



Department of Transport & Main Roads  
Queensland

Design & Construct Professional Liability  
Insurance Policy

Annual Bulk Program

Period: 31 December 2023 – 31 December 2024



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# Important Notice

## **Effect of Section 40 Insurance Contracts Act 1984 (Cth)**

This notice is provided in connection with but does not form part of this Policy.

This is a claims made and notified liability insurance policy. It only provides cover if:

1. a claim is made against the Insured, by some other person, during the Period of Insurance; and
2. the claim arises out of Professional Services committed, attempted or alleged to have been committed or attempted after the Retroactive Date stipulated in the Schedule.

Section 40(3) of the Insurance Contracts Act 1984 (Cth) applies to this type of policy. That sub-section provides that if the Insured becomes aware, during the Period of Insurance, of any occurrence or fact which might give rise to a claim against them by some other person, then provided that the Insured notifies the Insurers of the matter before this policy expires, the Insurers may not refuse to indemnify merely because a claim resulting from the matter is not made against the Insured during the Period of Insurance.

If the Insured, inadvertently or otherwise, does not notify the relevant occurrence or facts to the Insurers before the expiry of the policy, the Insured will not have the benefit of Section 40(3) of the Insurance Contracts Act 1984 (Cth) and the Insurers may refuse to pay any subsequent claim, notwithstanding that the events giving rise to it or the Professional Services alleged in it may have taken place during the Period of Insurance. If a claim is actually made against the Insured by some other person during the Period of Insurance but is not notified to the Insurers until after the Policy has expired, the Insurers may refuse to pay or may reduce its payment under the Policy if it has suffered any financial prejudice as a result of the late notification.

# Design & Construct Professional Liability Project Insurance Policy

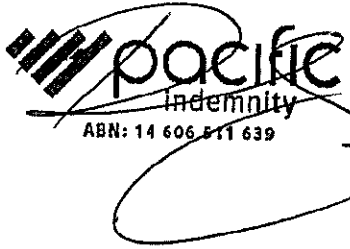
## Introduction

In consideration of the Named Insured having paid or agreed to pay the Premium, the Insurers agree to indemnify the Insured to the extent provided herein subject always to the Limits of Liability and Sub-limits of Liability of this Policy.

This Policy incorporates the Introduction, Schedule, Definitions and Interpretation, Insuring Clauses, Extensions, Exclusions, Claim and General Conditions and any other terms herein contained, which are to be read together. The Insurers agree that this Policy and any subsequent attaching Endorsements are accepted as their own.

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
Pacific Indemnity Underwriting Solutions Pty Limited on behalf of Berkley Insurance Company trading as Berkley Re.	02-ENG-0021102	100%		12/12/2023



- (b) Tunnels and Horizontal Directional Drilling Contracts (including where the Contract involves any level of this) All Contract Values
- (c) Wet Risks All Contract Values
- (d) Major Infrastructure Projects All Contract Values
- (e) All Other Projects Where the estimated Contract Value exceeds \$100,000,000

The following Projects are also deemed to be Excluded Contracts unless agreed by specific Endorsement;

- (f) Where the Project involves working in Difficult Ground Conditions.
- (g) Projects involving prototypical, innovative or unusual construction techniques, designs or materials

**ENDORSED CONTRACTS**

The following Contracts have been referred to and accepted by the Insurer in accordance with Clause 14

Nil

**POLICY PERIOD**

From: 31 December 2023 at 4 PM Australian Eastern Standard Time

To: 31 December 2024 at 4 PM Australian Eastern Standard Time

**GEOGRAPHICAL SCOPE**

This Policy responds to activities anywhere in the world, subject to the limitations of Policy Clause 29.

**RETROACTIVE DATE**

Unlimited

**LIMIT OF LIABILITY**

\$20,000,000 each Claim and in the aggregate for each Insured Project during the Period of Insurance subject to a maximum aggregate limit of \$100,000,000 for all Insured Projects.

The above limit is inclusive of Defence Costs and in addition to the Excess.



<b>SUB-LIMITS OF LIABILITY</b>	The Sub-limits of liability form part of, and are not in addition to the Limit of Liability:										
	<table> <tr> <td>Inquiries Costs</td> <td>\$1,000,000 each claim</td> </tr> <tr> <td>Court Attendance Costs</td> <td>\$100,000 each claim</td> </tr> <tr> <td>Loss of Documents</td> <td>\$1,000,000 each claim</td> </tr> <tr> <td>Public Relations Expenses</td> <td>\$250,000 each claim</td> </tr> <tr> <td>Claim Preparation Costs</td> <td>\$50,000 each claim</td> </tr> </table>	Inquiries Costs	\$1,000,000 each claim	Court Attendance Costs	\$100,000 each claim	Loss of Documents	\$1,000,000 each claim	Public Relations Expenses	\$250,000 each claim	Claim Preparation Costs	\$50,000 each claim
Inquiries Costs	\$1,000,000 each claim										
Court Attendance Costs	\$100,000 each claim										
Loss of Documents	\$1,000,000 each claim										
Public Relations Expenses	\$250,000 each claim										
Claim Preparation Costs	\$50,000 each claim										
<b>EXCESS</b>	<p>\$500,000 each and every Claim, other than:</p> <p>Inquiries and Personal Court Attendance Costs: \$50,000 each and every Claim</p> <p>Public Relations Costs: \$50,000 each and every Claim</p> <p>Loss of Documents: \$50,000 each and every Claim</p>										
<b>MARSH ADDRESS FOR NOTICES</b>	<p>Notices under this Policy to be sent to The State Manager Construction Marsh Pty Ltd 111 Eagle Street QLD 4000</p>										
<b>NOMINEE FOR INSURERS' NOTICES</b>	Not applicable										
<b>NOMINEE FOR LEGAL SERVICE</b>	<p>The Claims Manager The Insurer stated in the Schedule</p>										
<b>CURRENCY</b>	Australian dollars										

**SPECIFIED UNDERLYING  
INSURANCE**

Policy	Insurer	Limit	Lead Policy Number	Expiry Date
Contract Works	Allied World Assurance Company Ltd (Australia Branch)	\$100,000,000	P042635/003	31/12/2026
Primary Third Party Liability	Liberty Specialty Markets (lead) / Lloyd's of London	\$50,000,000	BNCAS23410573	31/12/2026
1 <sup>st</sup> Excess Third Party Liability	XL Insurance Company SE	\$50,000,000 excess of \$50,000,000	AU00009576LI23A	31/12/2024
2 <sup>nd</sup> Excess Third Party Liability	Lead Insurer: Allied World Assurance Company	\$50,000,000 excess of \$100,000,000	C068408-004	31/12/2024
Environmental	Liberty	\$25,000,000	BNCAS23410573	31/12/2026

**APPLICABLE LAW**

Queensland

**PREMIUM**

As agreed (and adjustable)

## Definitions and Interpretation

The following Definitions will apply to this Policy.

**Agent** means a natural person or company or other entity engaged by the Insured to act for or on behalf of the Insured in the provision of Professional Services.

**Associate** means any business venture or related or associated entity of any Insured which is owned, managed or operated directly or indirectly by any Insured, any person who at the time of the conduct giving rise to the claim is a family member of any Insured, any joint venture partner of any Insured, any parent or controlling entity, successor or assign of any Insured, any other person or entity, including but not limited to a trustee, who or which is controlled or operated by the Insured or where the Insured has a direct or indirect financial interest including but not limited to where the Insured is a beneficiary of a trust.

**Authorised Representative** means the person nominated from time to time by an Insured for the purpose of dealing with any potential or actual claim under this Policy.

**Claim** means any of the following:

- i any civil proceedings or written or oral demand made by a third party during the Period of Insurance however conveyed against the Insured for compensation or damages and notified to the Insurers during the Period of Insurance; and/or
- ii a notification by the Notifying Party to the Insurers during the Period of Insurance in respect of a First Party Loss first incurred by the Named Insured during the Period of Insurance; and/or
- iii a notification by the Notifying Party to the Insurers during the Period of Insurance of a circumstance or event that may lead to a Claim under either (i) or (ii) above; and/or
- iv an Inquiry.

Notwithstanding the above a claim may be brought against this Policy by The State of Queensland represented by the Department of Transport and Main Roads (including its RoadTek division), Queensland Rail Limited, and Queensland Rail Transit Authority.

For the purposes of the Limit of Liability and Excess, all Claims arising out of or in connection with the same or related conduct, events, acts, errors or omissions shall constitute a single Claim.

**All Other Projects** means where the estimated Contract Value exceeds \$100,000,000 for any type of Contract.

**Alliance Contract or a Collaborative Project Agreement** means: an Alliance Agreement or a Collaborative Project Agreement entered into by the Named Insured.

**Contract** means any contract or agreement, made verbally and/or in writing by or on behalf of the Named Insured, and includes a Contract novated by the Named Insured to another Insured, in respect of the relevant Insured Project.

**Contract Value** means the total value of the construction costs and professional fees but excluding GST incurred by or on behalf of the Insured in respect of the Insured Projects. It includes the value of principal supplied and other free supplied materials.

For the purpose of applying the Contract Value each Project undertaken under a separate Contract or work order or purchase order or similar arrangement, will be deemed to be a separate Project, irrespective of the existence of a service agreement or agreed rate or similar contract or master agreement that applies over more than one Contract.

**Court Attendance Costs** mean Personal Expenses necessarily incurred or suffered in connection with the attendance at court whilst the Insured is legally obligated to attend a civil proceeding as a witness in connection with a Claim.

**Defence Costs** mean:

- i reasonable costs and expenses incurred by the Insurers, or by or on behalf of the Insured but only with Insurers' prior written consent, such consent not to be unreasonably withheld or delayed, solely for the benefit of the Insured(s) in the investigation, settlement, defence or appeal of any Claim covered under this Policy;
- ii the costs of obtaining senior counsel's or Expert's advice for determination under this Policy pursuant to clauses 36 and 37.

Defence Costs does not include the Insured's salaries, wages, directors' fees, travel or accommodation expenses.

**Difficult Ground Conditions**, shall mean 'conditions requiring extensive soil remediation or improvement in order to provide an acceptable foundation for the Project to be constructed.

**Document** means a document of any nature whether written, printed or reproduced by any method, including computer records or electronic data, belonging to the Insured or for which the Insured is legally responsible but does not include Money.

**Endorsed Projects** means those Projects stated in the Schedule under "Endorsed Projects" and any other Projects that have been referred to and accepted by the Insurer(s) in accordance with Extension 14 and endorsed hereon.

**Excess** means the amounts noted in the schedule or the amount which the Named Insured has requested in any Contract that a contractor holds a certain level of professional indemnity insurance; then this amount will be the Excess, however at the sole discretion of the Named Insured.

**Expert** means an appropriately qualified industry expert to be mutually agreed upon by the Insurers and the Insured. In the absence of agreement, such expert is to be nominated by the President of Engineers Australia.

**Head Contractor** means the entity stated in the contract, who is bound to execute the Work under the Contract

**Inquiry** means:

- i any criminal proceeding against the Insured arising from an alleged breach of statute or regulation;
- ii any inquiry, legal, arbitral or other hearing;

relating to the provision of Professional Services by the Insured or its Agent if findings from such proceeding, inquiry or hearing could lead to a Claim being made against the Insured which may be covered under this Policy.

**Inquiry Costs** mean:

- i legal, assessor, adjuster, expert and other witness costs but does not include the Insured's salaries, wages, directors' fees, travel or accommodation expenses; and
- ii Personal Expenses necessarily incurred in connection with the attendance at the Inquiry.

**Insured** means:

- i The Named Insured;
- ii Additional Insureds stated in the Schedule;
- iii any parent or subsidiary company (including subsidiaries thereof) of the Named Insured and the Additional Insureds and any other organisation under the control of the Named Insured and over which it is exercising active management, whether now or hereafter incorporated;
- iv the predecessors in business of the Insured;
- v any past, present or future director, partner or principal of parties in i, ii, iii or iv above in respect of the provision of the Professional Services whilst acting in such capacity, including contracts executed in the personal name of such director, partner or principal;
- vi any past, present or future employee of the Insured of parties in i, ii, iii or iv above in the provision of Professional Services that occurred prior to their last day of employment with the party in i, ii, iii or iv above, including contracts of Professional Services executed in the personal name of such employee;
- vii any self-employed individual (and the entity under which such individuals trade) working under the control of or under contract with the Insured in respect of the performance of the Professional Services whilst acting in such capacity and on whose behalf the Insured in i and ii above have agreed to arrange insurance;
- viii in the event of the death or incapacity of any employee, director, partner or principal of the Insured parties in i to vii above, the estate, heirs, legal representatives or assigns of any such employee, director, partner or principal of such party.

**Insured Project(s)** means the Insured Projects stated in the Schedule and includes Endorsed Projects.

**Intellectual Property Rights** means any statutory and other proprietary right in respect of inventions, innovations, patents, utility models, designs, circuit layouts, mask rights, copyright (including future copyright), confidential information, trade secrets, know-how, trade-marks and any other right in respect of intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967 including but not limited to any right to register those rights.

**Local Time** means the Official Government Time set on Co-ordinated Universal Time (UCT) (which includes daylight savings time where observed) at the designated place stated in the Schedule.

**Loss** means:

- i Third Party Loss is any civil liability for compensation or damages payable to a third party; and/or
- ii the total direct costs necessarily and reasonably incurred by the Insured in taking action to rectify or mitigate the effects of any act or omission of the Insured in the provision of Professional Services that would otherwise result in a Loss under (i) above; and/or
- iii First Party Loss is any other costs, damages, expenses or loss incurred by or on behalf of the Named Insured, including any reasonable costs or expenses incurred by or on behalf of the Named Insured in taking action necessary to rectify, or to mitigate any costs, damages, expenses or loss.

*Loss does not include:*

- a) amounts uninsurable at law;
- b) regular or overtime wages or salaries or directors' fees incurred in assessing, investigating, dealing with or assisting others to deal with the Loss unless and to the extent incurred under (ii) above;
- c) indirect costs and expenses such as loss or diminution of Insured's profit, bonus, incentive payment or opportunity cost;
- d) costs and expenses in relation to any increased quality or standard from that specified or intended in the design parameters and or functional requirements of the relevant Contract;
- e) any costs, damages expenses or Loss under (ii) or (iii) above incurred by the Insured prior to obtaining the Insurer's written consent to incurring the same.

**Marsh** means Marsh Pty. Ltd ABN: 86 004 651 512

**Money** means money, negotiable instruments, shares, bonds, coupons, stamps, bank or currency notes or precious metals.

**Named Insured** means The State of Queensland represented by the Department of Transport and Main Roads or where the Contract is an Alliance or a Collaborative Project Agreement the Named Insured includes all parties to the respective collaborative agreement.

**Notifying Party** means the party(ies) stated in Schedule.

**Performance Adjustment Payment** means any payment (sometimes referred to as 'gainshare' payments) of reduction of revenue (sometimes referred to as 'painshare' payments) which rewards or penalises an Insured beyond any agreed base-line operating profit as a result of the performance of the Insured or the project as a whole.

**Personal Expenses** mean personal expenses incurred by the Insured or their nominated personal representative limited to:

- i transport, accommodation and other related disbursements for which the Insured provides receipts; and
- ii reimbursement of the Insured's nominated representative's annual income, calculated by dividing the last annual income of the Insured's nominated representative (by reference to the

nominated representative's current annual salary and duly validated) by 365 and multiplying the result by the number of days the nominated representative is required to attend any legal, arbitral or other proceedings with the prior written agreement of the Insurers.

**Period of Insurance** means, the period commencing with the entering into of each Contract in respect of an Insured Project provided such Contract is entered into during the Policy Period, until 10 years from the entering into of the Contract for that Insured Project.

**Pollutant** means any solid, liquid, gaseous or thermal irritant or contaminant including but not limited to smoke, vapour, soot, fumes, acids, alkalis, compounds, chemicals, asbestos including mould or waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**Professional Services** means one or more of the following services but only in respect of the Project:

- i design, including advice in relation to design, in accordance with all relevant building, construction or engineering codes and standards;
- ii drafting;
- iii technical calculation;
- iv specification;
- v project management;
- vi construction management;
- vii feasibility studies;
- viii programming and time flow management;
- ix quantity surveying;
- x surveying;
- xi contract administrators
- xii other services declared and agreed by the Insurers; and
- xiii training in respect of i to xi above;

provided it is performed by or under the direct supervision as applicable of:

- a) a properly registered engineer, architect or surveyor;
  - b) a quantity surveyor who is a member of the Australian Institute of Quantity Surveyors; or
  - c) any other person providing a professional service of a skilful character according to an established discipline, whether such person is an employee of the Insured or working under the control of the Insured or their Agent.
- xiv Professional Services excludes:
- a) performance or supervision (where such supervision would normally be undertaken by a building contractor, site supervisor, site manager, superintendent or foreman) of

- construction, manufacture, assembly, installation, erection, maintenance or physical alteration of buildings, goods, products or property;
- b) environmental protection, workplace health and safety or industrial relations matters which would normally be overseen by a building contractor;

**Project Type means:**

- i Bridges being works involving a structure built to span physical obstacles such as a body of water, valley, or road, for the purpose of providing passage over the obstacle.
- ii Horizontal Directional Drilling, being micro-tunnelling work for the construction of tunnels utilising surface based horizontal directional drilling equipment.
- iii Tunnels, being tunnels (including declines) involving underground works and underground drilling plant and underground crew, but shall not include Horizontal Directional Drilling Contracts.
- iv Wet Risks being any works where more than thirty-five (35) percent 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. Wet Risks shall not include Bridges.
- v Major Infrastructure Project means a Project classified as such by the Named Insured. For the purposes of determining whether a Project is considered a Major Infrastructure Project the Insurers agree to accept the designation applied by the Named Insured in all cases.

Other than in respect of a Major Infrastructure Project, in the event of a Contract or project comprising more than one Project Type, the Project Type shall be deemed the Project Type with the largest contract and materials value.

**Proportionate Liability Legislation** means the Civil Liability Act 2002 (NSW) Pt 4, Wrongs Act 1958 (Vic) Pt IVA, Civil Liability Act 2002 (WA) Pt 1 F, Civil Liability Act 2003 (Qld) Pt 2, Civil Law (Wrongs) Act 2002 (ACT) Ch 7A, Proportionate Liability Act 2005 (NT), Civil Liability Act 2002 (Tas) Part 9A, Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA) Pt 3, Trade Practices Act (Cth) s87C, Development Act 1993 (SA) s72, Building Act 2004 (ACT) s141 and Building Act 2000 (Tas) s252, and any similar legislation, all as amended from time to time.

**Proposal** means the proposal form and/or supporting underwriting information submitted by the Insured to the Insurers.

**Public Relations Expenses** mean the reasonable fees, costs and expenses of any public relations consultant engaged by the Insured for the sole purpose of protecting the Insured's reputation that has been or may be brought into question as a direct result of a Claim or potential Claim.

**Retroactive Date** means the retroactive date shown in the Schedule and only acts, errors or omissions in the provision of Professional Services after the Retroactive Date are covered by this Policy.

**Specified Underlying Insurance** means the policies so designated in the Schedule.



The following Interpretation will apply to this Policy.

**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.

**Singular/Plural**

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

**Inclusions**

'Includes' in any form is not a word of limitation.

# Insuring Clauses

The Insurers will indemnify the Insured as follows.

## 1 Professional liability

### **First Party**

The Insurers agree to indemnify the Named Insured for any First Party Loss incurred by the Named Insured as a result of any Claim in connection with the provision of Professional Services in respect of the Insured Projects specified in the Schedule.

### **Third Party**

The Insurers agree to indemnify the Insured for any Third Party Loss incurred by the Insured as a result of any Claim to the extent arising from the provision of Professional Services in respect of the Insured Projects specified in the Schedule.

## 2 Defence and other costs

The Insurers will also pay on behalf of the Insured Defence Costs in respect of any Claim insured under this Policy.

The Insurers agree to advance payment for Defence Costs, Inquiry Costs, Court Attendance Costs and Public Relations Expenses incurred by an Insured in the defence of a Claim, as they are incurred and prior to the final adjudication of the Claim, where:

- (a) indemnity under this Policy is confirmed in writing by the Insurers; or
- (b) at the Insurers' absolute discretion, without admitting indemnity, the Insurers agree to advance such costs until determined in accordance with Clause 37.

## Extensions applying to this Policy

Cover is automatically provided for the Extensions described below. Each Extension is subject to the other provisions of this Policy and no Extension shall increase the Insurers' Limit of Liability, unless expressly stated otherwise. The Insurers also agree to indemnify the Insured for any Loss incurred by the Insured as a result of any Claim in respect of the Insured Projects specified in the Schedule in respect of:

### 3 Competition and Consumer Act and Other Legislation

any allegation that the Insured has engaged in conduct that is misleading or deceptive or likely to mislead or deceive, or alleged misrepresentations by the Insured (not being deliberate or fraudulent representations) under the terms of the Competition and Consumer Act (Cth) 2010, National Consumer Credit Protection Act 2009 (Cth) or any Fair Trading legislation of any State or Territory of Australia or other equivalent Commonwealth or State or Territory legislation all as amended from time to time in the provision of Professional Services.

However the Insurers will exclude such Claims where the Insured conduct was established by final adjudication to be fraudulent or intended to mislead or deceive.

### 4 Intellectual Property Rights

any allegation that the Insured has infringed Intellectual Property Rights of any third party (not being an intentional infringement) in the provision of Professional Services.

For the sake of clarity the Insurers will exclude such Claims where the Insured conduct was established by final adjudication to be an intentional infringement of the Intellectual Property Rights of any third party.

### 5 Liability arising from fraud and dishonesty

notwithstanding Clause 24 – Fraud and dishonesty, the Insurers will pay on behalf of the Insured any Claim for Loss which the Insured becomes legally liable to pay in connection with arising out of or attributable to an allegation of fraudulent or dishonest conduct of the Insured or their Agent in the provision of Professional Services.

However Insurers will not make any payment on behalf of the Insured to any person, company or other entity who has knowingly committed or condoned the fraudulent or dishonest conduct.

### 6 Libel, slander or defamation

any Claim alleging any libel, slander or defamation or injurious falsehood by the Insured (not being an intentional libel, slander or defamation) in connection with the provision of Professional Services.

For the sake of clarity the Insurers will only exclude such Claims where the Insured conduct was established by final adjudication to be an intentional libel, slander or defamation.

## 7 Vicarious liability

any Loss which the Insured incurs or becomes legally liable to pay as a result of a Claim arising from the provision of Professional Services by an Agent.

The Insurers will not be liable under this clause for the Agent's own liability, nor will the Insurers be prevented from seeking recovery from an Agent, unless the Insurers have specifically agreed to include such Agent as an Insured.

## 8 Inquiries and Court Attendance Costs

Inquiry Costs and Court Attendance Costs which the Insured incurs on its own behalf and with the prior written consent of the Insurers such consent not to be unreasonably withheld or delayed, in preparing for and attending an Inquiry provided that the notice requiring the Insured to attend the Inquiry is first served upon the Insured during the Period of Insurance and reported to the Insurers during the Period of Insurance unless in connection with a Loss pursuant to Clause 1. Any concurrent or subsequent Loss arising out of an Inquiry notified hereunder shall be deemed to be notified under this Policy.

The maximum amount payable by the Insurers under this clause will not exceed the Sub-limit of Liability specified in the Schedule.

The Insurers will not be liable under this clause for

- (a) an Agent's own Inquiry Costs or Court Attendance Costs, unless such Agent is also an Insured; or
- (b) any Inquiry Costs which are considered uninsurable under applicable law and for which the Insurers are legally prohibited from paying.

## 9 Joint ventures

a Claim alleging any conduct, event, act, error or omission as a joint venture or partner, including any vicarious liability attaching to the Insured arising out of any Claim made against the joint venture or joint venture partner in the provision of the Professional Services.

This Extension does not operate to indemnify any such joint venture partner of the Insured unless the joint venture partner is also an Insured.

## 10 Loss of Documents

the costs and expenses of replacing or restoring Documents used in connection with the provision of Professional Services either owned by or the responsibility of the Insured where their loss or damage is first discovered during the Period of Insurance, subject to the following:

- (a) if any Sub-limit is applicable to this clause, such Sub-limit shall not apply to the Insured's legal liability as consequence of such Documents being lost or damaged.
- (b) the Insurers will not pay for any loss or damage arising from:

- i the dishonesty of the Insured; or
- ii wear and tear or gradual deterioration.

#### 11 Divested subsidiary companies/run-off cover

an Insured that ceases to exist or operate or is merged into, taken over by or sold to another entity during the Period of Insurance until the expiry date of the Period of Insurance.

#### 12 Public Relations Expenses

Public Relations Expenses arising out of the provision of the Professional Services, provided that:

- (a) the Insurers have given prior written consent to pay for Public Relations Expenses, such consent not being unreasonably withheld; and
- (b) the Insurers' liability in respect of each Claim under this clause shall not exceed the Sub-limit of Liability stated in the Schedule.

#### 13 Claim Preparation Costs

all reasonable and necessary out of pocket expenses incurred by the Insured in the preparation of a defence to any Claim or evidence to establish a Loss covered by this Policy, including the Insured's salaries, wages, or directors' fees and expenses associated with the preparation, retrieval, collation, copying and transportation of documents up to the Sub-limit of Liability stated in the Schedule. Expenses under this clause do not extend to include Defence Costs, Inquiry Costs, Court Attendance Costs and the Insured's legal adviser's fees.

#### 14 Excluded Projects

Other than in respect of a Major Infrastructure Project, the Insurers agree to cover the Excluded Projects stated in the Schedule in accordance with the provisions of this Policy for a period not exceeding 90 days from the date a Contract for the Excluded Project is entered into by the Insured (such period referred to as the "Interim Cover Period"). Thereafter this Policy will only cover such Project subject to agreement by the Insurers (referred to herein as an "Endorsed Project").

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

In the event that the Insurers' proposed Excess, Premium or other Policy terms required after the Interim Cover Period are not acceptable to the Named Insured, the Named Insured shall be under no obligation to declare an Excluded Project to the Insurers after the Interim Cover Period. If the Named Insured elects not to continue cover for an Excluded Project after the Interim Cover Period, the Named Insured is obliged to declare the expended Contract Value for such Excluded Project during the Interim Cover Period in its declaration to the Insurers under Clause 50.

An Endorsed Project appearing in the Schedule will be covered in accordance with the provisions of this Policy, subject to any agreed amendment to this Policy's Excess, Premium or other terms.

## Exclusions applying to this Policy

This Policy does not provide indemnity in respect of any Claim, Defence Costs or any other cover by this Policy in connection with or arising out of or attributable to:

### 15 Personal injury or property damage

- (a) death or personal injury to any person;
- (b) loss of or damage to any property or any loss of use or consequential loss arising there from;

unless and to the extent arising from the provision of Professional Services.

### 16 Workers compensation / employers liability

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

### 17 Product and workmanship

- (a) any defect or alleged defect in any product or good manufactured, supplied, sold, installed, assembled, repaired, erected or maintained by the Insured;
- (b) any cost or expense incurred in withdrawing any product or good from sale or recalling any product or good; or
- (c) any construction, assembly, installation or maintenance or workmanship;

unless and to the extent arising from the provision of Professional Services.

### 18 Pollution and contamination

- (a) liability arising out of the presence, discharge, dispersal, seepage, release or escape of any Pollutant;
- (b) any costs and expenses incurred in the prevention, removing, nullifying or clean-up of any Pollutant;

unless and to the extent arising from the provision of Professional Services.

### 19 Asbestos

asbestos, in whatever form or quantity.

20 Retroactive Date

the Insured's provision of Professional Services prior to the Retroactive Date stated in the Schedule.

21 Specified Underlying Insurance

any indemnity provided to the Insured under the Specified Underlying Insurance stated in the Schedule.

22 Guarantees, warranties and commercial liabilities

(a) any liability assumed by the Insured under any express guarantee or warranty, but this Clause 22(a) shall not apply to liability:

- i under a Contract novated to or by the Insured;
- ii under any mediation or arbitration provisions of a Contract;
- iii which would have attached to the Insured in the absence of such express guarantee or warranty; or
- iv assumed by the Insured contracting out of the operation of, or agreeing to settle a matter for an amount greater than, the provisions in any Proportionate Liability Legislation.

(b) any trading debt incurred by the Insured or any guarantee given by the Insured for a trading debt.

(c) the failure to provide, effect, or maintain any bond, surety or insurance.

23 Fines and penalties

liability arising from or attributable to any fine, penalty, punitive, exemplary, aggravated, multiple or liquidated damages, but this Clause 23 does not apply to civil awards which are compensatory.

24 Fraud and dishonesty

any actual or alleged dishonest, fraudulent, criminal or malicious act, error or omission of the Insured.

25 Occupier's liability

any occupation as tenant or ownership of any real property by the Insured, unless it results from the provision of Professional Services.

26 Prior Claims and circumstances

(a) any Claim made, threatened or intimated against the Insured prior to the commencement of the Period of Insurance;



- (b) any material facts that the Insured was aware of before the commencement of the Period of Insurance that might give rise to a Claim against the Insured;
- (c) any material facts reported, or which can be or could have been reported, to an insurer under any insurance policy entered into before the commencement of the Period of Insurance;
- (d) any facts disclosed to any insurer in any proposal for insurance before the commencement of the Period of Insurance; or
- (e) any facts disclosed to the Insurers in the Proposal;

unless the Insurers have specifically agreed by Endorsement to this Policy to cover any Claim in connection with or arising out of or attributable to the above facts or circumstances or where the provisions of Clause 52 apply.

## 27 Pre-estimation of construction costs

any act or omission in the process of formulating a contract price, cost estimate, tender or expression of interest or similar process.

However this Exclusion shall not apply post Contract award for the estimation of construction costs if the Professional Services are provided by a qualified quantity surveyor.

## 28 Money, negotiable instruments etc.

any loss of Money, unless involving theft or misappropriation of funds for which the Insured is legally liable to a third party.

## 29 USA and Canada jurisdictional limit

- (a) legal proceedings brought within the United States of America and/or the Dominion of Canada or any of their territories or protectorates;
- (b) the enforcement of any judgment or award obtained within or determined pursuant to the laws of the United States of America and/or the Dominion of Canada or any of their territories or protectorates; or
- (c) legal proceedings in which the laws of the United States of America and/or the Dominion of Canada or any of their territories or protectorates are applicable even if only in a limited respect.

## 30 Nuclear risks

ionising, radiations or contamination by radioactivity from any nuclear fuel, installation, reactor or other nuclear assembly, or from any nuclear waste from the combustion of any nuclear fuel.

This Clause 30 shall not apply to liability resulting from the use of commercial radioactive isotopes and which results directly from the provision of Professional Services.

### 31 War and terrorism

- (a) war, invasion, act of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war;
- (b) mutiny, military uprising, insurrection, rebellion, revolution, usurped power, martial law, a state of siege, nationalisation, confiscation, requisition, seizure of or loss of or damage to property by order of the government or by any public or local authority;
- (c) strike, riot, civil commotion or popular uprising;
- (d) any actual or threatened terrorist act.

For the purpose of this Clause 31, terrorist act shall have the meaning attributable to it in the Terrorism Insurance Act 2003 (Cth).

In the event any portion of this Clause 31 is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

### 32 Performance Adjustment Payments

any loss resulting from an increase or decrease in a Performance Adjustment Payment under any Collaborative Contract.

For clarity, it is intended that this Policy places the Insured in a position where the Insured is reimbursed for any loss up to their agreed base-line profit margin only, as a consequence of a Loss. The loss of 'gainshare' payments beyond the agreed baseline profit is not covered. 'Painshare' losses are indemnifiable under this Policy, but only up to the point where the Insured is paid for their loss plus their baseline profit margin.

### 33 Default or insolvency Exclusion

any Claim arising out of wilful default or act of insolvency as defined in the Collaborative Contract but only if the Insured committed or condoned the act or omission which gave rise to the wilful default or act of insolvency.

### 34 Related Entities

any Claim made against the Insured by or on behalf of any Insured or its Associates (in whatever capacity) except for Claims made by:

- (a) the Named Insured against any other Insured; or
- (b) the Head Contractor against any other party insured by this Policy, but not against the Named Insured.

## Claim Conditions applying to this Policy

### 35 Claims and circumstance notification

The Notifying Party or the Insured shall give to the Insurers, within the Period of Insurance, written notice of any Claim made or of a circumstances which may give rise to a Claim against the Insured. The Notifying Party or the Insured shall upon becoming aware of a Claim or of a circumstance during the Period of Insurance:

- (a) give notice thereof as soon as reasonably practicable to the Insurers via Marsh;
- (b) take all reasonable steps to mitigate the actual or potential amount of the Loss;
- (c) as soon as reasonably practicable thereafter submit a claim notification in writing to the Insurers via Marsh;
- (d) produce to the Insurers or to any person officially designated by the Insurers all such details, proof and particulars as may be reasonably required by the Insurers and permit extracts and copies of such documentation to be made and retained.

Notwithstanding the foregoing, it is understood and agreed that any Insured shall be entitled to take immediate action to avoid danger to persons or property and that such action shall in no way prejudice or invalidate the relevant Insured's position or entitlement with respect to any claim hereunder.

### 36 Determining the extent of policy cover

- (a) Where a Claim is insured only in part by this Policy, the Named Insured and Insurers shall allocate any Loss, Defence Costs, Inquiry Costs, Court Attendance Costs, Public Relations Expenses, or any other amount insured under this Policy, incurred by or on behalf of an Insured based upon the relative legal and financial exposure of the Insured.
- (b) If the parties cannot agree to an appropriate allocation in (a) above, or in respect of the settlement or defence of a third party claim, then the matter shall be determined by a senior counsel to be agreed by the Insurers and the Insured. If the parties are unable to agree a senior counsel, the matter will be remitted to the Chair or President of the Bar Association of the State in which the Project is located who will be asked to appoint the senior counsel. The senior counsel shall at their discretion appoint any Expert to investigate and advise on all matters to assist in his or her determination. Until the senior counsel has made his or her determination, the Insurers may, in their absolute discretion, pay such Loss, Defence Costs, Inquiry Costs, Court Attendance Costs, Public Relations Expenses or any other amount insured under this Policy as they consider appropriate.
- (c) Senior counsel appointed under this Clause 36 shall:
  - i act as an expert and not an arbitrator;
  - ii observe the rules of natural justice; and

- iii proceed with the determination, after seeking and considering the views of the parties, in a manner senior counsel thinks fit without being bound by the rules of evidence.
- (d) all costs relating to the determination are to be borne by the Insurers.
- (e) the determination of senior counsel shall be given in writing, with reasons, and the parties agree that the determination of senior counsel shall be final and binding upon each of them.
- (f) any payments made in advance by the Insurers before determination under Clause 36(e) shall be repaid to the Insurers by the Insured (or where more than one Insured has received such payments, by such Insureds severally according to their respective interests) in the event and to the extent the Insured is not entitled to payment of such Defence Costs, Inquiry Costs, Court Attendance Costs or Public Relations Expenses under the terms and conditions of this Policy.

### 37 Defence and settlement

The Insured shall not admit liability for or settle any Claim without the consent of the Insurers, which consent shall not be unreasonably withheld or delayed and:

- (a) the Insured shall not incur any costs or expenses without the consent of the Insurers, which shall not be unreasonably withheld or delayed;
- (b) the Insured shall assert all appropriate defences and cross claims for contribution, indemnity or damages and take all reasonable steps to defend the Claim; and
- (c) the Insured or the legal counsel retained by the Insured shall keep the Insurers fully informed about all matters relating to the defence of the Claim and will consult with the Insurers on prospects of settlement.

The Insurers shall be entitled at their option (but not obliged) at any time, to take over and conduct in the name of the Insured the defence or settlement of any Claim against the Insured and to claim indemnity at any time in the name of the Insured from any party against whom the Insured may have such rights.

The Insurers shall only settle a Claim with the consent of the Insured. If the Insurers and Insured cannot agree upon a settlement, then the matter shall be determined in accordance with Clause 36. If the Insured refuses to consent to a settlement which has been recommended by the Insurers and senior counsel and the Insured elects to continue the legal proceedings, then in those circumstances the Insurers' liability for the Claim will not exceed the amount for which the Claim could have been settled and the costs and expenses incurred up to the date of such refusal.

### 38 Handling & co-operation

The Insured shall immediately upon the Insurers' request give all such information and assistance to the Insurers as they may reasonably require to enable them to investigate and to defend a Claim and to make any cross claim for contribution, indemnity or damages and/or to enable the Insurers to determine their liability under this Policy. In particular, the Insured shall

on becoming aware, inform the Insurers of any other insurance or indemnities pursuant to which the Insured may be entitled to any benefit in respect of the Claim.

### 39 Insurers' rights and subrogation

- (a) Subject to Clause 40, upon the granting of indemnity for a Claim under this Policy, subject to any restrictions imposed by the Insurance Contracts Act 1984 (Cth), the Insurers shall be subrogated to all the rights and remedies of the Insured arising out of such Claim against any person or entity whatsoever.
- (b) The Insurers may pay to the Insured, an amount for which the Claim can be settled not exceeding the Limit of Liability subject to the deduction of any sum already paid as compensation in respect of such Claim and the Insurers shall thereafter be under no further liability in respect of such Claim except for the payment of costs and expenses for which the Insurers are liable hereunder and incurred prior to the date of such payment.
- (c) Any claim amount recovered shall be applied in the following order of priority:
  - i firstly to reimburse the Insured for the uninsured proportion of the loss, which includes any Excess paid by the Insured;
  - ii secondly, to reimburse the Insurers of any excess insurance over the indemnity by this Policy as their interest may appear;
  - iii thirdly, to reimburse the Insurers to the extent of their actual payment under this Policy;
  - iv fourthly, if any balance then remains unpaid, to reimburse the Insurers of any primary or Underlying Insurance as their interest may appear.

The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries. If there is no such recovery in proceedings conducted solely by the Insurers, they shall bear the expenses thereof.

### 40 Waiver of subrogation and severability

- (a) 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 a parent of or a subsidiary of any Insured, including any Queensland Government Agency, Queensland Government Department or Queensland Government Owned Corporation;
  - ii any other parties or persons, where the Insured has waived their rights under contract prior to the Loss occurring.

Provided that:

- iii each such Insured party complies with the terms and provisions of this Policy; and
- iv nothing contained in this Clause 40 shall limit the Insurers' exercise of rights of subrogation against an Insured party where the conduct giving rise to the Claim

involves a fraudulent, criminal, wilfully reckless, malicious or dishonest act, error or omission or act of insolvency on the part of that Insured party.

- (b) Notwithstanding Clause 22(a), where an Insured enters into a Alliance Contract, a Collaborative Project Agreement or any other agreement with another party which provides, among other things, that the Insured will indemnify and/or hold harmless and/or release from liability such other party in respect of any Loss or liability insured under this Policy, then this Policy shall not be prejudiced or invalidated by the Insured agreeing to such provision, and the indemnity and/or hold harmless and/or release from liability given by the relevant Insured shall be equally binding upon the Insurers.

# General Conditions applying to this Policy

The following Conditions apply to this Policy.

## 41 Limits of Liability

- (a) The Insurers' liability shall not exceed the Limit of Liability stated in the Schedule:
  - i for each Claim in the aggregate for each Insured Project during the Period of Insurance; and
  - ii the aggregate limit for all Insured Projects.
- (b) The Limit of Liability stated in the Schedule, is inclusive of the Sub-Limits of Liability, Defence Costs and other amounts Insured under this Policy.
- (c) Where a Sub-limit of Liability has an aggregate limit specified against it in the Schedule, the Insurers' liability for such Sub-limit of Liability, shall also apply to all Claims in the aggregate for each Insured Project during the Period of Insurance.
- (d) The Limit of Liability and Sub-limits of Liability shall apply in excess of any Excess.
- (e) For the purpose of applying the Limit of Liability, a Contract awarded directly with the Named Insured in connection with a schedule of works constitutes one Insured Project.

## 42 Application of Excess

- (a) The Excess shall be the first amount borne by the Insured and shall be uninsured. The Excess also applies to Defence Costs, Inquiry Costs, Court Attendance Costs and Public Relations Expenses.
- (b) Where the Insurers make a payment in relation to a Claim, which includes payment of part or all of the Excess, the Insured shall within 30 days of being notified by the Insurers, reimburse the Insurers for the amount of the Excess paid by the Insurers.
- (c) For the purpose of applying the Excess, each Project undertaken under a separate Contract or work order or purchase order or similar arrangement, will be deemed to be a separate Project, irrespective of the existence of a service agreement or agreed rate or similar contract or master agreement that applies over more than one Contract.
- (d) Should more than one Excess apply for any Claim, such Excesses shall not be aggregated and only the highest single Excess amount shall apply.

## 43 Notices

- (a) The Notifying Party or the Insured shall address all notices or communications required by this Policy to the Insurers and provide a copy to Marsh and at the address stated in the Schedule. The Insurers shall also address all notices or communications required by this Policy to the Insured and provide a copy to Marsh at the address stated in the Schedule.
- (b) The Insurers will accept notice of a Claim by Notifying Party or any Insured as notice by all Insureds under this Policy and that such notice is notice as required to be given to the Insurers for Claim notification. Where the Insured is required under contract to include a provision that the Insurers provide any notice under this Policy to all Insureds, the Insurers agree to be

bound by this undertaking. Marsh will assist the Insurers in identifying contact details for each Insured.

- (c) Notice of non-renewal by the Insurers
- (d) If the Insurers elect not to renew this Policy, they will send notice by registered post or e-mail to the Named Insured, (at Marsh's address) at least sixty (60) days prior to the expiration of this Policy's anniversary date in the event of:
  - i the cancellation or expiry of this Policy for any reason, including non-payment of Premium;
  - ii the Insurers giving any notice under this Policy.

#### 44 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.

#### 45 Assignment

If required, the Insurers will consider the assignment of this Policy to another party upon application by the Insured. Such agreement shall not be unreasonably withheld and will be expressed in writing.

#### 46 Cancellation

- (a) By the Insurers

Subject to Clauses 43(c) and 49, the Insurers may cancel this Policy in accordance with Section 60 of the Insurance Contracts Act 1984 (Cth) by serving on the Named Insured sixty (60) days' notice in accordance with Section 59 of that Act.

- (b) By the Named Insured

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

- (c) Run-off cover

In the event of this Policy being cancelled or not renewed and if requested by the Named Insured within 30 days of cancellation or non-renewal, cover by this Policy shall continue uninterrupted in respect of Insured Projects that have not commenced at the time of cancellation or non-renewal, provided that a Contract as defined herein has been entered into prior to the date of cancellation or non-renewal and that Contract relates to or is in respect of an Insured Project that has not commenced.



For the purposes of this Clause 46(c):

Contract means any contract or agreement, made verbally and/or in writing by or on behalf of the Named Insured in respect of Professional Services and includes a Contract novated by the Named Insured to another Insured.

Period of Insurance means the period commencing with the entering into of each Contract (as defined in this Clause 46(c)), provided that such Contract is entered into prior to the date of cancellation or non-renewal until 10 years from the date of this Policy being cancelled or not renewed.

#### 47 Currency

All monetary amounts expressed in this Policy are in the denomination stated in the Schedule.

#### 48 Jurisdiction and service of suit

The Insurers agree that:

- (a) this Policy is solely governed by the laws of Australia or if a specific State or Territory jurisdiction is stated in the Schedule, the laws of that State or Territory;
- (b) in the event of a dispute arising under this Policy, at the request of the Insured, the Insurers will submit to the jurisdiction of any competent court 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.

#### 49 Non imputation and severability

The Insurers agree that any act, neglect, fraud, misrepresentation, misdescription, non-disclosure or the failure to comply with this Policy's terms or conditions by any Insured, whether occurring prior to or during the Period of Insurance, shall not prejudice, reduce or render void the rights of any other Insured who is innocent of and has no prior knowledge of such conduct or omission. Any Insured becoming aware of such conduct or omission shall as soon as practicable after becoming aware of such, advise the Insurers in writing of all relevant facts.

Without limiting the above, the Insurers agree that any rights arising pursuant to Section 60 of the Insurance Contracts Act 1984 (Cth) to cancel this Policy shall only be exercised in respect of the party whose conduct or omission has given rise to the right.

## 50 Declarations and Premium payment

The Insurers agree that:

- (a) The Premium for this Policy is provisional and will be adjusted as follows:
  - i within 30 days of expiry of the Policy Period, the Named Insured will declare to the Insurers the final Contract Values by Project Type for all Insured Projects commenced and completed during the preceding period, and the projected Contract Values by Project Type for the Insured Projects commenced during the preceding period, but not completed as at the end of the Policy Period; and
  - ii The deposit Premium will be adjusted (subject to any minimum premium applicable) 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 by applying the agreed rate to the difference between the estimated and final or projected Contract Values (as applicable) for the Insured Projects;
- (b) 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 50, 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 their nominee, acting as an expert and not as an arbitrator. The cost of any such determination shall be borne equally by the Insurers.
- (c) Notwithstanding Clause 50(a) in the event this Policy is placed into Run-off pursuant to Clause 46(c) the Premium payable by the Named Insured will be the agreed, non-adjustable, Premium stated in the Schedule.

## 51 Primary cover

The Insurers agree that this is a primary policy covering breach of professional duty in respect of the insured Project and agree not to seek any contribution from any insurers of any other valid professional indemnity insurances held by any Insured with regard to any Claim(s) paid or payable by the Insurers under this Policy. However, the Named Insured may, at its sole discretion, waive any right or entitlement to rely upon this provision if the Named Insured has specified, mandated, requested or required in any contract that an Additional Insured must hold any type of insurance.

## 52 Innocent Non-disclosure

The Insurer will not seek to void, cancel or amend the terms and conditions applicable to an Insured Project declared under this Policy where it is alleged that there has been non-disclosure or misrepresentation of facts or incorrect particulars or statements in the written Proposal provided to the Insurer upon which this Insurance is based.

Provided that the Insured shall establish to the reasonable satisfaction of the Insurer that such alleged non-disclosure, misrepresentation or incorrect particulars or statements was made innocently and free of any fraudulent conduct or intent to deceive.