



The Crown in Right of the State of South Australia

Construction Risks - General Liability Annual Insurance Policy

Period of insurance

31 October 2023 to 31 October 2024

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Introduction

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

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

Signed for and on behalf of the Insurers:

Insurers	Policy No.	Proportion %	Signature	Date
Swiss Re International SE Australia Branch	P80764.01-02	100%	<i>Noreen Sullivan</i>	11/12/2023



Schedule

Insured	<p>The Crown in Right of the State of South Australia, Department for Infrastructure and Transport, South Australian Water Corporation, South Australian Housing Authority, Renewal SA and all other Government (State and Local) Departments and Agencies, Commissions, Trusts, Companies, Corporations or other Statutory Bodies (whether as Principal, Project Manager, Adviser, Consultant or Contractor).</p> <p>This Policy also insures other parties as specified in the definition of Insured.</p>															
The Business	<p>Principally but not limited to government instrumentality responsible for the design, construction, manufacture, testing, commissioning, operation, maintenance and property services in relation to transport infrastructure, buildings, facilities and assets, but excluding activities in respect of any Excluded Contracts or Referral Contracts except as provided by or endorsed onto the Policy.</p>															
Insured Operations	<p>Contracts Commenced During the Period of Insurance</p> <p>All contracts of any kind or description undertaken by or on behalf of the Named Insured and commenced during the Period of Insurance, however, Referral Contracts are subject to Condition 3.17 of the Policy.</p>															
Insured Services	<p>The provision of building maintenance and property services in respect of assets for which Government has responsibility, owns or leases within South Australia, including preventative and programmed maintenance, logged and emergency breakdown maintenance, property services including rubbish removal, hygiene, cleaning, bore maintenance, security, grounds maintenance, venue management services, technical services and pest and vermin control.</p>															
Scope of Cover	<p>The Insurers will under this Policy indemnify the Insured against the Insured's legal liability to pay damages or compensation in respect of:</p> <p>(a) Personal Injury;</p> <p>(b) Property Damage; or</p> <p>(c) Advertising Injury,</p> <p>sustained as a result of an Occurrence within the Territorial Limits in connection with the Business:</p> <p>(i) during the Construction Period or Defects Liability Period in respect of the Insured Operations; and/or</p> <p>(ii) during the Period of Insurance in respect of the Insured Services; and/or</p> <p>(iii) during the Period of Insurance in respect of the Insured's Products and/or Completed Operations</p> <p>In addition Insurers will pay Defence and Other Costs.</p>															
Referral Contracts (Condition 3.17)	<p>Are those Contract Types listed below where the Insurers will grant interim cover as per Condition 3.17 of the Policy.</p> <table><tr><td>Contract Type</td><td>Where the original estimated Project Value for the Contract Type exceeds:</td></tr><tr><td>All Contracts</td><td>\$500m</td></tr><tr><td>Tunnels</td><td>All Values</td></tr><tr><td>Airport (Tarmac, Taxi or Runway)</td><td>All Values</td></tr><tr><td>Offshore Work</td><td>All Values</td></tr><tr><td>New Dam Construction & Infrastructure</td><td>All Values</td></tr><tr><td>Where Original Construction period exceeds 36 months</td><td>All Values</td></tr></table>		Contract Type	Where the original estimated Project Value for the Contract Type exceeds:	All Contracts	\$500m	Tunnels	All Values	Airport (Tarmac, Taxi or Runway)	All Values	Offshore Work	All Values	New Dam Construction & Infrastructure	All Values	Where Original Construction period exceeds 36 months	All Values
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Where Original Construction period exceeds 36 months	All Values															

Excluded Contracts	None
Period of Insurance	From: 4:00 p.m. on 31 October 2023 To: 4.00 p.m. on 31 October 2024 All at Local Time
Defects Liability Period	24 months any one Contract in respect of the original Defects Liability Period.
Territorial Limits	Anywhere in the world but excluding any operations of the Insured domiciled in the United States of America or Canada. Notwithstanding the above, indemnity is provided in respect of: 1. Products exported into those countries; 2. directors of the Insured or Employees who are non-resident in such countries; 3. any person or firm engaged in a consultative capacity in such countries.
Limits of Liability (Condition 3.3)	Limit in respect of each Occurrence \$10,000,000 but limited to: \$10,000,000 in the aggregate annually for all Occurrences in respect of Products and/or Completed Operations;
Nominee for Legal Service (Condition 3.11(c))	As agreed
Agreed Loss Adjuster(s) (Condition 3.14)	Claims under this Policy shall be adjusted with the following company(ies) or as otherwise agreed by the Insured and the Insurers: YDR Chartered Loss Adjusters Integra Technical Services (Australia) Pty Ltd Crawford & Co.
Underlying Insurance (Condition 3.16)	Underlying Insurance includes, but is not limited to, those policies and types of policies described below or their substitute policies:

Contract	Policy No.	Insurer	Underlying Limit
South Australian Housing Authority New builds & Civil Works	Various	Various	Various
Renewal SA – All projects	Various	Various	Various

and any other relevant Contract entered into by the Insured from time to time.

Policy Wording	As per Aon Manuscript wording provided.
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**Included Referral
Contracts 2023/2024
Period:****(Condition 3.17)**

The Insurers agree to provide coverage for the Referral Contracts specified below:

Agency	Project	Description	Referral Type
DIT Building Projects	Flinders Medical Centre Expansion	New Hospital Extension/Expansion	Project exceeds 36 months
DIT Building Projects	Mount Barker Hospital	New Works	Project exceeds 36 months

Excess

Each Occurrence (inclusive of Defence and Other Costs in clause 1.2)

Transport Project Delivery

Contracts where the original estimated Project Value is:

\$0 to \$15,000,000	\$25,000
Greater than \$15,000,001	\$100,000
Except for Worker to Worker Liability	\$250,000

Building Projects and Renewal SA

Contracts where the original estimated Project Value is:

All Contracts	\$25,000
Except for Worker to Worker Liability	\$250,000

Facilities Services

All claims	\$1,000
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South Australian Water Corporation

All contracts	\$25,000
Except for Worker to Worker Liability	\$250,000

South Australian Housing Authority

All claims	\$5,000
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Premium

As agreed

**Declaration and
Premium Payment
Terms:****(Condition 3.8)**

The deposit premium will be calculated at the agreed rate applied to 100% of the initial Estimated Project Value declared prior to each Period of Insurance. Project Values declared and invoiced within 90 days of the expiry of the Period of Insurance.

The premium will be adjusted by payment to the Insurers of an additional premium or by allowance to the Named Insured of a return premium, as the case may be, calculated at the agreed rate on the difference between the Estimated and Final project values.

Minimum premium to apply calculated at 50% of the annual deposit premium.

Endorsements

LTA Endorsement

Period of Agreement from 4pm 31/10/2023 to 31/10/2025 Policy to renew on identical terms and conditions in force at the due date but with renewal premium rate increasing by 5% for Full Cover & 5% for DIC Contracts.

However, this agreement may be altered subject to the following;

1. Annual Loss ratio of this policy exceeds 50%
2. The Insureds estimated contract value increases or decreases by more than 30%
3. There are no material changes in the Insureds risk profile

Definitions / Interpretations

The following Definitions will apply to this Policy:

Advertising Injury means:

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

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

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

Business means:

- (1) the Business specified in the Schedule;
- (2) the provision and management of canteens, social, sports and welfare organisations, educational and child care facilities primarily for the benefit of the Insured's Employees;
- (3) first aid, medical, security, fire and ambulance services;
- (4) the maintenance of the Insured's premises or property for which such responsibility exists;
- (5) participation in exhibitions;
- (6) tours of the Worksite;

Completed Operations means contracts or work which have been completed and handed over to the Principal/Owner.

Construction Period means,

- (1) the period commencing with the date of acceptance of tender or the date of agreement to enter into each Contract or of the entering into of each Contract, whichever is the earlier, provided such acceptance or agreement or Contract is made or entered into during the Period of Insurance; and
- (2) the commencement date of the Period of Insurance in respect to Contracts on Hand at that date but only if shown as "Included" in the Insured Operations in the Schedule of this Policy;

until in accordance with the obligations of the Insured under such Contract:

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

- ii. with respect to each separable portion of the Contract Works, the time the separable portion is taken over and put into use by the principal or owner, including any Performance Testing Periods; or
- iii. any such later time until which the Named Insured is required to maintain insurance in accordance any relevant Contract.

In the event of this Policy being cancelled or not renewed, coverage shall continue subject to the same terms and conditions, in respect of all Contract(s) commenced prior to the date of such cancellation or non renewal and shall remain in force in accordance with i or ii or iii above.

Contract includes contracts or agreements made by or on behalf of the Insured in connection with the Business.

Project Value means the total value of work and construction costs incurred by or on behalf of the Insured in respect of the Business including the value of principal supplied and other materials.

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

Where the Contract provides for the Defects Liability Period to be extended upon rectification of a defect, the Defects Liability Period in respect of the rectification can be extended up to a maximum of 24 months following completion of the rectification works.

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

Insured means:

- i. The Named Insured;
- ii. any parent or subsidiary company (including subsidiaries thereof) of the Named Insured and any other organisation under the control of the Named Insured and over which it is exercising active management, whether now or hereafter incorporated;
- iii. any of the following persons or entities for whom or for which the insured parties under clauses i and ii above are obliged to arrange insurance by virtue of a contract or assumption of responsibility, but only to the extent required by such contract or assumed responsibility and in any event only for such coverage and Limits of Liability as provided in this Policy:
 - a. any principal or owner or agent of the principal or owner, or joint venture partner or alliance participant;
 - b. any construction manager or project manager or superintendent;
 - c. any contractor or sub-contractor of any tier, other than those categories more specifically defined elsewhere in this Policy;
 - d. any architect, engineer, quantity surveyor or other professional consultants
 - e. any lessor, financier, mortgagee or trustee;
 - f. any government body;
 - g. suppliers whilst at the Worksite;
 - h. any other party with an insurable interest in the Contract(s);

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

all for their respective rights and interests.

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

Occurrence means an event including continuous or repeated exposure to conditions that results in Personal Injury, Property Damage or Advertising Injury where such injury or damage is neither expected nor intended from the standpoint of the Insured. Occurrence extends to include any intentional act by or at the direction of the Insured which results in Personal Injury if such Personal Injury arises solely from the use of reasonable force for the purpose of protecting persons or property.

Personal Injury includes:

- i. bodily injury, death, illness, disease, disability, shock, fright, mental anguish and mental injury including loss of consortium or services;
- ii. false or wrongful arrest, detention or imprisonment and malicious prosecution, wrongful entry upon, wrongful eviction from or other invasion of right to private occupancy of property and humiliation;
- iii. libel, slander or defamation, except where:
 - a. the first publication or utterance happened prior to the commencement of this Policy; or
 - b. the Injury arises out of Advertising Injury as defined herein;
- iv. assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing Injury or Property Damage or eliminating or preventing danger to persons or property;
- v. discrimination as a result of race, religion, sex, marital status, age, intellectual impairment, disability or otherwise (unless insurance thereof is prohibited by law) not committed by or at the intentional direction of the Insured, but only in respect to liability other than for fines and penalties imposed by law.

Pollution means the discharge, dispersal, seepage, release or escape of smoke, vapours, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or water.

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

Property Damage means

- (1) physical loss or destruction of or damage to tangible property including the loss of use thereof (total or partial); or any consequential loss resulting therefrom; or

- (2) total or partial interruption of or interference with or loss of use of or deprivation of premises, property, services, facilities, trade or vehicular or pedestrian traffic or the like.

Tunnelling means Contracts for the construction of underground passageways, subways and/or roads used for the movement of pedestrians or vehicular traffic that is open at both ends and is constructed by boring, drilling, excavating, or digging through the earth or any construction using horizontal directional drilling techniques. "Tunnelling" does not include a structure constructed by open excavation and covering which would be regarded as a cut and cover tunnel.

Underlying Insurance means a policy of insurance arranged by or on behalf of an Insured either voluntarily or pursuant to a Contract (which may include a policy(ies) arranged by joint venture partners, principals, contractors, etc) that provides cover to the Insured for a risk, which save for the Underlying Insurance, would be covered by this Policy. Underlying Insurance includes but is not limited to those policies identified in the Schedule.

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

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

Worker to Worker Liability means:

- i. legal liability of the Insured in respect of recoveries of any payments by any workers' compensation insurer under the provisions of any workers' compensation legislation or policy, or at common law; or
- ii. a claim made by an injured worker (as defined by the relevant workers' compensation legislation) against any Insured other than the worker's direct employer.

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

Interpretation

The following Interpretations will apply to this Policy:

Singular/Plural

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

Headings

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

1. Insuring Clauses

The following Insuring Clauses apply to this Policy.

1.1 Legal Liability

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

- (a) Personal Injury;
- (b) Property Damage; or
- (c) Advertising Injury,

sustained as a result of an Occurrence within the Territorial Limits in connection with the Business:

- (i) during the Construction Period or Defects Liability Period in respect of the Insured Operations; and/or
- (ii) during the Period of Insurance in respect of the Insured Services; and/or
- (iii) during the Period of Insurance in respect of the Insured's Products and/or Completed Operations subject to any applicable Retro-active Dates contained in the schedule.

1.2 Defence and Other Costs

Pursuant to indemnity under clause 1.1 and in addition to the Limits of Liability (unless specified to the contrary) the Insurers will pay the following costs and expenses:

- (a) all legal costs and other expenses incurred with the written consent of the Insurer;
- (b) all expenses incurred by the Insured for temporary repairs, shoring up or protection of property of others that has been damaged. Provided all expenses incurred in connection with 1.2 (b) shall form part of the Limit of Liability and not in addition to the Limit of Liability;
- (c) all costs and expenses incurred by the Insured for legal representation at any coroner's inquest, fatal accident inquiry or court of summary jurisdiction or an indictment in a higher court;
- (d) all expenses incurred by the Insured for first aid rendered for Personal Injury to others at the time of an Occurrence, except any medical expenses which the Insurer is prohibited by law from paying;

2. Exclusions Applying to the Policy

This Policy does not provide indemnity for:

2.1 Employer's Liability

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

This Exclusion 2.1 does not apply to:

- (a) Worker to Worker Liability;
- (b) Claims for loss of consortium from the spouse of an Employee; or

to liability of others assumed by the Insured under written contract.

2.2 Industrial Awards

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

2.3 Aircraft and Watercraft

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

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

2.4 Vehicles

liability arising from the ownership, possession or use by the Insured of any Vehicle whilst used in circumstances where such Vehicle is required by law to be registered.

Provided that this Exclusion 2.4 shall not apply to liability:

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

2.5 Loss of Use

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

2.6 Products and Work Performed

liability for:

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

This Exclusion 2.6 shall apply only to the part which is defective or deficient and shall not apply to any other parts of the works, Products or any other property lost or damaged as a consequence.

2.7 Professional Liability

liability arising out of the rendering of or failure to render professional advice or service by the Insured or error or omission connected therewith, but this Exclusion 2.7 does not apply to:

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

2.8 Pollution and Contamination

- (a) liability arising out of Pollution, but this Exclusion 2.8(a) does not apply where the liability arises from a sudden identifiable, unintended and unexpected event from the standpoint of the Insured which takes place in its entirety at a specific time and place.
- (b) any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such Pollution, but this Exclusion 2.8(b) does not apply where clean-up, removal or nullifying expenses are incurred consequent upon a sudden identifiable, unintended and unexpected event from the standpoint of the Insured which takes place in its entirety at a specific time and place.

2.9 Asbestos Liability

liability arising out of, caused by or in connection with asbestos or materials containing asbestos.

2.10 Fines and Penalties

- (a) any fine or penalties or liquidated damages imposed by law or assumed by the Insured under any contract, warranty or agreement;

- (b) an award of aggravated, punitive or exemplary damages;

but this Exclusion 2.10 does not apply to civil awards in the nature of compensatory damages.

2.11 Advertising Injury

liability arising out of Advertising Injury for:

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

2.12 Property owned and Damage to Works

- (a) damage to property owned by the Insured;
- (b) damage to property held in trust or in the custody or control of the Insured, but only to the extent that such damage is payable under the Named Insured's construction risks (material damage) insurance policy or other similar policy covering such property;

2.13 Nuclear Risks

liability directly or indirectly caused by or contributed to by or arising from:

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

for the purpose of this Exclusion 2.13(a) only, combustion shall include any self-sustaining process of nuclear fission;

- (b) nuclear weapons materials.

This Exclusion 2.13 shall not apply to liability resulting from the use of commercial radioactive isotopes.

2.14 War and Terrorism

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

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

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; Notwithstanding this clause 2.14(a), this Policy shall cover loss, damage or liability caused by missiles and/or mines and/or bombs and/or other explosives not discovered at the moment of commencement of this Policy as long as no state of war exists in the country where the loss occurs; or
- (b) any act of terrorism, except to the extent provided under the Terrorism Insurance Act 2003 (Cth).

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

This clause also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 2.14(a) and/or 2.14(b) above.

In the event any portion of this Exclusion clause 2.14 is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

3. Conditions applying to this Policy

The following conditions apply to this Policy.

3.1 Notification and Claims Procedure

Upon the Insured becoming aware of any Occurrence giving rise or likely to give rise to a claim under this Policy or upon receipt by the Insured of notice of any claim or subsequent proceeding, the Insured shall as soon as practicable thereafter:

- (a) give notice thereof in writing to the Insurer;
- (b) preserve any property or things which might prove necessary or useful by way of evidence in connection with any claim and, so far as may be reasonably practicable, with due regard to safety, no alteration or repairs shall, without the consent of the Insurer, be made after the Occurrence until the Insurer shall have had an opportunity of inspection;
- (c) forward to the Insurer every letter of demand, writ, summons or process as soon as practicable after receipt thereof and give notice to the Insurer in writing as soon as practicable after the Insured shall have knowledge of an impending prosecution or inquest in connection with any Occurrence;
- (d) when called upon to do so, furnish to the Insurer in writing all details of the Occurrence together with such information, evidence, explanations and assistance as the Insurer may reasonably require.

Notwithstanding the provisions of this Condition 3.1, this insurance will not be prejudiced by any inadvertent delay, error or omission in notifying the Insurer of any Occurrence that may give rise to a claim or claims under this Policy.

3.2 Settlement of Claims

- (a) no admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the Insured without the consent of the Insurers who shall have the right and duty to take over and conduct in the name of the Insured the defence or settlement of any claim or to prosecute in the name of the Insured for the Insurer's own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings or in the settlement of any claim.
- (b) the Insurers agree to discuss the conduct, defence, prosecution or settlement of any claim or proceeding with the Insured prior to taking action or effecting settlement.
- (c) the Insurers may pay to the Insured the amount of the applicable Limit of Liability or such lesser sum for which the claim can be settled subject in either case to deduction of any sum or sums already paid as compensation or damages in respect of such claim and the Insurers shall thereafter be under no further liability in respect of such claim except for the payment of costs and expenses for which the Insurers are liable hereunder incurred prior to the date of such payment, whether or not pursuant to an order made subsequently.

3.3 Limits of Liability

- (a) No liability shall attach to the Insurers until the loss in respect of each Occurrence exceeds the amount of any relevant Excess stated in the Schedule. The Limit of Liability shall apply in excess of the amount of the Excess.
- (b) The liability of the Insurers under this Policy in respect of each Occurrence shall not exceed the Limit of Liability stated in the Schedule. All Personal Injury, Property Damage or Advertising Injury arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one Occurrence.
- (c) The total aggregate liability of the Insurers for all claims arising out of Products and/or Completed Operations shall not exceed the Limit of Liability stated in the Schedule.

3.4 Application of Excess

- (a) The Insured shall be liable to pay the amount of the Excess in respect of each Occurrence. If a series of claims are made arising out of the one Occurrence then only one Excess shall apply.
- (b) Should more than one Excess apply under this Policy for any claim (or series of claims arising out of continuous or repeated exposure to substantially the same general conditions) such Excesses shall not be aggregated and only the highest single level of Excess shall apply.
- (c) The Excess shall also apply to Defence and Other Costs as described in Insuring Clause 1.2 and to costs and expenses incurred relating to Condition 3.14.

3.5 Subrogation and Recovery of Claims

- (a) The Insured shall, at the request and the expense of the Insurers, do and concur in doing all such acts and things as the Insurers may reasonably require to preserve and enforce any rights the Insured may have against anyone in respect of liability for Personal Injury, Property Damage or Advertising Injury.
- (b) Upon the payment of any claim under this Policy, subject to any restrictions imposed by the Commonwealth Insurance Contracts Act 1984, the Insurers shall be subrogated to all the rights and remedies of the Insured arising out of such claim against any person or corporation whatsoever.
- (c) Any amount so recovered shall be applied in the following order of priority:
 - (i) first to the uninsured proportion of the loss,
 - (ii) second to reimburse the Insurer to the extent of its actual payment in respect of the claim,
 - (iii) third, to reimburse the Insured for any Excess borne by the Insured,
 - (iv) fourth, any balance recovered which exceeds the loss shall be payable to the Insured.

- (d) The expenses of such recovery proceedings shall be apportioned as agreed between the Insured and the Insurer. Should the parties be unable to agree on an appropriate apportionment then such expenses shall be paid by each party in the same proportion as their percentage share of all amounts recovered. If there is no such recovery by the Insurer, the expenses shall be borne by the Insurer.

3.6 Multiple Insureds Clause

- (a) If the Insured comprises more than one insured party each operating as a separate and distinct entity then (save as provided in this clause 3.6), cover hereunder shall apply in the same manner and to the same extent as if individual policies had been issued to each such insured party provided that the total liability of the Insurers to all of the insured parties collectively shall not exceed the Limits of Liability or Sub-limits in this Policy. For the purposes of this Policy, each government department, government entity or government owned corporation of the Named Insured shall be deemed a separate and distinct entity from the other government entities.
- (b) The insured parties will, to the extent allowed under contract, at all times preserve the various contractual rights and agreements entered into by the insured parties and contractual remedies of such parties in the event of loss or damage.
- (c) The Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from an insured party in circumstances of such insured party committing fraud, misrepresentation, material non-disclosure or breach of any warranty or Condition of this Policy referred to in this Condition 3.6 as a "Vitiating Act".
- (d) However a Vitiating Act or any other act or neglect committed by one insured party, either at the time of entering this contract or during the Period of Insurance, shall not prejudice the right to indemnity of any other insured party who has an insurable interest and who has not committed a Vitiating Act.
- (e) The Insurers agree to waive all rights of subrogation that they may have or acquire against:
 - (f) any Insured or any individual or organisation affiliated or associated with, parent of or a subsidiary of any Insured;
 - (g) at the option of the Insured, any other parties or persons, subject to the Insured, waiving rights of subrogation prior to the loss, but only when required to do so under contract;

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

3.7 Notices

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

3.8 Declarations and Premium Payment

- (a) If the Premium with regard to an item of this Policy is shown in the Schedule as being adjustable, then the Premium for the applicable item(s) is provisional and will be adjusted.
- (b) Within 90 days of the expiry of each period, the Named Insured will declare to the Insurers:
 - (i) the sum of the value of Insured Services undertaken during the preceding Period; and
 - (ii) the sum of the final and/or estimated Project Values for all Contracts let by the Named Insured during the period for Contracts insured by this Policy.

Such declaration shall include all amounts paid or due in respect to Contracts on Hand which were included in the Insured Operations as Contracts on Hand in the Schedule of this Policy.

Such declaration shall allocate Project Values by contract type and by postcode or otherwise such that applicable charges can be calculated.

- (iii) In the event of this Policy being cancelled or not renewed, and the Named Insured exercises its option to continue coverage for Contracts not completed at the date of cancellation or expiry of the Period of Insurance ("Run-Off Cover"), the Named Insured shall declare the estimated value of the uncompleted work for all such

uncompleted Contracts at the date of cancellation or expiry of the Period of Insurance.

- (c) Subject to any applicable minimum premium, the Premium will be adjusted by payment to the Insurers of an additional premium or by allowance to the Insured of a return premium, as the case may be, calculated at the agreed rates on the difference between the estimated and final or projected Project Values.
- (d) If at any time there shall be any dispute or difference between the Insurers and the Named Insured as to the actual declared values, then for the purposes of this clause, at the request of either party, such values shall be determined by the President for the time being of the Australian Institute of Quantity Surveyors, or his nominee, acting as an expert and not as an arbitrator. The cost of any such determination shall be borne equally by the Insurers and the Named Insured.

3.9 Insolvency or Bankruptcy

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

3.10 Hold Harmless Agreements

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

3.11 Jurisdiction and Service of Proceedings

The Insurers agree that:

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

3.12 Cancellation

(a) By The Insurers

The Insurers may cancel this Policy for any of the reasons set forth in Section 60 of the Commonwealth Insurance Contracts Act 1984 by serving on the Named Insured sixty (60) days notice in accordance with Section 59 of that Act.

(b) By The Named Insured

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

(c) After cancellation by the Named Insured or the Insurers, the Premium will be adjusted in accordance with Condition 3.8(a) and (b), except that the declared final or projected values shall be at the date of cancellation. The Named Insured will be obliged to supply to the Insurers such information as is necessary to determine adjustment of the Premium.

3.13 Alterations in Material Fact/Error or Omission

(a) The Insured will not be prejudiced under this Policy in the event of any alteration in material fact, an unintentional or inadvertent error, omission or misdescription or any other information contained or omitted from any underwriting information supplied to the Insurers.

(b) The Named Insured undertakes to immediately notify the Insurers as soon as the alteration or omission becomes known to them, whereupon the Insurers shall be entitled to make reasonable variations to this Policy's terms and Conditions as may be mutually agreed between the Insurers and the Insured.

3.14 Engagement of Loss Adjusters

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

(b) The Insurers agree that the Agreed Loss Adjuster's documents, transcripts and reports shall be made available to the Insurers and the Named Insured.

However, where indemnity under this Policy has not been admitted by the Insurer, the Insurer shall be entitled to direct the Agreed Loss Adjuster to:

(i) remove any information from such documents that pertains to whether or not the Insurer should admit liability to indemnify the

Named Insured; or to the quantum of the Insurers liability to the Named Insured; and

- (ii) provide a separate confidential report to the Insurer in respect to the matters outlined in clause 3.14(b)(i);

unless such matters are discoverable at law.

- (c) If at any time there shall be any dispute or difference between the Insurers and the Insured in respect of the adjustment of a loss, then the Insurers or the Named Insured shall be entitled to appoint an independent loss adjuster at their own cost.

3.15 Currency

All monetary amounts expressed in this Policy are in Australian dollars. The Premium and losses shall be paid in Australian dollars or as otherwise agreed between the Insurers and the Insured.

3.16 Difference in Conditions Cover

- (a) In the event of the Named Insured being indemnified by Underlying Insurance in respect of a claim, the Excess for the purposes of a claim under this Policy in respect of the same subject matter will be deemed to be the limit of indemnity under the Underlying Insurance such that no cover shall be afforded by this Policy until the limit of indemnity of the Underlying Insurance has been exhausted.
- (b) In the event of the Named Insured being indemnified by Underlying Insurance in respect of a claim by virtue of the scope of cover and other provisions of the Underlying Insurance for which indemnity is not provided by this Policy (for reasons other than the operation of clause 4.21(a)), then this Policy shall, upon the limit of liability of the Underlying Insurance being exhausted, provide cover for a claim in respect of the same subject matter.
- (c) In the event of the Named Insured being indemnified by Underlying Insurance in respect of a claim, where the excess or deductible exceeds the Excess under this Policy, then this Policy shall indemnify the Insured for the difference between the Excess under this Policy and the excess or deductible under the Underlying Insurance (in addition to other cover afforded by this Policy).
- (d) The foregoing provisions of this clause 3.16 are subject to the terms, conditions, Exclusions and other provisions of this Policy.
- (e) In the event of the Named Insured or the Insurer of the Underlying Insurance electing not to appeal a judgment in excess of the limit of indemnity of the Underlying Insurance, the Insurer may elect to make such appeal at its own cost and expense, and in that event the Insurer will be liable under this Policy for any cost and expense incurred in the conduct of the appeal including any adverse costs orders awarded against the Named Insured (or the Insurer) by the Court notwithstanding that the Limit of Liability may have been exhausted.

- (f) Should any such Underlying Insurance, by virtue of its scope of cover, definitions, deductibles or excesses, conditions or limits of indemnity, not indemnify the Insured in whole or in part in respect of a loss, damage, liability, costs or expenses indemnifiable under this Policy, this Policy will provide indemnity to the extent that such indemnity is not provided by the terms and conditions of such Underlying Insurance.
- (g) In the event that the Insured cannot obtain an admission of liability from the insurer of an Underlying Insurance and/or Underlying Insurance fails or is reasonably likely not to indemnify the Insured, the Insurers of this Policy shall be obligated to indemnify the Insured. Subject to the terms, conditions, Exclusions and any other provisions of this Policy.
- (h) In the event of cancellation of an Underlying Insurance or reduction or exhaustion of the limits of indemnity thereunder, this Master Policy shall:
 - (i) in the event of reduction, pay in excess of the reduced Underlying Limit;
 - (ii) in the event of cancellation or exhaustion, continue in force as Underlying Insurance.

3.17 Referral Contracts:

The indemnity provided by this Policy applies to Referral Contracts appearing in the Schedule as Included Referral Contracts, subject to any special terms and conditions that have been agreed and endorsed to this Policy.

The indemnity provided by this Policy also applies to Referral Contracts not specified in the Schedule for a period not exceeding 90 days from the commencement of the Referral Contract's construction period (such period referred to as the "Interim Cover Period"), and thereafter will be only be covered subject to agreement by the Insurers.

The Named Insured shall provide to the Insurers, as soon as practicable, full particulars of such Referral Contracts, including the nature and methods of construction, contract drawings and other contract documents.

In the event that the Insurers amended terms and conditions to include such Referral Contracts as Included Referral Contracts are not acceptable to the Named Insured, the Named Insured shall be obliged to declare all progress claims and other amounts paid or due relating to the Interim Cover Period for such Contracts in its declaration to the Insurers under clause 3.8 and not be required to declare any amounts relating to the period after the Interim Cover Period.

3.18 Master and Agreed Rate Contracts

For the purpose of determining Excluded Contracts and Referral Contracts, each Contract or project undertaken under a separate contract or work order or purchase order or similar arrangement will be considered as a separate Contract irrespective of the existence of a service agreement or agreed rate or similar contract or master agreement which applies over more than one Contract.