



# The Crown in Right of the State of South Australia

## Construction Risks

### Principal Arranged Material Damage Annual Insurance Policy

#### Period of Insurance

31 October 2024 to 31 October 2025

**AON**



AON Client Treaty - ACT 4514  
ACT24CB00001  
Adeola Oketayo 02/12/2024



2024-12-03



02  
12  
24



Front and Back  
28/11/24



Allianz

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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 and Sub-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 and Sub-limits 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
Zurich Insurance Company Ltd UK Branch (Z3105)		25.0		28/11/24
AXIS 1686 (UK)		15.0		02/12/24
ACT2 4514 (UK)		7.5	AON Client Treaty - ACT 4514 	02/12/2024
Great Lakes (UK)		5.0		2024-12-03
AIG (Singapore)	1000179741	12.5		04/12/2024
QBE Insurance Australia		12.5		5th December 2024
Allianz Global Corporate & Specialty		12.5		05-12-2024
ALLIED WORLD Assurance Company, Ltd (Australia Branch)		10.0	For and on behalf of Allied World Assurance Company, Ltd (Australia Branch) ABN: 54 163 304 907 	05/12/2024 Authorised Signature(s)

## Schedule

**Named Insured:** The Crown in Right of the State of South Australia, the 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).  
This Policy also insures other parties as specified in the definition of Insured.

**Insured Operations:** **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 but shall not include Excluded Contracts unless endorsed onto this Policy.  
Furthermore, Referral Contracts are subject to Condition 4.18.

**Excluded Contracts:** Are those Contract Types listed below where the Insurers will not grant any cover under this Policy, unless agreed by specific endorsement:  
South Australian Housing Trust projects with a contract value less than \$50,000

**Referral Contracts: (Condition 4.18)** Are those Contract Types listed below where the Insurers will grant interim cover as per Condition 4.18.

<b>Contract Type</b>	<b>Where the original estimated Project Value for the Contract Type exceeds:</b>
All Contracts	\$250,000,000
Other than: -	
(a) Roadworks	\$100,000,000
(b) Pipelines	\$100,000,000
(c) Bridge Contracts	\$30,000,000
(d) Tunneling Contracts (excluding HDD/Trenchless techniques)	All values
(e) Wet Civil Works	\$15,000,000
(f) Where the original estimated Construction period for a Contract exceeds 36 months	All values
(g) Tunneling Contracts (HDD/Trenchless techniques)	\$5,000,000
(h) Rail Projects	\$100,000,000
(i) Desalination Plants (Complete)	\$100,000,000
(j) Renewable Projects	All values



**Included Referral Contracts**  
**2024/2025 Period:**  
**(Condition 4.18)**

The Insurers agree to provide coverage at terms and conditions to be agreed for the following Included Referral Contracts subject to provision of specific underwriting information (but not limited to; cost breakdown, scope of work, geotechnical reports and construction bar charts) within the following commencement dates of the Included Referral Contract Construction Period.

- BESS (Battery Energy Storage System), Hydrogen, Solar, Wind Projects: within 30 days from the commencement of the Insured Referral Contract Construction Period

Mount Barker Hospital – New work, South-Eastern Freeway Managed Motorway, SA Forensic Centre New Works:

- within 60 days from the commencement of the Insured Referral Contract Construction Period
- All Other Referral Contracts: within 60 days from the commencement of the Insured Referral Contract Construction Period

Contract Title	Description	Referral Type
DIT Building Projects Mount Barker Hospital – New Work	New Hospital Extension/Expansion	Project exceeds the 36-month referral duration
DIT Transport Delivery South-Eastern Freeway Managed Motorway	Roadworks	AUD 120,000,000 (exceeds the AUD 100,000,000 Roadworks Limit)
DIT Building Projects SA Forensic Centre New Works	Building	AUD 270,000,000 (exceeds the AUD 250,000,000 Building referral limit)

**Period of Insurance:** From: 4:00 p.m. on 31 October 2024 Adelaide, South Australia  
 To: 4.00 p.m. on 31 October 2025 Adelaide, South Australia  
 All at Local Time

**Maintenance / Defects Liability Period:** 24 months original period any one Contract.

**Performance Testing Period:** 3 months any one Contract.

**Territorial Limits:** Anywhere in Australia, including cover for Insured Property whilst in storage and in transit.

**Limits of Liability:** **Limit of Liability any one Event at any one Worksite:**

1. Contract Works \$250,000,000 (or such higher limit that is shown in respect of any Included Referral Contract.)
2. Existing Structures \$2,000,000

3. Construction Plant and Equipment (limit any one item)	Not Insured
4. Acquired Construction Plant and Equipment (limit any one item and in the aggregate any one Occurrence) Endorsement 5.7	\$250,000

**Sub-limits of Liability:**

The liability of Insurers will be further limited in respect of any one Event at any one situation as set out in the Sub-limits below. These Sub-limits will apply in addition to the above Limits of Liability.

2.1 (a)(i) Removal of Debris and Other Costs	\$20,000,000
2.1 (b) Expediting Expenses	\$15,000,000
2.1 (c) Search and Locate Costs	\$2,000,000
2.1 (d) Professionals' Fees	\$15,000,000
2.1 (e) Mitigation Expenses	\$15,000,000
2.1 (f) Plant Hire Charges	Not Insured
2.1 (g) Claim Preparation Costs	\$100,000
2.1 (h) Government and other Fees	\$5,000,000
2.1 (i) Sue and Labour	\$2,000,000
2.1 (j) Inflation Protection	\$2,000,000
2.1 (k) Extra Expense (in the aggregate)	\$500,000

The following Sub-limits are included within the Limit of Liability:

Offsite Storage	\$7,500,000
Insured Property whilst in transit	\$5,000,000

<b>Unsealed Road Limitation</b> (Exclusion 3.9)	Each Event in respect of each continuous section of Unsealed Road	1 Kilometre 5 Kilometres
	Aggregate unsealed limit for any one event	

<b>Basis of Settlement</b>  (Insuring Clause 1.3)	1. In respect of Contract Works:	Reinstatement Value
	2. In respect of Existing Structure:	Reinstatement Value
	3. Construction Plant and Equipment:	Not Applicable
	4. Acquired Construction Plant and Equipment:	Indemnity Value

**Nominee for Insurers' Notices:**

Nominee	Address
SAFA	C/- Aon Risk Services Level 22 / 91 King William Street Adelaide SA 5000

**Nominee for Legal Service:**

As agreed

(Condition 4.11(c))



**Agreed Loss  
Adjuster(s):**

**(Condition 4.15)**

Claims under this Policy may be prepared by the Insured with the assistance of Aon Risk Accounting. Furthermore, claims shall be adjusted with the following company(ies) or as otherwise agreed by the Insured and the Insurers:

- Integra Technical Services (Australia) Pty Ltd
- McLarens
- Crawford and Company

**Loss Payee:  
(Condition 4.16)**

The Named Insured



**Excesses:**

**Works in Respect of DIT Building Project Services and Renewal SA**

Excess Category	Initial Estimated Project Value		
	0 - <\$10m	\$10m - \$50m	>\$50m
Each loss except as below:	\$35,000	\$35,000	\$35,000
Testing & Commissioning	\$35,000	\$35,000	\$50,000
Earthquake subsidence, collapse, Storm, Tempest and Flood, Named Cyclone, Defects Liability Period, LEG2/96, Water Damage	\$35,000	\$35,000	\$150,000
Civil Contracts	\$35,000	\$50,000	\$100,000
LEG 3/06 Defects Claims	\$500,000	\$500,000	\$500,000

**Works in respect of DIT Transport Projects Delivery**

Excess Category	Initial Estimated Project Value			
	0 - <\$3m	\$3m-\$6m	\$6m-\$50m	\$50m+
Each loss except as below:	\$35,000	\$35,000	\$50,000	\$50,000
Earthquake subsidence, collapse	\$50,000	\$50,000	\$150,000	\$150,000
Wet Work Contracts	\$50,000	\$100,000	\$150,000	Referral
Storm, Tempest, Flood and Water Damage	\$100,000	\$150,000	\$250,000	\$350,000
Tunneling Contracts	Referral	Referral	Referral	Referral
LEG 2/96 Defects Claims/ Defects Liability Period	\$100,000	\$100,000	\$150,000	\$200,000
LEG 3/96 Defects Claims	\$750,000	\$750,000	\$1,000,000	\$1,000,000
Named Cyclone	\$100,000	\$150,000	\$250,000	\$350,000

**Works in Respect of South Australian Housing Authority**

All Losses – \$35,000 except LEG3/06 Defects Claims \$500,000



**Works in respect of SA Water Corporation**

Contract Value	Category		
	Buildings	Dry Civils, Mechanical & Electrical, Utility Works and Pipelines	Wet Civils
0 to 2m	\$35,000	\$35,000	\$50,000
2m to 5m	\$35,000	\$35,000	\$50,000
5m to 10m	\$35,000	\$50,000	\$100,000
10m to 20m	\$35,000	\$50,000 Major Perils, Testing & Commissioning, Defects Liability period, LEG2/96  \$35,000 all other losses	Up to Wet Works referral limit of \$15m \$150,000
Greater than 20m	\$50,000	\$100,000 Major Perils, Testing & Commissioning, Defects Liability period, LEG2/96  \$50,000 all other losses	Referral
LEG 3/06 Defects Claims	\$500,000	\$500,000	\$500,000

**Premium:**

As agreed

**Declarations and Premium Payment Terms:**

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.

75% minimum premium retained



## Definitions/Interpretations

The following Definitions will apply to this Policy.

**Aircraft** means any craft or machine made or intended to fly or become airborne or move in or through the atmosphere or space.

**Construction Period** means,:

- (1) the period commencing with the entering into of each Contract, provided such Contract is entered into during the Period of Insurance, until, in accordance with the obligations of the Insured:
  - (a) the Contract Works have been formally accepted in their entirety by the principal or 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 or owner prior to that time, including any Performance Testing Periods; or
  - (b) with respect to each separable portion of the Contract Works, the time it is taken over and put into use by the principal or owner, including any Performance Testing Periods.
- (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.

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:

- (3) in accordance with 1(a) or 1(b) above; or
- (4) the Named Insured formally advises the Insurers that the Contract(s) have been insured elsewhere;

whichever occurs first.

**Contract** means all works, contracts or agreements undertaken by or on behalf of the Insured in connection with the Insured Operations.

**Damage** means physical loss, physical destruction or physical damage with the word Damaged having a corresponding meaning.

**Defects Liability Period** means the period described in any Contract during which an Insured is contractually obliged or legally liable to rectify defects, shrinkages, errors, omissions or other faults and/or to complete the obligations under such Contract (the original Defects Liability Period), which may include the granting of a further period, following rectification of defects under the original period.

The original Defects Liability Period shall not exceed the Defects Liability Period stated in the Schedule in respect of any one Contract.

**Desalination Plant** means an industrial facility that uses chemical or physical processes to reduce or recover salt concentrations from water supplies intended for drinking or industrial purposes.

**Event** means an occurrence or series of occurrences consequent upon or attributable to one source or original cause.

**Flood** means inundation following the escape of water from the normal confines of any lake, reservoir, dam, river, creek or navigable canal, as a result of a natural phenomenon which has some element of violence, suddenness or largeness about it, but does not mean inundation by water from fixed apparatus, fixed tanks or fixed pipes.

### Horizontal Directional Drilling

means a trenchless method of installing underground utilities such as pipe, conduit, or cables in a relatively shallow arc or radius along a prescribed underground path using a surface-launched drilling rig and associated ancillary equipment.

**Indemnity Value** means:

- (1) where the Damage to property can be repaired, the cost necessarily incurred to restore the property to its former state of serviceability, including the cost of dismantling and re-erection incurred for the purpose of effecting the repairs. Deductions will not be made for depreciation in respect of parts replaced, but the salvage value of such parts shall be taken into account;

- (2) where the property is totally destroyed, abandoned or cannot be satisfactorily repaired at a cost not exceeding the market value immediately before the Damage, the market value of the item at the time of the Event. If due to the nature of the property, it is not possible to readily ascertain a market value, the basis of settlement shall be the replacement cost of the damaged property less due allowance for depreciation taking into consideration the anticipated useful life of the property and the nature of its usage;

**Insured means:**

- (1) the Named Insured;
- (2) 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;
- (3) any of the following persons or entities for whom or for which the insured parties under clauses (1) and (2) above are obliged to arrange insurance by virtue of a Contract or assumption of responsibility, but only to the extent required by such Contract 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 and/or joint venture partner and/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;
  - (d) any suppliers and/or any architect, engineer, surveyor, quantity surveyor or other professional consultant, but only in relation to their manual activities associated with the Insured Property and only whilst at a Worksite (such parties not being deemed to be contractors and sub-contractors in 3(c) above);
  - (e) any lessor, financier, mortgagee or trustee;
  - (f) any government body;
  - (g) any other party with an insurable interest in the Contract(s);
- (4) any director, executive officer, employee, contract staff or partner of any of the insured under clauses (1), (2) or (3) whilst acting as such; with an insurable interest herein whom the Named Insured has agreed to insure via a written contract in connection with the project
- (5) any office bearer or member of any social, sporting, safety, security, medical or welfare facility of any of the insureds under clauses (1), (2), (3)(a), (3)(b) or (3)(c) whilst acting as such; with an insurable interest herein whom the Named Insured has agreed to insure via a written contract in connection with the project

all for their respective rights and interests provided that an entity falling within the definition of Insured above is only an Insured for the purpose of this Policy, insofar as they are insured against the particular risk indemnified under this Policy.

**Insured Property:**

- (1) **Contract Works** means property of every description used or to be used in part of or incidental to or having any connection whatsoever with the Insured Operations. It shall include but not be limited to:
- (a) the whole of the works, whether permanent or temporary works, structures, materials and supplies including free supplied materials where included in the Project Value;
  - (b) temporary buildings, camp buildings and all other project buildings and their contents;
  - (c) formwork, falsework, scaffolding, access platforms, hoardings, mouldings, and the like, whether the foregoing be consumable or reusable;
  - (d) consumables, drawings and other documents and Electronic Data, but always subject to Endorsement 5.11 (Property, Cyber and Data Endorsement)
- but excluding Construction Plant and Equipment and Existing Property not specified above.
- (2) **Existing Structure** means existing buildings, structures, plant, contents and real property of every description situated at a Worksite, but only in respect of Events during the course of completing the Insured Operations. Existing Structure is specifically excluded under this Policy unless an amount is

specified against this item in the Schedule.

(3) **Construction Plant and Equipment** means:

- (a) all construction plant, tools and equipment of every description including spare parts;
- (b) employees' tools, equipment and personal property at a Worksite;

in connection with a Contract. Property described in clauses (1)(b) and (1)(c) is deemed to be Construction Plant and Equipment when situated at the Named Insured's premises or storage locations and provided the Named Insured has elected to cover Construction Plant and Equipment under this Policy against which an appropriate Limit of Liability is stated in the Schedule. Construction Plant and Equipment is specifically excluded under this Policy unless an amount is specified against this item in the Schedule.

Property defined in Clauses (2) and (3) shall refer to property owned by the Named Insured or for which they are responsible or have assumed responsibility prior to any Event for which a claim may be made hereunder, or for which the Named Insured has agreed to insure, or in which the Named Insured otherwise has an insurable interest.

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

**Major Perils** means earthquake, landslip, fire, subterranean fire or volcanic eruption, subsidence, collapse, storm and/or tempest and/or rainwater and/or flood and/or tsunami and/or Named Cyclone.

**Named Cyclone** means wind, wind gusts, hail, rain, tornadoes, or cyclones and storm surge or any wind driven water caused by or resulting from a specific storm system that has been named by the Australian Bureau of Meteorology when such organization issues a watch or warning and ending 72 hours after the termination of the watch or warning.

**Offsite Storage** means locations where the Insured stores Insured Property away from the Worksite.

**Performance Testing Period** means the period of testing and/or commissioning of the Contracts Works or any of its component parts and begins when 'live load' is introduced, including the use of feedstock or other materials for processing or other media to simulate normal working conditions and in the case of electrical motors, electrical generating, transforming, converting or rectifying plant or machinery, connection to a grid or other load circuit, or as more particularly described in a Contract, and ends at the completion of testing and commissioning under the Contract, but in no case exceeding the Performance Testing Period shown in the Schedule (if any stated).

Where Performance Testing is performed in stages any periods between the applications of 'live load' are not considered to be part of the Performance Testing Period. Simple functionality tests without the application of 'live load' are not considered to be part of the Performance Testing Period.

**Performance Testing** that exceeds the maximum period stated in the Schedule will only be covered subject to the prior approval of the Insurers.

**Pipeline Contracts** shall mean the supply and installation of pipes excluding Wet Work Contracts

**Project Value** means the total value of work and construction costs incurred by or on behalf of the Insured in respect of the Contract Works and includes the value of principal supplied and other free supplied materials (if required to be insured under the Contract).

**Reinstatement Value** means:

- (1) where the property is lost or destroyed, the cost of replacement thereof by similar property in a condition equal to, but not better nor more extensive than, its condition when new;
- (2) where the property is Damaged and can be repaired, the cost necessarily incurred to restore the property to a condition substantially the same as, but not better nor more extensive than its condition when new, plus the cost of dismantling and re-erection incurred for the purpose of effecting the repairs.

**Renewable Projects** mean all works/property in connection with the development, design, procurement, installation, erection, testing and commissioning of hydrogen plants, solar plants (photovoltaic systems), wind

farms and battery energy storage systems (BESS); but this Definition does not mean any works for photovoltaic systems and their ancillary work, that may be a section of a larger Project insured hereunder and where such values do not exceed 10% of the Project Value or AUD 2,500,000 whichever is the lesser.

**Roadworks** means any works involving the following:

Road construction, road widening & duplication, asphalt replacement, road grading, road regrading, road sealing & resealing, shouldering works and any associated ancillary works.

However, Roadworks does not include: building works, traffic lights/signalling works, signage, barrier installation, pothole remediation and any other maintenance works (other than works specifically noted in Roadworks definition above)

**Storm** means disturbance of the atmosphere manifested by, for example a sudden heavy rainfall, load and disturbing thunder or lightning outbreaks.

**Tempest** means an extensive current of wind rushing with great velocity and violence, especially one attended with rain, hail, snow or a violent storm.

**Tunneling Contracts** 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, including 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 those policies identified in the Schedule.

**Water Damage** means Damage by water from any cause whatsoever.

**Wet Work Contracts** shall mean any Contract Works where more than thirty-five (35) per cent of its value is in a permanent body of water or is below the high-water mark of any tidal body of water. The term shall include contracts for the construction of wharves, piers, marinas, causeways, breakwaters, jetties, dry docks and offshore pipelines when connected directly to on-shore facilities and canal developments..

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

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.



## Material Loss or Damage

The following Insuring Clauses apply to this Policy.

### 1. Insuring Clauses

#### 1.1 Construction Period

The Insurers will indemnify the Insured in accordance with the Basis of Settlement, against Damage to the Insured Property other than from a cause specifically excluded, occurring at a Worksite of the Insured Operations or in transit within the Territorial Limits, in respect of:

- a. Construction Plant and Equipment - during the Period of Insurance;
- b. All other Insured Property (including Acquired Construction Plant and Equipment) - during the Construction Period.

#### 1.2 Defects Liability (Extended Maintenance) Period

The Insurers will indemnify the Insured in accordance with the Basis of Settlement, against Damage to the Contract Works from a cause not specifically excluded, provided such Damage:

- a. manifests itself during the Defects Liability Period and
- b. originates from:
  - (i) a cause arising during the Construction Period and at a Worksite; or
  - (ii) an act or omission of any of the Insured or a cause for which the Insured is responsible under the requirements of the defects liability provisions of the Contract.

#### 1.3 Basis of Settlement

In the event of Damage to Insured Property the amount payable shall be in accordance with the Basis of Settlement stated in the Schedule in respect of the property designated therein.

- a. Reinstatement Value

Where the Basis of Settlement is Reinstatement Value the following provisions shall apply:

- (i) the work of rebuilding, replacing, repairing or restoring as the case may be (which may be carried out upon any other site(s) and in any manner suitable to the requirements of the Named Insured, but subject to the liability of the Insurers not being thereby increased), must be commenced and carried out with reasonable dispatch;
- (ii) where Insured Property has been Damaged and where the Named Insured elects not to reinstate such Insured Property, the Insurers will pay to the Named Insured an amount equal to the cost necessary to replace, repair or rebuild the Insured Property to a condition substantially the same as but not better nor more extensive than its condition at the time the Damage occurred;
- (iii) if the Insured Property is reasonably abandoned because the cost of recovery would exceed the amount payable under this Policy in respect of such property, it shall be deemed to be a constructive total loss and settlement shall be made in accordance with the above provisions (as applicable).



b. Indemnity Value

Where the Basis of Settlement is Indemnity Value the following exceptions will apply to the settlement of Damage to Construction Plant and Equipment:

- (i) where the item is financed and in the event of its total loss or constructive total loss, the amount settled shall be the greater of the cost of discharging the lease or the stated Basis of Settlement;
  - (ii) in respect of items leased, hired or rented, the basis of settlement shall be in accordance with the rectification provisions of the lease, hire or rental agreement but not exceeding the Reinstatement Value;
- c. The total amount payable by Insurers will also include any additional amounts as provided in clauses 1.4 to 1.7 (as applicable).

**1.4 Local Authorities Clause**

The indemnity provided by this clause 1.4 shall, subject to the Sub-Limit of Liability stated in the Schedule (if any), extend to include the extra costs (including demolition or dismantling) necessarily incurred to comply with the requirements of any Act of Parliament or regulation made thereunder or any by-law or regulation of any municipal or other statutory authority, other than such extra costs as aforesaid with which the Insured had been required to comply prior to the Damage occurring.

**1.5 Undamaged Foundations**

Where the Contract Works is destroyed but the foundations are not destroyed and due to the exercising of statutory powers and/or delegated legislation and/or authority by the government or any other statutory authority reinstatement of the Contract Works has to be carried out upon another site, then the abandoned foundations will be considered as being destroyed. The term "foundations" is deemed to include services such as, but not limited to, conduits, pipes, cables and wiring built into the footings and foundations (including concrete floor slabs).

**1.6 Output Replacement**

If any item(s) of the Contract Works having a measurable output is Damaged (in whole or in part) and which is capable of replacement with a new item(s) which performs a similar function, then the amount payable by the Insurers in respect of such property shall be on the following basis:

- a. If any lost or destroyed Contract Works is to be replaced by an item(s) which has the same or a lesser total output, then the amount payable thereof is the new installed cost of such replacement item(s) as would give the same total output as the Damaged item(s);
- b. If any Damaged Contract Works is to be replaced by an item(s) which has a greater total output and the replacement value is no greater than the value of the Damaged items(s) then the amount payable shall be the cost of the replacement item(s) and no deduction shall be made due to improved output;
- c. If any Damaged Contract Works is to be replaced by an item(s) which has a greater total output and the replacement value is greater than the value of the Damaged item(s) then the insurable value thereof is that proportion of the new installed cost of the replacement item(s) as the output of the Damaged item(s) bears to the output of the replacement item(s). The difference between the insurable value as defined and the new installed cost of the replacement item(s) shall be borne by the Insured.

This clause 1.6 does not apply if the Basis of Settlement against the relevant property is designated in the Schedule as Indemnity Value.

## 1.7 Reasonable Margin for Profit

In all cases, the cost of reinstatement shall refer to the final cost to the Insured after completion of the repair, reinstatement or replacement work (including materials and wages incurred for the purpose of repairs and a reasonable margin for profit, administration costs and overheads).

## 2. Extensions applying to this Policy

The following Extensions apply to this Policy, are subject to the Sub-limits of liability stated in the Schedule (if any) and are consequent upon Damage.

### 2.1 Additional Costs and Expenses

The Insurers shall, in addition to the Limits of Liability, pay the following extra costs and expenses incurred by or on behalf of the Insured (over and above those already included in the Project Value), subject to the Sub-limits of Liability stated in the Schedule (if any):

#### a. Removal of Debris and Other Costs

##### (i) Debris

Costs and expenses necessarily incurred in respect of the demolition, removal, storage and/or disposal of debris, Insured Property (including Insured Property which is no longer useful for the purpose it was intended) and any other property or substances affecting the Insured Operations arising out of Damage.

##### (ii) Temporary Protection

Costs and expenses incurred by or on behalf of the Insured:

(A) for the removal of and/or the temporary protection and safety of Insured Property;

(B) in the purchasing and/or hiring and in the erection and dismantling of hoardings, barriers, fences and any other forms of protection which the Insured must provide in order to comply with the requirements of any government, municipal or other statutory authority.

provided that the indemnity afforded shall only apply where the costs and expenses are incurred as a result of Damage.

##### (iii) Shoring, Propping and Other Costs

Costs and expenses necessarily incurred in respect of shoring up, propping, underpinning and temporary repairs as a consequence of actual or further imminent Damage.

#### b. Expediting Expenses

Costs and expenses necessarily incurred in connection with or incidental to expediting the commencement, carrying out or completion of the repair, reinstatement or replacement of the Insured Property consequent upon Damage. Such costs and expenses shall include but not be limited to:

- (i) express or chartered carriage or delivery (including by sea or air);
- (ii) reasonable and necessary travel (including by sea or air) of the Insured's employees, agents, sub- contractors, consultants or representatives;
- (iii) overtime or penalty rates of wages and other related allowances and payments;
- (iv) hire of additional labour, plant, equipment, materials, expertise or services;
- (v) reasonable and necessary changes in the method of construction, the cost of

earlier than usual delivery or manufacture and/or costs of purchasing resources;

(vi) accommodation and boarding costs (including meals and other costs associated therewith);

(vii) additional administrative and/or overhead expenses.

c. Search and Locate Costs

Leak search and other costs incurred following irregularities discovered in the results of a hydrostatic or other testing procedure. Such costs will include but not be limited to:

(i) the cost of hiring, operating and transporting apparatus;

(ii) the cost of all associated earthworks;

and are payable consequent upon Damage.

d. Professionals' Fees

The fees of project managers, architects, surveyors, quantity surveyors, engineers, and other consultants and clerks of works' salaries for estimates, plans, specifications, quantities, tenders and supervision necessarily incurred in reinstatement consequent upon Damage to the Insured Property, but not for preparing any claim under this Policy.

e. Mitigation Expenses

Reasonable costs and expenses incurred by or on behalf of the Insured in connection with or incidental to mitigating, containing, eliminating, avoiding or suppressing actual Damage or further imminent Damage occurring at or adjacent to or immediately threatening the Insured Property.

Such costs and expenses shall include but not be limited to:

(i) the payment for additional labour (including the Insured's employees), services or resources;

the cost of replenishing firefighting appliances or systems and costs and charges incurred for the purpose of shutting off the supply of water or any other substance following the accidental discharge or escape from intended confines of any such substance, whether from fire protection equipment or otherwise.

f. Plant Hire Charges – Not Insured

Reasonable costs and expenses incurred by the Insured for the hire of a replacement item of Damaged Construction Plant and Equipment but excluding all costs and expenses incurred to avoid penalties or liquidated damages.

g. Claims Preparation Costs

Reasonable costs and expenses necessarily incurred by the Insured and not otherwise recoverable in connection with or incidental to preparing, collating, auditing or qualifying actual or imminent Damage being claimed under this Policy.

h. Government and other Fees

(i) Any fee, contribution or other impost (excluding fines and/or penalties) payable to any government, municipal or other statutory authority, where payment of such fee, contribution or impost is a condition precedent to the obtaining of consent to reinstate Insured Property as a result of Damage.

(ii) Any fee contribution or other impost (excluding fines and/or penalties) payable to

any government, municipal or other statutory authority for services rendered or equipment supplied for the purpose of helping to prevent, mitigate or confine further actual Damage at the Worksite.

i. Sue and Labour

Sue and labour and other costs incurred for general average contributions, the salvage, rescue, recovery or retrieval of Contract Works, together with the cost of dismantling and transportation of property to an appropriate place for assessment of any Damage including any transportation costs returning the Insured Property to the Worksite or storage yard once it has been repaired or replaced.

For the purpose of claims for general average contributions and salvage charges recoverable hereunder, the Contract Works shall be deemed to be insured for its full contributory value.

j. Inflation Protection

In the event of delay in completion of any insured Contract (or part thereof) being incurred by reason of Damage to Insured Property which is indemnified hereunder, cover by this Policy shall extend to indemnify the Insured in respect of the amount by which the ultimate cost of construction of those parts of the Contract Works not suffering such loss or damage and being unbuilt or incomplete at the date of the Damage should exceed the cost of construction had no such Damage or consequent delay occurred.

Provided always that:

- (i) The indemnity provided by this Extension shall apply to the net increase in costs caused by the inflationary effect of escalation in the costs of labour, materials and services which the Insured shall prove to be a direct result of the delay consequent upon indemnifiable Damage.
- (ii) No indemnity is given under this Extension in respect of increased construction costs incurred:
  - (A) in consequence of any other delay not referred to above;
  - (B) by reason of any improvement or change in methods of working or construction;
  - (C) in redesigning the Contract Works, or incurred as a result of such redesign;
  - (D) for acceleration of the progress of the Contract Works or to expedite repairs or to progress the Contract Works at a faster rate than previously achieved;
- (iii) No indemnity is provided in respect of the payment of penalties or liquidated damages under the Contract, nor in respect of costs incurred to avoid such payment;
- (iv) The Insurer shall, upon admission of liability to indemnify the Insured under this clause 2.1(j), be subrogated to any right that the Insured may have to recover any net increase in construction cost from another party.

k. Extra Expense

The indemnity under this clause is limited to:

- (a) the reasonable extra expenses, incurred temporarily to continue the Project as nearly normal as practicable;
- (b) the reasonable extra costs of temporarily using property or facilities of the Insured or others.

Any value remaining in property obtained in connection with (a) or (b), above, shall be taken into consideration in the determination of Damage.

In no event shall Extra Expense include:

- (a) loss or expenses indemnifiable elsewhere in this Policy;
- (b) costs which normally would have been incurred in completing the Project, during the same period, had no Damage occurred.

The Insured agrees to use any suitable property, or service owned or controlled by the Insured, or reasonably obtainable from other sources, to reduce the Extra Expense incurred under this Section.

Limited to the applicable Sum Insured shown in the Schedule.

## 2.2 Plot Ratio Indemnity

In the event of Damage to Contract Works and as a result of the exercise of statutory powers and/or authority by any government or statutory authority the replacement of Contract Works as before is prohibited or is only permissible subject to a reduced floor space ratio index and/or to the payment of certain fees and contributions as a prerequisite to replacement or reinstatement, then the Insurers agree to pay to the Insured in addition to any amount otherwise payable:

- a. the difference between the actual cost of replacement or reinstatement incurred in accordance with a reduced floor space ratio index and the cost of replacement which would have been incurred had a reduced floor space ratio index not been applicable; the amount of any fees, contributions or other impost payable to any government department, local government or other statutory authority where such fee, contribution or impost is a condition precedent to consent being given to the replacement of such property;
- c. the amount of any additional costs and expenses incurred by or on behalf of the Insured as a result of alterations to the specifications of such property brought about by the reduced floor space ratio index as aforesaid.

In arriving at the amount payable under clause a above, any amount paid by the Insurers shall include any extra costs of reinstatement or replacement as insured under clause 1.4.

## 2.3 Civil Authority

This Policy is extended to include loss resulting from Damage to Insured Property by civil authority during a conflagration or other catastrophe incurred for the purpose of retarding the same.



### 3. Exclusions applying to this Policy

This Policy does not provide indemnity in respect of:

#### 3.1 Consequential Loss

liquidated damages or penalties for non-completion of or delay in completion of the Contract or non-compliance with contract conditions or consequential loss, other than as specifically provided under this Policy.

#### 3.2 Wear and Tear

Damage directly caused by:

- a. wear and tear, upkeep or making good;
- b. rust, oxidation, corrosion or deterioration, in each case when due to normal atmospheric conditions or other causes;

but this Exclusion 3.2, shall be limited to that part of the Insured Property which is immediately affected and shall not apply to any other parts lost or Damaged in consequence thereof.

#### 3.3 Defects (LEG 3/06 & LEG 2/96)

This Exclusion 3.3 is subject to Condition 4.4.

##### (a) LEG 3/06

all costs rendered necessary by defects of material, workmanship, design, plan or specification, however should Damage (which for the purposes of this Exclusion 3.3 (a) shall include any patent detrimental change in the physical condition of the Insured Property) occur to any portion of the Insured Property containing the said defects the cost of replacement or rectification which is hereby excluded is that cost incurred to improve the original material, workmanship, design, plan or specification.

##### (b) LEG 2/96

all costs rendered necessary by defects of material, workmanship, design, plan or specification, however should Damage occur to any portion of the Insured Property containing any of the said defects the cost of replacement or rectification which is hereby excluded is that cost which would have been incurred if replacement or rectification of the Insured Property had been put in hand immediately prior to the said damage.

For the purpose of this Policy, and not merely this Exclusion 3.3, it is understood and agreed that any portion of the Insured Property shall not be regarded as Damaged solely by virtue of the existence of any defect of material, workmanship, design, plan or specification.

Exclusion applicable in respect of photovoltaic systems and their ancillary work: Policy Exclusion 3.3(b) Leg 2/96

#### 3.4 Aircraft or waterborne craft

Aircraft or waterborne craft or plant and equipment permanently mounted thereon.

#### 3.5 Disappearance or Shortage

loss due to disappearance or revealed by inventory shortage alone, unless the shortage can be reasonably attributed to burglary, theft, pilferage or like dishonesty of persons other than the Named Insured.



### **3.6 Money**

Damage to cash, bank notes, treasury notes, cheques, postal orders and money orders, stamps or securities and the like.

### **3.7 Transits Outside of Australia**

Damage to Insured Property in the course of ocean marine shipment between countries or transit by air between countries.

### **3.8 Breakdown of Construction Plant and Equipment**

Damage to Construction Plant and Equipment caused by its own mechanical or electrical breakdown.

### **3.9 Unsealed Roads**

Subject to the terms, exclusions, provisions and conditions contained in the Policy or endorsed thereon, the Insurers will indemnify the Insured in respect of costs incurred for Damage to roadworks without a Weatherproof Course arising from water up to the limits specified below in respect of each Project Site.

Unsealed Roads limitation: 1000 metres per section and 5000 metres in the aggregate per Worksite any one Occurrence.

WEATHERPROOF DEFINITION "Weatherproof Course" shall mean the bitumen based primary sealant layer put in place ahead of the subsequent overtopping base course and wearing course layers. The Insurers will not indemnify the Insured in respect of costs incurred for Damage to unsealed roadworks where Damage is caused by, or the aggravation of Damage caused by, the passage of road vehicles or construction plant.

### **3.10 Nuclear Risks**

loss, damage or 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 3.10(a) only, combustion shall include any self-sustaining process of nuclear fission;

- b. nuclear weapons materials.

This Exclusion 3.10 shall not apply to Damage resulting from the use of commercial radioactive isotopes.

### **3.11 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 3.12(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), which from its nature or context is done for or in connection with 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 3.11(a) and/or 3.11(b) above.

In the event any portion of this Exclusion clause 3.11 is found to be invalid or unenforceable, the remainder shall remain in full force and effect.



#### 4. Conditions applying to this Policy

The following Conditions apply to this Policy

##### 4.1 Escalation

If during the Construction Period, the anticipated final Project Value of a Contract or series of Contracts in connection with one project exceeds the Limit of Liability, then the Limit of Liability and Sub-Limits of Liability shall be increased by the percentage that represents the amount the anticipated final Project Value for such Contract(s) exceeds the estimated Project Value at commencement of the Construction Period of the Contract(s), but the total amount of all such increases shall not exceed Fifteen percent (15%) of the amount set against each item in the Limits of Liability and Sub-limits of Liability.

##### 4.2 Claims Procedure

For estimated Damage up to \$50,000 the Insured is at liberty to immediately proceed with repairs or replacement and shall provide to the Insurers full details of the cause and circumstances of the Damage, followed by written notification of the claim, supported by the necessary invoices and other details.

For estimated Damage exceeding \$50,000 the Insured is to defer proceeding with repairs or replacement until the Insurers or their representatives have made a preliminary survey or have agreed to the Insured proceeding with repairs or replacement.

The amounts stated in this Condition 4.2 refer to estimates made by the Insured of amounts payable by Insurers after application of any relevant Excess.

##### 4.3 Limits of Liability

- a. No liability shall attach to the Insurers until the loss in respect of each Event exceeds the amount of any relevant Excess stated in the Schedule.
- b. The Liability of the Insurers for any one Event at any one Worksite shall not exceed the Limits of Liability and the cumulative amounts of the Sub-limits of Liability stated in the Schedule (as applicable).
- c. The Limits of Liability and Sub-limits of Liability shall apply in excess of the amount of the relevant Excess.

##### 4.4 Application of Excess

- a. The Insured shall be liable to pay the amount of the Excess in respect of each Event. If a series of claims are made arising out of the one Event then only one Excess shall apply.
- b. Non-aggregation of Excess  
Should more than one Excess apply for any claim or series of claims arising from the one Event, such Excesses shall not be aggregated and only the highest single Excess shall apply.
- c. 72 Hour Clause

For the purpose of the application of any Excess, all Damage resulting from fire, earthquake, cyclone (Named or unnamed), Flood, Storm and/or Tempest, occurring during each period of 72 consecutive hours shall be considered as one Event where such peril is sporadic in its sweep and scope. The Insured shall select the time from which any such period shall commence but no two selected periods shall overlap.

d. Inland Transit

If a transit Excess is specified in the Schedule, such Excess shall apply to Insured Property in the course of loading of the Insured Property, whilst in transit, including any incidental storage until completion of unloading at the point of discharge at the final destination.

e. Defects Claims

The Insured at their own option may elect to submit a claim applying the Defects Exclusion 3.3(b) rather than the Defects Exclusion 3.3(a) and in such circumstances, the Insurers agree to apply the LEG2/96 Defects Excess.

**4.5 Insurers' Rights and Subrogation**

- a. 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.
- b. 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 Damage to Insured Property.

**4.6 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 4.5b), 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 or government entity comprising the Named Insured shall be deemed a separate and distinct entity from the other government entities.

- b. Any payment or payments by Insurers to any one or more such insured parties shall reduce to the extent of that payment the Insurers' liability to all such parties arising from one Event giving rise to a claim under this Policy and (if applicable) in the aggregate.
- c. 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.
- d. 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 4.5b as a "Vitiating Act".

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:
  - (i) any Insured or any individual or organisation affiliated or associated with, parent of or a subsidiary of any Insured;

- (ii) 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.

#### 4.7 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. Any notice(s) given to any office of the appointed broker constitutes notice upon Insurers.
- b. 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.
- c. Any notice(s) given by the Insurers to any party insured under this Policy shall also be given to all other named parties.
- 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 before completion of the Construction Period and/or Defects Liability Period of the relevant Contract due to non- payment of premium or any other cause;
  - (ii) the Insurers giving any notice under this Policy.

#### 4.8 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 of Insurance, the Named Insured will declare to the Insurers:
  - (i) the sum of final and/or estimated Project Values for all Contracts let by the Named Insured during the Period of Insurance 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.
  - (ii) 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.
  - (iii) if applicable, the actual value of Construction Plant and Equipment (in accordance with the agreed Basis of Settlement) at expiry of the Period of Insurance.



- c. Subject to any minimum premium applicable, the provisional 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 as follows:
  - (i) in respect of the Insured Operations, the agreed rate on the difference between the estimated Project Values at inception of the Period of Insurance and the value declared in accordance with clauses 4.8 (b)(i) and (b)(ii) above;
  - (ii) in respect of Construction Plant and Equipment, the agreed rate on fifty percent of the difference between the estimated values at inception of the Period of Insurance and the value declared in accordance with clause 4.8 (b)(iii).
- 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 and clause 4.1, by agreement of both parties, 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.

#### 4.9 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.

#### 4.10 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 damage, defect or 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.

#### 4.11 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 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;
- 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.

#### 4.12 Cancellation/Non-renewal

- 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 or cancel cover in respect of any Contract or Insured Property at any time by giving notice in writing to the Insurers.

c. Provisions

After cancellation by the Named Insured or the Insurers, the Premium will be adjusted in accordance with Condition 4.8, except that the declared final or projected contracted 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.

#### 4.13 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 or otherwise regarding construction methods or procedures, an unintentional or inadvertent error, omission or mis-description 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, and 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.

#### 4.14 Progress Payments

Provided that indemnity has been granted under this Policy, progress payments on account of any claim shall be made to the Insured, at such intervals and for such amounts as may be agreed upon production of an acceptable report by the Agreed Loss Adjuster (if appointed), provided quantum has reasonably been established and such payments shall be deducted from the amount finally determined upon adjustment of the claim.

#### 4.15 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.
- b. The Insurers and Insured agree that the Agreed Loss Adjusters shall be agents of the Insurers and the Insured and all documents, transcripts, reports (verbal and written) shall be made available to the Insurers and the Insured.
- 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 Named Insured at their own expense shall be entitled to appoint an independent loss adjuster.

#### 4.16 Loss Payee

Any claim arising under this Policy shall be settled with and paid to the Loss Payee stated in the Schedule or as they may direct.

#### 4.17 Currency

- a. 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.
- b. For the purpose of this Policy, the Insurers agree to the Named Insured's normal practice of converting currency to Australian dollars in accordance with the Insured's accounting practices at the date such monetary transaction is due.

#### 4.18 Referral Contracts

Referral Contracts specified in the Schedule, will be held covered by the Insurers in accordance with the indemnity provided by this Policy for a period not exceeding 60 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, except for Referrals for BESS (Battery Energy Storage System), Hydrogen, Solar, Wind Projects which are subject to a 30 day hold covered period from the commencement of the Contract Construction Period.

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 Insured Operations in the Schedule shall be automatically covered if specified as an Endorsed Referral Contract in the Schedule, subject to any agreed alteration in this Policy's Excess, 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 4.8.

#### 4.19 Master and Agreed Rate Contracts

For the purpose of applying the maximum Construction Period, Project Value and other Policy provisions, 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

#### 4.20 Permission to Occupy and Operate

The Insurers agree that the principal and/or owner or any other party can occupy and operate any portion of the Worksite prior to practical completion and such occupancy or operation shall not constitute handover of the Insured Operations.

#### 4.21 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 4.21 are subject to the terms, conditions, Exclusions and other provisions of this Policy, save and except for the purpose of

indemnity provided under clause 4.21(b).

- 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.

#### 4.22 Extension to the Period of Insurance

Any extension in the Construction Period for any declaration of Contract Works beyond the provisioned 36 months is extended at pro rata for 3 months, subject to Nil Losses on that Declaration. Should any losses have occurred on that declaration or for any extensions beyond 3 months, such extensions are at terms to be agreed.



## 5. Endorsements applying to this Policy

It is hereby agreed and declared that the following Endorsements attach to and form part of this Policy:

### 5.1 De-watering

Notwithstanding the Conditions, provisions and other Endorsements of this Policy, it is agreed and understood that the Insurers shall not be liable to indemnify the Insured in respect of;

- (a) additional de-watering expenses incurred because the quantities of water originally expected are exceeded
- (b) expenses incurred for additional installation and facilities for the discharge of run-off and/or underground water
- (c) loss or damage due to failure of the de-watering system if such failure could have been avoided by sufficient stand-by facilities
- (d) expenses incurred for the repair of cracks and to remedy leakage of water into excavations and basements.

### 5.2 Over-topping of Cofferdams

Notwithstanding the Conditions, provisions and other Endorsements of this Policy, it is agreed and understood that the Insurers shall only indemnify the Insured for loss of or damage to the Contract Works arising from the over-topping of cofferdams caused directly by precipitation, flood or inundation if adequate safety measures have been taken in the design and execution of the coffer dam.

For the purposes of this Endorsement adequate safety measures shall mean that at all times during the Period of Insurance, allowance is made for precipitation, flood or inundation to a minimum return period of 50 years for the contract site on the basis of statistics prepared by the meteorological agencies or other agencies agreed to by the Insurers.

### 5.3 Pipelines

Notwithstanding the Conditions, provisions and other Endorsements of this Policy, it is agreed and understood that;

- (a) Pipe-pulling

Warranted that during pipe pulling or towing operations the maximum stress exerted on the pipe shall not exceed 85% of the specified minimum yield of the pipe material.

- (b) Radiography of Welds

Warranted that all welds on steel pipelines will be subjected to radiography.

#### Definition

For the purposes of application of Radiography of Welds Warranty, pipelines will be deemed to be pipes with welded steel joints, greater than 2,000m in length.



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#### 5.4 Incomplete Trenches

Insurers will indemnify the Insured against an Event for all Incomplete Trenches only up to a maximum length of 1,000 metres per section and 5,000 metres combined aggregate length any one Event.

##### Definition

Incomplete Trenches being partially or completely excavated trenches (including shafts or pits) with or without pipes, ducts or cables laid therein. This definition will apply at any stage of construction prior to completion of backfill and final compaction.

##### Supplementary Exclusions

Insurers will not indemnify the Insured against:

- (i) the cost of rectification of subsidence of completed backfill regardless of the cause of subsidence
- (ii) clearing and cleaning of pipes, the ends of which have not been sealed by the end of each working day to prevent penetration by water and/or detritus
- (iii) displacement of pipes or ducts by water unless such pipes or ducts have been secured by the end of each working day by backfilling placed in a manner intended to counteract pipe buoyancy.

##### Excess

The Excess under this Endorsement will be the amount stated in the Schedule.

#### 5.5 Directional Drilling or Other Trenchless Pipe Installation

Notwithstanding the Conditions, provisions and other Endorsements of this Policy, it is agreed and understood that this insurance will indemnify the Insured in respect of physical loss and/or damage incurred during directional drilling operations or other trenchless pipe installation, but however excluding:

- (a) Any Damage directly or indirectly due to any corrections and/or re-routing as a result of deviations from the planned route;
- (b) Damage or any change in the drilling fluids e.g. bentonite;
- (c) Damage to the drilling head(s), reamer(s), and all other contractors constructional plant, equipment and tools, and losses arising out of damage to or failure of these items;
- (d) Damage directly or indirectly due to abandonment of any directional drilling operations or other trenchless pipe installation shaft(s) prior to the entry of the pipeline into the ground at the commencement of the pulling/jacking operations;
- (e) Operations involving the installation of pipes of greater than 200mm diameter and longer than 200m and where the value of such works exceeds 25% of the total Project Value unless specifically agreed by Insurers in advance of the commencement of work.
- (f) Damage to the outer insulation of the pipeline in the area of Horizontal Directional Drilling

Notwithstanding anything contained herein to the contrary the Insured shall in the event of a claim

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under this Policy associated with directional drilling operations or other trenchless pipe installation operations, bear 20% of the loss amount with a minimum Excess as specified in the Schedule.

### 5.6 Piling Works and Retaining Walls

Subject otherwise to the terms, Conditions, Exclusions and Memoranda applicable to this policy, the Insurers shall not indemnify the Insured in respect of expenses incurred for:

- (a) the repair, replacement, or rectification of foundation piles and/or casings and/or sheet pile structures and/or retaining wall elements that have been:
  - (i) misplaced and/or misaligned; and /or jammed during Construction/ Installation
  - (ii) physically lost or damaged during driving, extraction, boring or drilling;
  - (iii) the subject of individual or block disconnection or declutching ;
  - (iv) obstructed by jammed or damaged piling equipment or casings

For the purposes of this policy Damage to foundation piles and/or casings and/or sheet pile structures shall be deemed to have occurred during driving, extraction, disconnection, declutching boring or drilling unless the Insured can produce satisfactory evidence to demonstrate otherwise.

- (b) The cost of repair replacement or rectification of piling work, necessitated by leakage or infiltration of liquid or material at seams, joints, connections and/or beneath pile structures or into casings, unless such leakage or infiltration is a direct consequence of other Damage Indemnifiable hereunder.
- (c) Any abandonment of piling work unless such abandonment is a direct consequence of other Damage Indemnifiable hereunder.
- (d) Piles, which have failed to pass a load test, or to reach the required bearing load, unless such failure is a direct consequence of Damage otherwise Indemnifiable hereunder.
- (e) (e) For filling voids or for replacing lost bentonite
- (f) For reinstating profiles or dimensions

### 5.7 Acquired Construction Plant and Equipment

This policy extends to cover Construction Plant and Equipment acquired by the Named Insured due to contractual default or insolvency of the contractor(s) and acquired for the purposes of facilitating completion of the works. Coverage under this clause shall cease when such Construction Plant and Equipment is returned to the contractor(s) or at the time of practical completion whichever shall occur first. The insurers liability under this clause is limited to the amount stated in the policy schedule against Acquired Construction Plant and Equipment.

### 5.8 Communicable Disease exclusion

- 1. Notwithstanding any provision to the contrary within this insurance, this insurance does not insure any loss, damage, claim, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of, or in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease regardless of any other cause or event contributing concurrently or in any other sequence thereto.
- 2. As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:
  - 2.1. the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and

- 2.2. the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
- 2.3. the disease, substance or agent can cause or threaten bodily injury, illness, damage to human health, human welfare or property.

LMA5397 29 April 2020

## 5.9 Special Endorsement for Wet Risks

This Endorsement forms part of Section 1a and is subject otherwise to the terms, provisions, conditions and exclusions contained in the policy of insurance or endorsed thereon.

### 1. Exclusion

- 1.1. The insurer shall not indemnify the Insured in respect of costs incurred for:
  - 1.1.1. loss or damage to berths, wharves, jetties and the likes caused by their subsidence or sinking,
  - 1.1.2. normal action of the river / sea / body of water,
  - 1.1.3. loss of or damage to more than 200m of uncompleted or unprotected seawall, quay or other marine structure,
  - 1.1.4. loss damage or liability due to soil erosion,
  - 1.1.5. dredging, re-dredging or reclaiming following silting up or loss of profile of a trench or other excavation in water,
  - 1.1.6. lost or damaged fill material,
  - 1.1.7. replacing or rectifying piles or retaining wall elements,
    - 1.1.7.1. which have become misplaced or misaligned or jammed during their construction,
    - 1.1.7.2. which are lost or abandoned or damaged during driving or extraction, or
    - 1.1.7.3. which have become obstructed by jammed or damaged piling equipment or casings,
  - 1.1.8. rectifying disconnected or de-clutched sheet piles,
  - 1.1.9. rectifying any leakage or infiltration of material of any kind,
  - 1.1.10. as a result of piles or foundation elements having failed to pass a load bearing test or otherwise not having reached their designed load bearing capacity,
  - 1.1.11. for reinstating profiles or dimensions,
  - 1.1.12. any floating and other equipment such as caissons, barges and the like and liabilities therefrom,
  - 1.1.13. any mobilization/demobilization and/or other costs which arise for stand-by/ waiting on weather of offshore construction equipment,
  - 1.1.14. loss or damage to pulling wires, anchors, chains and buoys,
  - 1.1.15. loss or damage due to impact of shipping
  - 1.1.16. marine liability and any loss covered or coverable under marine insurance

### 2. Definition

- 2.1. Normal action of the sea means the state of the sea, which manifests itself up to No. 10 on the Beaufort Scale, or the state of the tides, current and wave action of the sea, which must be statistically expected to occur once during a 25 year period, whichever is the more onerous.

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**3. Warranties**

3.1. It is agreed and understood that subject otherwise to the terms, exclusions and provisions contained in the policy or endorsed thereon, the insured shall:

3.1.1. receive daily weather updates from the local meteorological office during the period of insurance and make continuous contact to the local meteorological office within 12 hours notice of an imminent storm,

3.1.2. make navigation distance for public traffic to work site minimum 200m.

**5.10 Existing Structure (arising out of Contract Works)**

The Insurers will indemnify the Insured against an Indemnifiable Event to Existing Structures at the Worksite, provided such loss or damage:

1. arises out of the performance of the Contract Works and
2. occurs and is discovered during the Construction Period.

Provided always that the indemnity under this Endorsement will not exceed the Sum Insured stated in the Schedule for Existing Structure for any one Indemnifiable Event.

**SUPPLEMENTARY EXCLUSIONS**

The Company will not indemnify the Insured against:

1. damage to floor and wall finishes, coverings or ceilings, superficial non structural items
2. loss of or damage to contents.
3. the cost of rectifying any loss or damage to the Existing Structure, which existed prior to the Inception Date of the Policy;
4. any damage occurring within the Construction Period or Defects Liability Period that is due to a cause or defect occurring prior to inception of the Policy

**5.11 Property, Cyber and Data Endorsement**

1. Notwithstanding any provision to the contrary within this Policy or any endorsement thereto this Policy excludes any:

1.1 Cyber Loss, unless subject to the provisions of paragraph 2;

1.2 loss, damage, liability, claim, cost, expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any loss of use, reduction in functionality, repair, replacement, restoration or reproduction of any Data, including any amount pertaining to the value of such Data, unless subject to the provisions of paragraph 3;

regardless of any other cause or event contributing concurrently or in any other sequence thereto.

2. Subject to all the terms, conditions, limitations and exclusions of this Policy or any endorsement thereto, this Policy covers physical loss or physical damage to property insured under this Policy caused by any ensuing fire or explosion which directly results from a Cyber Incident, unless that Cyber Incident is caused by, contributed to by, resulting from, arising out of or in connection with a Cyber Act including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any Cyber Act.

3. Subject to all the terms, conditions, limitations and exclusions of this Policy or any endorsement thereto, should Data Processing Media owned or operated by the Insured suffer physical loss or physical damage insured by this Policy, then this Policy will cover the cost to repair or replace the Data Processing Media itself plus the costs of copying the Data

from back-up or from originals of a previous generation. These costs will not include research and engineering nor any costs of recreating, gathering or assembling the Data. If such media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank Data Processing Media. However, this Policy excludes any amount pertaining to the value of such Data, to the Insured or any other party, even if such Data cannot be recreated, gathered or assembled.

4. In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.
5. This endorsement supersedes and, if in conflict with any other wording in the Policy or any endorsement thereto having a bearing on Cyber Loss, Data or Data Processing Media, replaces that wording.

#### Definitions

6. Cyber Loss means any loss, damage, liability, claim, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any Cyber Act or Cyber Incident including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any Cyber Act or Cyber Incident.
7. Cyber Act means an unauthorised, malicious or criminal act or series of related unauthorised, malicious 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.
8. Cyber Incident means:
  - 8.1 any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any Computer System; or
  - 8.2 any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any Computer System.
9. Computer System means:
  - 9.1 any computer, hardware, software, communications system, electronic device (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, data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.
10. Data means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System.
11. Data Processing Media means any property insured by this Policy on which Data can be stored but not the Data itself.

LMA5400 11 November 2019



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#### 5.12 Manufacturers, Suppliers, Engineers and Professional Consultants (Rights of Recourse)

It is agreed and understood that, otherwise subject to the terms and conditions of this Policy that the Insurers shall retain all rights of subrogation against manufacturers, suppliers, engineers and professional consultants (where not forming a part of the Named Insured) in respect of such loss or Damage insured under this Policy.

#### 5.13 Stockpiles Exclusion

Subject to the terms, exclusions, provisions and conditions contained in the Policy or endorsed thereon, the Insurers will not indemnify the Insured in respect of costs incurred for Damage to stockpiles unless adequate measures have been put in place to ensure protection and are in compliance with the Erosion and Sedimentation Plan. Such measures shall include but are not limited to bunding, sheet covering, stabilising, binders, vegetation and drainage.

For the avoidance of doubt, the Insurers will not indemnify the Insured in respect of costs incurred for reworking wet or saturated fill material arising from an increase in moisture content and where no other Damage has occurred to Insured Property.

#### 5.14 Temporary Access Roads Exclusion

Subject to the terms, exclusions, provisions and conditions contained in the Policy or endorsed thereon, the Insurers will not indemnify the Insured in respect of Damage to temporary access roads, haul roads, borrow pits, quarries, culverts or causeways that will not form part of the permanent completed Works.

#### 5.15 Cessation of Works Clause

If any unscheduled cessation of work occurs on a Contract for a period exceeding 60 consecutive days or if works are abandoned, the Insured shall:

- (a) immediately notify the Insurer of any the cessation of work or abandonment of the works; and
- (b) take reasonable precautions to protect the Insured Property to avoid or diminish the potential or severity of any Damage resulting therefrom.

After 90 consecutive days from the time that worked ceased or was abandoned, the Insurer reserves the right to alter the terms and conditions of this Policy.

#### 5.16 Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith

1. In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from
  - 1.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel
  - 1.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof
  - 1.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
  - 1.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared,

carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes

1.5 any chemical, biological, bio-chemical, or electromagnetic weapon.  
CL370 10/11/2003

#### 5.17 Sanction Limitation and Exclusion Clause

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America and Switzerland.

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#### 5.18 Endorsements applicable in respect of photovoltaic systems and their ancillary work:

##### MICROFRACTURE ENDORSEMENT LMA5517

- 1 Notwithstanding any provision to the contrary within this Policy or any amendment thereto, it is hereby understood and agreed that, Microfractures shall not be considered physical loss of or physical damage to Insured Property, regardless of the nature, scope or cause thereof, unless subject only to the provisions of paragraph 2 of this Endorsement.
- 2 Further to paragraph 1 of this Endorsement, Microfractures shall be considered physical loss of or physical damage to Insured Property where the Insured can evidence that:
  - 2.1 Microfractures occurred during the Policy Period as a direct result of a peril, cause or event not otherwise excluded; and
  - 2.2 more than 25% of the cells of any individual solar module have Microfractures which occurred during the Policy Period as a direct result of a peril, cause or event not otherwise excluded; unless the cause of the Microfractures is Thermal Cycling, which is excluded absolutely.
- 3 Once physical loss of or physical damage to Insured Property has been determined under the provisions of paragraph 2 of this Endorsement, all of the following conditions must apply before recovery can be made under this Policy:
  - 3.1 only individual solar modules with more than 25% of its cells containing Microfractures shall be indemnified;
  - 3.2 the power output on a per module basis must have degraded by more than 10% of the power output at the date of commissioning in excess of the manufacturer documented degradation rates for modules of an equivalent age immediately prior to the peril, cause or event giving rise to the loss; and
  - 3.3 the power output of each module must be at least 10% lower than immediately prior to the peril, cause or event giving rise to the loss; and
  - 3.4 for operational risks, thermal imaging of the Insured Property must have been carried out in the 12 months immediately prior to the peril, cause or event giving rise to the loss.
- 4 Microfractures will only be indemnified on a replacement cost value basis when panels are replaced. If the panels are not replaced, Insurers will only pay for the Actual Cash Value of

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the panel immediately prior to the peril, cause or event giving rise to the loss. In the event that the panels are not replaced within one year of the date of loss, Insurers will only be liable for the Actual Cash Value of the panels.

- 5 The Insured is responsible for paying the cost of testing modules for Microfractures up to the first \$10,000. Above this threshold, Insurers will pay fifty percent (50%) of the cost of testing for Microfractures thereafter up to a maximum of one percent (1%) of the physical loss of or damage to the values reported, whichever is greater. The cost of testing modules for Microfractures cannot be claimed under any other part of this Policy.

The cost of testing modules for Microfractures that constitutes physical loss of or physical damage to Insured Property will only be indemnified where modules are deemed to have suffered a covered loss as per the terms of this Endorsement.

The cost of testing modules does not prejudice the Policy Excess (s).

- 6 Subject to paragraphs 1, 2, 3 and 4 of this Endorsement, the maximum payable limit afforded by this Endorsement, including costs under Paragraph 5, is \$500,000. This sub-limit of liability is included within the Policy limit and not in addition thereto.

Indemnity under this paragraph 6 shall only be recoverable where a sub-limit of liability has been specified.

- 7 DEFINITIONS applicable to this Endorsement:

7.1 Microfractures: means the manifestation of any microscopic crack or fracture in the panel and/or cell of a solar photovoltaic module. For the purposes of this Endorsement the term Microfracture and Microcracking shall be considered the same and interchangeable.

7.2 Thermal Cycling: means the alternate heating and cooling of a material.

7.3 Actual Cash Value: for solar panels means the replacement cost of the panels less the ten (10) year straight line depreciation of the panel based on the actual age of the panels.

#### SERIAL LOSS ENDORSEMENT LMA 5587 (amended for Solar only)

- 1) Notwithstanding any provision to the contrary within this Policy, where there has been Damage to any property insured which is indemnifiable under this Policy, or which would have been indemnifiable but for the application of the Excess, that constitutes a Serial Loss then this Clause shall apply to limit Insurers' liability under this Policy. Each business interruption loss or delay in start-up loss (as applicable) which is indemnifiable under this Policy shall be limited to the same proportion as its corresponding loss or damage to property insured, as set out in paragraph 2.
- 2) Insurers' liability for Serial Loss is limited according to the following scale, after application of the Excess(s):  
  
First and second Loss Amounts 100%  
Third and fourth Loss Amounts 75%  
Fifth Loss Amount 50%  
Sixth and following Loss Amounts 0%
- 3) A separate Excess shall apply to each and every Loss Amount stated in Paragraph 2 of this Clause.
- 4) Loss Amount shall mean the indemnifiable claim amount associated with Damage to an individual item of insured property for example, but not by way of limitation, loss or damage to any of the following

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would be a single Loss Amount: photovoltaic (PV) cell module, battery system, charge controller, power storage battery, power inverter, cooling system, telecommunications device, switchgear, substation, transformer, PV cell mounting structure, tracker, foundation, power cable, power cable joint, workshop equipment and special tools, fire detection and protection equipment, security equipment, lighting equipment.

- 5) Each Loss Amount stated in Paragraph 2 of this Clause shall be indemnified in the chronological order in which the loss or damage occurred.
- 6) Without prejudice to the Insured's general obligations, Insurers' liability for Serial Loss is contingent on the Insured adhering to reasonable precautions or similar clause within the policy after discovery of the first Damage indemnifiable under this Policy. If the Insured does not adhere to the to reasonable precautions or similar clause within the policy clause after discovery of the first loss or damage, there shall be no cover under this Policy for the second and subsequent loss(es) or damage.
- 7) Serial Loss shall mean Damage of a similar nature or similar type or arising from a similar cause.
- 8) Notwithstanding Paragraph 3, if the Policy contains a "72 hour" provision, Damage within the scope of that provision shall constitute a single Loss Amount as stated in Paragraph 2 of this Clause. This Paragraph (8) shall not apply to loss or damage indemnifiable under this Policy resulting from any defect in material, workmanship, design, plan or specification.

The following clauses are included for Allied World 10% share of whole:

**POLLUTION & CONTAMINATION EXCLUSION CLAUSE**

This Policy does not apply to and specifically excludes losses resulting from pollution or contamination, but this shall not exclude loss resulting from Damage to Insured Property, used by the Insured for the purpose of the business not otherwise excluded, and caused by:

1. pollution and contamination which itself results from a Defined Peril hereby insured against;
2. any Defined Peril hereby insured against which itself results from pollution or contamination.

For the purpose of this exclusion a "Defined Peril" shall mean:

fire, lightning, explosion, aircraft, riot, civil commotion, strikers/locked-out workers, earthquake, subterranean fire, storm, flood, escape of water from any tank apparatus or pipe, impact, accidental escape of water from any automatic sprinkler installation, theft, accidental damage – glass/sanitary ware, accidental damage and subsidence or ground heave.

**ASBESTOS & TOXIC MOULD EXCLUSION**

This Policy shall not apply to and does not cover any actual or alleged loss, damage or liability whatsoever, directly or indirectly arising out of, resulting from or in consequence of, or in any way involving asbestos or toxic mould, or any materials containing asbestos or toxic mould in whatever form or quantity.



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