




## Construction Risks - Material Damage Project Insurance Policy

**PROJECT:** 

**PERIOD:** 

**PRINCIPAL INSURED:** Roads and Maritime Services (RMS)

INTRODUCTION.....	3
SCHEDULE .....	4
DEFINITIONS / INTERPRETATIONS .....	6
1. INSURING CLAUSES.....	11
1.1 Insured Property .....	11
1.2 Maintenance or Defects Liability .....	11
1.3 Basis of settlement.....	11
1.4 Local Authorities Clause.....	12
1.5 Undamaged Foundations .....	12
1.6 Output Replacement .....	12
1.7 Reasonable Margin for Profit .....	13
2. EXTENSIONS APPLYING TO THIS POLICY.....	14
2.1 Additional Costs and Expenses .....	14
2.2 Plot ratio indemnity .....	17
2.3 Civil authority.....	17
3. EXCLUSIONS APPLYING TO THIS POLICY.....	18
3.1 Defects (LEG 2/96) .....	18
3.2 Consequential loss.....	18
3.3 Corrosion, Wear and Tear.....	18
3.4 Aircraft or waterborne craft .....	18
3.5 Disappearance or shortage .....	18
3.6 Money .....	18
3.7 Transits outside Australia .....	18
3.8 Radioactive.....	19
3.9 Electronic Data Exclusion.....	19
3.10 War .....	19
3.11 Terrorism.....	20
3.12 Breakdown of Construction Plant and Equipment.....	20
3.13 Vegetation .....	20
3.11 Earthwork Materials and Pavement Materials.....	20
3.12 Offshore in respect to RMS Maritime Services operations .....	21
3.13 Foreshore or tidal excavation and pile driving. (in respect of RMS Maritime Activities ONLY).....	21
3.14 Sanctions and Embargoes .....	21
3.15 Iran Risks .....	22
4. CONDITIONS APPLYING TO THIS POLICY .....	23
4.1 Limits of Liability .....	23
4.2 Escalation.....	23
4.3 Permission to Occupy and Operate .....	23
4.4 Application of Excess .....	23
4.5 Claims procedure.....	24
4.6 Insurers' Rights.....	24
4.7 Subrogation and Settlement of Claims.....	24
4.8 Multiple Insureds Clause .....	24
4.9 Non Contribution.....	25
4.10 Notices .....	25
4.11 Declarations and Premium Payment.....	25
4.12 Extension to Period of Insurance .....	26
4.13 Insolvency or Bankruptcy .....	26
4.14 Assignment.....	26
4.15 Hold harmless agreements.....	26
4.16 Cancellation.....	26
4.17 Alterations in Material Fact/Error or Omission .....	27
4.18 Progress Payments.....	27
4.19 Engagement of Loss Adjuster.....	27
4.20 Claims Payment.....	27
4.21 Currency.....	27
4.22 Jurisdiction and Service of Proceedings.....	28
4.23 Master and Agreed Rate Contracts.....	28
4.24 Cessation of Work.....	28
4.25 Marine/ Non marine Loss Sharing.....	28
4.26 Claims Co-Operation Clause .....	29
4.27 Dispute Resolution.....	29
4.28 Arbitration.....	29

**Roads & Maritime Services**

**Introduction**

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

The liability of all of the Insurer 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 the Insurer individually will in no case exceed the proportion set against the Insurer's name.

Signed for and on behalf of the Insurers:

<b>Insurer</b>	<b>Policy No.</b>	<b>Proportion %</b>	<b>Signature</b>	<b>Place</b>	<b>Date</b>
Self-Insurance Corporation of NSW	.....	100		Sydney	.....

## Schedule

<b>Named Insured:</b>	Roads and Maritime Services (ABN 76 236 371 088)						
	This Policy also insures other parties as specified in the definition of the Insured herein.						
<b>Project:</b>	Contracts relating to the declared project as more particularly defined in the scope of works in the contract including variations thereto.						
<b>Construction Period:</b>	From: 4.00 PM (Project Start Date) on Local Standard Time To: 4.00 PM (Project End Date) on Local Standard Time						
<b>Defects Liability Period:</b>	(XX) months any one Contract in respect of the original Defects Liability Period						
<b>Performance Testing Period</b>	Up to 3 months any one Contract						
<b>Project Site:</b>	Project as described in more detail in the scope of works.						
<b>Territorial Limits:</b>	<b>Material Loss or Damage</b> Anywhere in the Commonwealth of Australia and/or elsewhere as stated herein.						
<b>Limits of Liability:</b>	<b>Material Loss or Damage</b> <table><tr><td>1. Limit of Liability any one Event at any one situation:</td><td>Up to \$100,000,000</td></tr><tr><td>2. Existing Structures</td><td>Included in item 1</td></tr><tr><td>3. Construction Plant and Equipment</td><td>NOT INSURED unless specifically declared and agreed As declared and agreed</td></tr></table> <b>Sub-limits - Applicable to Material Loss or Damage:</b> <p>The liability of Insurers will be further limited in respect of any one Event at any one situation as set out in the Sub-limits below. These Sub-limits will apply in addition to the above Limits of Liability.</p> <p>40% of Project Value A\$40,000,000, whichever the lesser combined limit in respect of items 2.1(a) to (i).</p>	1. Limit of Liability any one Event at any one situation:	Up to \$100,000,000	2. Existing Structures	Included in item 1	3. Construction Plant and Equipment	NOT INSURED unless specifically declared and agreed As declared and agreed
1. Limit of Liability any one Event at any one situation:	Up to \$100,000,000						
2. Existing Structures	Included in item 1						
3. Construction Plant and Equipment	NOT INSURED unless specifically declared and agreed As declared and agreed						

<b>Basis of Settlement:</b> (Insuring Clause)	In respect of Construction Plant and Equipment: - Indemnity Value.  Otherwise reinstatement and replacement.  Reinstatement
<b>Nominee for Insurers' Notices:</b>	icare Self Insurance – GPO Box 4052 SYDNEY NSW 2000
<b>Nominee for Legal Services</b>	GIO
<b>Agreed Loss Adjuster(s)</b>	Claims under this policy shall be adjusted with the following companies or as otherwise agreed by the Insured and the Insurer: <ul style="list-style-type: none"> <li>• Crawford</li> <li>• Cunningham Lindsay</li> <li>• Technical Assessing</li> <li>• McClarens</li> </ul>
<b>Excess:</b>	<p><b><u>For projects valued up to \$5,000,000</u></b></p> <p>\$15,000 each and every Event</p> <p><b><u>For projects valued greater than \$5,000,000, less than \$20,000,000</u></b></p> <p>\$50,000 each and every Event</p> <p><b><u>For projects valued greater than \$20,000,000, less than \$100,000,000</u></b></p> <p>\$250,000 each and every Event in respect of Water Damage</p> <p>\$250,000 each and every Event in respect of Tunnelling contracts</p> <p>\$350,000 each and every Event in respect of Wet Works</p> <p>\$100,000 each and every Event</p>
<b>Loss Payee:</b>	Roads and Maritime Services.
<b>Premium:</b>	As agreed.

## Definitions / Interpretations

The following Definitions will 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'.

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

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

**Defined Peril** means, for the purposes of Exclusion 3.9. fire, lightning, explosion, storm, windstorm, hail, tornado, cyclone, hurricane, earthquake, volcano, tsunami, flood, freezing, weight of snow, impact by aircraft or other aerial devices or articles dropped there from, impact by any road vehicle or animal. bursting, overflowing, discharging, theft (other than theft by employees) including theft of Electronic Data solely where such theft is accompanied by theft of the computer hardware, firmware, medium, microchip, integrated circuit or similar device containing such Electronic Data; riot, commotion, strikes, locked-out workers, persons taking part in labour disturbances, malicious persons, accidental damage, leaking or escape of water from any tank apparatus or pipes, impact by any road vehicle or animal, theft, accidental escape of water from any automatic sprinkler installation, subsidence, ground heave or landslip.

### Earthworks

All operations involving the loosening, removing, depositing, shaping and compacting soil or rock. Including the excavating and embankment of earth involved in an engineering construction and the structures resulting from this operation

**Electronic Data** means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation, or, processing by electronic or electromechanical data processing or electronically controlled equipment.

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

**Indemnity Value** means:

- i. where the Damage to property can be repaired, the Insurers will pay the cost necessarily incurred to restore the property to its former state of serviceability, plus the cost of dismantling and re-erection incurred for the purpose of effecting the repairs. Deductions will not be made for depreciation in respect of parts replaced, but the salvage value of such parts shall be taken into account;
- ii. where the Insured Property is totally destroyed, lost or stolen, abandoned or cannot be satisfactorily repaired at a cost not exceeding the market value immediately before the Damage, the Insurers will pay the market value of the item at the time of the Event. If due to the nature of the Insured 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;
- 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 clause i.

**Insured** means:

- i. the Named Insured;
- ii. any 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 clause i or 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 joint venture partner;
  - b. any construction manager or project manager;
  - c. any contractor or sub-contractor of any tier;
  - d. any architect, engineer or other consultant for their onsite activities only;
  - e. any lessor, financier, mortgagee or trustee;
  - f. any government body;
  - g. any other party with an Insurable interest in the Project;
- iv. any director, executive officer, employee, contract staff, or partner of any of the insureds, under clauses i, ii or iii whilst acting as such;
- v. any office bearer or member of any social, sporting, safety, security, medical or welfare facility of any of the insureds under clauses i, ii, iii(a), iii(b), or iii(c) whilst acting as such; and

all for their respective rights and interests.

**Insured Property** means:

- i. **Contract Works:**

being property of every description used or to be used in part of or incidental to or having any connection whatsoever with the Project. It shall include but not be limited to:

- a. the whole of the works, whether permanent or temporary works, structures, materials and supplies including free supplied materials;
- b. temporary buildings, camp buildings and all other project buildings and their contents;
- c. formwork, falsework, scaffolding, access platforms, hoardings, mouldings, and the like, whether the foregoing be consumable or reusable;
- d. consumables, drawings and other documents, plant and improvements;

but excluding Construction Plant and Equipment not specified above.

- ii. **Existing Structures** being existing structures, plant and real property of every description. Existing Structures are specifically excluded under this Policy unless an amount is specified against this item in the Schedule.
- iii. **Construction Plant and Equipment** being:
  - a. all construction plant, tools and equipment of every description including spare parts;

- b. employees' tools and equipment;

Construction Plant and Equipment is specifically excluded under this Policy, unless an amount is specified against this item in the Schedule.

Property described in clauses I, ii and iii above 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.

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

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

**Offsite Fabrication** means locations where pre-fabrication, repair, remedial or any other work is undertaken in connection with the Insured Operations away from the Project Site. The term does not include any location where the Property Insured is being manufactured under a contract of supply or manufacture, in the course of transit or in storage.

### **Pavement Materials**

Any material obtained from any source either natural, raw, processed, crushed, manufactured or recycled, either in a stockpile or as part of running surface which may comprise that portion of a road designed for the support of, and to form the running surface, for vehicular traffic.

### **Performance Testing Period**

means the period for the testing and/or commissioning of the Contract Works or any of its component parts which:

(a) begins when 'live load' is introduced, including the use of feedstock or other materials for processing or other media to simulate working conditions and in the case of electrical motors, electrical generating, transforming, converting or rectifying plant or machinery, connection to a grid or other load circuit or as more particularly described in a Contract, and

(b) ends at the completion of testing and commissioning under the Contract, but in no case exceeding the Performance Testing Period shown in the Schedule.

Any testing and/or commissioning that exceeds the Performance Testing Period stated in the Schedule will continue to be covered only after the Insurers' prior approval is obtained.

If as a result of a peril Insured it becomes necessary to repeat any test and/or commissioning or to carry out subsequent test(s) and/or commissioning, the Insurers herein will bear the cost of any such repeated and/or test or commissioning subject to the Policy limits, it being within the cover provided by the Policy and which forms part of the Sum Insured. For the avoidance of doubt, Insurers will only bear the cost of 2 repeated tests.

Where Performance Testing is performed in stages, any period between the application of 'live load' is not considered to form part of the Performance Testing Period. Any simple functionality test without the application of 'live load' is also not considered to form part of the Performance Testing Period.



**Period of insurance** means:

from the commencement date of this Policy and during the Construction Period and Defects Liability Period.

(1) Construction Period means

the period commencing with the entering into of each Contract or commencement of work whichever is the earlier, provided such Contract is entered into or work commenced during the Policy Period, until at the option of the Named Insured:

- i. the Contract Works have been formally accepted in their entirety by the principal or owner as having achieved practical completion and completed any relevant Performance Testing Period, notwithstanding the fact that portions of the Contract(s) may have been handed over, or accepted by the principal or owner prior to that time, including any relevant Performance Testing Period; 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 or owner, including any relevant Performance Testing Period, or;
- iii. The expiry of the Construction Period in the Schedule.

(2) Defects Liability Period means

the period described in any Contract during which an Named Insured is legally obliged to rectify defects, shrinkages, errors, omissions or other faults and/or to complete its obligations under such Contract (the initial Defects Liability Period), which may include the requirement for a further period, following rectification of defects under the initial period.

The initial Defects Liability 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 repair or rectification of a defect, coverage shall be extended for a further period as required by the Contract up to a maximum of an additional 36 months only in respect of Property Insured (which has been rectified or repaired) for which the contractual extension of the Defects Liability Period applies.

**Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, chemicals or waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**Project Site** means the situation(s) stated in the Schedule against this item and any other situation where the Insured is performing the works or has property stored or being processed together with all surrounding areas in connection with the Project. Project Site shall extend to include overseas situations stated in the Schedule or subsequently endorsed onto this Policy.

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

**Reinstatement Value** means:

- i. where the property is lost or destroyed, the 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 Insurers will pay 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. the work of rebuilding, replacing, repairing or restoring as the case may be (which may be carried out upon any other site(s) and in any manner suitable to the requirements of the Named Insured, but

subject to the liability of the Insurers not being thereby increased), must be commenced and carried out with reasonable dispatch;

- iv. 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:
- v. 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).

**Indemnity Value** means:

- i. Where the Damage to Property Reinsured can be repaired, the reinsurers will pay the cost necessarily incurred to restore the property to its former state of serviceability, plus the cost of dismantling and re-erection incurred for the purpose of effecting the repairs. Deductions will not be made for depreciation in respect of parts replaced, but the salvage value of such parts shall be taken into account;
- ii. Where the Property Reinsured is totally destroyed or cannot be satisfactorily repaired at a cost not exceeding the market value immediately before the Damage, the reinsurers will pay the market value of the item at the time of the Event. If due to the nature of the Property Reinsured, 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.
- iii. If the Property Reinsured 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 clause i.

**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, but shall not include Horizontal Directional Drilling Contracts, or work to existing tunnels which do not involve the above construction techniques.

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

**Underlying Insurance** means a policy of insurance arranged by or on behalf of an Insured either voluntarily or pursuant to a contract (which may include a policy(ies) arranged by joint venture partners, principals, contractors, etc) that provides cover to the Insured for a risk, which save for the Underlying insurance, would be covered by this Policy. Underlying insurance includes those policies identified in the Schedule.

**Watercraft** means any vessel, craft or thing in excess of 12 metres in length (measured at the waterline) made or intended to float on or travel on or through water

**Wet Works** means any works - excluding bridges - where more than fifteen (15) percent of its value is in, under or overwater 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 Risk Contracts exclude Offshore Works Contracts.

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

**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 Insurers will indemnify the Insured as follows.

### 1. Insuring Clauses

#### 1.1 Insured Property

In accordance with the Basis of Settlement, against Damage to the Insured Property other than from a cause specifically excluded, occurring at the Project Site or in transit within the Territorial Limits during the Construction Period.

#### 1.2 Maintenance or Defects Liability

legal liability under the maintenance or defects liability clauses under any Contract in accordance with the Basis of Settlement for Damage to the Insured Property from a cause not specifically excluded, provided that such Damage:

- (a) Manifests itself during the Defects Liability Period; and
- (b) Originates from:
  - (i) A cause prior to the commencement of the Defects Liability Period; or
  - (ii) An act or omission of any of the Insured parties in the course of complying with the requirements of the Defects Liability Period provisions of the Contract.

#### 1.3 Basis of settlement

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

##### (a) Reinstatement Value

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

- (i) The work of rebuilding, replacing, repairing or restoring as the case may be (which may be carried out upon any other site(s) and in any manner suitable to the requirements of the 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 Insured elects not to reinstate such Insured Property, the Insurers will pay to the 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) The total amount payable by Insurers will also include any additional amounts as provided in clauses 4 to 7 (as applicable).

(c) In all cases, (except as is excluded by (d) below), the cost of reinstatement (including the provisions of paragraph (ii) herein above), shall refer to the final cost to the Insured after completion of the repair, reinstatement or replacement work, if required by the Insured, the cost of transporting the item to the place where the Damage occurred and including a reasonable margin for profit administration costs and overheads where such work is carried out in whole or in part by the Insured.

(d) In the event that the financier elects to have a cash payment rather than reinstatement, the cash settlement shall be for the amount equivalent to the Reinstatement Value as described, less any margin for profit that would have been payable to the Insured had the Damage to the Insured Property been reinstated.

(e) Notwithstanding the foregoing, in the event of Damage to Tunnelling, the maximum amount payable shall be limited to the costs incurred to reinstate the Insured Property to the standard or condition technically equivalent to that which existed immediately before the occurrence of the loss or damage but not in excess of 150% of the original average per metre construction cost of the immediate Damaged area.

(f) For employees' tools and personal property, the basis of settlement shall be Reinstatement Value;

(g) In respect of Construction Plant and Equipment (other than as provided in (e) above), the amount payable shall be the Basis of Settlement stated in the Schedule, except:

(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;

#### **1.4 Local Authorities Clause**

The indemnity provided by this clause 4 shall extend to include the extra costs (including demolition or dismantling) of Damaged Insured Property necessarily incurred to comply with the requirements of any government department, local government or other statutory authority, provided that the indemnity under this clause shall only apply as a result of Damage.

#### **1.5 Undamaged Foundations**

In the event of Damage to the Insured Property but the foundations are not destroyed, and due to the exercising of statutory powers and/or delegated legislation and/or authority by any government or authority, the reinstatement or replacement of the Property Insured is required to be carried out upon another site, then the abandoned foundations will be considered as being lost or destroyed. If the presence of the abandoned foundations increases the resale value of the original site, then such increase in resale value shall be regarded as salvage and the amount thereof shall be deducted from the payment to the Insured. The term "foundations" is deemed to include services such as, but not limited to, conduits, pipes, cables and wiring built into the footings and foundations (including concrete floor slabs).

#### **1.6 Output Replacement**

If any item(s) of the Insured Insured Property having a measurable output is Damaged (in whole or in part) and which is capable of replacement with a new item(s) which performs a

similar function, then the amount payable by the Insurers in respect of such property shall be on the following basis.

- (a) If any lost or destroyed Insured Property is to be replaced by an item(s) which has the same or a lesser total output, then the amount payable thereof is the new installed cost of such replacement item(s) as would give the same total output as the Damaged item(s).
- (b) If any Damaged Insured Property is to be replaced by an item(s) which has a greater total output and the replacement value is no greater than the value of the Damaged items(s) then the amount payable shall be the cost of the replacement item(s) and no deduction shall be made due to improved output;
- (c) If any Damaged Insured Property is to be replaced by an item(s) which has a greater total output and the replacement value is greater than the value of the Damaged item(s) then the insurable value thereof is that proportion of the new installed cost of the replacement item(s) as the output of the Damaged item(s) bears to the output of the replacement item(s). The difference between the insurable value as defined and the new installed cost of the replacement item(s) shall be borne by the Insured.
- (d) This clause does not apply if the Basis of Settlement against the relevant property is stated in the Schedule as Indemnity Value.

#### **1.7 Reasonable Margin for Profit**

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

## 2. Extensions applying to this Policy

The following Extensions apply to this Policy

### 2.1 Additional Costs and Expenses

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

#### Removal of Debris and Other Costs

##### 1. Debris

Costs or expenses reasonably and necessarily incurred in removing, clearing, dismantling or demolishing debris, materials, Insured Property, or other property, ponded water or other substances (including the removal, clearance or demolition of any of the Insured Property, which is no longer fit for the purpose for which it was intended), and clearing drains, sewers service mains and the like including dewatering affecting the Project arising out of Damage or other event Insured by this Policy.

##### 2. Shoring, Propping and Temporary Protection

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

- (i) for shoring up, propping, underpinning or for the removal of and/or the carrying out of temporary repairs for the protection or safety of Property Insured or injury;
- (ii) 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 department, local government or other statutory authority.

The indemnity under this clause shall only apply where the costs and expenses are incurred as a result of actual or imminent Damage or are necessary to prevent 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, delivery (including by sea or air);
- (ii) travel, (including by sea or air) of the Insured's employees, agents, sub-contractors, consultants or representatives;
- (iii) overtime or penalty rates of wages and other related allowances and payments;
- (iv) hire of additional labour, plant, equipment, materials, expertise or services;
- (v) reasonable and necessary cost of earlier than usual delivery or manufacture and/or the costs of purchasing additional resources;
- (vi) accommodation and boarding costs (including meals and other costs associated therewith);
- (vii) additional administrative and/or overhead expenses.

(c) Search and Locate Costs

Leak search and other costs incurred following irregularities discovered in the results of a hydrostatic or other testing procedure up to a maximum of \$100,000 any one Event. Such costs will include but not be limited to:

- (i) the cost of hiring, operating and transporting apparatus; the cost of operation;
- (ii) the cost of all associated earthworks;

and are payable notwithstanding that physical damage may not have occurred to the affected item.

(d) Professionals' Fees

Salaries, expenses, fees and other costs of clerks of works, project managers, architects, surveyors, quantity surveyors, project coordinators, engineers, legal and other consultants for estimates, plans, designs, specifications, quantities, tenders and supervision necessarily incurred in reinstatement consequent upon Damage to the Insured Property, but not for preparing any claim.

(e) Mitigation Expenses

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

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

- (i) the payment for additional labour (including the Insured's employees), services or resources;
- (ii) the cost of replenishing firefighting appliances or systems and costs and charges incurred for the purpose of shutting off the supply of water or any other substance following the accidental discharge or escape from intended confines of any such substance, whether from fire protection equipment or otherwise.

(f) Claim Preparation Costs

Reasonable costs and expenses up to \$100,000 as may be payable by the Named Insured and not otherwise recoverable in connection with or incidental to preparing, collating, auditing and/or qualifying claims under this Policy.

(g) Government and other Fees

- (iii) Any fee, contribution or other impost (excluding fines and/or penalties) payable to any government, municipal, or other statutory authority other than the Name Insured, where payment of such fee, contribution or impost is a condition precedent to the obtaining of consent to reinstate Insured Property.
- (iv) Any fee contribution or other impost (excluding fines and/or penalties) payable to any government, municipal or other statutory authority other than the Name Insured 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 Project Site.

(h) 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, this Policy shall indemnify the Insured in respect of the amount by which the ultimate cost of construction of those parts of the project not suffering such Damage and being unbuilt or incomplete at the date of the Damage should exceed the cost of construction had no such Damage or consequent delay occurred

Provided always that:

(i) The indemnity provided by this Extension shall apply to the net increase in costs caused by the inflationary effect of escalation in the costs of labour, materials and services which the Insured shall prove to be a direct result of the delay consequent upon indemnifiable Damage.

(ii) No indemnity is given under this Extension in respect of increased construction costs incurred:

(1) in consequence of any other delay not referred to above;

(2) by reason of any improvement or change in methods of working or construction;

(3) in redesigning the project, or incurred as a result of such redesign;

(4) for the acceleration of the progress of the contract or work or to expedite repairs or to construct the project 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.

Furthermore, 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.

(i) 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 Project 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.



## **2.2 Plot ratio indemnity**

In the event of Damage to Insured Property and as a result of the exercise of statutory powers and/or authority by any government authority, the reinstatement or replacement of such Insured Property 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 reinstatement or replacement, then the Insurer agrees to pay to the Insured in addition to any amount otherwise payable:

- (a) the difference between the actual cost of reinstatement or replacement incurred in accordance with a reduced floor space index and the cost of reinstatement or replacement which would have been incurred had a reduced floor space ratio index not been applicable;
- (b) the amount of any fees, contributions or other impost payable to any government department, local government or other statutory authority where such fee, contribution or impost is a condition precedent to consent being given to the reinstatement or 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 Insurer shall include any extra costs of reinstatement or replacement as are Insured under clause 1.3

## **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 Defects (LEG 2/96)**

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

#### **3.2 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.

#### **3.3 Corrosion, Wear and Tear**

Damage directly caused by:

- normal wear and tear;
- rust, oxidation, corrosion or gradual deterioration, in each case when due to 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.

#### **3.4 Aircraft or waterborne craft**

Aircraft or waterborne craft or plant and equipment permanently mounted thereon, exceeding 12 metres in length

#### **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, bills of exchange, bonds, deeds, manuscripts, promissory notes, tokens and vouchers..

#### **3.7 Transits outside Australia**

Damage to Insured Property in the course of ocean marine shipment between countries or transit by air between countries, but in no case shall this Exclusion 3.7 exclude Australian coastal transits.

### **3.8 Radioactive**

Any Damage, liability or expense directly or indirectly caused by or contributed to by or arising from:

- (a) ionizing radiation from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- (b) radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- (c) any weapon, operation or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- (d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter
- (e) the use of any nuclear reactor, atomic piles, particle accelerators, generators or similar devices
- (f) the use, handling, transportation of any radioactive material.

This exclusion does not apply to radioactive isotopes or radium or radium compounds which have reached the final stage of fabrication, when used and/or stored away from the place where such are made or produced and when used exclusively incidentally to ordinary industrial, educational, scientific medical or research pursuits.

### **3.9 Electronic Data Exclusion**

Any claim of whatsoever nature, which consists of or arises directly or indirectly out of or in connection with:

- (a) total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data and/or Software;
- (b) error in creating, amending, entering, deleting or using Electronic Data and/or Software;
- (c) total or partial inability or failure to receive, send, access or use Electronic Data and/or Software for any time or at all; from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

This Exclusion does not apply in the event that a Defined Peril (being a peril Insured by this Policy but for this exclusion) causes any of the matters described in paragraph (a) above:

### **3.10 War**

Any Damage occasioned by or through or in consequence directly or indirectly of any of the following occurrences:

War, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power;

This Exclusion 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 the above.

### **3.11 Terrorism**

Any Damage, cost or expense directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any act of terrorism, as defined herein, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

An act of terrorism includes any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- (a) involves violence against one or more persons;
- (b) involves Damage to property;
- (c) endangers life other than that of the person committing the action;
- (d) creates a risk to health or safety of the public or a section of the public;
- (e) is designed to interfere with or to disrupt an electronic system.

This Exclusion also excludes Damage, cost or expense directly or indirectly caused by, contributed to by, resulting from, or arising out of or in connection with any action in controlling, preventing, suppressing, retaliating against, or responding to any act of terrorism.

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

(a) Damage to Construction Plant and Equipment owned or the responsibility of any Insured except RMS (and then only where declared by the RMS).

(b) Damage caused by mechanical or electrical breakdown of Construction Plant and Equipment, however this Exclusion 22(b) shall be limited to the part immediately affected and shall not extend to include other components or parts Damaged in consequence thereof.

### **3.13 Vegetation**

Damage to vegetation which forms part of the Insured Property and which rises directly or indirectly from:

- a) disease
- b) lack of water
- c) excess water
- d) moths, termites, or other insects, vermin, mildew, mould or wet or dry rot
- e) replanting operations
- f) transportation operations

### **3.11 Earthwork Materials and Pavement Materials**

It is agreed and understood in respect of contracts declared with an initial value greater than A\$50m and otherwise subject to the terms, exclusions, provisions and conditions contained in the Policy or endorsed thereon, the Insurer will not indemnify the insured for loss or damage due to rain on earthwork materials and or pavement materials, except where such loss or damage is due to an event with a minimum return period of 10 years for the location insured on the basis of the 24 hour statistics prepared by the Bureau of Meteorology or any company certified, classified and contracted by the Insured to provide this data for the nearest station to the location insured.

For the purpose of this endorsement, the following definitions shall apply:

Pavement Materials:

Any material obtained from any source either natural, raw, processed, crushed, manufactured or recycled, either in a stockpile or as part of running surface which may comprise that portion of a road designed for the support of, and to form the running surface for, vehicle traffic.

Earthworks Materials:

All operations involving the loosening, removing, depositing, shaping and compacting soil or rock. Including the excavating and embankment of earth involved in an engineering construction and the structures resulting from this operation

### **3.12 Offshore in respect to RMS Maritime Services operations**

Offshore marine works being all related business which has no fixed attachment to the shore or on land such as offshore gas platforms, offshore oil platforms and the like.

### **3.13 Foreshore or tidal excavation and pile driving. (in respect of RMS Maritime Activities ONLY)**

Activities undertaken by RMS Maritime Services operations only in respect to

Foreshore or tidal excavation and pile driving

The Insurer will not indemnify the Insured in respect of:

- (a) the re-dredging of previously excavated underwater operations, except where such re-dredging expenses are incurred as the immediate and direct result of an event otherwise indemnifiable under the policy;
- (b) expenses associated with re-dredging of any underwater excavation required as the result of any silting up or scouring;
- (c) movement of a riverbed or watercourse from any cause except earthquake;
- (d) loss or damage arising from any failure of the Insured to take immediate action to protect existing underwater excavations from further damage following the occurrence of any event indemnifiable under the policy;
- (e) mobilization/demobilization costs due to weather and or downtime;
- (f) over-excavation in excess of the minimum excavation provided in the plans and the additional expenses resulting therefrom for refilling or reinstating to design specifications;
- (g) loss or damage to piles arising from any cause occurring 7 days after completed placement until interconnecting structural members are placed according to project specifications;
- (h) any expenses incurred as a result of repositioning or re-piling due to exceeding 'rake' tolerances or piles being out of plumb or positions as per drawings or specifications

### **3.14 Sanctions and Embargoes**

Sanctions and Embargoes

This Policy does not provide any cover or benefit for any business or activity to the extent that:

- a) such cover or benefit: and/or
- b) such business or activity,

would violate any applicable economic or trade sanction law or regulations of the UN and/or the EU/EEA and/or any other applicable national economic or trade sanction law or regulations.

This policy does also not provide any insurance coverage or other benefits, if and to the extent, there is no insurance coverage in the master policy or reinsurance contract, subject to any applicable sanction laws.

### **3.15 Iran Risks**

This policy does not provide any cover, and does not include any liability to pay any claim or provide any benefit, in respect of any risk related to Iran unless such risk is specifically disclosed and agreed in writing by the parties

## 4. Conditions applying to this Policy

The following Conditions apply to this Policy.

### 4.1 Limits of Liability

- (a) No liability shall attach to the Insurer until the Damage or loss in respect of each Event/Occurrence exceeds the amount of any relevant Excess stated in the Schedule. The Limits of Liability and Sub-limits of Liability shall apply in excess of the amount of the relevant Excess.
- (b) The liability of the Insurer for any one Event at any one Worksite shall not exceed the Limits of Liability and the accumulative amounts of the Sub-limits of Liability stated in the Schedule.

### 4.2 Escalation

If during the Period of Insurance, the anticipated actual Project Value is estimated to exceed the original estimated Project Value, then the Limits of Liability and Sub-limits of Liability shall be increased by the percentage that represents the amount the anticipated actual Project Value exceeds the estimated Project Value at commencement of the Project, but the total amount of all such increases shall not exceed 25% of the amount set against each item in the Limits of Liability and Sub-limits of Liability.

### 4.3 Permission to Occupy and Operate

Permission is granted by Insurer to the principal and/or owner or any other party to occupy and operate any portion of the construction site or works prior to practical completion and such occupancy or operation shall not constitute handover of the Insured Property.

### 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 under this Policy arising out of the one Event then only one Excess shall apply.
- (b) Non-aggregation of Excesses

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 amount 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.

Any one Occurrence which exceeds 72 hours in duration shall be deemed to be one Occurrence in respect of application of any Excess.

- (d) Inland transit

In respect of the transit Excess (if any), such Excess shall apply to Insured Property in the course of loading of the Insured Property, whilst in transit, including incidental storage and until unloaded at the point of discharge at the final destination.

#### **4.5 Claims procedure**

For estimated Damage up to \$100,000 the Insured is at liberty to immediately proceed with repairs or replacement and shall provide to the Insurers full details of the cause and circumstances of the Damage, followed by written notification of the claim, supported by the necessary invoices and other details.

For estimated Damage exceeding \$100,000 the Insured is to defer proceeding with repairs or replacement until the insurers or their representatives have made a preliminary survey or have agreed to the Insured proceeding with repairs or replacement.

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

#### **4.6 Insurers' Rights**

The Insured shall, at the request and the expense of the Insurers, do and occur in doing all such acts and things as the Insurers may reasonably require with a view to recovery of Damaged Insured Property or to preserve and enforce any rights the Insured may have against anyone in respect of Damage to Insured Property.

#### **4.7 Subrogation and Settlement of Claims**

The Insured shall inform the Insurers as soon as reasonably practicable of the happening of any Damage which may give rise to a claim under this Policy.

Upon the payment of any claim under this Policy, subject to any restrictions imposed by the Commonwealth Insurance Contracts Act 1984, the Insurers shall be subrogated to all the rights and remedies of the Insured arising out of such claim against any person or corporation whatsoever.

The Insurer may pay to the Insured, the amount of the applicable Limit of Liability of the Insurer or such lesser sum for which the claim can be settled subject in either case to deduction of any sum or sums already paid as compensation in respect of such claim and the Insurer shall thereafter be under no further liability in respect of such claim except for the payment of costs and expenses for which the Insurer is liable hereunder incurred prior to the date of such payment

#### **4.8 Multiple Insureds Clause**

- a) If the Insured comprises more than one insured party each operating as a separate and distinct entity then (save as provided in this clause 4.7), cover hereunder shall apply in the same manner and to the same extent as if individual policies had been issued to each such Insured party provided that the total liability of the Insurers to all of the Insured parties collectively shall not exceed the Limits of Liability or Sub-limits in this Policy.
- b) The insured parties will, to the extent allowed under contract, at all times preserve the various contractual rights and agreements entered into by the insured parties and contractual remedies of such parties in the event of loss or damage.
- c) The Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from an insured party in circumstances of such Insured party committing fraud, misrepresentation, material non-disclosure or breach of any warranty or Condition of this Policy referred to in this Condition 4.7 as a "Vitiating Act".
- d) However a Vitiating Act or any other act or neglect committed by one insured party, either at the time of entering this contract or during the Period of Insurance, shall not prejudice the right to indemnity of any other insured party who has an insurable interest and who has not committed a Vitiating Act.
- e) The Insurers agree to waive all rights of subrogation that they may have or acquire against:



- a. any Insured other than those defined in the insured definition iii.d. in circumstances where indemnity is not provided to that Insured under this;
- b. at the option of the Insured, any other parties or persons, subject to the Insured, waiving rights of subrogation prior to the loss, but only when required to do so under contract;

except where the rights of subrogation or recourse are acquired in consequence or otherwise following a Vitiating Act, in which circumstances the Insurers may enforce such rights against the party committing the Vitiating Act.

#### **4.9 Non Contribution**

The Insurer agrees that despite the existence of other policy/ies which may provide cover for the same risk being held by any number of Insured parties, that they will not seek contribution in respect of losses paid by this insurance. It is understood that Insurers will be unable to seek contribution under section 76 or section 45 of the Insurance Contracts Act 1984

#### **4.10 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 the Self Insurance Corporation of NSW (icare)

(b) Any notice(s) given by the Insurers to any party insured under this Policy shall also be given to all other named parties.

(c) Any notice of claim given to the Insurers by any party insured under this Policy shall be accepted by the Insurers as a notice of claim given on behalf of all other parties insured under this Policy.

(d) If a Nominee for Insurers' Notices is shown in the Schedule, the Insurers agree to give the nominated organisation 30 business days prior notice in the event of:

- i. the cancellation or expiry of this Policy before completion of the Construction Period and Defects Liability Period due to non-payment of premium or for any other cause;
- ii. the Insurers giving any notice under this Policy.

#### **4.11 Declarations and Premium Payment**

If the Premium with regard to an item of this Policy is shown in the Schedule is being adjustable, then such Premium is provisional and will be adjusted as follows.

Within 30 days of the expiry of the Construction Period, the Named Insured will declare to the Insurers the actual value of the Adjustable Factor for each relevant item shown in the Schedule.

The 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 at the agreed rate on the difference between the estimated and actual value of the adjustable Factor.

In the event of any dispute or difference between the Insurers and the Named Insured as to the actual declared values, then for the purposes of clause 4.1, at the request of either party, such values shall be determined by the President for the time being of the Australian Institute of Quantity Surveyors, or his nominee, acting as an expert and not as an arbitrator. The cost of any such determination shall be borne equally by the Insurers and the Named Insured.

#### **4.12 Extension to Period of Insurance**

After first becoming aware that the completion date will exceed the Period of Insurance limitations stated in the Schedule, the Named Insured agrees to notify the Insurer as soon as possible (but no later than the Period of Insurance limitation stated in the Schedule or any revised period agreed by Endorsement), the revised estimated completion date.

Despite any Period of Insurance limitation stated in the Schedule the Insurer agrees to automatically grant an extension to a Contract's Construction Period and Defects Liability period of up to 60 months at no additional premium.

Beyond 60 months the Insurers agree to automatically grant any required alteration/extension to the Period of Insurance up to a maximum of 90 days at additional premium not exceeding pro-rata. The Named shall notify the Insurers as soon as possible (but no later than the estimated end date of the Construction Period shown in the Schedule or endorsement of this policy) of becoming aware that the completion date last notified to the Insurers will be exceeded and the revised estimated completion date.

Extensions to the estimated Period of Insurance of greater than 90 days will only be covered subject to the prior approval of the Insurers.

#### **4.13 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.

#### **4.14 Assignment**

The insolvency or bankruptcy of any party comprising the Insured shall not release the Insurers from any of their obligations assumed hereunder.

#### **4.15 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.

#### **4.16 Cancellation**

(a) By the Insurers

The Insurers may cancel this Policy for any of the reasons set forth in Section 60 of the Commonwealth Insurance Contracts Act 1984 by serving on the Named Insured ninety (90) days' notice in accordance with Section 59 of that Act, in which case the Named 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 thereof at any time by giving notice in writing to the Insurers.

After cancellation by the Named Insured, the Premium will be adjusted in accordance with Condition 4.9 or pro-rata for the period on risk if the outcome does not represent an equitable refund for the cancelled period. The Named Insured will be obliged to supply to the Insurers such information as is necessary to adjust the Premium.

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

- (a) Each Insured shall be covered as if it made its own proposal for this insurance;
- (b) Any declaration, statement or representation made in any proposal or submission will be construed as a separate declaration, statement or representation by each Insured;
- (c) Any knowledge possessed by any Insured shall not be imputed to the other Insured(s).
- (d) Any fraud, misrepresentation, misdescription, non-disclosure or breach of Condition or warranty by any individual Insured party shall not prejudice or invalidate the rights of the other parties comprising the Insured who are themselves not guilty of such fraud, misrepresentation, misdescription, non-disclosure or breach of Condition or warranty
- (e) 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..

#### **4.18 Progress Payments**

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

#### **4.19 Engagement of Loss Adjuster**

- a) Loss adjusters appointed to investigate and quantify losses that are potentially indemnifiable under this Policy are agents of the Insurer and their fees and related expenses shall be payable by the Insurer.
- b) JLT, SICorp and GIO are authorised to appoint a loss adjuster from the panel of Loss Adjusters stated in the Schedule.
- c) The Insurer agrees that the agreed Loss Adjuster's documents, transcripts, reports (verbal and written) shall be made available to the Named Insured.
- d) However, where indemnity under this Policy has not been admitted by the Insurer, the Insurer shall be entitled to direct the agreed Loss Adjuster to:
  - remove any information from such documents that pertains to whether or not the Insurer should admit liability to indemnify the Named Insured; or to the quantum of the Insurers liability to the Named Insured; and provide a separate confidential report to the Insurer in respect to the matters outlined in Condition 4.17(b)(i) unless such matters are discoverable at law.

#### **4.20 Claims Payment**

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.

#### **4.21 Currency**

All monetary amounts expressed in this Policy are Australian dollars. The Premium and losses shall be paid in Australian dollars or as otherwise agreed between the Insurers and the Insured.

For the purposes of this Policy, the Insurers agree to the Named Insured's normal practice of converting currency to Australian dollars in accordance with the Named Insured's accounting practices.

#### **4.22 Jurisdiction and Service of Proceedings**

The Insurers agree that:

- a) this Policy is governed by the laws of Australia;
- b) in the event of a dispute arising under this Policy, Insurers at the request of the Insured will submit to the jurisdiction of any competent court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such court;
- c) any summons notice or process to be served upon the Insurers may be served upon the Nominee for Legal Service stated in the Schedule. Such Nominee has authority to accept service and to enter an appearance on the Insurers' behalf. If directed by the Insured, the nominee shall give a written undertaking that the Nominee will enter an appearance on the Insurers' behalf;
- d) if proceedings are instituted against any one of the Insurers, all Insurers hereon will abide by the decision of such Court or any competent Appellate Court.

#### **4.23 Master and Agreed Rate Contracts**

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

#### **4.24 Cessation of Work**

Any cessation of work exceeding 90 consecutive days, or immediately following abandonment shall be notified to the Insurers. The Insurers reserve the right to alter the terms and Conditions of this Policy, including cancellation after the 90 consecutive days.

#### **4.25 Marine/ Non marine Loss Sharing**

The Insured undertakes to examine each item of the Insured Property as soon as practicable after arrival at the Project Site for possible Damage sustained during transit.

In the case of packed items which are to be left in their packaging until a later date, the packaging is to be individually visually examined for signs of possible Damage and where such Damage is visible, the items are to be unpacked and inspected and any Damage discovered reported to any other applicable marine cargo /transit insurer.

Notwithstanding the above, in the event of Damage to the Insured Property being discovered after the risk has terminated under any marine cargo/transit insurance or any subsequent period of discovery attaching thereto (whichever shall be the later), and after proper investigation it is not possible to ascertain whether the cause of such Damage happened prior to termination of the marine venture or subsequently, the Insurers shall contribute 50% of the loss provided that marine cargo /transit insurers also agree to contribute 50% of such loss. Any such settlement will be without prejudice to the subsequent final apportionment of the loss agreed between the Insurers and the marine cargo /transit insurers.

Should the Insurers settle a claim as described by the provisions of this clause, the applicable Excess shall be reduced proportionally to the contribution made by the Insurers to the total loss.

#### **4.26 Claims Co-Operation Clause**

It is a condition of any liability under this Contract that:-

- i) The Named Insured shall, upon knowledge of any circumstances which may give rise to a claim against them, exceeding 50% of the Insured retention, advise the Insurers within a reasonable period of time.
- ii) The Named Insured shall co-operate with Insurers and/or their appointed representatives subscribing to this Policy in the investigation and assessment of any loss and/or circumstances giving rise to a loss.

Should any Insurer fail to respond or reasonably object to any request by the Named Insured for an admission of liability within five (5) working days of receiving such a request, then the Insurer will be deemed to have agreed to the request.

#### **4.27 Dispute Resolution**

Where any dispute of difference between the parties arising out of or in connection with this Policy, including formation and validity and whether arising during or after the Period of Insurance, has not been settled through negotiation, both parties agree to try in good faith to settle such dispute by non-binding mediation, before resorting to arbitration in the manner set out below.

#### **4.28 Arbitration**

Any dispute or difference whatsoever arising in connection with this Policy shall be referred to the arbitration of three arbitrators. One arbitrator shall be chosen by each party and the third arbitrator, who shall act as chairperson, shall be a nominee of the President, for the time being, of the Institute of Arbitrators and Mediators Australia. The chairperson shall have the deciding vote in the absence of a majority. The arbitrators may determine any question that arises for determination in the course of the proceedings by reference to consideration of general justice and fairness. The arbitrations shall be held in Sydney, New South Wales in accordance with and subject to the provisions of the relevant Commercial Arbitration Act.