by the Party to be notified at such Party's address as set forth below. Each Party may, by written notice to the other Party as provided in this Clause, change its address for receiving such notices to another address in Australia.

APP Corporation Pty Limited  
APP House  
53 Berry Street  
North Sydney NSW 2060  
Fax: 02 9954 1951  
Attention: Ian Maxted

Hyder Consulting Pty Ltd  
Level 5  
141 Walker St  
North Sydney NSW 2060  
Fax: 02 8907 9001  
Attention: Regional Managing Director

## 19. DISPUTES

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- 19.1 In the event of any disagreement or dispute between the Parties arising in connection with this Agreement, the conduct of the Association or of its termination or dissolution, or with respect to any other matter, cause or thing whatsoever not herein otherwise provided for, then the Parties shall use their best endeavours to reach an amicable settlement. If such a settlement has not been reached within 20 Business Days of either Party issuing a notice of dispute to the other Party, then such disagreement or dispute ("Dispute") must be submitted to mediation in accordance with this Clause before any Party is entitled to commence proceedings in a court.
- 19.2 Within 5 Business Days of the expiry of the period referred to in Clause 19.1, the Parties shall mutually agree upon the appointment of the mediator and in the absence of such agreement within that 5 Business Day period, the Parties agree that the President of the Law Society of NSW shall appoint the mediator to hear the Dispute.
- 19.3 Within 5 Business Days of the appointment of an independent mediator in accordance with Clause 19.2 the Parties must confer in the presence of the mediator in order to:-
- (a) identify the subject matter of the Dispute;
  - (b) identify the provisions of this Agreement relevant to the Dispute;
  - (c) discuss each Party's position in relation to the Dispute;
  - (d) listen to any comments made by the mediator; and
  - (e) resolve the Dispute by mutual agreement.
- 19.4 The mediation will be conducted by the mediator at a time and place agreed between the Parties or otherwise nominated by the mediator.
- 19.5 The mediation proceedings and any matter, document or information arising out of those proceedings shall remain entirely confidential as between the Parties and the mediator.
- 19.6 The Parties agree that the mediator will act as an aid to assisting them to resolve a Dispute and not as an arbitrator or a determiner or decider of any matter.
- 19.7 The Parties shall share equally the costs of the mediation.

## **20. LIMITATION OF RIGHTS OF OTHERS**

- 20.1 Nothing in this Agreement, whether expressed or implied, shall be construed to give the Client or any other entity or person other than the Parties any legal or equitable right, remedy, or claim under or in respect of this Agreement.

## **21. MISCELLANEOUS**

- 21.1 No Waiver. Neither the failure of any Party to exercise any power given to such Party under this Agreement or to insist upon strict compliance by another Party with such other Party's obligations under this Agreement, nor any custom or practice of the Parties at variance with the terms hereof, shall constitute a waiver of any Party's right to demand exact, full, and complete compliance by the other Party with the terms and provisions of this Agreement.
- 21.2 Entire Agreement. This Agreement contains and constitutes the entire agreement between the Parties with respect to the Association for the performance of the Services.
- 21.3 Severability of Invalid Provision. If any provision of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect under the laws of the New South Wales and such invalidity, illegality or non-enforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been incorporated herein, then the rights of the Parties hereto shall be construed and enforced accordingly.
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21.4 Amendments. This Agreement shall not be changed, amended, modified, or waived otherwise than by a written instrument signed by duly authorized officers of both APP and Hyder.

21.5 Confidential Information. In the event any Party hereto shall disclose confidential or proprietary information to another Party hereto and shall advise the receiving Party in writing at the time of disclosure that such information is confidential or proprietary information, the receiving Party shall keep such information confidential and not disclose it to any other person or entity which is not a party to this Agreement, except to the extent disclosure is needed in connection with the performance on the Services or at law. It is understood that the "information" referred to in this Clause 21.5 does not include information which:

- (a) was in the public domain at the time it was so obtained by the receiving party;
- (b) subsequently enters the public domain through no fault of the receiving party;
- (c) was in the receiving party's possession at the time it was so obtained by receiving party; or
- (d) is subsequently rightfully obtained by the receiving party from another person or entity which is not a party to this Agreement.

## **22. GOVERNING LAW**

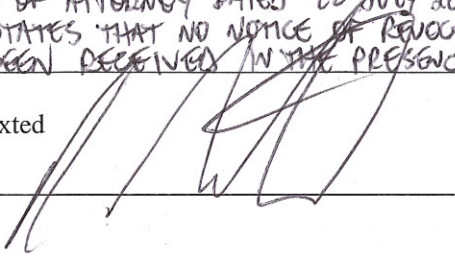
22.1 This Agreement shall be governed by and shall be construed and interpreted in accordance with the laws of New South Wales, and the Parties hereby submit to the jurisdiction of the courts exercising jurisdiction there and any courts entitled to hear appeals therefrom.

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In WITNESS HEREOF, APP and Hyder have caused this Agreement to be executed by their fully authorised officers to be effective as of the date first above written.

~~EXECUTED~~ By APP Corporation PTY LIMITED in )  
presence of ABN 29 003 764 770 BY )  
THE PARTY'S ATTORNEY PURSUANT TO A )  
POWER OF ATTORNEY DATED 22 JULY 2008 )  
WHO STATES THAT NO NOTICE OF REVOCATION )  
HAS BEEN RECEIVED IN THE PRESENCE OF: )

Ian Maxted



~~Jeff Sharp~~ Christopher Keane  
CHRISTOPHER KEANE

25 JULY 2008

Date

By Hyder Consulting PTY LIMITED, in the )  
presence of: )  
)



Director

JAVIER ARONSO



Director/Secretary

S JHM

25 JULY 08

Date

# ATTACHMENT 1

## Financial Arrangements

The following arrangements will apply to allocation and payment of the funds received from the Client under the Head Contract to the Parties under this Agreement.

1. The Project Management Design Services, Construction and O&M Phase budget for the Project is attached in Attachment 3 (“**Budget**”). APP shall monitor performance of the Association against that Budget, and report to the Management Committee, at least monthly.
2. All expenses incurred by each Party in relation to the Project shall be paid by that Party. All such expenses, provided those expenses are included in the Budget or are otherwise approved by the Management Committee, shall be taken into account when calculating the Operating Surplus for the Project under this Attachment.
3. For the purposes of this Attachment, “Operating Surplus” or “OS” is defined as any profit in respect of the Construction Phase Services over a period as calculated below for project management accounting purposes.
4. For the purposes of the Agreement, OS for each period shall be defined as:

$$OS = TP - (FC + PR + NR + MF)$$

where:

TP = the total Contract payments received from the Client for the Services for the period.

FC = the consulting fees paid to the Parties (in accordance with clause 8 below) or other consultants for the Services for the period and related personnel costs such as housing, travel and allowances, to the extent approved by the Management Committee prior to incurring the liability.

PR = Client payments for procurement or reimbursable items for the Services under the Head Contract (inclusive of any procurement management fee) – see clause 9 below.

NR = other Project costs incurred by the Parties in supply or management of the Services, but not included in the Budget and regarded as an expense of the Association, provided that all amounts exceeding \$1000 require prior approval by the Management Committee – see clause 10 below.

MF = management fees payable to APP in respect of the Services as defined in clause 10, 11 and 12 below.

For the duration of this Agreement, all OS shall be shared in 50/50. It is noted that the 50/50 split is based on the current intention that each party provide equivalent equal resources.

5. APP shall calculate Operating Surplus on a quarterly basis, or as otherwise determined by the Management Committee. All Operating Surplus/Deficit calculations by APP shall be fully disclosed to the other Party.
6. The Management Committee shall decide when OS dividends are to be made.
7. Personnel and Consulting Fees paid to Parties

Where not nominated all personnel to be engaged for the Services or the Project, will be engaged and mobilised on a best for project basis. The intent is that each party provides equal resourcing..

Where permanent staff of the Parties are engaged in provision of the Services in accordance with this Agreement, the Parties will be paid the following amounts from funds received:

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- (a) for Project Management Design Services and Design Services rates as shown on the attachment.
- (b) for full time Construction Phase Verification Services on site, Salary Cost;
- (c) for part time Construction Phase Verification Services at offices of the Parties, Salary Cost multiplied by 1.65;
- (d) any other Services, Salary Cost multiplied by 1.65,

in each case to the extent included in the Budget or are otherwise approved by the Management Committee.

**“Salary Cost”** means salary package (including gross salary after any project uplift, superannuation, motor vehicle, allowances and other salary related entitlements) plus workers compensation and payroll tax over the period of the Services.

These payments will be included in the calculation of the OS (included in item “FC”) in clause 4 above.

8. Procurement and reimbursables

Procurement costs and reimbursable expenses incurred by the Parties and included in the Budget in respect of the Services shall be reimbursed to the Parties at cost. A procurement management fee shall be paid to the procuring Party at the level to be determined by the Management Committee (if any).

9. Other Project related expenses

Other Project-related expenses, including other personnel entitlements (such as hotel and per diem rates and other reimbursable costs), incurred in respect of the Services shall be reimbursed to the Parties at cost or otherwise agreed by the Management Committee.

10. Management Fee

APP shall be entitled to a Management Fee of 2.5% of the value paid by the Client to be determined and paid on a six monthly basis

11. The above arrangements for Operating Surplus will apply to any Head Contract variations, amendments and extensions for the Services

12. In addition it is agreed that APP had spent \$250,000 on the project prior to Hyder becoming a team member. This will be reimbursed to APP from the Operating Surplus at a time to be agreed by the Management Committee.

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## ATTACHMENT 2

### Allocation of Services/Scope of Work

The Parties undertake to provide the role of the Independent Verifier under the Head Contracts as an integrated team as detailed in the Independent Verifier Agreement in accordance with their areas of expertise being project management for APP and technical design for Hyder.

The Management Committee shall determine each party's specific scope of work in accordance with the tables below.

Position/Discipline	Name
Independent Verifier's Representative	J Sharp
Project Director	I Maxted
Design Manager and Senior Construction Engineer	A Bennett
Quality Assurance Auditor	D Sidhu
Senior Engineer General	D Coalter
Tunnel Engineer	D Stewart
Geotechnical Engineer	J Yang / S Khazaei
Hydrogeological Engineer	S Buttlng
Road and Pavement Engineer	R Smith
Road Geometry Verifier	M Kelleher
Hydrology, Flooding and Drainage Engineer	H Boshoff
Structural Engineer	J Kenward / Tim Baker
ITS and Tolling Engineer	G Pitcher
Ventilation and Fire Safety Engineer	R Lau
M&E Engineer	J Lennard
Groundwater and Soil Contamination Verifier	K Bradfield
Environmental Planning Verifier	A Smith
Environmental Controls Engineer	N Valentine
Urban design and Architecture	A Homewood
Building Architect	***
Administration and Document Control	Administration
Construction Manager	J Crouche
Senior Construction Engineer	TBA
Construction Engineer	TBA
Surveillance Officer	TBA
Independent Verifier's Representative	J Sharp
Quality Assurance Auditor	D Sidhu
Maintenance Manager	J Crouche

Position/Discipline	Name	Minimum hours to be committed to the Projects			
		Pre Design	Design	Construction	Maintenance
Independent Verifier's Representative	J Sharp APP	Part-time 160 hrs	Full-time 640 hrs	Full-time 6560 hrs	Full-time 388 hrs

Position/Discipline	Name	Minimum hours to be committed to the Projects			
Project Director	I Maxted APP	Part-time 16 hrs	Part time 232 hrs	Part time 1068 hrs	
Design Manager and Senior Construction Engineer	A Bennett APP	Part-time 160 hrs	Full-time 640 hrs	Full-time 6560 hrs	
Quality Assurance Auditor	D Sidhu APP	Part-time 16 hrs	Full-time 640 hrs	Full-time 6560 hrs	Part-time 388 hrs
Senior Engineer General	D Coalter APP		Full-time 2240 hrs		
Tunnel Engineer	D Stewart Hyder	Part-time 32 hrs	Full-time 2240 hrs	Part-time 1900 hrs	
Geotechnical Engineer	J Yang Hyder	Part-time 16 hrs	Part-time 1120 hrs	Part-time 420 hrs	
Geotechnical Engineer	S Khazaei Hyder	Part-time 16 hrs	Part-time 1120 hrs	Part-time 420 hrs	
Hydrogeology Engineer	S Buttlng Hyder		Part-time 592 hrs	Part-time 100 hrs	
Road and Pavement Engineer	R Smith Hyder	Part-time 16 hrs	Part-time 2000 hrs	Part-time 1500 hrs	
Pavement Engineer	P Balmaceda Hyder		Part-time 240 hrs	Part-time 500 hrs	
Roads and Pavement Engineer	P Phillips Hyder		Full-time 2240 hrs		
Road Geometry Verifier	M Kelleher Hyder		Part-time 355 hrs		
Hydrology, Flooding and Drainage Engineer	H Boshoff Hyder		Part-time 492 hrs	Part-time 100 hrs	
Structural Engineer	J Kennard Hyder	Part-time 16 hrs	Full-time 2240 hrs	Part-time 2000 hrs	
Structural Engineer	T Baker		Full-time 2240 hrs		

Position/Discipline	Name	Minimum hours to be committed to the Projects			
	Hyder				
ITS and Tolling Engineer	G Pitcher APP		Part-time 2008 hrs	Part-time 3252 hrs	
Ventilation and Fire and Life Safety Engineer	R Lau Hyder		Part-time 2000 hrs	Part-time 576 hrs	
M&E Engineer	J Lennard Hyder		Part-time 1477 hrs	Part-time 535 hrs	
Groundwater and soil contamination Verifier	K Bradfield APP		Part-time 65 hrs		
Environmental Planning Verifier	A Smith APP		Part-time 385 hrs		
Environmental Controls Engineer	N Valentine APP		Part-time 100 hrs	Part-time 412 hrs	
Urban Design and Architecture	A Homewood APP		Part-time 250 hrs	Part-time 254 hrs	
Building Architecture	***		Part-time 228 hrs	Part-time 228 hrs	
Administration and Document Control	Administration Hyder/APP	Part-time 32 hrs	Part-time 2240 hrs	Part-time 4975 hrs	Part-time 384 hrs
Construction Manager	J Crouche APP			Full-time 6560 hrs	
Senior Construction Engineers (2 No) (Darren Wren)	***** Hyder			Full-time 13,120 hrs	
Construction Engineer (6 No)	***Hyder/APP			Full-time 39,360 hrs	
Surveillance Officers (18 no) (Damien Naughton)	***Hyder/APP			Full-time 118,080 hrs	
Maintenance Manager	J Crouche APP				Full-time 3840 hrs
<b>TOTALS</b>		<b>480 hrs</b>	<b>28,024 hrs</b>	<b>215,040 hrs</b>	<b>5,000 hrs</b>

## **Financiers Engineer**

In addition to the above the following personnel will be required to undertake services in relation to the Financiers Engineer

- (a) The people required to perform the Engineer Services are:
  - (i) Jeff Sharp;
  - (ii) Ian Maxted;
  - (iii) Andrew Bennet;
  - (iv) Davinder Sidhu;
  - (v) D Stewart;
  - (vi) R Smith;
  - (vii) J Kenward;
  - (viii) Richard Lau;
  - (ix) John Lennard;
  - (x) Geoff Pitcher; and
  - (xi) John Crouche.
  
- (b) The only people who may perform the Financier's Engineer Services are:
  - (i) Scott Johnston;
  - (ii) Alan Clover
  - (iii) Harry Carrick
  - (iv) Jim Senogles.

The Parties agree to provide the above services under this Agreement so as to ensure APP is in compliance with its obligations under the Head Contract including Cl 3.4 of the Deed of Appointment of the Financier's Engineer.

## **ATTACHMENT 3**

### **Operating and Financial Budgets for the Services**

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