

Lessons learned from one of New Zealand's most challenging civil engineering projects: rebuilding the earthquake damaged pipes, roads, bridges and retaining walls in the city of Christchurch 2011 - 2016.

## Alliance Agreement Schedule 7: Terms of Compensation

**Story:** The Commercial Model

**Theme:** Finance and Business Systems

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An extract from SCIRT's Alliance Agreement, detailing the terms of compensation.

This document has been provided as an example of a tool that might be useful for other organisations undertaking complex disaster recovery or infrastructure rebuild programmes.

For more information about this document, visit [www.scirtlearninglegacy.org.nz](http://www.scirtlearninglegacy.org.nz)



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## 25 Schedule 7: Terms of Compensation

### S7-1 General

#### S7-1.1 Introduction

The Non-Owner Participants will be compensated, through the Joint Venture, for carrying out the Work under the Alliance in accordance with the following commercial framework:

- a) Limb 1: Net Actual Cost
- b) Limb 2: Profit and Corporate Overhead
- c) Limb 3: Performance Based Payments

The elements of the commercial framework are described in detail in clauses S7-2 to S7-4 below.

The Alliance Participants will develop procedures and systems to implement the intent of this **Schedule 7** and meet the requirements of the External Alliance Auditor.

The Alliance Participants will ensure that costs are allocated to separate cost codes as necessary to ensure that the intent of this **Schedule 7** can be implemented, and validated by the External Alliance Auditor.

#### S7-1.2 Principles of Application

Costs are to be allocated to the following three primary categories:

Cost Category	Performed By	Limb 1
Direct IAT Costs	IAT	Cost reimbursable for a maximum of 12 months Target Out-turn Cost thereafter, set annually
Projects	Alliance or Individual NOPs	Target Out-turn Cost
Other Works	Alliance or Individual NOPs	Cost reimbursable or Target Out-turn Cost
	Subcontractors	Cost reimbursable or Target Out-turn Cost

The IAT will allocate Projects for delivery by Individual Non-Owner Participants in a manner that:

- a) Achieves best value for money;
- b) Provides for the different Non-Owner Participant business models;
- c) Initially targets distribution of work reasonably equitably among the Non-Owner Participants;
- d) Subsequently distributes work among Non-Owner Participants taking into account each Non-Owner Participant's performance in the delivery of previous Projects, available capacity and capability. Better performing Non-Owner Participants will be allocated a greater share of the work, and poorer performing Non-Owner Participants a lesser share, in a manner agreed by the ALT.

The Target Out-turn Cost (TOC) for each Project and for IAT services (where applicable), shall be established by the IAT with input from the Independent Estimator.

## Schedule 7: Terms of Compensation

The Target Out-turn Cost (TOC) shall be built up from first principles using a master pricing schedule of the format required by CCC.

The master pricing schedule will be updated frequently, and at least every six months, with input from the Independent Estimator, to take account of feedback on actual costs from the Delivery Teams.

The Alliance Manager will approve each Target Out-turn Cost (TOC) before submitting to the ALT for final approval (unless the ALT has delegated such approval to the Alliance Manager).

The nature of this Alliance is such that TOC for Projects are expected to be developed and approved on a progressive basis.

Actual direct IAT costs (including Limb 2) will be reconciled against a pre-agreed budget until such time as a target out-turn cost is agreed for these services, following which actual costs (including Limb 2) will be reconciled against that target out-turn cost. The target out-turn cost will incorporate all costs incurred for the IAT services prior to agreement of the target out-turn cost.

Where a Project is delivered by the Alliance Participants or an Individual Non-Owner Participant, actual costs (including Limb 2) will be reconciled against a Target Out-turn Cost.

A Non-Owner Participant responsible for delivering a Project may engage another Non-Owner Participant as a Subcontractor, provided that the subcontract price has been market tested or benchmarked. Subcontractor costs will accrue to the relevant Project, even if the Subcontractor is one of the other Non-Owner Participants.

Where a Project is delivered by a Subcontractor, the Alliance Participants will remain accountable for delivery of the Project under a three limb model, with actual costs reconciled against a Target Out-turn Cost.

Limb 2 compensation for all Work under the Alliance will consist of a fixed lump sum, determined in accordance with Section S7-3.

Limb 3 compensation for all Work under the Alliance will be incentivised both on a cost basis and a non-cost basis, using Key Results Areas.

Limb 2 and Limb 3 compensation will be distributed to the Joint Venture for distribution among the Non-Owner Participants in proportion to the sum of the target out-turn costs of their respective Projects.

### S7-2 Limb 1: Actual Costs

#### S7-2.1 Guiding Principles

Limb 1 is the total Net Actual Cost incurred by the Alliance in delivery of the Alliance Works, subject to any adjustments or limitations noted in this AA.

Costs allocated to the Alliance must be consistent with the charges traditionally levied by the Alliance Participants on similar projects and must not include any off-site overheads or profit.

## 25 Schedule 7: Terms of Compensation

Limb 1 costs shall be coded and reported to allow accurate allocation of costs between Owner Participants.

Limb 1 costs are detailed in clauses S7-2.2 to S7-2.15.

### Labour

Labour costs shall mean the cost of labour employed by the Alliance Participants and assigned to the team up to and including the seniority of the Alliance Manager. Labour costs will include as appropriate all directly applicable remuneration costs and statutory on-costs as below:

- a) Remuneration package costs
  - i) Annual salary/wages;
  - ii) Any vehicle costs and Fringe Benefit Tax; and
  - iii) Bonus, medical, superannuation and other allowances included in the total remuneration package.
- b) Project package costs
  - i) Overtime as agreed; and
  - ii) Project/site/expense/accommodation allowances.
- c) Accrual costs
  - i) Annual leave;
  - ii) Annual leave loading;
  - iii) Sick leave; and
  - iv) Long service leave loadings and other specific allowances.
- d) Statutory on-costs
  - i) Accident compensation.
- e) Other costs
  - i) Costs within industry norms of termination and/or redundancy of project labour and staff specifically employed for the project;
  - ii) Project specific training costs; and
  - iii) Designer branch office costs.

Labour costs shall be charged at an hourly rate or daily rate consistent with the relevant operating work regime where the labour is deployed. A 220 workday year shall be adopted (providing allowance for statutory holiday, sick leave and annual leave).

### S7-2.2 Construction Plant and Temporary Works

The use and service of facilities, off-site and on-site plant and equipment, and temporary works furnished by the Alliance Participants, taking into account depreciation, maintenance and utilisation.

Any item of construction plant with a current market value of more than \$1,000,000 purchased collectively by the Alliance Participants for purposes of carrying out the Work under the Alliance will be required to have a guaranteed buy back provision or commitment from a Non-Owner Participant to accept ownership of residual items at a fair market price as determined by a recognised practitioner. The proceeds of that sale will be taken into account in calculating the Final Actual Cost.

### S7-2.3 Materials

## 25 Schedule 7: Terms of Compensation

Materials, goods, consumables, small plant and tools purchased by the Alliance Participants for the Work under the Alliance or incorporation in the Alliance Works.

### S7-2.4 Subcontracts

Contracted services, equipment and utilities provided by outside sources. For example, professional consultant services or contract services of technical personnel directly engaged by the Alliance Participants.

### S7-2.5 Transport

Transport of employees and materials required for the Work under the Alliance and the Alliance Works. The Alliance Participants shall give all due attention to optimisation of transportation of employees and materials so as to minimise transportation costs. Where appropriate, trip rates or hourly rates will be agreed for transport of equipment and materials.

### S7-2.6 Site Accommodation and Facilities

The establishment, maintenance and operation of any site accommodation, warehouse and other facilities including Information Technology system costs. If such facilities serve operations in addition to the work under the AA the cost shall be allocated on a reasonable basis as agreed to by the ALT.

### S7-2.7 License Fees and Royalties

All taxes, duties, excises, fees, royalties, licences and statutory charges, penalties or fines of any kind or nature assessed, imposed or levied with respect to the execution of the Work under the Alliance and the Alliance Works other than:

- a) Annual administration charges for resource consents; and
- b) GST.

### S7-2.8 Insurances

Premiums for insurance policies required specifically by the AA, together with the costs of administration, preparation of claims and deductibles under those policies.

Proceeds recovered under insurance policies required specifically by the AA shall be credited against Limb 1 costs.

### S7-2.9 Legal and Litigation Expenses

Legal and litigation expenses shall mean:

- a) All sums paid or received (in which case they are credited to Limb 1 costs) by way of judgement, award, compromise or otherwise and all sums paid defending or prosecuting lawsuits or claims arising out of the Work under the Alliance, other than those against other Alliance Participants; and
- b) Any legal service otherwise necessary or expedient for the Work under the Alliance.

### S7-2.10 Surplus Materials

Credit materials purchased by the Alliance Participants to ensure the efficient performance of the Alliance Works, which are subsequently deemed to be surplus. Disposal of surplus materials shall be credited against Limb 1 costs.

## 25 Schedule 7: Terms of Compensation

### S7-2.11 Access to Private Land

Costs incurred by the Alliance Participants in obtaining, providing and maintaining any required access to private land and any reinstatement at the completion of the Project.

### S7-2.12 Accommodation Works

Costs incurred by the Alliance Participants in fulfilling Owner Participant obligations under property purchase agreements to provide services or perform works.

### S7-2.13 Communication Costs

Costs incurred by the Alliance Participants in keeping affected parties fully informed of the progress and impact of the Project, including all preparation, publication and distribution costs associated with local letter drops, newsletters, media releases and advertising on radio and in local and national newspapers.

### S7-2.14 Service Relocation Costs

Costs incurred by the Alliance Participants in protecting or relocating utility services.

Proceeds recovered under cost sharing arrangements between Owner Participants and service authorities will not be credited against Limb 1 costs.

### S7-3 Limb 2: Profit and Corporate Overhead

Limb 2 for IAT services, prior to agreement of the target out-turn cost for IAT services, will consist of the Limb 2 margin specified in Part L of **Schedule 1** applied to actual Limb 1 costs for IAT services.

Limb 2 for IAT services, following agreement of the target out-turn cost for IAT services, and Projects is derived by applying the Limb 2 margin specified in Part L of **Schedule 1** to the Limb 1 costs in the Target Out-turn Cost. Limb 2 is included as a fixed lump sum in the Target Out-turn Cost, and will not be increased or decreased except for Variations.

Limb 2 for Other Works consists of the Limb 2 margin specified in Part L of **Schedule 1** applied to actual Limb 1 costs for Other Works.

Limb 2 will be deemed to fully compensate the Non-Owner Participants for all expenditure they incur in carrying out the Work under the Alliance not otherwise reimbursed under this AA.

Limb 2 compensation will be distributed among the Non-Owner Participants in proportion to the sum of the target out-turn costs of their respective Projects.

### S7-4 Limb 3: Performance Based Payments

Limb 3 provides a mechanism for financial adjustments for:

- Sharing any underrun or overrun in cost measured against the Final Target Out-turn Cost (FTC); and
- Sharing the consequences arising from increased or decreased performance in other non-cost areas relative to "Business as Usual" (BAU) performance.

Where the Final Actual Cost (FAC) exceeds the FTC, the Non-Owner Participants, through the Joint Venture, will pay the Owner Participants the lesser of:

## Schedule 7: Terms of Compensation

- a) The amount calculated as follows:

$$(FAC - FTC) \times (0.5 - (0.1 \times \frac{(OPS-50)}{50}))$$

- b) The amount of the Limb 2 lump sum.

Where the FAC is less than the FTC, Owner Participants will pay the Non-Owner Participants, through the Joint Venture, an amount calculated as follows:

$$(FTC - FAC) \times (0.5 + (0.1 \times \frac{(OPS-50)}{50}))$$

Limb 3 compensation will be distributed to the Joint Venture for distribution among the Non-Owner Participants in proportion to the sum of the target out-turn costs of their respective Projects.

### S7-5 Application of GST

With each payment pursuant to this AA the payer shall include with the payment to the payee the amount of any GST included in the relevant Tax Invoice.

GST paid to the Joint Venture or the Non-Owner Participants under this AA will not be taken into account in the calculation of the FTC or the FAC for any Project.

### S7-6 Variations

The Target Out-turn Cost (TOC) for any Project shall be increased or decreased, as the case may be, by the amount of the estimate accepted by the ALT for each Variation it approves, Inclusive of Limb 2, where applicable.

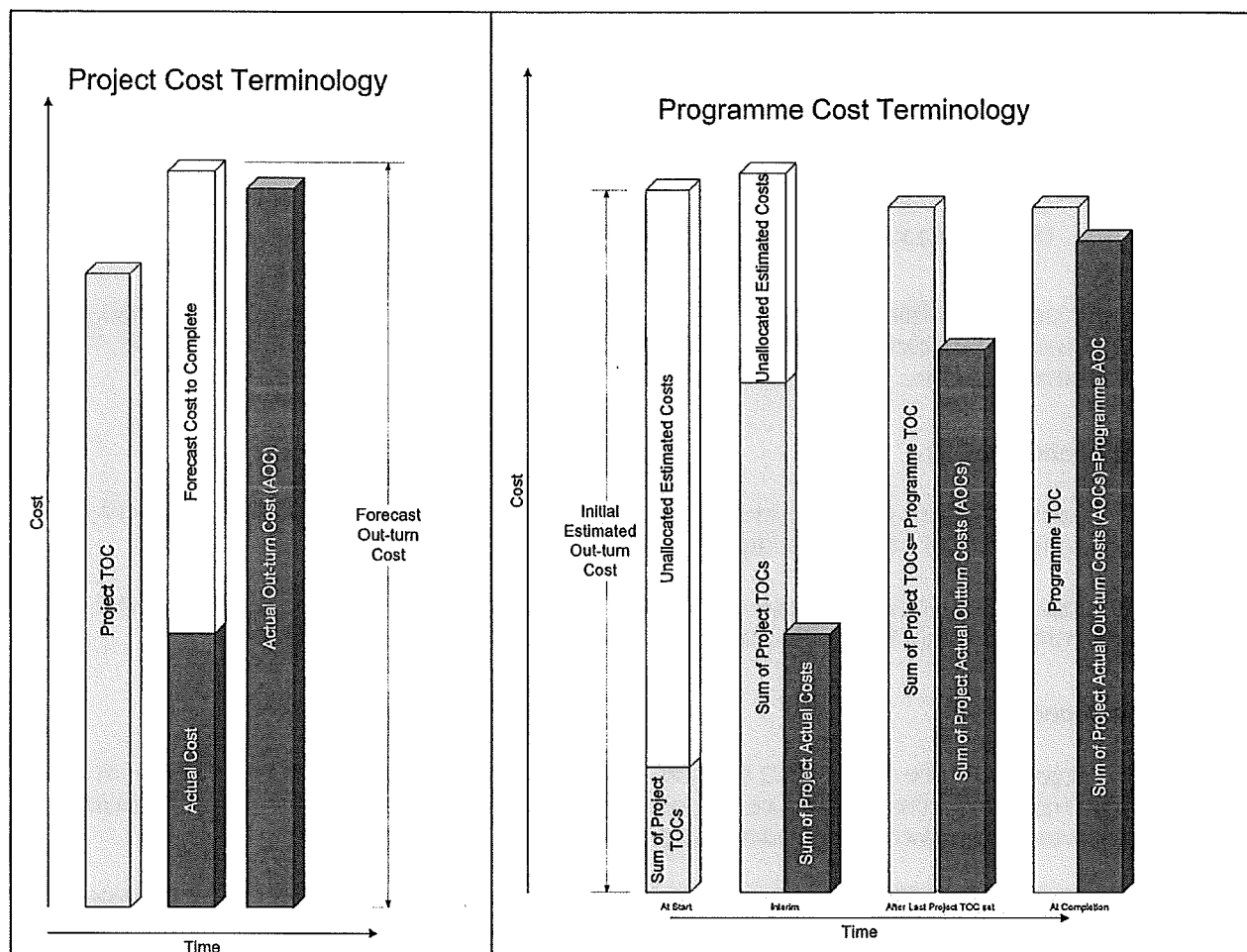
The nature of this Alliance is such that TOC for Projects are expected to be developed and approved on a progressive basis.

There will be no adjustments to the Target Completion Date for any Project, unless the ALT decides to adjust the Target Completion Date to take account of Variations or for some other reason.



## 26 Schedule 7: Terms of Compensation

### S7-7 Basis of Payment



#### S7-7.1 Non-owner Participant (NOP) Progress Payment Claim Submission

5 Working Days following month end cut-off date, each NOP will submit a Progress Payment Claim to the Joint Venture (via the Alliance Manager) for all Life-to-date costs, and Limb 2 payments due in the period up to the end of the previous month.

#### S7-7.2 SCIRT Payment Claim Submission

7 Working Days following month end cut-off date, the Joint Venture (via the Alliance Manager) will submit a combined Progress Payment Certificate to the Owner Participants.

#### S7-7.3 Payment to SCIRT Joint Venture Account

On the last Wednesday prior to the 20<sup>th</sup> of the month or the 20<sup>th</sup> if that is a Wednesday, the Progress Claim Certificate amount due is to be paid by the Owner Participants into a Joint Venture Account.

#### S7-7.4 Payments to Non-owner Participants

1 Working day after clearance of the deposit referred to in S7-7.3, each Non-owner Participant's allocation of the certified amount is to be paid from a Joint Venture Account to each Non-owner Participant account.

## 25 Schedule 7: Terms of Compensation

### S7-7.5 Payments to Non-owner Participant's Suppliers

Non-owner Participant's are responsible for the timing and amount of their payments to their Suppliers and Subcontractors.

### S7-7.6 Progress Payments are Provisional

All progress payments will be provisional payments on account only and subject to verification audit by the External Alliance Auditor, at the Owner Participants' discretion. Any under payment or over payment determined by the External Alliance Auditor will be formally reported to the Alliance Manager. If the Alliance Manager disagrees with the conclusions in that report they are to respond within 10 working days, seeking to resolve the disagreement. If the Alliance Manager does not respond within this timeframe or the findings of the External Alliance Auditor are accepted by the Alliance Manager, the under-payment or over-payment determined by the External Alliance Auditor is to be incorporated in the next progress claim after expiry of the response period.

### S7-7.7 Programme Practical Completion Payment

The timetable for payment prescribed in S7-7.3 shall not apply to the Programme Practical Completion Payment Claim, which shall be submitted no earlier than the month following the month of issue of the Programme Practical Completion Certificate. This Payment Claim will be subject to a final verification audit by the External Alliance Auditor, at the Owner Participants' discretion. Any decision by the Owner Participants to initiate a verification audit of this claim must be advised to the Non Owner Participants within 7 days of submission of the this Payment Claim. Any under payment or over payment determined by the External Alliance Auditor will be formally reported to the Alliance Manager.

If the Alliance Manager disagrees with the conclusions in that report they are to respond within 21 days, seeking to resolve the disagreement and have this resolution reflected in Part 1 of the Payment Certificate.

In the event there is no disagreement notified within 21 days; a partially completed Programme Practical Completion Payment Certificate will then be issued to the ALT.

Within 21 days after the ALT receives the partially completed Practical Completion Payment Certificate:

- The ALT will make a determination of the amount owing to or owed by the Owner Participants as the case may be; and
- The ALT Members will correct Part 1 as necessary and sign Part 2 of the Practical Completion Payment Certificate.

Any amount due on this Programme Practical Completion Payment Certificate will be paid by the relevant Alliance Participant within a further 21 days after the date of issue of the Payment Certificate to the Alliance Manager.

(For the avoidance of doubt, this clause is not applicable to progress payments that incorporate "practical completion" claims for individual Projects. They are to be treated as normal progress claims.)

### S7-7.8 Programme Final Payment

The timetable for payment prescribed in S7-7.3 shall not apply to the payment of the Final Payment Claim. A Final Payment Claim, will be clearly labelled as such and will be subject

## Schedule 7: Terms of Compensation

to a final verification audit by the External Alliance Auditor, at the Owner Participants' discretion. Any decision by the Owner Participants to initiate a final verification audit must be advised to the Non Owner Participants within 7 days of submission of the Final Payment Claim. Any under payment or over payment determined by the External Alliance Auditor will be formally reported to the Alliance Manager.

If the Alliance Manager disagrees with the conclusions in that report they are to respond within 21 days, seeking to resolve the disagreement and have this resolution reflected in Part 1 of the Payment Certificate.

In the event there is no disagreement notified within 21 days; a partially completed Final Payment Certificate will then be issued to the ALT.

Within 21 days after the ALT receives the partially completed Final Payment Certificate:

- The ALT will make a determination of the amount owing to or owed by the Owner Participants as the case may be; and
- The ALT Members will correct Part 1 as necessary and sign Part 2 of the Final Payment Certificate.

Any amount due on the Final Payment Certificate will be paid by the relevant Alliance Participant within a further 20 working days after the date of issue of the Final Payment Certificate to the Alliance Manager.

(For the avoidance of doubt, this clause is not applicable to progress payments that include final claims for individual Projects. They are to be treated as normal progress claims.)