



The Crown in Right of the State of South Australia

Construction Risks – Third Excess Liability Annual Insurance Policy

Period of insurance

31 October 2024 to 31 October 2025

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Introduction




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

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

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

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

Signed for and on behalf of the Insurers:

Insurers	Policy No.	Proportion %	Signature	Date
Markel Australia Pty Ltd	CS8195A24IZA	50%	 <i>Doug Hurst</i>	06/12/2024
Everest Insurance Australia		30%	 <i>[Signature]</i>	13/12/2024
HDI Global SE Australia	01819243-14000	20%	 <i>[Signature]</i>	13/12/2024

Schedule

Named Insured:	<p>The Crown in Right of the State of South Australia, Department for Infrastructure and Transport, South Australian Water Corporation, South Australian Housing Authority, Renewal SA and all other Government (State and Local) Departments and Agencies, Commissions, Trusts, Companies, Corporations or other Statutory Bodies (whether as Principal, Project Manager, Adviser, Consultant or Contractor).</p> <p>This Policy also insures other parties as specified in the definition of Insured.</p>
Business:	<p>Principally but not limited to government instrumentality responsible for the design, construction, manufacture, testing, commissioning, operation, maintenance and property services in relation to transport infrastructure, buildings, facilities and assets, but excluding activities in respect of any Excluded Contracts or Referral Contracts except as provided by or endorsed onto the Policy.</p>
Insured Operations:	<p>Contracts Commenced During the Period of Insurance</p> <p>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 3.17 of the Policy.</p>
Insured Services:	<p>The provision of building maintenance and property services in respect of assets for which Government has responsibility, owns or leases within South Australia, including preventative and programmed maintenance, logged and emergency breakdown maintenance, property services including rubbish removal, hygiene, cleaning, bore maintenance, security, grounds maintenance, venue management services, technical services and pest and vermin control.</p>
Scope of Cover	<p>The Insurers will under this Policy indemnify the Insured against the Insured's legal liability to pay damages or compensation in respect of:</p> <ul style="list-style-type: none">(a) Personal Injury;(b) Property Damage; or(c) Advertising Injury, <p>sustained as a result of an Occurrence within the Territorial Limits in connection with the Business:</p> <ul style="list-style-type: none">(i) during the Construction Period or Defects Liability Period in respect of the Insured Operations; and/or(ii) during the Period of Insurance in respect of the Insured Services; and/or(iii) during the Period of Insurance in respect of the Insured's Products and/or Completed Operations <p>In addition Insurers will pay Defence and Other Costs.</p> <p>Are those Contract Types listed below where the Insurers will grant interim cover as per Condition 3.17 of the Policy.</p>

Referral Contracts
(Condition 3.17)

Are those Contract Types listed below where the Insurers will grant interim cover as per Condition 3.17 of the Policy.

Contract Type

**Where the original
estimated Project Value
for the Contract Type
exceeds:**

All Contracts	\$ 500,000,000
Tunnels	All Values
Airport (Tarmac, Taxi or Runway)	All Values
Offshore Work	All Values
New Dam Construction & Infrastructure	All Values
Where Original Construction period exceeds 36 months	All Values

**Included Referral
Contracts**
2024/2025 Period:
(Condition 3.17)

The Insurers agree to provide coverage for the Referral Contracts specified below:

Agency	Project	Description	Referral Type
Nil			

Excluded Contracts

None

Period of Insurance:

From: 4:00 p.m. on 31 October 2024

To: 4.00 p.m. on 31 October 2025

All at Local Time

**Defects Liability
Period:**

24 months any one Contract in respect of the original Defects Liability Period.

Territorial Limits:

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

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

Limits of Liability: Limit in respect of each and every Occurrence \$50,000,000
(Condition 3.3) but limited to: \$50,000,000 in the aggregate annually for all Occurrences in respect of Products and/or Completed Operations;
in excess of the underlying \$50,000,000 limit of liability

Underlying Policies In excess of the Underlying Primary and First Excess Policies

	Insurer	Policy No.	Limit
First Excess Policy	Swiss Re International SE Australia Branch	P80764.02	Limit in respect of each Occurrence \$10m But limited to: \$10m in the aggregate annually for all Occurrences in respect of Products and/or Completed Operations
	Liberty Specialty Markets	MECAS21498764	Limit in respect of each Occurrence \$20m But limited to: \$20m in the aggregate annually for all Occurrences in respect of Products and/or Completed Operations In excess of underlying primary policy
Second Excess Policy	Swiss Re International SE Australia Branch	P80764.02	Limit in respect of each Occurrence \$20m But limited to: \$20m in the aggregate annually for all Occurrences in respect of Products and/or Completed Operations In excess of underlying primary policy

Endorsements

(see policy wording below for full definitions)

- LMA 5469A Cyber & Data Exclusion
- LMA 3100A Sanctions Limitations
- Service of Suit Clause

Nominee for Insurers' Notices:	Nominee	Address	Attention
(Condition 3.7(d))	SAFA	C/O Aon Risk Services Level 22 91 King William Street Adelaide SA 5000	Joshua Ingall, Aon
Nominee for Legal Service:	As agreed		
(Condition 3.11(c))			
Agreed Loss Adjuster(s):	Claims under this Policy shall be adjusted with the following company(ies) or as otherwise agreed by the Insured and the Insurers:		
(Condition 3.14)	<ul style="list-style-type: none">• YDR Chartered Loss Adjusters• Integra Technical Services (Australia) Pty Ltd• Crawford & Co.		

Definitions / Interpretations

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

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

Underlying Excess Insurer is the party or parties named in the Schedule who have issued any Underlying Excess Insurance.

Insured includes each of the following:

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

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

Singular/Plural

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

Headings

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

Conditions

1.1 Maintenance of Primary and Underlying Excess Insurance

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

1.2 Following Cover of Primary Insurance

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

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

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

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

1.3 Claims Condition

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

1.4 Costs

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

1.5 Settlement of Losses

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

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

1.6 Exhaustion of Underlying Aggregate Limit

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

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

1.7 Premium Adjustment

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

1.8 Cancellation

- (a) By The Insurers:

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

- (b) By The Named Insured:

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

- (c) Run-off Cover:

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

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

whichever occurs first.

(d) Premium Adjustment

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

1.9 Application of Recovered Funds

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

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

1.10 Jurisdiction and Service of Proceedings

The Insurers agree that:

- (a) this Policy is governed by the laws of Australia;
- 1. 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;

2. 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;
3. 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.

1.11 Notices

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

1.12 Referral Contracts

Referral Contracts specified in the Schedule, will be held covered by the Insurers for a period not exceeding 3 months from the commencement of the Referral Contract's Construction Period (such period referred to as the "Interim Cover Period"), and thereafter will be covered subject to agreement by the Insurers.

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

Referral Contracts appearing in the Schedule shall be automatically covered if specified as an Included Referral Contract in the Schedule, subject to any agreed alteration in this Policy's, premium or other terms.

In the event that such terms and conditions are not acceptable to the Named Insured, the Named Insured shall be under no obligation to declare these Contracts to the Insurers after the

Interim Cover Period. In the event of the Named Insured electing not to continue cover for a Contract after the Interim Cover Period, the Named Insured is obliged to declare the expended Project Value for such Contract in its declaration to the Insurers under clause 1.7.

1.13 Endorsements

CYBER and DATA LIMITED EXCLUSION ENDORSEMENT 1

(Other than Bodily Injury or Property Damage arising out of a Cyber Incident)

(for attachment to International Liability forms)

1. Notwithstanding any provision to the contrary within this Policy or any endorsement thereto this Policy does not apply to any loss, damage, liability, claim, fines, penalties, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any:
 - 1.1. **CYBER ACT** or **CYBER INCIDENT** including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any **CYBER ACT** or **CYBER INCIDENT**; or
 - 1.2. loss of use, reduction in functionality, repair, replacement, restoration, reproduction, loss or theft of any **DATA**, including any amount pertaining to the value of such **DATA**, regardless of any other cause or event contributing concurrently or in any other sequence thereto, unless subject to the provisions of paragraph 2.
2. Subject to all the terms, conditions and exclusions contained in this Policy or any endorsement thereto, clause 1.1 of this Endorsement shall not apply in respect of any actual or alleged liability for and/or arising out of:
 - 2.1. any ensuing third party bodily injury (other than mental injury, mental anguish or mental disease); or
 - 2.2. any ensuing physical damage to or destruction of tangible third party property, resulting from or arising out of a **CYBER INCIDENT**, unless that **CYBER INCIDENT** is caused by, contributed to by, resulting from, arising out of or in connection with a **CYBER ACT**.

Nothing contained in the foregoing shall provide any coverage for any action taken in controlling, preventing, suppressing or remediating a **CYBER INCIDENT** or a **CYBER ACT**.
3. In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

4. If the Underwriters allege that by reason of this endorsement loss sustained by the Insured is not covered by this Policy, the burden of proving the contrary shall be upon the Insured.

Definitions

COMPUTER SYSTEM means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.

CYBER ACT means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **COMPUTER SYSTEM**.

CYBER INCIDENT means:

- (a) any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any **COMPUTER SYSTEM**; or
- (b) any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **COMPUTER SYSTEM**.

DATA means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a **COMPUTER SYSTEM**.

LMA5469A

12 October 2022

SANCTIONS LIMITATION CLAUSE

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations' resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

LMA3100A

5 October 2023

Service of Suit Clause

The Underwriters accepting this Insurance agree that:

If a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;

any summons notice or process to be served upon the Underwriters may be served upon:

Lloyd's Underwriters' General Representative in Australia

Suite 1603

Level 16

1 Macquarie Place

SYDNEY NSW 2000

who has authority to accept service on the Underwriters' behalf;

if a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

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