



## **The Crown in Right of the State of South Australia**

### **Construction Risks – Third Excess Liability Annual Insurance Policy**

**Period of insurance**

**31 October 2023 to 31 October 2024**

# Contents

	Page No
INTRODUCTION.....	1
SCHEDULE.....	2
DEFINITIONS / INTERPRETATIONS .....	7
CONDITIONS .....	8
1.1 Maintenance of Primary and Underlying Excess Insurance .....	8
1.2 Following Cover of Primary Insurance .....	8
1.3 Claims Condition .....	8
1.4 Costs .....	8
1.5 Settlement of Losses .....	8
1.6 Exhaustion of Underlying Aggregate Limit .....	9
1.7 Premium Adjustment .....	9
1.8 Cancellation.....	9
1.9 Application of Recovered Funds.....	9
1.10 Jurisdiction and Service of Proceedings .....	10
1.11 Notices .....	10
1.12 Referral Contracts .....	10

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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 Primary Insurer has issued to the Insured a policy or policies of liability insurance (referred to as "Primary Insurance").

Subject to the terms contained herein or endorse on this Policy, the Insurers will indemnify the Insured in accordance with the applicable terms, definitions, exclusions, conditions and endorsements of the Primary Insurance with which this Policy shall run concurrently. The Insurers shall only be liable if a claim is covered by, or but for the relevant limit of liability, would have been covered by the Primary Insurance and after the Primary Insurers and any Underlying Excess Insurers (if applicable) have paid or have been held legally liable to pay the respective Underlying Limits under the Primary Insurance and any underlying Excess Insurance (if applicable).

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
CGU Insurance	10M 8269368	100%	  <small>Insurance Australia Ltd trading as CGU Insurance ABN 11 000 511 712 AFSL 227681</small>	30/11/2023

## Schedule

<b>Named Insured:</b>	<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>
<b>Business:</b>	<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>
<b>Insured Operations:</b>	<p>Contracts Commenced During the Period of Insurance 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>
<b>Insured Services:</b>	<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>
<b>Scope of Cover</b>	<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> <p>Are those Contract Types listed below where the Insurers will grant interim cover as per Condition 3.17 of the Policy.</p>

**Referral Contracts:** Are those Contract Types listed below where the Insurers will grant interim cover as per Condition 3.17 of the Policy.  
(Condition 3.17)

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

**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:** Limit in respect of each and every Occurrence \$50,000,000  
(Condition 3.3)

but limited to: \$50,000,000 in the aggregate annually for all Occurrences in respect of Products and/or Completed Operations;

in excess of the underlying \$50,000,000 limit of liability

In excess of the Underlying Primary and First Excess Policies

**Primary Policy**

Insurer	Policy No.	Limit
Swiss Re International SE Australia Branch	P80764.02	Limit in respect of each Occurrence \$10m  But limited to: \$10m in the aggregate annually for all Occurrences in respect of Products and/or Completed Operations

**First Excess Policy**

Insurer	Policy No.	Limit
Liberty Specialty Markets	MECAS21498764	Limit in respect of each Occurrence \$20m  But limited to:  \$20m in the aggregate annually for all Occurrences in respect of Products and/or Completed Operations  In excess of underlying primary policy

**Second Excess Policy**

Insurer	Policy No.	Limit
Swiss Re International SE Australia Branch	P80764.02	Limit in respect of each Occurrence \$20m  But limited to:  \$20m in the aggregate annually for all Occurrences in respect of Products and/or Completed Operations  In excess of underlying primary policy

**Nominee for Insurers' Notices:**  
(Condition 3.7(d))

Nominee	Address	Attention
SAFA	C/O Aon Risk Services Level 22 91 King William Street Adelaide SA 5000	Joshua Ingall Aon

**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 &amp; Co.

**Policy Wording:**

As per Aon Manuscript wording provided.

**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

## **CGU Endorsements    Silica Exclusion**

This Policy does not cover any liability arising out of or in any way connected with the inhalation of, or exposure to silica in any form.

### **General Insurance Code of Practice**

The Insurer proudly supports the General Insurance Code of Practice (Code). The purpose of the Code is to raise the standards of practice and service in the general insurance industry.

The objectives of the Code are:

- to commit the Insurer to high standards of service;
- to promote better, more informed relations between the Insurer and Insured;
- to maintain and promote trust and confidence in the general insurance industry;
- to provide fair and effective mechanisms for resolving complaints the Insured makes about the Insurer; and
- to promote continuous improvement of the general insurance industry through education and training.

The Code Governance Committee is an independent body that monitors and enforces insurers' compliance with the Code.

The Insurer has adopted and supports the Code and is committed to complying with it. Please contact the Insurer for more information about the Code or the Code Governance Committee.

### **Pandemic/Epidemic Exclusion**

Notwithstanding any provision to the contrary within this Policy, it is declared and agreed that this Policy does not cover any loss, destruction, damage, liability, cost, expense or any other amounts (whether actual or alleged), directly or indirectly caused by, or contributed to by, or in consequence of, or in any way connected with any:

- disease determined to be a Listed Human Disease or in respect of which a Human Biosecurity Emergency is declared under the Biosecurity Act 2015 (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation including delegated legislation;
- outbreak of infectious disease declared as a pandemic or epidemic by the World Health Organization or any Australian government or Australian government agency; or
- disease determined by the World Health Organisation to be a Public Health Emergency of International Concern (PHEIC).

### **Non-Absolute Cyber Exclusion**

Notwithstanding any provision to the contrary within this Policy or any endorsement thereto, the Insurer shall not be liable in respect of:

Any liability

- a) arising out of Property Damage, defamation, humiliation, shock, fright, mental anguish, mental injury or breach of privacy directly or indirectly caused by, contributed to by or as a consequence of a Cyber Act;
- b) arising out of the Insured's Products directly or indirectly caused by, contributed to by or as a consequence of a Cyber Act;
- c) directly or indirectly caused by, contributed to by or as a consequence of Electronic Data Loss caused by a Cyber Act; or
- d) directly or indirectly caused by, contributed to by or as a consequence of an act, error or omission by or on behalf of the Insured in controlling, preventing, suppressing, retaliating against or responding to a Cyber Act or Electronic Data Loss caused by a Cyber Act.

However, this exclusion does not apply to claims for:

- e) Personal Injury, excluding mental anguish or mental injury;
- f) Property Damage, excluding Electronic Data; or
- g) Advertising Injury, directly caused by a Cyber Act.

For the purpose of this exclusion only, the following definitions apply:

Computer System means any computer, hardware, software, communications system (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, Electronic Data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.

Cyber Act means any actual or alleged illegal, malicious, reckless, wilful or criminal act or series of related illegal, malicious, reckless, wilful or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any Computer System.

Electronic Data Loss means the loss of use of, loss of access to, total or partial destruction of, corruption of, alteration of, misappropriation of, reduction in functionality of, repair of, replacement of, restoration of, reproduction of, error in the creation of, error in the amendment of, error in the entering of, deletion of, or theft of Electronic Data including any monetary amount pertaining to the value of such Electronic Data, the infringement of intellectual property rights and breach of confidentiality



## Definitions / Interpretations

The following Definitions/interpretations will apply to this Policy. In the absence of a more specific definition, capitalised terms used in this Policy will take on the meaning in the Underlying Insurance.

**Primary Insurer** is the party or parties named in the Schedule who have issued the Primary Insurance.

**Underlying Excess Insurer** is the party or parties named in the Schedule who have issued any Underlying Excess Insurance.

**Insured** includes each of the following:

- (a) the Named Insured stated in the Schedule;
- (b) all other companies, parties and persons designated as ‘the Insured’ in the Primary Insurance to the extent defined therein.

**Underlying Insurance** means the Primary Insurance and Underlying Excess Insurance (if any).

### 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.

## Conditions

### 1.1 Maintenance of Primary and Underlying Excess Insurance

The Primary Insurance and any Underlying Excess Insurance (if applicable) shall be maintained in full effect during the currency of this Policy except for any reduction of the limits contained therein by payment of any claims. The failure of the Insured to comply with the foregoing shall not invalidate this Policy, but in the event of such failure, the Insurers shall only be liable to the same extent as if the Insured had complied with this Condition.

### 1.2 Following Cover of Primary Insurance

This Policy is subject to the same terms, definitions, conditions and exclusions (except as regards the Limits of Liability, the Premium, any agreement to renew or as specifically provided for herein) as are contained in or as may be added to the Primary Insurance prior to the happening of an occurrence for which a claim is made hereunder.

The Liability of the Insurers to pay damages or compensation under this Policy as a result of each occurrence or all occurrences of a series consequent on or attributable to one source or original cause happening in connection with the Insured Operations shall not exceed the Limits of Liability stated in the Schedule.

If an amount is specified in the Schedule against Products in the Limit of Liability, the total liability of the Insurers for all claims arising out of Products shall not exceed such amount in the aggregate during the Period of Insurance.

In respect of any additional Primary Insurance policy covering Contracts which fall outside of the scope of the Named Insured's Primary Insurance specified in the Schedule, the indemnity by this Policy shall be subject to the same terms, definitions, conditions and exclusions (except as regards the Limits of Liability and the Premium) in accordance with the Primary Insurance specified in the Schedule, until such additional Primary Insurance has been formally agreed by the Insurers and endorsed onto this Policy.

### 1.3 Claims Condition

The Insured shall immediately advise the Insurers of any occurrence or circumstances of which the Insured becomes aware which is likely to give rise to a claim under this Policy. The Insurers shall not, however, be called upon to assume conduct of the settlement or defence of any claim made, or suits brought, or proceedings instituted against the Insured, but shall have the right and opportunity to be associated with the Insured in the defence and trial of any such claims, suits or proceedings relative to any occurrence, which, in the opinion of the Insurers may create liability on the part of the Insurers under the terms of this Policy. If the Insurers avail themselves of such right and opportunity, the Insured and the Insurers shall co-operate in all respects so as to effect a final determination of the claim or claims.

### 1.4 Costs

In the event of a loss arising to which the Insurers may be liable to contribute, no legal costs shall be incurred on their behalf without their consent being first obtained. Upon the Insurers giving such consent, the Insurers shall contribute to the legal costs in the proportion that their share of the final settled loss bears to the total sum payable. If however, a settlement of the loss is practicable prior to taking the case into court, whether by compromise or otherwise, for a sum not exceeding the Underlying Limits, no legal costs shall be payable by the Insurers.

### 1.5 Settlement of Losses

The Insured agrees not to settle a loss for a sum in excess of the Underlying Limits without the consent of the Insurers.

This Policy shall not cover any expenses or costs that are recoverable under the Underlying Insurance.

#### **1.6 Exhaustion of Underlying Aggregate Limit**

In the event of the exhaustion of any aggregate limit whether partial or total of the Underlying Insurance by reason of a loss paid thereunder this Policy shall:

- (a) in the event of partial exhaustion, pay in excess of the reduced Underlying Insurance;
- (b) in the event of total exhaustion, continue in force as the Underlying Insurance subject to the terms conditions exclusions and endorsements of the Primary Insurance.

#### **1.7 Premium Adjustment**

Where the Premium is designated in the Schedule as being adjustable, the Named Insured shall keep accurate records and make declarations to the Insurers in respect of the Premium variables to enable adjustment of the Premium.

#### **1.8 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, any cover in respect of any Contract by giving notice in writing to the Insurers.

- (c) Run-off Cover:

Notwithstanding the Period of Insurance, in the event of cancellation by either the Insurers or the Named Insured or non-renewal of this Policy, the insurance by this Policy shall continue for each Contract until:

- (i) expiration of the Construction Period and Defects Liability Period; or
- (ii) the Named Insured formally advises the Insurers that the Contracts have been insured elsewhere;

whichever occurs first.

- (d) Premium Adjustment

Upon cancellation by either party, the Named Insured will be entitled to a pro-rata refund of the Premium as at the date of cancellation.

#### **1.9 Application of Recovered Funds**

As that this Policy provides coverage in excess of the Underlying Insurance, the Insured's rights of recovery against any person or other entity cannot always be exclusively subrogated to the Insurers. In case of the payment of a claim under this Policy, the Insurers will act in concert with all other interested parties (including the Insured) in exercising such rights of recovery. Any amount recovered shall be apportioned in the following order:

- (a) firstly any interests, including the Insured's, that have paid an amount over and above any payment under this Policy;
- (b) secondly the Insurers of this Policy;
- (c) thirdly the interests, including the Insured's, of whom this coverage operates in excess;
- (d) expenses for the recovery of such amounts shall be apportioned between the interests, including the Insured's, in the ratio of their respective recoveries.

#### **1.10 Jurisdiction and Service of Proceedings**

The Insurers agree that:

- (a) this Policy is governed by the laws of Australia;
- 1. 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;
- 2. any summons notice or process to be served upon the Insurers may be served upon the Nominee For Legal Service stated in the Schedule. Such Nominee has authority to accept service and to enter an appearance on the Insurers' behalf. If directed by the Insured the Nominee shall give a written undertaking that the Nominee will enter an appearance on the Insurers' behalf;
- 3. 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.

#### **1.11 Notices**

- (a) Any notice(s) required by the Conditions of this Policy to be given to the Insurers shall be given by the Insured through any office of their insurance broker, Aon Risk Services Australia Limited (Aon) or direct to the Insurers. Any notice(s) given to any office of the appointed broker constitutes notice upon Insurers.
- (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) If a Nominee for Insurers' Notices is stated in the Schedule, the Insurers agree to provide 30 business days prior notice to such Nominee in the event of:
  - (i) cancellation or expiry of this Policy before completion of the Construction Period and Defects Liability Period due to non payment of Premium or any other cause;
  - (ii) the Insurers giving any notice under this Policy.

#### **1.12 Referral Contracts**

Referral Contracts specified in the Schedule, will be held covered by the Insurers for a period not exceeding 3 months from the commencement of the Referral Contract's Construction Period (such period referred to as the "Interim Cover Period"), and thereafter will be covered subject to agreement by the Insurers.

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

Referral Contracts appearing in the Schedule shall be automatically covered if specified as an Included Referral Contract in the Schedule, subject to any agreed alteration in this Policy's, premium or other terms.

In the event that such terms and conditions are not acceptable to the Named Insured, the Named Insured shall be under no obligation to declare these Contracts to the Insurers after the Interim Cover Period. In the event of the Named Insured electing not to continue cover for a Contract after the Interim Cover Period, the Named Insured is obliged to declare the expended Project Value for such Contract in its declaration to the Insurers under clause 1.7.

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