

Main Roads Western Australia

Principle Controlled Insurance Programme

Contract Works Insurance – Material Damage Annual Insurance
Policy

Period: 30 June 2023 to 30 June 2024



Definitions/Interpretations

The following Definitions apply to this Policy.

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

Computer Virus means a set of corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. Computer Virus includes but is not limited to 'trojan horses', 'worms' and 'time or logic bombs'.

Construction Period means 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 under such Contract:

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

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 until:

1. in accordance with i or ii above; or
2. the Named Insured formally advises the Insurer that the Contract(s) have been insured elsewhere;

whichever occurs first.

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

Contract 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).

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

Defects Claims means claims resulting from faulty material, workmanship, design, plan or specification.

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

Where the Contract provides for the Defects Liability Period to be extended upon rectification of a defect, the Defects Liability Period in respect of the rectification can be extended up to a maximum of 24 months following completion of the rectification works (36 months where required by contract for projects where the original estimated Contract Value exceeds AU\$50,000,000)

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 the 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.

Indemnity Value means:

- (i) 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;
- (ii) 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:

- (i) the Named Insured;
- (ii) many parent or subsidiary company (including subsidiaries thereof) of the Named Insured and any other organisation under the control of the Named Insured and over which it is exercising active management, whether now or hereafter incorporated;
- (iii) any of the following persons or entities for whom or for which the insured parties under clauses (i) and (ii) above are obliged to arrange insurance by virtue of a contract or assumption of responsibility, but only to the extent required by such contract or assumed responsibility and in any event only for such coverage and Limits of Liability as provided in this Policy:
 - (a) any principal or owner or agent of the principal or owner; or joint venture partner; or alliance participant;
 - (b) any construction manager, superintendent or project manager;
 - (c) any contractor or sub-contractor of any tier;
 - (d) any architect, engineer, engineer's authorised representative, surveyor, quantity surveyor or other professional consultant, but only in relation to their manual activities associated with the Insured Property and only whilst at the project site (such parties not being deemed to be contractors and sub-contractors in (iii) c above);
 - (e) any lessor, financier, mortgagee or trustee;
 - (f) any government body;
 - (g) suppliers whilst at the project site;
 - (h) any other party with an insurable interest in the Contract(s);

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

all for their respective rights and interests.

Insured Property:

- (i) 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;
 - (b) camp buildings, project buildings and all other temporary structures 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;

but excluding Construction Plant and Equipment and Existing Property not specified above.

- (ii) Existing Property being existing structures, buildings, plant, stock, machinery, equipment supplies, contents and real property of every description either owned by the Named Insured or for which they assume responsibility, but only in respect of Events during the course of completing the Insured Operations.
- (iii) Construction Plant and Equipment means:
 - (a) all construction plant, tools and equipment of every description including spare parts;
 - (b) employees' tools and equipment and personal property;

Property described in clauses (b) and (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.

- (iv) Property defined in clauses (i) to (iii) shall refer to property owned by the 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 Insured has agreed to insure, or in which the Insured otherwise has an insurable interest.

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

Named Cyclone means a storm which is declared a tropical cyclone by the Australian Bureau of Meteorology.

Offsite Storage means locations where the Insured stores Insured Property away from where the works are being undertaken.

Pavement Structure means the actual structure of the road above existing formation comprising sub base, base, binder course and surface course as detailed on the designed permanent works drawings.

Performance Testing Period means the period for the 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 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.

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

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.

Reinstatement Value means:

- (i) where the Insured 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;
- (ii) where the Insured 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

Storm means disturbance of the atmosphere manifested by, for example, a sudden heavy rainfall, loud 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

Tunnelling means the construction of underground passageways, subways and/or roads used for the movement of pedestrians or vehicular traffic that is open at both ends and is constructed by boring, drilling, excavating, or digging through the earth or any construction using horizontal directional drilling techniques. "Tunnel" does not include a structure constructed by open excavation and covering less than 250 metres in length which would be regarded as an intersection (or similar) rather than a cut and cover tunnel.

Underground Services means existing pipework, cables, conduits, conveying services such as electricity, gas, water, waste and electronic communications, located below the existing ground service.

Network means work which is in, on or over standing water, permanent water, water in box culverts, 'Beds or Banks' including dry creek beds which flood annually. The definition extends up to 10 metres horizontally of the 'Bed and Banks' or box culverts. The definition of 'Beds and Banks' is in accordance with the Water Act 2000.

The definition of 'Beds and Banks' is per the Water Act 2000.

Bed and Banks for a watercourse of lake, means land over which the water of the watercourse or lake normally flows or that is normally covered by the water, whether permanently or intermittently; but does not include land adjoining or adjacent to the Bed or Banks that is from time to time covered by floodwater.

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 Insured Property

The Insurers will indemnify the Insured in accordance with the Basis of Settlement, against Damage to the Insured Property from a cause not specifically excluded, occurring at Worksites or in transit within the Territorial Limits, during the Period of Insurance, irrespective of whether or not turnover has been generated and premium been earned on such Insured Property during the Period of Insurance.

1.2 Defects Liability

The Insurers will indemnify the Insured in accordance with the Basis of Settlement, against Damage to the Insured Property during the Period of Insurance from a cause not specifically excluded, irrespective of whether or not turnover has been generated and premium been earned on such Insured Property during the Period of Insurance, provided such Damage:

- (a) manifests itself during the Defects Liability Period and
- (b) originates from:
 - (i) an event on the contract site during the Construction Period before the certificate of close out is issued for the final section; or
 - (ii) an act or omission of any of the Insured parties or some other cause occurring in connection with an Insured party complying with the requirements of the Defects Liability Period 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 1.3(d) and 1.4 to 1.6 (as applicable).

(d) Local Authorities Clause

The indemnity provided by this clause 1.3(d) shall, subject to the Sub-Limit of Liability stated in the Schedule (if any), extend to include the extra costs (including demolition or dismantling) of Damaged Insured Property 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.

1.4 Undamaged Foundations

Where the Insured Property 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 Insured Property 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).

1.5 Output Replacement

If any item(s) of the Insured Property 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 Insured Property 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 Insured Property 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 Insured Property 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.

1.6 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

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 Contract 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 and reasonably 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 including ponded water affecting the Insured Operations arising out of Damage.

(ii) Temporary Protection

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

- (1) for the removal of and/or the temporary protection and safety of Insured Property;
- (2) 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 and reasonably incurred in respect of shoring up, propping, underpinning and temporary repairs as a consequence of actual or imminent Damage.

(b) Expediting Expenses

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

- (vi) additional administrative and/or overhead expenses.
- (c) **Professionals' Fees**

The professional fees of project managers, architects, surveyors, quantity surveyors, engineers, legal 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.
- (d) **Mitigation Expenses**

Reasonable costs and expenses incurred by or on behalf of the Insured in connection with or incidental to mitigating, containing, eliminating or suppressing actual or imminent threat to life or actual or 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;
 - (ii) 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.
- (e) **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.
 - (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 or in the vicinity of the Worksite.
- (f) **Inflation Protection**

In the event of delay in completion of any insured Contract (or part thereof) being incurred solely 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 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:

- (1) in consequence of any other delay not referred to above;
 - (2) by reason of any improvement or change in methods of working or construction;
 - (3) in redesigning the Contract, or incurred as a result of such redesign;
 - (4) for the acceleration of the progress of the Contract or to expedite repairs or to progress the Contract at a faster rate than previously achieved;
- (iii) No indemnity is provided in respect of the payment of penalties or liquidated damages, nor in respect of costs incurred to avoid such payment;
 - (iv) The Insurer's obligation to indemnify the Insured in accordance with this Extension will be reduced to the extent that the net increase in construction cost is recovered by the Insured from another party.
- (g) Sue and Labour
- Sue and labour and other costs incurred for general average contributions, the salvage, rescue, recovery or retrieval of Insured Property, 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. Such costs and expenses shall be covered notwithstanding the fact that the loss may not have arisen from physical damage to the item affected.
- For the purpose of claims for general average contributions and salvage charges recoverable hereunder, the Insured Property shall be deemed to be insured for its full contributory value.

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;
- (b) 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 (d).

2.3 Civil Authority

This Policy is extended to include loss resulting from Damage 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) normal wear and tear;
- (b) rust, oxidation, corrosion or gradual deterioration, in each case when due to normal atmospheric conditions or other gradual 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

(This Exclusion 3.3 is subject to Condition 4.21)

(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 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.

3.4 Aircraft or waterborne craft

Aircraft, waterborne craft not exceeding 8 meters in length 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 Insured.

3.6 Money

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

3.7 Marine/Air Transits

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

3.8 Breakdown of Construction Plant and Equipment

Damage to Construction Plant and Equipment caused by its mechanical or electrical breakdown, however this Exclusion 3.8 shall be limited to the part immediately affected and shall not extend to include other components or parts Damaged in consequence thereof.

3.9 Unsealed Roads

Damage to Pavement Structure without a weatherproof course arising from storm, rain, flood or inundation beyond the kilometre limits specified in the Schedule in respect of each Contract.

'Weatherproof course' is defined as when the bitumen based primary sealing (or other initial protection) is in place ahead of the subsequent final surfacing.

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;
- (b) for the purpose of this Exclusion 3.10 (a) only, combustion shall include any self-sustaining process of nuclear fission;
- (c) 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 3.11 (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) confiscation, expropriation, nationalisation, commandeering, requisition or destruction of or damage to property by order of the Government de jure or de facto or any public, municipal or local authority of the country or area in which

the property is situated; seizure or destruction under quarantine or customs regulations;

- (c) any act of terrorism.

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

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

3.12 Communicable Diseases

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.

3.13 Property Cyber and Data

1. Notwithstanding any provision to the contrary within this Policy or any endorsement thereto this Policy excludes any:
 - 1.1 Cyber Loss;
 - 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; regardless of any other cause or event contributing concurrently or in any other sequence thereto.

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

Definitions

4. 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.
5. 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.
6. Cyber Incident means:
 - 6.1 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
 - 6.2 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.
7. Computer System means 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.
8. 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.

4. Conditions applying to this Policy

The following Conditions apply to this Policy

4.1 Escalation

If during the Period of Insurance, the anticipated final Contract Value of a Contract or series of Contracts in connection with one project exceeds the Limit of Liability, then the Limit of Liability shall be increased by the percentage that represents the amount the anticipated final Contract Value for such Contract(s) exceeds the estimated Contract Value at commencement 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.

4.2 Claims Procedure

For estimated Damage up to AU\$100,000 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 AU\$100,000 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.
- (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, 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 incidental storage until unloading at the point of discharge at the final destination.

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 4.6), cover hereunder shall apply in the same manner and to the same extent as if individual policies had been issued to each such insured party provided that the total liability of the Insurers to all of the insured parties collectively shall not exceed the Limits of Liability or Sub-limits in this Policy. For the purposes of this Policy, each government department 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 any 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 4.6 as a "Vitiating Act".
- (e) However a Vitiating Act (save as provided in this clause 4.6) 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.
- (f) The Insurers agree to waive all rights of subrogation that they may have or acquire against any insured party 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, after notification has been made or received by the Named Insured's Representative. Any notice(s) given to any office of the appointed broker constitutes notice upon Insurers. Any such notice shall be deemed to be given on behalf of the Insured giving the notice and on behalf of all other Insureds.
- (b) Any notice(s) given by the Insurers to any party insured under this Policy shall also be given to all other named parties.
- (c) Any notice of claim given to the Insurers by any party insured under this Policy shall be accepted by the Insurers as a notice of claim given on behalf of all other parties insured under this Policy.
- (d) Subject to the Named Insured providing details to the Insurers of the name of the Nominee for Insurers' Notices and the relevant Contract provisions, the Insurers agree to provide 30 business days prior notice to that Nominee in the event of:
 - (i) the cancellation or expiry of this Policy 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 as follows.
- (b) After expiry of each annual period, the Named Insured will declare to the Insurers:
 - (i) the final values for all Insured Operations Carried out within the preceding annual period; and
 - (ii) if applicable, the actual value of Construction Plant and Equipment (in accordance with the agreed Basis of Settlement) at expiry since the preceding period.
- (c) The provisional Premium will be adjusted (subject to a minimum premium of 75% of the total deposit) by payment to the Insurers of an additional premium or by allowance to the Insured of a return premium, as the case may be calculated as follows:
 - (i) in respect of the Insured Operations, the agreed rate on the difference between the estimated and final values (as applicable) for the Insured Operations;
 - (ii) in respect of Construction Plant and Equipment, fifty percent (50%) of the difference between, the estimated and final values by the agreed rate.
- (d) If at any time there shall be any dispute or difference between the Insurers and the Named Insured as to the actual declared values, then for the purposes of

this clause at the request of either party, such values shall be determined by the President for the time being of the Australian Institute of Quantity Surveyors, or his nominee, acting as an expert and not as an arbitrator. The cost of any such determination shall be borne equally by the Insurers and the Named Insured.

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, in which case the Insured will be entitled to a pro-rata refund of the Premium.

(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

In the event of cancellation by either the Insurers or the Named Insured or non-renewal of this Policy, at the Named Insured's option, the insurance by all

Sections of this Policy shall continue in respect of Contracts and/or Works which have commenced or been awarded until:

- (i) the Contract and/or Work has been formally accepted by the principal/owner as practically complete and all maintenance and/or defects liability, testing and/or commissioning periods and/or activities have subsequently expired and/or been completed; or
- (ii) the Insured formally advises the Insurers that the Insured Property has been insured elsewhere;

whichever occurs first.

- (d) After cancellation by the Named Insured or the Insurers the premium will be adjusted, calculated on a pro-rated basis on the agreed policy premium rates. Cancellation will not affect the obligation of the Named Insured to supply to the Insurers such information as is necessary to adjust the premium.

4.13 Change in Policy Coverage at Anniversary date

In the event of change in scope of policy coverage of any sort including Limits, Sub-Limits, Excess levels, at the Anniversary date, the Named Insured may at their option continue the insurance under all Sections of this Policy in respect of Contracts and/or Works which have commenced or been awarded until:

- (i) the Contract and/or Work has been formally accepted by the principal/owner as practically complete and all maintenance and/or defects liability, testing and/or commissioning periods and/or activities have subsequently expired and/or been completed; or
- (ii) the Insured formally advises the Insurers that the Insured Property has been insured elsewhere;

whichever occurs first.

After such continuation of cover by the Named Insured the premium on these contracts will continue to be payable on turnover declared at either the prevailing policy rate for subsequent Periods of Insurance or in the event of non-renewal by Insurers hereon, at the premium rate of the last expired Period of Insurance of policy coverage.

4.14 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 from an unintentional or inadvertent error, omission or misdescription or any other information contained or omitted from any underwriting information supplied to the Insurers.
- (b) The Named Insured undertakes to immediately notify the Insurers as soon as the alteration or omission becomes known to them, 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.

4.15 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 such payments shall be deducted from the amount finally determined upon adjustment of the claim.

4.16 Engagement of Loss Adjusters

- (a) Aon is authorised to appoint a loss adjuster from the panel of Agreed Loss Adjusters to investigate and quantify losses that are potentially indemnifiable under this Policy. Loss adjuster fees and expenses shall be payable by the Insurers and shall not form part of any Excess borne by the Insured.
- (b) The Insurers and The Commissioner of Main Roads Western Australia (as Principals) agree that the Agreed Loss Adjusters shall be agents of the Insurers and The Commissioner of Main Roads Western Australia (as Principals) and all documents, transcripts, reports (verbal and written) shall be made available to the Insurers and The Commissioner of Main Roads Western Australia (as Principals.)
- (c) If at any time there shall be any dispute or difference between the Insurers and the Insured in respect of the adjustment of a loss, then the Insurers or The Commissioner of Main Roads Western Australia (as Principals) shall be entitled to appoint an independent loss adjuster.

4.17 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.

4.18 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 purposes 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.

4.19 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 a Contract prior to practical completion and such occupancy or operation shall not constitute handover of the Insured Operations.

4.20 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 90 days from the commencement of the Construction Period (such period referred to as the "Interim Cover Period"), and thereafter will only be covered subject to agreement by the Insurers.

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

Referral Contracts appearing in the 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 Contract Value for such Contract in its declaration to the Insurers under clause 4.8.

4.21 Defects Claims

The Insured at their own option may elect to submit a claim applying the Leg 2 Defects Exclusion 3.3(b) rather than the Leg 3 Defects Exclusion 3.3(a) and in such circumstances, the Insurers agree to apply only the LEG 2/96 Defects Excess

