

**CONTRACT NO.**

**FINPRO PRACTICE**

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**RISK DETAILS**

**POLICY NUMBER:** **XS 12219**

**TYPE:** PAI General Liability Excess liability insurance

**POLICYHOLDER:** New Zealand Transport Agency being a Crown entity established on 1st August 2008 or as may be re-established under any amending or replacing legislation.

and any subsidiary company, more than half the nominal value whose equity share capital is owned by the named Insured either directly or through other subsidiaries; and any other entity over which an Insured exercises management control.

**PRINCIPAL ADDRESS:** Victoria Arcade, 50 Victoria Street, Private Bag 6995, Wellington, New Zealand

**POLICY PERIOD:** From: 30 June 2020  
To: 30 June 2021  
both days at 4 p.m. local time at the principal address.

Defects Liability Period - 24 months any one contract

**LIMIT OF LIABILITY:** (a) \$80,000,000 any one occurrence and in the aggregate in respect of Product Liability (comprising of AIG \$55,000,000 and Chubb \$25,000,000)

excess of

(b) \$20,000,000 any one occurrence and in the aggregate in respect of Product Liability

excess of any retention applicable to the Primary Contract.

**SITUATION:** Worldwide

**CONDITIONS :** 1. Finpro Excess Layer Wording NZ 2012 as attached.

2. **PRIMARY POLICY:**  
Policy no: 47-ZCA-000395-06  
Insurer/s: Berkshire Hathaway Specialty Insurance  
Limit: \$20,000,000 any one occurrence and in the aggregate in respect of Product Liability

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**CHOICE OF LAW  
AND JURISDICTION:**

As stated in Primary Policy

**PREMIUM AND TAXES:**

As agreed

**SECURITY DETAILS**

**INSURER'S  
LIABILITY:**

**Insurer's liability several not joint**

The liability of an insurer under this contract is several and not joint with other insurers party to this contract. An insurer is liable only for the proportion of liability it has underwritten. An insurer is not jointly liable for the proportion of liability underwritten by any other insurer. Nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this contract.

In a co-insurance placement, following insurers may, but are not obliged to, follow the premium charged by the leading insurer.

Insurers may not seek to guarantee for themselves terms as favourable as those which others subsequently achieve during the placement.

**WRITTEN LINES:**

AIG Insurance New Zealand Ltd (Lead Insurer) 68.75%  
Chubb New Zealand Limited (Co-Insurer) 31.25%

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Endorsements**Sanctions Clause**

This **Policy** does not cover any claim and will not provide any cover or benefit to the extent that the provision of such 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 or the United States of America.

All other terms, conditions and exclusions remain unchanged.

**Co-insurance Agreement -Lead**

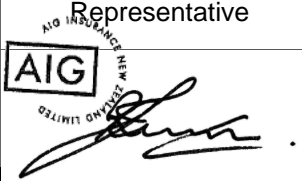

In consideration of the payment of the premium, the policy is amended as follows:

The following provisions are added to the policy:

Each insurer listed below (referred to in the policy as "**Insurer**", notwithstanding the description of **Insurer** which appears in the Schedule) agrees to provide cover as detailed in the policy.

**Insurer**

The following insurance companies:

Insurer	Proportion %	Date	Signature of Authorised Representative
AIG Insurance New Zealand Limited (Lead Insurer)	68.75% (\$55,000,000)	01/09/2020	
Chubb New Zealand Limited (Co-insurer)	31.25% (\$25,000,000)	01/09/2020	

The cover afforded by each **Insurer**:

- (i) shall be subject to the submission, the Schedule, the general terms and conditions and the Exclusions, provisions and other terms of this policy, or as may be subsequently varied by mutual agreement;
- (ii) shall be limited to the proportion of payment shown against its name;

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- (iii) is several and not joint. Each **Insurer** is not responsible for the proportion of any co-insurer who, for any reason, does not satisfy all or part of its obligations; and
- (iv) the total liability of all the **Insurers** shall not exceed the **limit of Liability** stated in the Schedule, or such other amount as may be substituted by an endorsement signed by or on behalf of each **Insurer**;
- (v) Any endorsement of this policy shall only bind an **Insurer** if agreed by that respective **Insurer** and the first named **Policyholder**.
- (vi) The **Lead Insurer** retains the rights to lead claims management, including but not limited to the investigation, defence, and settlement of any **Claim**.
- (vii) The **Subscribing Insurer(s)** shall have the right and shall be given the opportunity to effectively associate with **the Lead Insurer** in the investigation, adjustment and settlement, including but not limited to the negotiation of a settlement of any **Claim**.
- (viii) Any endorsement of this policy shall be agreed between all **Insurers** and the **Insured**.

All other terms, conditions and exclusions remain unchanged.

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**Endorsed Referral Contracts under the Primary Policy also covered under the Excess Layer, cover including the projects but not limited to them being named:**

Waikato Expressway Rangiriri Section

Contract Period 7 January 2013 – 30 April 2017  
Total Contract Value NZD75,093,498

CA3825 – SH 16 St Lukes Western Ring Route Project

Contract Period 14 February 2014 - 1 May 2017  
Total Contract Value NZD68,717,855

HAIRINI LINK – Stage 4

Contract Period November 2014 - 2017  
Total Contract Value NZD53,240,000

NCTIR ALLIANCE – Kaikoura Project

Contract Period 1 January 2017- 30 December 2020  
Total Contract Value NZD1,400,000,000  
This project includes: The Kaikoura Harbour Restoration Work, with the interest of KDC noted.

BAYPARK TO BAYFAIR – Contract no 2/09-024/603

Contract Period Starting 2 May 2017 – 21 February 2021  
Total Contract Value NZD87,000,000

LYTTELTON TUNNEL DELUGE & ASSOCIATED SYSTEMS UPGRADE PROJECT – Contract no NZTA 63181 SH 74

Contract Period 15 July 2017 – December 2018  
Total Contract Value NZD21,217,786

SH2: WAIHI TO OMOKOROA PROJECT

Contract Period 1 May 2019 – March 2023  
Total Contract Value NZD63,875,000  
Excess NZD25,000 (cost inclusive)

WAIKATO EXPRESSWAY – LONGSWAMP SECTION

Contract Period 4 July 2016 – 12 September 2019  
Defects Liability Period 31 August 2020 – 9 November 2020

And as referred to in the **Primary Policy**.

**FINPRO EXCESS LAYER WORDING (NZ Jan 2012)**

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In consideration of the **Policyholder** or the **Insured** having paid or having promised to pay the premium, and subject to all of the terms, conditions and limitations of this excess policy, the insurers described in the SECURITY DETAILS of this excess policy (**'Insurer'**) and the **Policyholder** and **Insured** agree as follows:

1. **Insuring agreement**

- 1.1 The **Insurer** will provide the **Insured** with insurance coverage upon the terms, conditions and limitations of the **Primary Policy** except insofar as express provision for any matter is set out in this excess policy, and only insofar as necessary, the terms conditions and limitations set out in this excess policy will prevail over the corresponding terms, conditions and limitations of the **Primary Policy**.
- 1.2 Subject to the **Limit of Liability** the **Insurer** will pay to or on behalf of the **Insured** (or, if the **Primary Policy** conditions require, to the relevant **Costs and Expenses Insurer**) that proportion of the loss which exceeds the **Underlying Insurance**.
- 1.3 Subject to the provisions of sub-clause 1.4, unless and to the extent that clause 4 of this excess policy applies, the **Insurer** will have no liability under this excess policy unless and until all of the **Underlying Insurance** has been exhausted by the payment of losses under the **Underlying Insurance**.
- 1.4 For the purposes of this excess policy, losses shall be deemed to have been paid under an **Underlying Insurance** to the extent that any of the insurers subscribing thereto have paid, or have agreed to pay such losses, or have had their liability to pay such losses established by judgment, arbitration award or other final binding adjudication. Such payment will, for the purposes of this excess policy, be deemed to have been made on the date of payment, agreement or adjudication, whichever occurs first.

Furthermore:

- (a) **If** a payment in respect of a loss is made under an **Underlying Insurance** of an amount which is less than the applicable limit of liability under that **Underlying Insurance** (but the relevant loss exceeds the applicable limit of liability under that **Underlying Insurance**), then such payment will, for the purposes of determining the application of this excess policy to such loss, be deemed to exhaust the applicable limit of liability of that **Underlying Insurance** provided that the **Insurer** will be liable to pay only that part of the loss which exceeds the **Underlying Insurance**.
- (b) **If** any insurer participating on an **Underlying Insurance** is or becomes **Insolvent** then, for the purposes of this excess policy, such **Insolvent** insurer will be deemed to have paid in full the amount of its liability for

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losses under such **Underlying Insurance**, but only in the event that either:

(i) any other insurer participating on the relevant **Underlying Insurance** pays, or agrees to pay or has its liability to pay established by judgment, arbitration award or other final binding adjudication, whichever occurs first; or

(ii) the **Insurer** would be liable hereunder but for the **Insolvency**

provided that the **Insurer** will be liable to pay only that part of the loss which exceeds the **Underlying Insurance**.

(c) The **Insurer** will recognise the erosion of **Underlying Insurance** whether or not cover provided in such **Underlying Insurance** is also provided by this excess policy. For the avoidance of doubt, a tie-in of limits clause in the **Underlying Insurance** is not a clause to which this clause 1.4(c) applies.

(d) The **Insurer** will recognise the erosion of **Underlying Insurance** as a result of a provision in the **Underlying Insurance** which reduces the limit of liability in **Underlying Insurance** by reason of any amount paid or payable or limit of liability provided under another policy issued by a subsidiary, associate or affiliate of an underlying insurer or its parent company.

## 2. Definitions

2.1 **Costs and Expenses Insurer** has the same definition as in the Primary Policy.

2.2 **Insolvent or Insolvency** means that any step, application, order, proceeding or appointment has been taken or made in respect of an entity for composition or arrangement with creditors, winding-up, dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or that the entity is unable to pay its debts.

2.3 **Insured** means the **Policyholder** and all other persons, organisations and entities as are insured under the **Primary Policy**.

2.4 **Insurer** means those entities and/or syndicates who are identified as underwriters or insurers by affixing of their seal or stamp in the SECURITY DETAILS section of this contract.

2.5 **Limit of Liability** means the amount specified at item (a) of the limit of liability in the RISK DETAILS of this excess policy, which will be the maximum sum the **Insurer** is liable to pay under this excess policy.

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- 2.6 **Primary Policy** means the primary contract identified in the RISK DETAILS of this excess policy.
- 2.7 **Policy Period** means the period specified in the RISK DETAILS of this excess policy.
- 2.8 **Policyholder** means the entity named in the RISK DETAILS of this excess policy.
- 2.9 **Underlying Insurance** means the **Primary Policy** together with any and all excess policies providing together the amount of cover specified at item (b) of the limit of liability in the RISK DETAILS of this excess policy, and any policies replacing any of them.
3. **Maintenance of Underlying Insurance**
- 3.1 Subject to sub-clause 3.3 below, all of the **Underlying Insurance** will be maintained during the **Policy Period** in full effect, except for any depletion of underlying limits.
- 3.2 The **Insured's** failure to maintain **Underlying Insurance** will not invalidate this excess policy but, and subject to the application of clause 4, the **Insurer** will not be liable to a greater extent or at an earlier point in time than if sub-clause 3.1 had been complied with. Nothing in this clause will negate clause 6 of this excess policy.
- 3.3 In the event of a failure by the **Policyholder** or the **Insured** to give notice or to exercise any extension under any **Underlying Insurance** the **Insurer** will not be liable under this excess policy to a greater extent or at an earlier point in time than they would have been in the absence of such failure.
- 3.4 In the event of the **Insolvency** of any insurer participating on any **Underlying Insurance** the **Insured** shall not be in breach of the obligations under sub-clause 3.1 above if the **Underlying Insurance** is no longer in full force and effect as a result of that **Insolvency**.
4. **Depletion of Underlying Limits**
- 4.1 In the event and to the extent of the depletion or exhaustion of any limit of liability of the **Underlying Insurance** other than as provided for in sub-clause 4.2 below, and as a result of payment of a loss or losses under the **Underlying Insurance**, this excess policy will (subject to the **Limit of Liability** and terms, conditions and limitations of this excess policy) continue and operate for subsequent losses as excess insurance over the amount of the relevant limit of liability remaining under such **Underlying Insurance**.
- 4.2 In the event of the exhaustion of any aggregate limit of liability applicable under the **Underlying Insurance** as a result of the payment of loss or losses under the **Underlying Insurance** this excess policy will (subject to the **Limit of Liability**



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and terms, conditions and limitations of this excess policy) continue for subsequent losses as primary insurance in respect of any subsequent loss or losses that would otherwise have been covered by such **Underlying Insurance** but for the exhaustion of that aggregate limit of liability.

4.3 In the event that this excess policy is required to operate as primary insurance by virtue of sub-clause 4.2 above:

- (a) any excess or retention specified in the **Primary Policy** shall apply to this excess policy, otherwise no excess or retention shall apply to this excess policy;
- (b) in respect of any loss or losses for which the **Primary Policy** imposed a sub-limit of liability, this excess policy will provide cover for any unpaid portion of that sub-limit.

4.4 For the purposes of this clause 4, the determination of whether there has been any payment of losses under and/or exhaustion of any **Underlying Insurance** will be made in accordance with sub-clause 1.4. However, and for the purposes of this clause 4 only:

- (a) if and to the extent that paragraph 1.4(a) above applies, any and all amounts representing the difference between:

- (i) any applicable limit of liability of any **Underlying Insurance** and
- (ii) the amount paid by that **Underlying Insurance**

will be included in the calculation of the amount excess of which this excess policy shall then operate in accordance with sub-clause 4.1 or sub-clause 4.2 above

and

- (b) if and to the extent that sub-paragraph 1.4(b)(i) above applies, any and all amounts representing the difference between:

- (i) any applicable limit of liability of any **Underlying Insurance** and
- (ii) the amount that any insurer participating on the relevant **Underlying Insurance** pays, or agrees to pay or has its liability to pay established by judgment, arbitration award or other final binding adjudication plus the amount deemed to have been paid by an insolvent insurer

will be included in the calculation of the amount excess of which this excess policy shall then operate in accordance with sub-clause 4.1 or sub-clause 4.2 above.

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4.5 An **Underlying Insurance** will not be deemed exhausted solely by reason of the **Insolvency** of an insurer participating thereon.

5. **Claims**

5.1 Any first notice of a claim or circumstance (or equivalent term by which the **Primary Policy** identifies matters potentially giving rise to notifications thereunder in respect of a loss or losses) required to be given under the terms of the **Primary Policy**, will also be given to the **Insurer** under this excess policy.

5.2 In respect of any matter notified pursuant to sub-clause 5.1 above:

- (a) the **Insured** will inform the **Insurer** of any material developments in relation to such matter;
- (b) without prejudice to paragraph 5.2(a) above the rights and obligations set out in any claims investigation, claims co-operation, claims handling, claims defence, claims assessment and/or claims settlement provisions of the **Primary Policy** will be incorporated into this excess policy, but will not be enforceable for the purpose of this excess policy unless and until the loss or losses (including any defence costs or other fees incurred by the **Insured** for which indemnity is available under the **Primary Policy**) likely to arise from such matter have the potential to deplete the **Underlying Insurance** such that the policy immediately underlying this excess policy will be eroded to the extent of 50% or more of the limit of liability of such immediately underlying policy.

6. **Alteration**

6.1 No amendment to the **Primary Policy** during the **Policy Period** will be effective in extending the scope of this excess policy, until agreed in writing by the **Insurer**.

6.2 No claim payment made as a consequence of an amendment to the **Primary Policy** during the **Policy Period** will operate to deplete or exhaust any limit of liability of the **Underlying Insurance** unless such amendment has been agreed in writing by the **Insurer**.

7. **Governing Law and Jurisdiction**

The constructions, interpretation and meaning of the terms, exclusions limitations and conditions of this excess policy and all other matters arising out of or relating to this excess policy shall be determined in accordance with the laws of the state or country specified in the RISK DETAILS of this excess policy, and any litigated dispute arising hereunder will be subject to the exclusive jurisdiction of the courts of the state or country specified in the RISK DETAILS of this excess policy.

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**8. Dispute Resolution**

- 8.1 In the event that a dispute arises between the Insurer and the Insured under this excess policy, the provisions of the Primary Policy are incorporated into this excess policy for the purposes of determining the dispute resolution procedures applicable to this excess policy.
  
- 8.2 In the event that a dispute arises between the Insurer and the Insured under this excess policy in relation to matters that are also the subject of a dispute between the Insured and the insurers of any Underlying Insurance then those disputes shall be heard together in the same court or arbitration proceedings.