

**PUBLIC & PRODUCTS LIABILITY  
PRINCIPAL ARRANGED INSURANCE**

**FOR**

**NEW ZEALAND TRANSPORT AGENCY  
Policy Number 47-ZCA-000395-09**

*Period 30th June 2024 to 30th June 2025 at 4.00 pm*

# SCHEDULE

Attaching to and forming part of Public & Products Liability Principal Arranged Insurance Policy Number

**Item 1 – The Insured** New Zealand Transport Agency being a Crown entity established on 1<sup>st</sup> August 2008 or as may be re-established under any amending or replacing legislation.

**Item 2 – Business of the Insured** Principally but not limited to the functions and powers of the Insured in relation to their business and responsibilities for:

- The design, construction, manufacture, testing, commissioning, demolition, project management and maintenance of state highways, busways, bridges, tunnels and other transport infrastructure.
- Plant and equipment owners, operators, hirers, lessees and lessors.
- Property owners, Property development and occupiers, lessees and lessors, but only when in connection with the Insured Operations.
- Road surveying.

**Item 3 – Insured Operations**

### **Standard Contracts**

All contracts of any kind or description undertaken by or on behalf of the Insured during the Period of Insurance.

However, this does not apply to Referral Contracts defined below, which are subject to Condition 4.17.

### **Referral Contracts**

Standard Contracts in which one or more of the following applies:

- (a) All Contracts whereby the original estimated Contract Value exceeds \$200 million, or
  - (b) Where the original estimated Construction Period for the Contract exceeds 36 months
  - (c) Tunnelling contracts where the structure constructed is a closed excavation and the original estimated Contract Value for the tunnel exceeds \$5 million
  - (d) Bridges where the structure value is more than \$25m
- (a) and (b) shall not apply to Network Outcome Contracts or maintenance contracts.

## Endorsed Referral Contracts

- 1) BAYPARK TO BAYFAIR – Contract no 2/09-024/603  
Contract Period Starting 2 May 2017 – 31 December 2023  
Total Contract Value NZD87,000,000 (original)  
Oct 2020 Updated CV: NZD 87M to 207M  
Oct 2021 Updated CV NZD 262M  
May 2023 Updated CV NZD 292M  
Defects Liability Period 1 January 2024 – 31 December 2025  
Excess NZD25,000 (cost inclusive)
  
- 2) SH2: WAIHI TO OMOKOROA PROJECT  
Contract Period 1 May 2019 – 31 December 2025  
Total Contract Value NZD165,600,000  
Project awaiting approval for \$32 million increase.  
Excess NZD25,000 (cost inclusive)
  
- 3) LINCOLN TO WESTGATE  
Contract Period 15 July 2016 – 31 December 2019  
Defects Liability Period 31 December 2019 – 31 October 2022  
Defects Liability Period 1 August 2023 – 31 July 2024 (for last section of work)  
Total Contract Value NZD87,000,000  
Total Contract Value NZD113,000,000
  
- 4) LONGSWAMP SECTION  
Contract Period 4 July 2016 – 30 April 2020  
Defects Liability Period 1 November 2019 – 30 October 2021  
Defects Liability Period 1 November 2019 – 31 October 2024 (for last section of work)  
Total Contract Value NZD89,000,000
  
- 5) Petone to Melling Shared Path  
Contract Period 16 August 2019 to 27 April 2023  
Revised Contract Period 16 August 2019 to 15 October 2023  
Defects Liability Period 10 August 2023 – 15 October 2024  
Total Contract Value NZD51,400,000 as of 15 June 2022  
Revised Total Contract Value NZD57,000,000 as of 11 May 2023
  
- 6) Wakatipu Transport Alliance  
Applicable Excess = \$100,000  
Estimated CV as of Feb '22 = \$61,000,000  
Estimated CV as of May '23 = \$120,000,000  
Construction Start date: 3 Feb 2022  
Construction Start date: Feb 2024  
Construction End Date: 31 May 2025, plus 24m DLP  
Revised Construction End Date: December 2027, plus 24m DLP

- 7) Transport Recovery East Coast Alliance  
 Applicable Excess = \$50,000  
 Estimated 2023/ 2024 Annual CV as of July '23 = \$144,000,000

**Item 4 – Period of Insurance** From 30<sup>th</sup> June 2024 to 30th June 2025 at 4.00 pm and for any subsequent period of insurance as may be agreed.

**Defects Liability Period**

24 months any one Contract in addition to project completion

**Item 5 – Territorial Limits** Worldwide excluding USA and Canada

**Item 6 – Limits of Indemnity**

\$20,000,000	any one Occurrence in respect of General Liability (insuring Clause 1.01(i))
\$20,000,000	any one Period of Insurance in respect of Products Liability (insuring Clause 1.01(ii))
\$ 2,000,000	any one Period of Insurance for Exemplary Damages – Extension 5.01
\$10,000,000	any one Occurrence for Property in Care Custody or Control of the Insured – Extension 5.03
\$10,000,000	anyone Occurrence for Hazardous Substance Emergency Indemnity – Extension 5.04

**Item 7 – Excesses** \$500,000 each and every Occurrence inclusive of Costs and Expenses

**Item 8 – Premium** As agreed

**DEFINITIONS / INTERPRETATIONS**

Whenever the following words or terms are used in this Policy they mean:

**Activities**

Includes the provision and management of canteens, social, sports and welfare organisations for the benefit of:

- the Insured's Employees, and

- the Insured's first aid, security, fire and ambulance services, and
- the maintenance of the Insured's premises.

### **Acts of Parliament**

Means an Act of Parliament including any Regulations made under it or any Act or Regulations enacted in substitution.

### **Act of Terrorism**

Means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

### **Aircraft**

Means any machine, craft or thing made or intended to fly or move in or through the atmosphere or space.

### **Business**

Means the 'Business of the Insured' stated in Item 2 of the Schedule including but not limited to all Activities.

### **Construction Period**

Means the period commencing with the entering into of each Contract until in accordance with the obligations of the Insured under such Contract:

- (i) the Contract has been formally accepted in its entirety by the principal/owner notwithstanding the fact that portions of the Contracts(s) may have been handed over, put into use and accepted by the principal/owner prior to that time, including any performance testing periods; or
- (ii) with respect to each separable portion of the Contract, the time it is taken over and put into use by the principal/owner, including any performance testing periods,

In the event of this Policy being cancelled or not renewed, coverage shall cease from the date of cancellation in respect of all Contract(s) commenced prior to the date of such cancellation or non renewal.

### **Contract**

Includes all works under contracts or agreements (including early contractor involvement or maintenance contracts) made by or on behalf of the Insured in connection with the Business

**Contract Value**

Means the total value of work and construction costs incurred by or on behalf of the Insured in respect of the Contract and includes principal supplied materials.

**Compensation**

Means any amount paid or agreed to be paid by judgment or settlement, including interest.

**Costs and Expenses****Mean(s):**

- (i) Any legal costs, disbursements, witnesses costs, assessors or adjusters costs or experts costs incurred by the Insurer, or by the Insured with the Insurer's prior written consent;
- (ii) Any first aid expenses incurred by the Insured arising from a Personal Injury.

**Defects Liability Period**

Means the period described in any Contract during which the Insured is obliged or legally liable to rectify defects, shrinkages, errors, omissions or other faults and/or to complete the obligations under such Contract

This period shall not exceed the Defects Liability Period stated in Item 4 of the Schedule in respect of any one Contract.

**Electronic Data**

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

**Employee**

Means any person under a contract of service or apprenticeship with the Insured.

**Employee Practice**

Means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, unfair contracts, harassment or discrimination (sexual or otherwise) in respect of employment by the Insured.

**Insurer**

Means Berkshire Hathaway Specialty Insurance.

**Insured means**

- (i) The named Insured in Item 1 of the Schedule.

- (ii) any parent subsidiary company, (including subsidiaries thereof) of that named Insured and any organisation under the control of that named Insured and over which it is exercising active management, whether now or hereafter incorporated;
- (iii) any of the following persons or entities for whom or for which the insured parties under clauses (i) and (ii) above are obliged to arrange insurance by virtue of a contract or assumption of responsibility, but only to the extent required by such contract or assumed responsibility and in any event only for such coverage and Limits of Indemnity as provided in this Policy;
  - (a) any principal or owner or the agent of the principal or owner, or joint venture partner or alliance participant;
  - (b) any construction manager or project manager;
  - (c) any alliance partner, sub alliance partner, alliance participant or sub alliance participant;
  - (d) any contractor or subcontractor of any tier;
  - (e) any architect, engineer or other consultant;
  - (f) any lessor, financier, mortgagee or trustee;
  - (g) any government body;
  - (h) suppliers whilst on the Contract worksite;
  - (i) any other party with an insurable interest in the Contract(s);
  - (iv) any director executive officer, employee, secondi, contract staff or partner of any of the insured parties under clauses (i), (ii) or (iii) whilst acting as such;
  - (v) any office bearer or member of a social sporting, safety, security, medical, fire facility staff or welfare facility of the insured parties under clauses (i), (ii), (iii)a, (iii)b, or (iii)c whilst acting as such; all for their respective rights and interests.

### **Insured Operations**

Means the 'Insured Operations' stated in Item 3 of the Schedule.

### **Occurrence**

Means an event in connection with the Business of the Insured, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury and/or Property Damage, where such injury or damage is neither expected nor intended from the standpoint of the Insured.

### **Period of Insurance**

Means the period stated in Item 4 of the Schedule.

### **Personal Injury means**

- (a) bodily injury (which expression includes death, illness, disease, disability, shock, fright, mental anguish and mental injury);
- (b) false arrest, false imprisonment, wrongful eviction, wrongful detention, malicious prosecution and humiliation;

- (c) libel, slander, defamation of character (except for any libel, slander or defamation of character committed arising directly from the performance of professional advice or services by the Insured), or invasion of right to privacy; and
- (d) assault and battery not committed by or at the direction of the Insured (unless committed for the purpose of preventing or eliminating danger to persons or property); which is caused by an Occurrence.

### **Pollutants**

Means any solid, liquid gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals and waste. "Waste" includes material to be recycled, reconditioned, or reclaimed.

### **Products**

Means anything, after it has ceased to be in the possession or under the control of the Insured, which has been, or is deemed by law to have been, manufactured, grown, produced, processed, formulated, built and/or constructed, assembled, erected, installed, sold, supplied, imported, exported, distributed, treated, serviced, altered or Repaired by the Insured,

This includes:

- works performed by the Insured,
- containers, labels, and packaging materials,
- directions, instructions and advice given or omitted to be given in connection with such 'Products'.

### **Property Damage**

Means physical damage to, or destruction or loss of, tangible property including loss of use of tangible property, whether or not that property has been destroyed or damaged, and includes the foregoing (but not limited to):

- (i) denial of access to property, premises, services or facilities; or
- (ii) interference with, or the stoppage of, vehicular or pedestrian traffic to property, premises, services or facilities;

caused by an Occurrence in connection with the Insured Operations.

### **Repair**

Means alteration, renovation, service or installation.

### **Territorial Limits**

Means the 'Territorial Limits' stated in Item 5 of the Schedule.



**Vehicle**

Means any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power, and any trailer or other attachment made or intended to be drawn by any such machine, and includes the machine's accessories, tools, specialised equipment and spare parts.

**Watercraft**

Means any vessel, craft or thing made or intended to float on or in the water, or travel on or through the water.

**Interpretation**

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 the Policy are not to be construed or interpreted by reference to such headings.

# 1. INSURING CLAUSES

## 1.01 General and Products Liability

The Insurer shall indemnify the Insured for all sums which the Insured shall become legally liable to pay as damages or compensation in respect of Personal Injury or Property Damage happening:

### General Liability

- (i) during the Construction Period or Defects Liability Period in respect of the Insured Operations, provided this is within the period of insurance.

### Products Liability

- (ii) during the Period of Insurance in respect of the Insured's Products within the Territorial Limits as a result of an Occurrence and in connection with the Business as stated in the Schedule.

## 1.02 Limit of Indemnity

The Insurer's maximum liability in respect of anyone Occurrence in respect of General Liability, and in the aggregate during the Period of Insurance in respect of all Occurrences in respect of Products Liability, shall not exceed the Limit of Indemnity stated in Item 6 of the Schedule, or the sub-limit in any applicable Extension Clause.

All Personal Injury or Property Damage in respect of continuous or repeated exposure to substantially the same general conditions shall be construed as arising out of one Occurrence.

PROVIDED THAT:

- (a) immediately that the Insurer has paid the Limit of Indemnity in respect of any judgment or settlement, its liability in relation to Costs and Expenses shall cease;
- (b) if a payment exceeding the Limit of Indemnity has to be made to dispose of a claim, the Insurer's liability in relation to Costs and Expenses shall be limited to the same proportion as the Limit of Indemnity bears to the amount required to dispose of the claim.

## 1.03 Costs and Expenses

In addition to the applicable Limit of Indemnity, in respect of any valid claim under this policy, the Insurer will pay Costs and Expenses subject to Insuring Clause 1.02.

# 2. EXCESSES

The Excesses specified in Item 7 of the Schedule being the first amount to be paid in respect of each claim or series of claims against the Insured, including legal costs and expenses, arising out of one Occurrence shall be borne by the Insured and the applicable Limits of Indemnity of the Policy are in excess of this sum.

### **3. EXCLUSIONS**

#### **3.01 Aircraft Products**

The Policy does not provide indemnity for liability in respect of claims arising out of any Insured's Products which are intended for incorporation into the structure, machinery or controls of any Aircraft or other aerial devices.

#### **3.02 Aircraft and Watercraft**

The Policy does not provide indemnity for liability in respect of claims arising out of the ownership, possession or use by the Insured of any Aircraft, or Watercraft but this exclusion shall not apply to:

- (a) Aircraft or Watercraft which are not owned by the Insured when such craft are hired, leased or chartered to or by the Insured with a pilot/master and crew supplied
- (b) Watercraft which does exceed 20 metres in length (as measured at the water line)
- (c) Liability arising out of the construction plant or equipment mounted upon or operating from any watercraft
- (d) The use or existence of explosives on or from any marine craft or vessels whether in, over or under water or otherwise
- (e) Liability in respect of work undertaken on marine craft or vessels.

#### **3.03 Asbestos**

The Policy does not provide indemnity for liability in respect of any Property Damage or Personal Injury or claim alleging, resulting from, arising directly or indirectly out of, in consequence of, or in any way involving asbestos in whatever form or quantity.

#### **3.04 Assumption of Liability**

This Policy does not provide indemnity in respect of liability assumed by the Insured under any contract or agreement except to the extent that such liability would have been implied by law.

But this Exclusion 3.03 does not apply to liability arising out of:

- (a) a contract entered into by the Insured for the hire, lease, or rental of any Property to the Insured;  
or
- (b) a contract entered into by the Insured as the declared contracts or agreements noted in the Schedule; or
- (c) any contract on NZS3910, NZS3915, NZS3916, NZS3917, (unamended by special conditions) their updates or replacement standards.

### **3.05 Building Defects**

The Insurer will not be liable to make any payment directly or indirectly caused by, arising out of or in any way connected with:

- (a) the failure of any building or structure to meet or conform to the requirements of the New Zealand Building Code or any applicable New Zealand regulation or standard (or any amended or substituted regulation or standard) in relation to leaks, water penetration, weatherproofing, moisture, or any effective water exit or control system; or
- (b) mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure.

This Exclusion does not apply to liability that is caused by, or directly arises from, the leakage of internal pipes, internal water systems or internal cisterns.

### **3.06 Conduct**

This Exclusion does not apply to liability for any alleged or actual fraudulent, dishonest, malicious, wilful or criminal act or omission of any Insured. Provided that this Exclusion does not apply to any Insured who has not committed or condoned the relevant conduct. Only the knowledge or actions of an entity Insured's chief executive officer or chief financial officer or general counsel or any of their functional equivalents will be imputed to that entity Insured.

In the event of a dishonest, fraudulent or malicious act or omission by an Insured, the Insurer's obligation to indemnify that Insured will cease and that Insured will reimburse all sums paid on their account in connection with that Claim.

### **3.07 Contract Works**

The Policy does not provide indemnity for liability for Property Damage to the contract works undertaken by an Insured.

### **3.08 Defective Materials, Design & Workmanship**

The Policy does not provide indemnity for liability for the cost of:

- (a) rectifying, repairing or replacing defective materials
- (b) remedying any defect in any design, plan or specification
- (c) remedying defective workmanship
- (d) correcting or improving work

undertaken by an Insured. Provided that this Exclusion does not apply to resultant Personal Injury or Property Damage

### **3.09 Defective Products**

This Policy does not provide indemnity for liability for the cost of rectifying any defect in any Product, or the cost of repairing or replacing or making any refund of the price paid for any Product, by reason of the Product having proved defective, harmful or unsuitable for its intended purpose. However, subject to the Policy terms, the Company will indemnify the Insured for resultant Damage arising from defective Products or workmanship after such Products or work has been put to use by any person or organisation other than an Insured.

For the purpose of this Exclusion the excluded portion is the defective component part of the Product.

### **3.10 Disclosure of Personal or Confidential Information**

The Policy does not provide indemnity for liability for the cost of:

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

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

Provided that this Exclusion does not apply to any Personal Injury as defined in Definition 2.11.1 or Property Damage as defined in Definition 2.18.1.

### **3.11 Employee Liability**

The Policy does not provide indemnity for liability for the cost of:

- (a) Personal Injury suffered by any Employee arising out of or in the course of employment of that person in the Insured's Business whether or not any Workers Compensation Law applies, but this exclusion does not apply with respect to the liability of others assumed by the Insured under written contract.
- (b) Employment Practices.

### **3.12 Fines and Penalties**

The Policy does not provide indemnity for liability for;

- (a) an award of punitive, liquidated, aggravated or exemplary damages;

- (b) any fine or penalties, including but not limited to civil penalties.

### **3.13 Loss of Use**

The Policy does not provide indemnity for liability for loss of use of tangible property that has not been physically injured or destroyed resulting from:

- (a) a delay in or lack of performance by or on behalf of the Insured of any contract or agreement, and/or
- (b) the failure of the Insured's Products or work performed by or on behalf of the Insured to meet the level of performance, quality, fitness or durability, expressly or implied warranted or represented by the Insured.

### **3.14 Pollution**

The Policy does not provide indemnity for liability in respect of Personal Injury or Property Damage or any Costs and Expenses incurred in the prevention, removing, nullifying or clean-up of contamination or pollution caused by or arising out of the discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere, or any water, unless the discharge, dispersal, release or escape occurs during the Period of Insurance and from the standpoint of the Insured is a sudden, identifiable, unexpected, accidental and unintended **Occurrence** taking place at a specific time and place.

### **3.15 Products Liability**

The Policy does not provide indemnity for the Insured's liability in respect of Products where the Contract construction commenced prior to 1<sup>st</sup> November 2010 (the date of the principal arranged insurance by the Insured).

### **3.16 Professional Advice or Design**

The Policy does not provide indemnity for:

- (a) liability for the rendering of or failure to render professional advice or a professional service by the Insured or for any act, error or omission connected therewith.
- (b) liability in connection with any defective design, formula, specification, plan or pattern of any Products prepared by the Insured.

But this Exclusion, 3.19, shall not apply to:

- (i) liability for Personal Injury or Property Damage arising therefrom. However, this proviso shall not apply to any insured parties providing architectural, engineering, quantity surveying or other professional consultancy except in respect of their manual activities at the Contract worksite
- (ii) liability for the rendering of, or the failure to render, necessary first aid to persons by the Insured or by any person employed the Insured.

### **3.17 Property in Custody or Control of the Insured**

The Policy does not provide indemnity for liability for Property Damage to:

- (a) any property owned by Insured;
- (b) any property held in trust or in the custody or control of the Insured other than as provided for under Extension 5.03.

### **3.18 Public Works Act**

The Policy does not provide indemnity for any liability to pay compensation that arises from the Insured exercising their statutory right to acquire or dispose of land under the Public Works Acts or its amendments.

### **3.19 Radioactivity**

The Policy does not provide indemnity for liability directly or indirectly caused by or contributed to by or arising from ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

### **3.20 Sanctions**

The Policy does not provide indemnity for liability directly or indirectly caused any claim and the Insurer shall not provide any cover or benefit to the extent that the provision of cover, payment of such claim or provision of such benefit would expose the 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, New Zealand, Australia or United States of America.

### **3.21 Terrorism**

The Policy does not provide indemnity for any liability, Cost and Expense of whatever nature directly or indirectly caused by, resulting from or in connection with any

- (i) Act of Terrorism regardless of any other cause or event contributing concurrently or in sequence to such Liability or Cost and Expense; or
- (ii) Action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

### **3.22 Vehicles**

The Policy does not provide indemnity for liability arising out of the ownership, possession, operation, control, maintenance or use by or on behalf of the Insured of any Vehicle which is required by law to be registered for road use.

But this Exclusion 3.17 does not apply to liability:

- (i) caused by or arising from the delivery, loading, unloading or collection of goods to and from any Vehicle, or
- (ii) caused by or arising out of or in connection with the Vehicle working as a tool of trade on any site or premises of the Insured.

### 3.23 War Risks

The Policy does not provide indemnity for liability arising from or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not) civil war, rebellion, resolution, insurrection, military or usurped power or expropriation including lawful seizure, resumption, confiscation, nationalisation, destruction or Property Damage by or under the order of any government or public or local authority.

## 4. CONDITIONS

### 4.1 Advancement of Defence Costs

- (a) If cover has been confirmed by the Insurer, then the Insurer shall advance all reasonable Costs and Expenses as and when they are incurred and prior to the final outcome of any claim.
- (b) If the Insurer has not confirmed cover in writing, the Insurer may, in their absolute discretion, agree to advance such reasonable Costs and Expenses.
- (c) The Insurer reserves the right to recover from any Insured any Costs and Expenses in accordance with the above if subsequently it is established by judgment, settlement or other final adjudication that the Insured is not entitled to payment under this Policy.

### 4.2 Assignment

No assignment of interest under this Policy shall bind the Insurer except as may otherwise be provided for herein, unless their written consent is endorsed hereon.

### 4.3 Breach of Conditions or Warranty or Misrepresentation

It is agreed that the insurance by this Policy will not be prejudiced by:

- (a) any innocent misrepresentation or innocent non-disclosure; or
- (b) the breach of any condition or warranty without the knowledge or consent of the Insured **provided always that** notice is given to the Insurer immediately the officer responsible for insurance in the Insured becomes aware of the above happenings and that an appropriate additional premium be paid if required by the Insurer.



#### 4.4 Cancellation

- (a) The Insured may cancel the cover under the Policy at any time by giving 90 days written notice to the Insurer in which case the Insurer shall be entitled to pro-rata of premium for the cover for the time this Policy or any Section or Extension of it has been in force.
- (b) The Insurer may cancel the Policy or any Section of this Policy or any extension of it at any time by giving 90 days written notice to the Insured at the address last notified to the Insurer.

In the event of cancellation by the Insurer the premium for the period in force shall be computed on a pro rata basis.

Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation is effected or as soon as cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

#### 4.5 Claims

- (a) The Insured must:
  - (i) in the event of an Occurrence or the likelihood of an Occurrence promptly take, at the Insured's own expense, all reasonable steps to prevent Personal Injury, Property Damage from arising or continuing, but such expenses shall not be recoverable under this Policy.
  - (ii) give notice in writing to the Insurer as soon as practicable of all information in connection with an Occurrence for which the insured party has a liability or potential liability for which the insured party may seek indemnity from the Insurer in terms of the Policy whether or not the insured party believes the amount of liability might be less than the Excess specified in the Schedule.
  - (iii) immediately forward to the Insurer any letter of demand or court documents.
  - (iv) not make any admission, offer, promise or payment in connection with any Occurrence, without the written consent of the Insurer.
  - (v) preserve all property, products, appliances and plant and all other things which may assist in the investigation or defence of a claim or in the exercise of rights of subrogation and so far as may be reasonably practicable no alteration or repair shall be effected without the written consent of the Insurer until the Insurer shall have had an opportunity of inspection.
- (b) The Insurer shall be entitled to take over and conduct in the name of the Insured the defence or settlement of any claim.
- (c) The Insurer shall have the discretion and conduct of any proceedings and the Insured shall give all information and assistance as the Insurer may require in the prosecution defence or settlement of any claim.

#### 4.6 Declarations

If the Minimum and Deposit Premium as shown in Item 8 of the Schedule is adjustable, then the premium is provisional and is calculated on the estimated Contract Values for the ensuing Period of Insurance;

- (a) Within 90 days of the expiry of each twelve (12) month period, commencing from inception of this Policy, the Insured will declare to the Insurer the final Contract Values by contract type for all Insured Operations commenced and completed during the preceding period and the projected

Contract Values by contract type for the Insured Operations commenced during the preceding period but not completed as at the end of the Period of Insurance.

- (b) Subject to any applicable minimum premium, the Minimum and Deposit Premium will be adjusted by payment to the Insurers of an additional premium or by way of an allowance to the Insured of a return premium as the case may be, calculated at the agreed rates on the difference between the estimated and final or projected Contract Values.

#### **4.7 Discharge of Liabilities**

The Insurer may at any time pay to the Insured in respect of all claims against the Insured arising directly or indirectly from one source or original cause the amount of the Limit of Indemnity or such other limit specified in respect thereof (after deduction of any sum or sums already paid as compensation in respect thereof), or any lesser sum for which the claim can be settled and upon such payment the Insurer shall relinquish conduct or control of and be under no further liability under the Policy in connection with the Claims except for costs, charges and expenses recoverable from the Insured in respect of the period prior to the date of such payment (whether or not pursuant to an order made subsequently) or incurred by the Insurer or by the Insured with the written consent of the Insurer prior to the date of such payment.

#### **4.8 Disputes**

Any dispute concerning the interpretation of the Terms, Definitions, Conditions, Exclusions, Limitations and/or Excess contained in this Policy or any Section or Extension of it is to be subject to New Zealand Law.

Each Party agrees to submit to the jurisdiction of any court of competent jurisdiction within New Zealand and to comply with all requirements necessary to give such court jurisdiction.

All matters as to the interpretation Terms, Definitions, Conditions, Exclusions, Limitations and/or Excess contained herein shall be determined in accordance with the law and practice of such court.

#### **4.9 Fraud**

Notwithstanding anything contained in this Policy, if an Insured shall make a claim against the Insurer that is fraudulent in any respect or if the insured or anybody acting on their behalf uses any fraudulent means to obtain a benefit under this Policy, then all benefits shall immediately be forfeited and the Insurer shall be entitled to cancel the coverage under this Policy or any Section or Extension of it, for that specific insured party.

#### **4.10 Hold Harmless Agreements**

Where in connection with or in relation to a Contract, the Insured enters into an agreement with another party where such agreement provides, inter alia, that the Insured shall indemnify and/or hold harmless and/or release from liability such other party in respect of any damage, defect or liability hereby insured against, it is understood and agreed that this Policy shall not be prejudiced or invalidated by the Insured agreeing to such provisions and that the indemnity and/or hold harmless and/or release from liability given by the Insured shall be equally binding upon the Insurers.

#### **4.11 Jurisdiction**

The Insurers agree that:

- (a) this policy is governed by the laws of New Zealand
- (b) in the event of a dispute arising under this Policy, Insurers at the request of the Insured will submit to the jurisdiction of any competent Court in New Zealand. Such dispute shall be determined in accordance with the practice applicable in such Court;
- (c) if proceedings are instituted against anyone of the Insurers, all Insurers hereon will abide by the decision of such Court or any competent Appellate Court.

#### **4.12 Loss Adjustors**

- (a) The Insurers and the Insured agree that their agreed loss adjustors shall be agents of the Insurers and the Insured and all documents, transcripts, reports (verbal and written) shall be made available to the Insurers and the Insured.
- (b) If at any time there shall be any dispute or difference between the Insurers and the Insured in respect of the adjustment of a loss, then the Insurers or the Named Insured shall at their own cost be entitled to appoint an independent loss adjustor.

#### **4.13 Multiple Insureds**

- (a) If the Insured comprises more than one insured party each operating as a separate and distinct entity (save as provided in this clause 4.13), 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 Indemnity or sub-limits in this Policy. For the purposes of this Policy each government department or government entity comprising the Insured shall be deemed to be a separate and distinct entity from the other government entities.
- (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 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.
- (d) However any 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 the act or neglect.
- (e) The Insurers agree to waive all rights of subrogation that they may have or acquire against:
  - (i) any Insured or individual or organisation affiliated or associated with, parent of or a subsidiary of any Insured;
  - (ii) at the option of the Insured, any other parties or persons, subject to the Insured waiving rights of subrogation prior to an Occurrence to which this policy applies, but only when required to do so under contract.

#### **4.14 Notices**

- (a) All notices given under this Policy shall be in writing.
- (b) Service of notices by the Insurer shall be effective immediately on receipt by the Insured of a facsimile transmission sent from the Insurer, or in the case of notices by post, three business days after having been posted by the Insurer, such notice to run from 4 pm of the day following that upon which the letter is posted.
- (c) Any notice by the Insurer to the Insured shall be deemed to be notice given to each of the parties comprising the Insured.
- (d) Any notice of claim given to the Insureds by any party insured under this Policy shall be accepted by the Insurers as a claim given on behalf of all other parties insured under this Policy. Notwithstanding, this clause does not diminish the obligation of an Insured to advise the Insurers of any written claim or proceeding against them that would materially impact on the defence of the claim.

#### **4.15 Other Insurance**

If there is at the time of any claim under this Policy or would be but for the existence of this Policy, any other policy of collectable insurance in force and available to the Insured applicable to such claim the coverage under this Policy shall be in excess of the amount of cover afforded under such other policy or policies and the Limit of Indemnity under this Policy shall be reduced by the amount of the limit of liability afforded under such other policy or policies.

#### **4.16 Policy Limits, Premiums and Excesses**

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

#### **4.17 Referral Contracts**

Referral Contracts specified in the Schedule, will be held covered by the Insurer in accordance with the indemnity provided by this Policy for a period not exceeding 90 days from the commencement of the Referral Contracts Construction Period (such period referred to as the "Interim Cover Period"), and thereafter will be covered subject to agreement by the Insurer, provided the Insured makes all efforts to declare prior to contract commencement.

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

Referral Contracts appearing in the Insured Operations in the Schedule shall be automatically covered if specified as an Endorsed Referral Contract in the Schedule, subject to any agreed alteration in this Policy's excesses, premium or other terms. Cover will be subject to Insuring Clause 1.01.

In the event that such terms and conditions are not acceptable to the Insured, the Insured shall be under no obligation to declare these Contracts to the Insurer after the Interim Cover Period. In the event of the Insured electing not to continue cover for a Referral Contract after the Interim Cover Period, the Insured is obliged to declare the expended Contract Value for such Contract in its declaration to the Insurers under Clause 4.6.

#### **4.18 Subrogation**

In the event of a payment made under this Policy to or on behalf of the Insured the Insurer shall be subrogated to all the Insured's rights of recovery against all persons and organisations and the Insured shall execute and deliver any and all appropriate instruments and papers and do all that is necessary to assist the Insurer in the exercise of such rights.

Any such amount so recovered shall be apportioned in the following order of priority:

- (a) firstly, to the uninsured portion of the loss;
- (b) secondly, to reimburse the Insurer to the extent of their actual payment hereunder;
- (c) thirdly, if any balance then remains unpaid it shall be applied to reimburse the Insured or any underlying Insurer or excess layer Insurers as their interest may appear.

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

#### **4.19 Taxes**

This Policy shall cover the Insured for any Goods and Services Tax that the insured party is liable to pay as the result of receiving any payment under this Policy.

Any payment under this General Condition is in addition to the Limits of Indemnity as stated in the Schedule.

#### **4.20 Waiver of Lawyer/Client Relationship**

Should the Insurer elect to instruct any lawyer to investigate or defend any claim against an insured party under this Policy so that a relationship of lawyer and client arises between the lawyer and the insured party, the insured party hereby agrees to waive client privilege to any information or documents supplied to the lawyer thereby allowing such information or documents to be supplied by the lawyer to the Insurer.

## 5. EXTENSIONS

The following Extensions are included under this Section of the Policy.

Each Extension is subject to the Terms, Definitions, Conditions, Limitations, Exclusions, Excess and Limit of Indemnity of the Policy except where the same may be expressly varied by the Extension.

The inclusion of any Extension shall not increase the Limit of Indemnity.

### 5.01 Exemplary Damages (New Zealand cover only)

Notwithstanding Exclusion 3.15(a), (Fines & Penalties), the Insurers shall indemnify the Insured for exemplary damages awarded by a New Zealand Court.

Provided always that:

- (a) the Insurers shall not be liable to pay for any exemplary damages awarded against the Insured in connection with:
  - (i) any dishonest, fraudulent or malicious act or omission of the Insured; and
  - (ii) any trespass malicious prosecution, sexual harassment or sexual abuse.
- (b) the Limit of Indemnity, inclusive of Costs and Expenses, shall not exceed that stated in Item 6 of the Schedule for this extension.

### 5.02 Property in Care, Custody or Control of the Insured

Notwithstanding Exclusion 3.13 (Property in the Care Custody & Control) the Insurer shall indemnify the Insured for all sums the Insured becomes liable to pay arising from Property Damage to property in the possession or control of the insured (but not owned, hired, leased or rented to or by the Insured) happening during the Period of Insurance and caused by an Occurrence.

Provided always that:

The Limit of Indemnity, inclusive of Costs and Expenses, shall not exceed that stated in Item 6 of the Schedule for this extension.

## **6. Endorsements**

### **6.01 Amended Aircraft and Aircraft Products Exclusion Endorsement**

#### Coverage

Notwithstanding the Aircraft and Aircraft Products exclusion the Company will indemnify the Insured for all sums that the Insured becomes legally liable to pay for Damage or Injury caused by the Insured's use of and operation of a Drone, UAV or Model Aircraft. Provided that;

- (a) the Drone, UAV or Model Aircraft is not flown or operated where flying is prohibited by central or local government laws, bylaws, rules or regulations; or
- (b) in contravention to any government department regulations including but not limited to the Civil Aviation Authority and its respective rules and/or regulations.

#### Definition of Drones, UAV's or Model Aircraft

Drones, Unmanned Aerial Vehicles (UAV's) or Model Aircraft means;

An unmanned miniature representation of an aircraft or flying device that;

- (i) complies with Part 101 of the New Zealand Civil Aviation Authority
- (ii) is not used to carry cargo of any nature other than camera equipment; and
- (iii) does not exceed an individual gross weight of 25kg; and
- (iv) is operated by the Insured from a ground based controller.

An Excess of \$50,000 applies in respect of each Occurrence arising from the use of Drones, Unmanned Aerial Vehicles (UAV's) or Model Aircraft.

In all other respects this Policy remains unaltered other than as stated above.

### **6.02 Additional Insureds - Milford Road Alliance Project including Downer as Alliance Participant Endorsement**

The definition of Insured is extended to include the Milford Road Alliance Project and Downer as Alliance Participants with respect to any liability arising from the Milford Road Alliance Project Contract, provided that Downer has responsibility for insuring Aviation Liability for the Milford Road Alliance Project Contract and this insurance does not cover any liability covered by any Aviation Liability policy. Notwithstanding the foregoing and Exclusion 3.02 (Aircraft & Watercraft), the Insurer will indemnify NZTA for vicarious Aviation Liability arising from Milford Road Alliance Project Contract only and in excess of \$5,000,000 in the aggregate.

The normal excess for non-aviation related claims will be \$10,000 in respect of this cover.

In all other respects this Policy remains unaltered other than as stated above.

### **6.04 Lincoln to Westgate Project Endorsement**

It is hereby noted and agreed that the defects liability period of cover is further extended in respect of the landscaping. It will extend to 156 weeks in-stead of the standard period of 104 weeks.

It is noted that the value of this contract is NZD87,000,000.

In all other respects this Policy remains unaltered other than as stated above.

## **6.05 Other Insurance Clause Endorsement**

It is hereby noted and agreed that the “Other Insurance Clause 4.15” will apply in respect of the Chubb Environmental Liability (policy number renewal of the 2024 policy NZENVA 03671), issued for the period 30 June 2024 – 30 June 2025 and that the cover afforded by Exclusion 3.17 of this PAI General Liability policy will respond in excess of that policy. Provided that this PAI General Liability policy will not provide excess cover for Costs and Expenses where the “legal defense expense” limit under policy number NZENVA 03671 has been exhausted but the limit of liability for “loss” excluding “legal defense expense” cover has not (as the terms “loss” and “legal defense expense” are defined in that policy).

However, it is the intention that the BH PAI General Liability policy will respond in the first instance to any Asbestos related claim in respect of the Lyttelton Deluge Project.

In all other respects this Policy remains unaltered other than as stated above.

## **6.06 Shared Aggregated Limits**

This endorsement modifies insurance provided under the following:

Combined General & Products Liability Insurance Policy

The combined total aggregate limit of indemnity that the Insurer will be liable to pay arising out of any one Occurrence arising out of the same event or circumstances made against the Insured under all covers combined involving:

1. Corporate CGL policy
2. CGL PAI policy

will be \$20,000,000 for loss (excluding Costs & Expenses).

All other terms and conditions of this Policy remain unchanged.

## **6.07 Primary and Non-Contributory**

It is hereby agreed and declared that this policy provides primary and non-contributory cover for the Insured(s) and that in the event of loss or liability covered by this Policy which is covered either in whole or in part under any other policy or policies of insurance, excluding project specific CGL policies, effected by or on behalf of any of the Insured parties, the Insurer will indemnify the Insured parties as if such other policy or policies of insurance were not in force, and the Insurers waive their rights of recourse, if any, against the insurers of such other policy or policies of insurance.”



## 6.08 Chatham Island Maintenance contract:

It is hereby noted and agreed that the Insurer will indemnify the Insured in respect of this contract for all major maintenance activities undertaken. These activities include but are not limited to replacement of broken fender piles, repairs to breakwater protection and channel dredging and more fully declared to the Insurer.

## 6.09 Perfluoroalkyl and Polyfluoroalkyl Exclusion

**PFAS** means:

perfluoroalkyl and polyfluoroalkyl substances, including, but not limited to: Perfluorinated chemicals, compounds, and substances;

- (a) Polyfluorinated chemicals, compounds, and substances;
- (b) Perfluoroalkane sulfonoamido chemicals, compounds, and substances;
- (c) Fluoropolymers of any type, kind, or substance;
- (d) Perfluoropolyethers of any type, kind, or substance;
- (e) Side-chain fluorinated polymers of any type, kind, or substance;
- (f) Perfluorooctanoic acid(s), perfluorooctane sulfonic acid(s), perfluorobutane sulfonic acid, GenX, and any other compound or substance included as or designated to be a perfluoroalkyl or polyfluoroalkyl by the New Zealand Environmental Protection Authority, Te Mana Rauhi Taiao, Australian Government Department of Climate Change Energy the Environment and Water, the United States Environmental Protection Agency or any similar state agency or entity, or any equivalent foreign environmental agency or entity having jurisdiction over the Insured or the Policy Territory to which this policy applies;
- (g) Any product(s) of, derived from, or including, any item included in this definition of PFAS;
- (h) Associated salts, esters, acids, and alcohols of any item included in this definition of PFAS;
- (i) Ionic state(s) and acid form(s) of any item included in this definition of PFAS; and
- (j) Precursor chemical(s), derivative(s), and degradation or by-product(s) of any item included in this definition of PFAS.

### Perfluoroalkyl and Polyfluoroalkyl Exclusion:

- A. This **Policy** does not apply to any **Personal Injury, Property Damage** or any other loss, cost, defence costs, expense, claim, dispute or suit in whole or in part arising out of, directly or indirectly resulting from or in any way related to **PFAS** or **PFAS** containing products or materials.
- B. This exclusion applies even if the claim(s) against any Insured alleges **Personal Injury, Property Damage**, negligence, other wrongdoing or any other loss, cost or expense in whole or in part arising out of, directly or indirectly resulting from or in any way related to:
  - 1. Actual, alleged or threatened inhalation of, ingestion of, consumption of, contact with, exposure to, existence of or presence of **PFAS** or **PFAS** containing products or materials;

2. Design, manufacture, production, use, sale, installation, removal, distribution, handling, packaging, processing of or any other similar business-related activity relating to **PFAS** or **PFAS** containing products or materials;
  3. Testing for, monitoring, cleaning up, abating, removing, containing, treating, detoxifying, neutralizing, remediating, disposing of or in any way responding to, or assessing the effect(s) of **PFAS** or **PFAS** containing products or materials; or
  4. Failure to report **PFAS** or **PFAS** containing products or materials to authorities.
  5. Any advertising, representations or statements of any kind relating to the presence, absence, or amount of **PFAS**, in whole or in part, in any products, materials, business-related activities or part of the environment.
- C. This exclusion shall apply regardless of whether any other cause, event, material, or product contributes concurrently or in any other sequence to cause such Injury, Damage or any other item listed in Paragraphs A. or B. above.