

# Construction Excess Liability Annual Insurance Policy

Period: 31 December 2020 to 31 December 2021

Department of Transport & Main  
Roads Queensland



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# Construction Excess Liability - Annual Insurance Policy

## Introduction

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

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

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

Signed for and on behalf of the Insurers:

<b>Insurers</b>	<b>Policy No.</b>	<b>Proportion %</b>	<b>Signature</b>	<b>Place</b>	<b>Date</b>
Berkshire Hathaway Specialty Insurance		50			
Zurich Australian Insurance Limited		25			

## Schedule

<b>NAMED INSURED</b>	<p>The State of Queensland represented by the Department of Transport and Main Roads, (including its RoadTek division), Queensland Rail Limited, Queensland Rail Transit Authority</p> <p>Any alliance partner, sub alliance partner, alliance participant and sub alliance participant.</p>
<b>ADDITIONAL INSUREDS</b>	<p>(a) The Head Contractor(s) undertaking work on any Insured Project commencing during the Period of Insurance;</p> <p>(b) Any contractor or consultant (of any tier) to the Named Insured or the Additional Insureds in (a) and/or (b) above who at the time the work is awarded to them, are qualified to do that type of work by the Named Insured</p> <p>(c) Any other party named in a Contract;</p> <p>(d) Any subcontractor or sub consultant (of any tier) to the Named Insured or Additional Insureds not mentioned above.</p> <p>(e) Other parties as declared and agreed for each specific Project.</p>
<b>ABN AND ITC DETAILS</b>	<p>ABN 39 407 690 291                      ITC    0.00%</p>
<b>OTHER INTERESTED PARTIES</b>	<p>This Policy also insures other parties as specified in the definition of the Insured</p>
<b>NAMED INSURED'S REPRESENTATIVE</b>	<p>Principal Advisor (Insurance), Program Delivery and Operations Branch Department of Transport and Main Roads 313 Adelaide Street, Brisbane Qld 4000</p>
<b>BUSINESS</b>	<p>Principally but not limited to:</p> <ul style="list-style-type: none"><li><input type="checkbox"/> government instrumentality responsible for the design, construction, manufacture, testing, commissioning and maintenance of roads, busways, bridges and other transport and infrastructure (including Rail Infrastructure);</li><li><input type="checkbox"/> plant and equipment owners, operators and hirers, lessees and lessors;</li><li><input type="checkbox"/> civil contractors, designers, consultants, suppliers, project and construction managers, maintenance contractors;</li><li><input type="checkbox"/> property owners and occupiers, lessees and lessors, but only when in connection with the Insured Operations;</li></ul>

and all incidental and associated operations, trades and activities – directly related thereto

#### **INSURED OPERATIONS**

**All Contracts other than RoadTek IIS Contracts (as described hereunder) commenced during the Period of Insurance.**

All Contracts of any kind or description undertaken by or on behalf of the Named Insured and commenced during the Period of Insurance, however, Referral Contracts are subject to Referral Criteria condition 3.16

#### **REFERRAL CONTRACTS**

Are those Contract types listed below: where the insurers will grant interim cover as per Referral Criteria Condition

(a) Any Contract that includes bridge work where the Contract Value for any single bridge structure exceeds **\$50,000,000**

b) any Contract that includes Tunnelling and/or Horizontal Directional Drilling work where the Contract Value for any single tunnel structure exceeds **\$5,000,000**

(c) any Contracts where the total Contract Value exceeds **\$200,000,000**

(d) any Contract where the original estimated Construction Period for the Contract exceeds **36 months**

For the purpose of the Referral Criteria Condition, the Contract Values stated above shall be the estimated Contract Value at the commencement of the contract

#### **PERIOD OF INSURANCE**

From: 31 December 2020 at 4 PM Local Time (QLD).

To: 31 December 2021 at 4 PM Local Time (QLD)

#### **SCOPE OF COVER**

##### **Legal Liability:**

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

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

happening:

- (i) during the Construction Period or Defects Liability Period in respect of the Insured Operations
- (ii) during the Period of Insurance in respect of the Insured's Products;

within the Territorial Limits in connection with the Business and related Activities as a result of an Occurrence.

In respect to an alliance agreement entered into by the Named Insured, for the purposes of coverage under this Policy, where any government department or instrumentality of the State of Queensland is not specified (as a Named Insured) under this Policy, then they are considered to be a third party to this policy which is not bound by the releases of liability given by the alliance participants to each other in an alliance agreement.

#### **Defence and Other Cost**

In addition to any indemnity pursuant to clause 1.1 and the Limits of Liability the Insurers will pay in connection therewith:

- a). all legal costs and other expenses incurred with the written consent of the Insurers;
- b) all costs and expenses incurred by the Insured for legal representation at any coroner's inquest, fatal accident inquiry or court of summary jurisdiction;
- c) expenses incurred by the Insured for first aid rendered for injury to others at the time of an Occurrence;

#### **TERRITORIAL LIMITS**

Anywhere in the world but excluding any operations of the Insured domiciled in the United States of America or Canada. Notwithstanding the above, indemnity is provided to the Insured in respect of:

1. Products exported into those countries; and to
2. Directors of the Insured or Employees who are non-resident in such countries ;and
3. any person or firm engaged in a consultative capacity in such countries

#### **GOVERNING LAW OF CONTRACT**

Australian

#### **LIMITS OF LIABILITY**

Limit in respect of each Occurrence \$100,000,000  
\$100,000,000 in the aggregate annually from inception for all Occurrences in respect of Products each contract.

#### **In excess of**

Limit in respect of each Occurrence \$150,000,000  
\$150,000,000 in the aggregate annually from inception for all Occurrences in respect of Products each contract.

**NOMINEE FOR LEGAL SERVICE**

The Claims Manager of the Insurer stated in the Schedule

**NOMINEE FOR INSURERS' NOTICES:**

Notices under this Policy to be sent to:  
Queensland State manager Construction  
Marsh JLT Specialty  
111 Eagle Street  
Brisbane QLD 4000

**ENDORSEMENTS**

BHSI Electronic Data Exclusion

BHSI Sanctions Exclusion

**PREMIUM**

As agreed

# 1. Definitions and Interpretation

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

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

**Insured** includes each of the following:

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

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

## **Singular/Plural**

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

## **Headings**

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

# 2. Conditions

## **2.1. Maintenance of Primary and Underlying Excess Insurance**

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

## **2.2. Following Cover of Primary Insurance**

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

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

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

In respect of any additional Primary Insurance policy covering projects which fall outside of the scope of the Named Insured's specified Primary Insurance in item 1 of the Schedule, the indemnity by this Policy shall be subject to the same terms, definitions, conditions and exclusions (except as regards the Limits of Liability and the Premium) in accordance with the Primary Insurance specified in item 1 of the Schedule, until such additional Primary Insurance has been formally agreed by the Insurers and endorsed onto this Policy.



### **2.3. Claims Condition**

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

### **2.4. Costs**

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

### **2.5. Settlement of Losses**

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

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

### **2.6. Exhaustion of Underlying Aggregate Limit**

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

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

### **2.7. Premium Adjustment**

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

### **2.8. Cancellation**

- (a) By The Insurers

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

- (b) By The Named Insured

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

(c) Run-off Cover:

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

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

(d) Premium Adjustment

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

## 2.9. Application of Recovered Funds

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

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

## 2.10. 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.

#### **2.11. Notices**

- (a) Any notice(s) required by the Conditions of this Policy to be given to the Insurers shall be given by the Insured through any office of their insurance broker, Marsh JLT Specialty (Marsh) or direct to the Insurers. Any notice(s) given to any office of the appointed broker constitutes notice upon Insurers.
- (b) Any notice(s) given by the Insurers to any party insured under this Policy shall also be given to all other named parties.
- (c) Any notice of claim given to the Insurers by any party insured under this Policy shall be accepted by the Insurers as a notice of claim given on behalf of all other parties insured under this Policy.
- (d) If a Nominee for Insurers' Notices is stated in the Schedule, the Insurers agree to provide 30 business days prior notice to such Nominee in the event of:
  - i. cancellation or expiry of this Policy before completion of the Construction Period and Defects Liability Period due to non payment of Premium or any other cause;
  - ii. the Insurers giving any notice under this Policy.

#### **2.12. 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 Referral Contract's Construction Period (such period referred to as the "Interim Cover Period"), and thereafter will be covered subject to agreement by the Insurers.

The Named Insured shall provide to the Insurers, as soon as practicable, full part 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 the Insurers under clause 2.7.

If the Named Insured elects not to cover the Contract under this Policy, the Policy will be endorsed to confirm such coverage and any variation in terms and conditions shall be stated within the Endorsement. The Contract Value shall be declared in accordance with Clause 2.7

### **2.13 ELECTRONIC DATA EXCLUSION**

This Policy does not apply to Personal Injury, Property Damage, Advertising Injury, or any other loss, cost or expense of whatsoever nature directly or indirectly caused by, or resulting from or in connection with any actual or alleged:

1. Unauthorised or improper access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information in the form of Electronic Data, including, but not limited to, any patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information, or any other type of non-public information;
2. Violation of any statute, regulation, common-law, or any other law regulating or protecting access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information in the form of Electronic Data.

For purposes of this Exclusion, Electronic Data includes, but is not limited to, information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

This Exclusion applies to, among other things, damages or amounts associated with any notification costs, credit monitoring expenses, forensic expenses, public relations expenses, or any other loss, cost or expense, whether incurred by the Insured or others, arising out of any access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information that is subject to this Exclusion.

However, this Exclusion does not apply to:

- a. Direct Personal Injury, which, for purposes of this Exclusion only, means: bodily injury, death, sickness, disease, disability, shock, fright, mental anguish or mental injury; or
- b. Direct Property Damage, which, for purposes of this Exclusion only, means: physical damage to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical damage that caused it.

For the purposes of this Exclusion, tangible property does not include any information, facts, programs, instructions, commands, Electronic Data, and anything else stored as or on, created or used on, or transmitted to or from computers or their software, including, but not limited to, systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices, networks, clouds, or other media used with electronically controlled equipment.

### **2.14 SANCTIONS EXCLUSION**

Any coverage of whatsoever nature that is in violation of any United States of America economic or trade sanctions, or any other applicable trade or economic sanctions, law or regulation including but not limited to sanctions administered and enforced by the United Nations, the United States Treasury Department's Office of Foreign Assets Control (OFAC), or under laws or regulations of the European Union, United Kingdom, New Zealand or Australia.