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**MARSH LTD**

CONTRACT NUMBER : - AS PER  
COLLECTIVE INSURANCE CLAUSE

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**WORDING ATTACHMENT**

**New Zealand Transport Agency  
Principal Arranged Insurance Program (PAIP)**

**Contract Works Insurance - Material Damage Annual  
Insurance Policy**

**Period: 30 June 2020 to 30 June 2021**



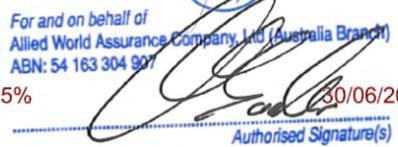
Contract Leader

## Introduction

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

The liability of all of the Insurers collectively will in no case exceed the Limits of Liability and Sub-limits stated in the Schedule or elsewhere in this Policy, Furthermore, the liability of each of the Insurers individually will in no case exceed the proportion set against each Insurer's name below.

Insurers	Policy Number	Proportion %	Signature / Stamp / Date
----------	---------------	--------------	--------------------------

NZI, a division of IAG NZ Limited	17-7029291-CAR	37.5% (lead)	 30/06/2020
AIG Asia Pacific Ltd	TBA	15%	 30/06/2020
QBE Insurance (Australia) Limited	P000333844CVL	32.5%	 30/06/2020
ALLIED WORLD Assurance Company, Ltd (Australia Branch)	P039000/004	15%	 30/06/2020 Authorised Signature(s)

Subject to:  
 - Electronic Data Exclusion NMA2915  
 - Communicable Disease Exclusion LMA5394 or equivalent



## Schedule

**Named Insured:** NZ Transport Agency (as Principals and/or Contractors)  
This Policy also insures other parties as specified in the definition of the Insured.

**Named Insured's Representative:** Marsh Ltd  
Level 18,  
151 Queen St  
Auckland, 1010,  
New Zealand

**Insured Operations:** Contracts commenced during the Period of Insurance except in respect of Road Maintenance Contracts (Network Outcome Contracts, Auckland System Management Maintenance Alliance and Auckland Harbour Bridge Sub Alliance) where cover is for losses occurring during the Period of Insurance.

All Contracts of any kind or description undertaken by or on behalf of the Named Insured and commenced during the period of Insurance, however, Referral Contracts are subject to Condition 4.19.

Maintenance Contracts Include Contracts on hand at the Inception of the Period of Insurance and Contracts commenced during the Period of Insurance but only in respect of losses occurring during the Period of Insurance.

**Referral Contracts (Conditions):**

Are those Contract types listed below where the Insurers will grant interim cover as per Condition 4.19.

Contract Type	Where the original estimated Contract Value for the Contract Type exceeds:
(a) Bridge Contracts	\$25,000,000
(b) Tunnelling Contracts	\$5,000,000
(c) All Contracts	\$200,000,000
(d) Wet Works Contracts	\$25,000,000



- (e) Where the original estimated Construction Period for a Contract exceeds 36 months All values
- (f) Where the original estimated Defects Liability Period for a Contract exceeds 24 months All values

- Period of Insurance:**
- From 4:00 p.m. on 30 June 2020  
To 4:00 p.m. on 30 June 2021  
Local Time
  - Any subsequent period for which renewal has been agreed.

**Maximum**

**Construction Period:** 36 months any one Contract but not applicable to Maintenance Contracts.

**Maintenance / Defects**

**Liability Period:** 24 months any one Contract

**Territorial Limits:** Anywhere in New Zealand, Including cover for Insured Property whilst in storage and in transit.

**Limits of Liability:** Limit of Liability any one Event any one Contract:

- Contract Works \$200,000,000 being the maximum initial estimated Contract value to attach. Estimated Contract value at the commencement of the Insured contract and/or work.
- Existing Property 25% of the estimated contract value at commencement subject to a minimum \$2,500,000 and maximum of \$25,000,000 any one Occurrence any one contract.  
  
Except Auckland Harbour Bridge which will be \$25,000,000 any one occurrence
- Construction Plant and Equipment (limit any one Item). Not covered



- 4. Limit per Event - this limit to include referral projects endorsed during the currency of the policy. \$200,000,000
- 5. All damage in respect of Earthquake Limit per Event \$200,000,000

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

**Sub-limits of Liability (any one Event any one Contract):**

Extensions:

2.1 (a) **Removal of Debris and Other Costs**

<b>Contract Value</b>	<b>Sub Limit</b>
< \$50,000,000	\$7,500,000
\$50,000,001 to \$100,000,000	\$12,000,000
\$100,000,001 to \$200,000,000	\$20,000,000

- 2.1 (b) **Expediting Expenses**  
not exceeding 150% of normal costs subject to a maximum of \$10,000,000

- 2.1 (d) **Mitigation Expenses** \$5,000,000

2.1 (c) **Professional Fees**

<b>Contract Value</b>	<b>Sub Limit</b>
< \$ 50,000,000	\$5,000,000
\$50,000,001 to \$100,000,000	\$10,000,000
\$100,000,001 to \$200,000,000	\$20,000,000

- 2.1 (e) **Government Fees**  
maximum amount for which the Insurer shall be liable is the amount payable in accordance with the relevant scales (up to a maximum amount of \$10,000,000 any one Occurrence any one Contract).



2.1 (f)	<b>Inflation Protection</b>	
	<b>Contract Value</b>	<b>Sub Limit</b>
	< \$50,000,000	\$1,000,000
	> \$50,000,000	\$3,000,000
2.1 (g)	<b>Sue and Labour</b>	\$2,500,000
2.1 (h)	<b>Insured Property whilst in transit (per conveyance)</b>	
	<b>Contract Value</b>	<b>Sub Limit</b>
	< \$50,000,000	\$2,500,000
	> \$50,000,000	\$5,000,000
2.1 (i)	<b>Offsite Storage (Per Location)</b>	
	<b>Contract Value</b>	<b>Sub Limit</b>
	< \$50,000,000	\$5,000,000
	> \$50,000,000	\$10,000,000
2.1 (j)	<b>Post Loss Land Reinstatement</b>	\$2,000,000
2.1 (k)	<b>Extra Expenses</b>	
	<b>Contract Value</b>	<b>Sub Limit</b>
	< \$50,000,000	\$5,000,000
	> \$50,000,000	\$10,000,000
2.1 (l)	<b>Claims Preparation</b>	\$250,000

**Unsealed Roads  
Limitation:**  
(Exclusion 3.10)

Each Event in respect of each Contract	5.0 kms any one work face, 10km in total any one Contract
--	---

**Basis of Settlement**  
(Insuring Clause)

- |    |                                  |                     |
|----|----------------------------------|---------------------|
| 1. | Contract Works:                  | Reinstatement Value |
| 2. | Existing Property                | Reinstatement Value |
| 3. | Construction Plant and Equipment | Not Applicable      |



**Nominee for****Insurers' Notices:**  
(Condition 4.7)**Nominee**  
NZ Transport  
Agency**Address**Victoria Arcade  
44 Victoria Street, Wellington 6141  
New Zealand**Nominee for Legal  
Service:**

(Condition 4.11)

To be agreed by Lead Insurer.

**Agreed Loss****Adjuster(s):**  
(Condition 4.14)Claims shall be adjusted with any of the following company(ies)  
or as otherwise agreed by the Insured and the Insurers:  
Crawford and Company, Cunningham Lindsey and Godfreys  
Chartered Loss Adjusters**Loss Payee:**

(Condition 4.15)

The Named Insured as applicable

**Excess:**

(Condition 4.4)

**Excess  
Category****Original****0 to 10m****Estimated****>10m to 50m****Contract Value****>50m**Each loss  
except as  
below:

\$10,000

\$25,000

\$50,000

Major Perils

\$25,000

\$50,000

\$100,000

Wet Work  
Contracts

\$150,000

\$200,000

\$300,000

Tunnelling  
Contracts  
(Including excavations /  
underpasses greater  
than 100m)

\$150,000

\$200,000

\$300,000

LEG 3/06  
Defects Claims

\$150,000

\$150,000

\$250,000



Earthquake for Wellington (Cresta zone 10)	5% of VARTOL minimum \$50,000 any one contract site, maximum \$500,000 any one contract site for Contracts in excess of \$50,000,000 and maximum \$250,000 any one contract site for Contracts less than \$50,000,000, maximum \$2,500,000 any one event
Earthquake locations Northland, Auckland, Waikato, Otago or Southland	1% of VARTOL minimum \$50,000 any one contract site maximum \$500,000 any one contract site for Contracts in excess of \$50,000,000 and maximum \$250,000 any one contract site for Contracts less than \$50,000,000, maximum \$2,500,000 any one event
Earthquake locations other than the above	2% of VARTOL minimum \$50,000 any one contract site, maximum \$500,000 any one contract site for Contracts in excess of \$50,000,000 and maximum \$250,000 any one contract site for Contracts less than \$50,000,000, maximum \$2,500,000 any one event

Road Maintenance Contracts (Network Outcome Contracts, Auckland System Management Maintenance Alliance and Auckland Harbour Bridge Sub Alliance) are subject to the following Excess Category:

Each loss except as below:	\$10,000
Major Perils:	\$25,000
LEG 3/06 Defects Claims:	\$250,000
Earthquake:	\$50,000



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<b>Premium: (Condition)</b>	<b>Item</b>	<b>Adjustable</b>	<b>Adjustment Factor</b>	<b>Estimated Value</b>
	1. Contract Works	Yes	Contract Values of Insured Operations but in respect of Maintenance Contracts turnover of Contracts applicable during the Period of Insurance	As agreed



Contract Leader

## 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 the 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. In the case of Road Maintenance Contracts it is a defined package of work and not the whole of the Network Outcome Contract, Auckland System Management Maintenance Alliance and Auckland Harbour Bridge Sub Alliance.

**Contract Value** means the total value of the 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 / defective 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.

**Defined Peril** means, for the purposes of Exclusion 3.8, fire and explosion.

**Earthquake** means shaking and vibration at the surface of the earth resulting from underground movement along a fault plane or from volcanic activity.

**Electronic Data** means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

**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 purposes 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. any parent or subsidiary company (including subsidiaries thereof) of the Named Insured and any other organisation under the control of the Named Insured and over which it is exercising active management, whether now or hereafter incorporated;
- 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);
- iv. any director, executive officer, employee, contract staff or partner of any of the insureds under clauses i, ii, 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:
- the whole of the works, whether permanent or temporary works, structures, materials and supplies including free supplied materials;
  - camp buildings, project buildings and all other temporary structures and their contents;
  - formwork, falsework, scaffolding, access platforms, hoardings, mouldings, and the like, whether the foregoing be consumable or reusable;
  - 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. Existing Property is specifically excluded under this Policy unless an amount is specified against this item in the Schedule.
- iii **Construction Plant and Equipment** means:
- all construction plant, tools and equipment of every description including spare parts;
  - employees' tools and equipment and personal property;

Property described in clauses i (b) and i (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.

**Major Perils** means Storm, Tempest, Flood, Named Cyclone, Water Damage, Volcanic Eruption, Tsunami, Subsidence and Collapse.



**Normal Action of the Sea** "normal" is the tidal action or other action of the sea with a return period less than twenty (20) years where Wetwork is exposed to the sea for up to twenty four (24) months, but fifty (50) years where Wetwork is exposed to the sea in excess of twenty four (24) months

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

**Performance Testing Period** means the period for the testing and/or commissioning of the Contracts Works or any off its component parts and begins when 'live load' is introduced, including the use of feedback 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
- iii in case of the physical loss or damage to electronic data processing media, notwithstanding any provision to the contrary within this Policy or any Endorsement thereto, the cost to repair, replace or restore such media to the condition that existed immediately prior to such loss or damage, including the cost of reproducing any Electronic Data contained thereon, providing such media is repaired, replaced or restored. Such cost of reproduction shall include all reasonable and necessary amounts, not to exceed the amount stated in the Schedule (if any) for any one Event, Incurred by the Insured in recreating, gathering and assembling such Electronic Data. If the media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank media. However this Policy does not insure any amount pertaining to the value of such Electronic Data to the Insured or any other party, even if such Electronic Data cannot be recreated, gathered or assembled.



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

**Structures** means any bridge, viaduct and other similar civil structure, but does not include road surfaces.

**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 excavation (e.g. trenches, foundation work, pits, cuttings, cut and cover and similar operations), nor to other works constructed within the confines of the artificial subterranean void. "Tunnel" does not include a structure constructed by excavation covering less than 100 metres in length which would be regarded as an intersection or underpass (or similar).

**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 any Contracts in or under any ocean, lake, river or other large body of water or watercourse, but does not mean any roadwork and/or Structures without piers or with a span of less than 30m in any water stream and/or brook.

**Contract Site** 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. For Road Maintenance Projects (Network Outcome Contracts, Auckland System Management Maintenance Alliance and Auckland Harbour Bridge Sub Alliance) the Contract site is the work completed in a defined Contract not the whole of the Network Outcome Contract, Auckland System Management Maintenance Alliance and Auckland Harbour Bridge Sub Alliance.

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

All Contracts other than Road Maintenance Contracts (Network Outcome Contracts, Auckland System Management Maintenance Alliance and Auckland Harbour Bridge Sub Alliance);

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 Contract sites or in transit within the Territorial Limits during the Construction Period.

Road Maintenance Contracts (Network Outcome Contracts, Auckland System Management Maintenance Alliance and Auckland Harbour Bridge Sub Alliance);

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 Contract sites or in transit within the Territorial Limits during the Period of Insurance.

### 1.2 Defects Liability – Extended

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, provided such Damage:

- (a) manifests itself during the Defects Liability Period and
- (b) originates from:
  - (i) a cause occurring during the Construction Period and happening at the Contract Site; or
  - (ii) an act of 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 sites(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 there under 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 Item(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).

### **1.7 Abandoned Undamaged Portion of a Structure**

Where any Property Insured being a structure is physically lost or damaged but not destroyed and due to the requirement of any law or of any local government or other statutory authority, reinstatement of such structure has to be carried out upon another site, the abandoned undamaged portion of such structure shall be considered as having been destroyed. If however, the resale value of the original site is increased by virtue of the presence of the abandoned portion of such structure, then such increase in resale value shall be regarded as salvage and that amount shall be paid to the Insurer by the Insured upon completion of the sale of the site or shall be deducted from the final amount of any moneys payable by the Insurer under this Policy, whichever shall occur later



## 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 service;
- (v) accommodation and boarding costs (including meals and other costs associated therewith);
- (vi) additional administrative and/or overhead expenses.
- (vii) Cost necessarily incurred in obtaining preferential treatment from the manufacturers and/or suppliers.

(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 fire fighting appliances or systems and costs and charges incurred for the purposes of shutting off the supply of water or any other substances 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 Contract site.

(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 redesigned 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 Contract site 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.

(h) Insured Property whilst in Transit

Damage to the Insured Property from a cause not specifically otherwise excluded whilst in transit within the Territorial Limits (other than by ocean marine shipment or air) including Damage occurring during any deviation therein or temporary storage in the course of transit (including any loading or unloading incidental thereto).

(i) Offsite Storage

Damage to the Insured Property from a cause not specifically otherwise excluded whilst in Offsite Storage within the Territorial Limits

(j) Post Loss Land Reinstatement

Where not otherwise recoverable under the terms of the Policy, the Insurer will indemnify the Insured for the costs incurred to reinstate and/or reconstitute and/or restabilise land, where the Insured Property suffers Loss or Damage as a result of any Occurrence for which indemnity is granted hereunder, and reinstatement of such land is necessary to support such Insured Property.

(k) Extra Expenses

The Insurer will indemnify the Insured for costs and expenses incurred by the Insured, if at any time during the Period of Insurance any, or all the Property Insured, suffers physical loss, destruction of or damage indemnifiable under this Policy,

Costs and expenses includes:

- (a) the reasonable extra expenses, incurred temporarily to continue the Project as nearly normal as practicable;
- (b) the reasonable extra costs of temporarily using property or facilities of the Insured or others.
- (c) any costs and expenses necessarily and reasonably incurred by the Insured not recoverable under contract / agreement which arise out of



the inability to utilise labour and/or materials and/or constructional plant and equipment (whether in whole or in part) following an indemnifiable claim under this Policy provided that Insurers will not indemnify the Insured under this Additional Benefit in respect of any costs and expenses arising out of the failure to undertake the repair or reinstatement of the Property Insured within a reasonable period of time

In no event shall costs and expenses include:

- (i) loss or expenses indemnifiable elsewhere in this Policy;
- (ii) costs which normally would have been incurred in respect of (a) and (b) above in completing the Project, during the same period, had no physical loss or damage indemnifiable by this Policy occurred.

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

(l) Claims Preparation

This Insurance automatically extends to cover costs and expenses necessarily incurred by the Insured in the preparation of claims for submission to the Insurer including (but not limited to) clerical labour costs and consultant fees but excluding legal costs and expenses.

## 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 be 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 1.3(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 Materials Workmanship or Design

- (a) All costs rendered necessary by defects of material workmanship design plan or specification and should any damage (which for the purposes of this Exclusion shall include any patent detrimental change in the physical condition of the Property Insured) occur to any portion of the Property Insured containing any of 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

For the purpose of this Policy and not merely this Exclusion it is understood and agreed that any portion of the Property Insured shall not be regarded as damaged solely by virtue of the existence of any defect of material workmanship design plan or specification (LEG 3/06)

Or at the option of the Named Insured whether or not involving physical loss or damage that has already occurred during the Period of Insurance:

- (b) All costs rendered necessary by defects of material workmanship design plan or specification and 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 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 (LEG 2/96).

**3.4 Aircraft or waterborne craft**

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

**3.5 Disappearance or Shortage**

Loss due to disappearance or revealed by inventory shortage alone, unless the shortage can be reasonably attributed to burglary, theft, pilferage or like dishonesty of persons other than the 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 (other than coastal shipping between New Zealand ports)**

Physical loss or damage to Insured Property in the course of ocean marine shipment (other than coastal shipping between New Zealand ports) or transit by air other than by flights wholly within New Zealand.

**3.8 Electronic Data Exclusion**

Loss, damage, destruction, distortion, erasure, corruption or alteration of Electronic Data from any cause whatsoever (including but not limited to Computer Virus) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting there from, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

However, in the event that a Defined Peril results from any of the matters described in this Exclusion 3.8, this Policy, subject to all its terms, conditions and exclusions, will cover physical damage occurring during the Construction Period or Defects Liability Period to Insured Property directly caused by a Defined Peril.

**3.9 Breakdown of Construction Plant and Equipment**

Damage to Construction Plant and Equipment caused by its mechanical or electrical breakdown, however this Exclusion 3.9 shall be limited to the part immediately affected and shall not extend to include other components or parts Damaged in consequence thereof.



### 3.10 Unsealed Roads

Loss or Damage to Unsealed Roadworks without a weatherproof course arising from storm, rain, flood or inundation in excess of five (5) kilometres of loss or damage per work face subject to an aggregate per Contract of ten (10) kilometres in total any one indemnifiable Event.

In the event that the work face affected is in excess of five (5) kilometres the Insured shall have the right to select the five (5) kilometres of work face relevant to the claim.

“Unsealed Roadworks” shall mean partial or completed roadworks that have not received a minimum of one application of a weatherproof course or substance.

“Section” shall mean any distinct coherent portion of road track up to a maximum length of five (5) kilometres built as part of the Contract.

### 3.11 Nuclear Risks

Loss, damage or liability directly or indirectly caused by or contributed to by or arising from:

- (a) ionising, radiations or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel;

for the purposes of this Exclusion 3.11(a) only, combustion shall include any self-sustaining process of nuclear fission;

- (b) nuclear weapons materials.

This Exclusion 3.11 shall not apply to Damage resulting from use of commercial radioactive isotopes.

### 3.12 War and Terrorism

Notwithstanding any provision to the contrary within this Policy or any endorsement thereto it is agreed that this Policy excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power. Notwithstanding this clause 3.12(a), this Policy shall cover loss, damage or liability caused by missiles and/or mines and/or bombs and/or other explosives not discovered at the moment of commencement of this Policy as long as no state of war exists in the country where the loss occurs; or
- (b) 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) or 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 3.12 (a) and/or 3.12(b) above.

In the event any portion of this Exclusion clause 3.12 is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

### 3.13 Wet Works

In relation to any Wet Work, the following additional Exclusions apply:

- a) loss or damage to Property Insured caused solely due to erosion or scour as a direct result of tidal action and normal action of the sea;
- b) loss or damage to the Property Insured arising from the overtopping of cofferdams unless the Property Insured is protected against Agreed Return Period;
- c) the cost of dredging and re-dredging;
- d) loss of fill

For the purposes of Exclusion 3.13(a), "normal" is the tidal action or other action of the sea with a return period less than twenty (20) years where Wet Work is exposed to the sea for up to twenty four (24) months, but fifty (50) years where Wet Work is exposed to the sea in excess of twenty four (24) months.

For the purpose of Exclusion 3.13(b), "Agreed Return Period" means a flood return period of one (1) in twenty (20) years where Wet Work is exposed to flood for up to twenty four (24) months, but a return period of one (1) in fifty (50) years where Wet Work is exposed to flood in excess of twenty four (24) months.



## 4 Conditions applying to this Policy

The following Conditions apply to this Policy

### 4.1 Escalation

If during the Construction Period, 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

Upon the happening of any Event likely to give rise to a claim under this Policy, the Insured shall give notice thereof to the Insurer as soon as practicable after such information shall come to the knowledge of the Insured.

As soon as possible thereafter the Insured shall render a statement to the Insurer, stating the knowledge of the Insured as to the time and cause of the physical loss, destruction of or damage, and the interest of the Insured and all others in the Property Insured.

Claims Process shall be as follows:

- Initial site visit by assessor - arrangement to be made within 1 working day from receipt of notification by lead insurer
- Preliminary assessor's report to insurers - 7 working days from initial site visit
- Confirmation of indemnity by insurers - 10 working days from receipt of assessor's preliminary report via email from lead insurer or explanation why indemnity cannot be granted
- Request for all information necessary to assess the claim to be made at commencement of the claim (follow up questions accepted in reasonable time if Indemnity cannot be granted).
- Insurer / assessor response to requests for progress updates – 2 working day to respond to request from insured for current claim status updates
- Delivery of assessor progress updates to insurers - 10 working days from relevant meetings / visits / correspondence; Lead Insurer to follow up assessor and confirm status and developments of claim and timeframe for next update / report
- Progress payment from Insurers - Once indemnity has been granted Insured is entitled to progress payment(s) within 7 working days – agreed minimum of 50% of initial loss estimate
- Final settlement / confirmation of advice - 10 days from final assessor's report Lead Insurer to forward email to broker and all insurers advising of final settlement approved and the amount; release only used on the final payment
- Lead insurer ensures co-insurers are promptly updated either directly or via the loss adjuster on progress of settlement



### 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 Contract site 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 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, 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) It is noted and agreed that if the Insured described in the Schedule comprises more than one insured party each operating as a separate and distinct entity then (save as described in this Condition) cover under this Policy 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 Sums Insured and including any sub limits set by the Additional Benefits or Endorsement stated in this Policy.
- (b) It is understood and agreed that any payment or payments by Insurers to any one or more such Insured parties shall reduce to the extent of that payment Insurers' liability to all such parties arising from any one Occurrence giving rise to a claim under this Policy and (if applicable) in the aggregate
- (c) It is further understood that the Insured parties will at all times preserve the rights of the Contract(s) or Agreement(s) entered into by the Insured parties and the contractual remedies of such parties in the event of loss or damage. However, the Insurers agree to waive all rights of recovery which they may have acquired by payment of a claim under this Policy to recover the amount so paid from any person or party with whom the Insured, prior to the Occurrence of the loss or damage, shall have agreed in writing to waive their rights of recovery in respect of any loss of or damage which may be caused by such person or party and such loss or damage is covered under this Policy.
- (d) It is understood and agreed that any non disclosure or misrepresentation (whether fraudulent or otherwise), any breach of a term or condition of a policy, or any fraud or other act, omission or default by one Insured party does not and will not effect another Insured party's right to claim under this Policy.
- (e) Insurers agree to waive all rights, remedies or relief to which it might become entitled by way of subrogation against any of the parties comprising the Insured.

**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, Marsh New Zealand (Marsh) 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) Within 90 days of the expiry of each Period of Insurance, the Named Insured will declare to the insurers:
  - (i) the final Contract Values by contract type for all Insured Operations commenced and completed during the preceding period, and the projected Contract Values by contract type for the Insured Operations commenced during the preceding period, but not completed as at the end of the Period of Insurance; and
  - (ii) in respect of Road Maintenance Contracts (Network Outcome Contracts, Auckland System Management Maintenance Alliance and Auckland Harbour Bridge Sub Alliance) the turnover applicable during the Period of Insurance in respect of all Maintenance Contracts on hand and commenced within the Period of Insurance.
  - (iii) If applicable, the actual value of Construction Plant and Equipment (in accordance with the agreed Basis of Settlement) at expiry since the preceding period.
- (c) The provisional Premium will be adjusted (subject to any minimum and deposit 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 as follows:
  - (i) In respect of the Insured Operations, the agreed rate on the difference between the estimated and final or projected Contract Values or turnover (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) In the event of the Named Insured electing to continue cover under this Policy in respect of any Contract / Insured Property, after the insured exercising the option to continue cover under this Policy, the Named Insured shall provide relevant declarations on an annual basis until such time as:
  - (i) All Construction Periods of Contracts insured under this Policy have expired; or
  - (ii) Alternative insurance arrangements are effected.

This clause (d) does not apply to Maintenance Contracts.

- (e) If at any time there shall be any dispute or difference between the insurers and the Named Insured as to the actual declared values, then for the purposes of this clause and clause 4.1, at the request of either party, such values shall be determined by the President for the time being of the New Zealand 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 New Zealand;
- (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 of New Zealand. 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 and 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 by serving on the Named Insured sixty (60) days notice, 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 insured's unless otherwise specified) may cancel this Policy or cancel cover in respect of any Contract or Insured Property at any time by giving notice in writing to the insurers.

- (c) Provisions

After cancellation by the Named Insured or the Insurers, the premium will be adjusted in accordance with Condition 4.8(a) and (b), except that the declared final or projected Contracted Values shall be at the date of cancellation. The Named Insured will be obliged to supply to the insurers such information as is necessary to determine adjustment of the Premium.

#### **4.13 Alterations in Material Fact / Error or Omission**

- (a) The insured will not be prejudiced under this Policy in the event of any alteration in material fact or otherwise regarding construction methods or procedures 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.

#### **4.14 Engagement of Loss Adjusters**

- (a) Marsh 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 Insured agree that the agreed Loss Adjusters shall be agents of the Insurers and the Insured and all document, transcripts, reports (verbal and written) shall be made available to the insurers and the insured.
- (c) If at any time there shall be any dispute or difference between the Insurers and the Insured in respect of the adjustment of a loss, then the Insurers or the Named Insured shall be entitled to appoint an independent loss adjuster.

#### **4.15 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.

#### **4.16 Sanctions**

The Company will not be liable to provide any coverage or make any payment hereunder if to do so would be in violation of any sanctions law or regulation which would expose the Company, their parent company or their ultimate controlling entity to any penalty under any sanctions law or regulation.

#### **4.17 Currency**

- (a) All monetary amounts expressed in this Policy are in New Zealand dollars (NZD). The Premium and losses shall be paid in New Zealand dollars (NZD) 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 New Zealand dollars (NZD) in accordance with the insured's accounting practices.

#### **4.18 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.

#### **4.19 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.



## 5 Endorsements applying to this Policy

The following Conditions apply to this Policy

### 5.1 Tunnelling Contracts

This policy does not cover costs and expenses in respect of Tunnelling Contracts incurred for:

- alterations in the construction method or due to unforeseen ground conditions or obstructions,
- measures which become necessary to improve or stabilise ground conditions or to seal against water ingress,
- removing material which has been excavated, or due to overbreak less than 20% of the design profile and/or for refilling cavities resulting therefrom
- dewatering unless necessary to reinstate indemnifiable loss or damage,
- loss or damage due to breakdown of the dewatering system if such loss or damage could have been avoided by use of standby facilities,
- the abandonment or recovery of tunnel-boring machines,
- the loss of bentonite, suspensions, or any media or substance used for excavation support or as a ground-conditioning agent.

unless necessary to reinstate indemnifiable loss or damage

In the event of indemnifiable loss or damage the maximum amount payable under this Restriction shall be limited to the costs incurred to reinstate the Property Insured but not in excess of the sum stated below:

\$50,000,000

The maximum sum payable is inclusive of all applicable Sub-Limits.

This Tunnelling Contract Endorsement shall not apply in the event of loss or damage due to seismic activity.

### 5.2 Landscaping Defects Liability Period

Insurers hereon note and agree that All Contracts attached under this policy are subject to the following Special Condition in respect of the Defects Liability Period for Landscaping.

Item (f) of the policy schedule refers to Referral Contracts (Conditions) where the original estimated Defects Liability Period for a contract exceeds 24 months (as per condition 4.19 applying to this Policy).

It is agreed and understood that Landscaping contracts or contracts with a separable portion relating to Landscaping with a Defects Liability Period greater than >



24 months can automatically attach to the policy and will not be treated as Referral Contracts.

It is agreed and understood that with respect to contracts and/or a separable portion relating to Landscaping (only) including a corresponding defect period exceeding 24 months, there is no cover beyond the maximum 24 months defect period specified in the policy.

**5.3 Serial Losses (to apply with the LEG3 Defects exclusion)**

It is agreed and understood that otherwise subject to the terms, exclusions, provisions and conditions contained in the Policy or endorsed thereon, the following clause shall apply to this insurance:

Loss or damage due to faulty design (if covered by endorsement), defective material and/or workmanship arising out of the same cause to structures, parts of structures, machines or equipment of the same type shall be indemnified according to the following scale after applying the policy deductible for each loss:

- 100% of the first 2 losses
- 80% of the 3rd loss
- 60% of the 4th loss
- 50% of the 5th loss

Further losses shall not be indemnified.



## **ELECTRONIC DATA ENDORSEMENT (AIG & AWAC SHARE)**

### 1. Electronic Data Exclusion

Notwithstanding any provision to the contrary within the policy or any endorsement thereto, it is understood and agreed as follows:

- a) This policy does not insure loss, damage, destruction, distortion, erasure, corruption or alteration of ELECTRONIC DATA from any cause whatsoever (including but not limited to COMPUTER VIRUS) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

ELECTRONIC DATA means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

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'.

- b) However, in the event that a peril listed below results from any of the matters described in paragraph a) above, this policy, subject to all its terms, conditions and exclusions, will cover physical damage occurring during the policy period to property insured by this policy directly caused by such listed peril.

Listed Perils – Fire, Explosion

### 2. Electronic Data Processing Media Valuation

Notwithstanding any provision to the contrary within the policy or any endorsement thereto, it is understood and agreed as follows:

Should electronic data processing media insured by this policy suffer physical loss or damage insured by this policy, then the basis of valuation shall be the cost of the blank media plus the costs of copying the ELECTRONIC DATA from back-up or from originals of a previous generation. These costs will not include research and engineering nor any costs of recreating, gathering or assembling such ELECTRONIC DATA. If the media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank media. However this policy does not insure any amount pertaining to the value of such ELECTRONIC DATA to the Assured or any other party, even if such ELECTRONIC DATA cannot be recreated, gathered or assembled.

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## **COMMUNICABLE DISEASE EXCLUSION (AIG & AWAC SHARE)**

1. Notwithstanding any provision to the contrary within this (re-)insurance agreement, this (re-)insurance agreement excludes 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 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 damage to human health or human welfare or can cause or threaten damage to, deterioration of, loss of value of, marketability of or loss of use of property.

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