

## **RISK DETAILS - WORDING**

# **Commissioner of Main Roads Western Australia**

## **Principal Arranged Insurance Liability Policy**

## Definitions / Interpretations

The following Definitions will apply to this Policy:

**Activities** includes the provision and management of canteens, social, sports and welfare organisations for the benefit of the Insured's employees, first aid, security, fire and ambulance services and maintenance of the Insured's premises.

**Advertising Injury** means:

- i. libel, slander or defamation;
- ii. infringement of copyright or of title or of slogan;
- iii. piracy or unfair competition or idea misappropriation under an implied contract;
- iv. invasion of privacy;

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast and arising out of the Insured's advertising activities or any advertising activities conducted on behalf of the Insured, in the course of advertising the Contract, Business, goods or services.

**Aircraft** means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

**Construction Period** means the period commencing with the entering into of each Contract; provided such Contract is entered into during the Period of Insurance, until in accordance with the obligations of the Insured under such Contract:

- i. the Contract Works have been formally accepted in their entirety by the principal/owner notwithstanding the fact that portions of the Contract(s) may have been handed over, put into use and accepted by the principal/owner prior to that time, including any Performance Testing Periods; or
- ii. with respect to each separable portion of the Contract Works, the time it is taken over and put into use by the principal/owner, including any Performance Testing Periods.

In the event of this Policy being cancelled or not renewed, coverage shall continue subject to the same terms and conditions, in respect of all Contract(s) commenced prior to the date of such cancellation or non renewal and shall remain in force until:

1. in accordance with © or ii above; or
2. the Named Insured formally advises the Insurer that the Contract(s) have been insured elsewhere;

whichever occurs first.

**Contract** includes all works, contracts or agreements including early contractor involvement 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 Business but excludes the value of principal supplied and other materials.

**Defects Liability Period** means the period described in any Contract during which an 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 the Schedule in respect of any one Contract.

Where the Contract provides for the Defects Liability Period to be extended upon rectification of a defect, the Defects Liability Period in respect of the rectification can be extended up to a maximum of 24 months following completion of the rectification works.

**Employee** means any person under a contract of service or apprenticeship with the Insured.

**Insured** means:

- i. The Named Insured;
- ii. any parent or subsidiary company (including subsidiaries thereof) of the Named Insured and any other organisation under the control of the Named Insured and over which it is exercising active management, whether now or hereafter incorporated;
- iii. any of the following persons or entities for whom or for which the insured parties under clauses i and ii above are obliged to arrange insurance by virtue of a contract or assumption of responsibility, but only to the extent required by such contract or assumed responsibility and in any event only for such coverage and Limits of Liability as provided in this Policy:
  - a. any principal or owner or agent of the principal or owner, or joint venture partner or alliance participant;
  - b. any construction manager or project manager;
  - c. any alliance partner, sub alliance partner, alliance participant or sub alliance participant;
  - d. any contractor or sub-contractor 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 a Worksite;
  - i. any other party with an insurable interest in the Contract(s);
- iv. any director, executive officer, employee, contract staff or partner of any of the insureds under clauses i, ii or iii whilst acting as such;
- v. any office bearer or member of any social, sporting, safety, security, medical or welfare facility of any of the insureds under clauses i, ii, iii(a) iii(b) or iii(c) whilst acting as such; and

all for their respective rights and interests.

**Local Standard Time** which appears in the Schedule means the time at the Named Insured's principal location.

**Occurrence** means an event including continuous or repeated exposure to conditions that results in Personal Injury, Property Damage or Advertising Injury where such injury or damage is neither expected nor intended from the standpoint of the Insured.

**Personal Injury** includes:

- i. bodily injury, illness, disease, disability, shock, fright, loss of consortium, mental anguish or mental injury, including any resultant death;
- ii. false arrest, false imprisonment, wrongful detention, malicious prosecution and humiliation;
- iii. the publication or utterance of libel or slander, or of other defamatory or derogatory material, or a publication or utterance in violation of any individual's right of privacy except:

- a. when the first such publication or utterance is related to any publication or utterance made prior to the commencement of this Policy; or
  - b. when any such publication or utterance is made in the course of or is related to advertising, broadcasting, telecasting or publishing activities conducted by or on behalf of the Insured;
- iv. wrongful entry or wrongful eviction or other invasion of the right to private occupancy;
- v. 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.

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

**Prime Contractor** means a prime, head or main contractor engaged by the Named Insured or their agents to perform construction activities or a combination of design and construction activities or an alliance participant performing any activities.

**Products** means anything after it has left the custody or control of the Insured and upon expiry of the Construction Period, 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, which includes works performed by the Insured, containers, labels and packing materials, directions, instructions and advice given or omitted to be given in connection with such Products. For the purpose of this Definition, Products shall apply to all Contracts of any kind or description undertaken by or on behalf of the Named Insured, irrespective of when the Contract is completed.

**Property Damage** means physical damage to or destruction of tangible property, including the loss of and loss of use of property, whether or not that property has been destroyed or damaged and includes, without limiting the foregoing:

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

**Tunnelling** means the construction of underground passageways, subways and/or roads used for the movement of pedestrians or vehicular traffic that is open at both ends and is constructed by boring, drilling, excavating, or digging through the earth or any construction using horizontal directional drilling techniques. "Tunnelling" does not include a structure constructed by open excavation and covering less than 250 metres in length which would be regarded as an intersection (or similar) rather than a cut and cover tunnel.

**Vehicle** means any type of machine on wheels or intended to be propelled by other than manual or animal power and any trailer made or intended to be drawn by any such machine whilst attached thereto.

**Watercraft** means any vessel, craft or thing in excess of 10 metres in length (measured at the waterline) made or intended to float on or travel on or through water.

**Worker to Worker Liability** means:

- i. legal liability of the Insured in respect of recoveries of any payments by any workers' compensation insurer under the provisions of any workers' compensation legislation or policy, or at common law; or
- ii. a claim made by an injured worker (as defined by the relevant workers' compensation legislation) against any Insured other than the worker's direct employer.

The following Interpretations will apply to this Policy:

**Interpretation**

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.

## Insuring Clauses

The following Insuring Clauses apply to this Policy.

### 1.1 Legal Liability

The Insurers will under this Policy indemnify the Insured against the Insured's legal liability to pay damages or compensation in respect of:

- (a) Personal Injury;
- (b) Property Damage; or
- (c) Advertising Injury,

**happening:**

- (i) during the Construction Period or Defects Liability Period in respect of the Insured Operations;
- (ii) during the Period of Insurance in respect of the Insured's Products;

within the Territorial Limits in connection with the Business and related Activities as a result of an Occurrence.

In respect to an alliance agreement entered into by the Named Insured, for the purposes of coverage under this Policy, where any government department or instrumentality of the State of Western Australia is not specified (as a Named Insured) under this Policy, then they are considered to be a third party to this policy which is not bound by the releases of liability given by the alliance participants to each other in an alliance agreement.

### 1.2 Defence and Other Costs

In addition to any indemnity pursuant to clause 1.1 and the Limits of Liability the Insurers will pay in connection therewith:

- (a) all legal costs and other expenses incurred with the written consent of the Insurers;
- (b) all costs and expenses incurred by the Insured for legal representation at any coroner's inquest, fatal accident inquiry or court of summary jurisdiction;
- (c) expenses incurred by the Insured for first aid rendered for injury to others at the time of an Occurrence;

Insurers will pay within the Limits of Liability specified in the Schedule all expenses incurred by the Insured for temporary repairs, shoring up or protection of property of others that has been damaged as a result of an Occurrence which may be the subject of indemnity under this Policy.

## Exclusions applying to this Policy

This Policy does not provide indemnity for:

### 2.1 Employer's Liability

liability for which the Insured is entitled to indemnity under any policy of insurance required to be taken out pursuant to any legislation relating to workers and workmen's compensation, whether or not the Insured has effected such a policy.

This Exclusion 2.1 does not apply with respect to liability of others assumed by the Insured under written contract.

### 2.2 Industrial Awards

liability to or of any Employee of the Insured imposed by the provisions of any industrial award or agreement or determination where such liability would not otherwise have attached.

### 2.3 Aircraft and Watercraft

liability arising from 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) liability arising out of construction plant or equipment mounted upon or operating from any Watercraft;
- (c) the use or existence of explosives on or from any marine craft or vessels whether in, over or under water or otherwise;
- (d) liability in respect of work undertaken on marine craft or vessels.

### 2.4 Vehicles

liability arising from the ownership, possession or use by the Insured of any Vehicle in respect of which there is required by law, at the time of the Occurrence, to be in force compulsory third party bodily injury liability insurance. In the absence of indemnity afforded by any other insurance, this Exclusion 2.4 shall not apply to:

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

### 2.5 Loss of Use

loss of use of tangible property that forms part of a Contract which has not been physically damaged or destroyed resulting from a delay in or lack of performance by or on behalf of the Insured of any Contract.

### 2.6 Products and Work Performed

liability for:

- (a) the cost of making good, replacing or reinstating workmanship performed by the Insured or of any Product which is or is alleged to be defective or deficient;

- (b) the cost of or damages claimed in relation to the withdrawal, recall, inspection, repair, replacement or loss of use of the Products or any property of which such Products form a part, if such Products or property are withdrawn from the market or from use solely because of any known or suspected defect or deficiency therein;

This Exclusion 2.6 shall apply only to the part which is defective or deficient and shall not apply to any other parts of the works, Products or any other property lost or damaged as a consequence.

## **2.7 Professional Liability**

liability arising out of the rendering of or failure to render professional advice or service by the Insured or error or omission connected therewith, but this Exclusion 2.7 does not apply to:

- (a) Personal Injury or Property Damage arising therefrom. This provision 2.7(a) shall not apply to any insured parties who are not a Named Insured or a Prime Contractor and who solely provide architectural, engineering, quantity surveying or other professional consulting services and any contractors or subcontractors to such insured parties except in respect of their manual activities at the Worksite; or
- (b) the rendering of or failure to render professional medical advice by medical persons employed by the Insured to provide first aid and other medical services on the Insured's premises.

## **2.8 Pollution and Contamination**

- (a) liability arising out of discharge, dispersal, seepage, release or escape of Pollutants into or upon land, the atmosphere, or water; but this Exclusion (a) does not apply if such discharge, dispersal, seepage, release or escape is sudden and accidental and neither expected nor intended from the standpoint of the Insured.
- (b) any costs and expenses incurred in the prevention, removing, nullifying or clean-up of Pollutants, but this Exclusion (b) does not apply where clean-up, removal or nullifying expenses are incurred consequent upon a sudden and accidental happening neither expected nor intended from the standpoint of the Insured, which results in Property Damage and/or Personal Injury.

## **2.9 Asbestos Liability**

claims directly or indirectly caused by, contributed to by or arising from asbestos or materials containing asbestos.

## **2.10 Fines and Penalties**

liability arising from or attributable to:

- (a) an award of punitive, liquidated, aggravated or exemplary damages;
- (b) any fine or penalties, including but not limited to civil penalties;

but this Exclusion 2.10 does not apply to civil awards in the nature of compensatory damages.

## **2.11 Advertising Injury**

liability arising out of Advertising Injury for:

- (a) offences committed prior to the inception date of this Policy;
- (b) offences made at the direction of the Insured with knowledge of the illegality or falsity thereof;



- (c) breach of contract, other than misappropriation of advertising ideas under an implied contract;
- (d) incorrect description of the price of the products, goods or services;
- (e) infringement of trade mark, service mark or trade name by use thereof as the trade mark, service mark or trade name of the products, goods or services sold, offered for sale or advertised, but this Exclusion does not apply to titles or slogans;
- (f) failure of the products, goods or services to conform with advertised performance, quality, fitness or durability;
- (g) any Insured whose business is advertising, broadcasting, publishing or telecasting.

#### **2.12 Property owned by or in Care, Custody or Control of the Insured**

damage to property:

- (a) owned by the Insured;
- (b) held in trust or in the custody or control of the Insured, but only to the extent that such damage is payable under the Named Insured's construction risks (material damage) insurance policy or other similar policy covering such property.

#### **2.13 Mould**

- (a) any actual, alleged or threatened inhalation, discharge, dispersal, seepage, migration, absorption, release, exposure to, or escape of any mould, mildew or fungus in any form from any source, at any time;
- (b) the prevention of the actual, alleged or threatened inhalation, discharge, dispersal, seepage, migration, absorption, release, exposure to, or escape of any mould, mildew or fungus in any form from any source; or
- (c) any testing, monitoring, clean up, removal, containment, treatment, disposal, detoxifying or neutralizing or in any way responding to or assessing the effects of mould, mildew or fungus in any form from any source, at any time.

#### **2.14 More Specific Insurance**

Liability for which indemnity is provided under the Named Insured's Construction Risks – Material Damage Principal Arranged Insurance, however if any claim covered under the Named Insured's Construction Risks – Material Damage Principal Arranged Insurance exceeds that policy limit of liability then this policy will attach in excess of the Named Insured's Construction Risks – Material Damage Principal Arranged Insurance, subject otherwise to the terms and conditions of this policy.

#### **2.15 Nuclear Risks**

liability directly or indirectly caused by or contributed to by or arising from:

- (a) ionising, radiations or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel;  
  
for the purpose of this Exclusion 2.15(a) only, combustion shall include any self-sustaining process of nuclear fission;
- (b) nuclear weapons materials.

This Exclusion 2.15 shall not apply to liability resulting from the use of commercial radioactive isotopes.

## **2.16 War and Terrorism**

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

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; Notwithstanding this clause 2.16(a), this Policy shall cover loss, damage or liability caused by missiles and/or mines and/or bombs and/or other explosives not discovered at the moment of commencement of this Policy as long as no state of war exists in the country where the loss occurs; or

- (b) **any act of terrorism**

For the purpose of this clause an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This clause also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 2.16(a) and/or 2.16(b) above.

In the event any portion of this Exclusion clause 2.16 is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

## **2.17 Dredging**

Liability arising out of dredging works.

## Conditions applying to this Policy

The following conditions apply to this Policy.

### 3.1 Limits of Liability

- (a) No liability shall attach to the Insurers until the loss in respect of each Occurrence exceeds the amount of any relevant Excess stated in the Schedule. The Limit of Liability shall apply in excess of the amount of the Excess.
- (b) The liability of the Insurers under this Policy in respect of each Occurrence shall not exceed the Limit of Liability stated in the Schedule. All Personal Injury, Property Damage or Advertising Injury arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one Occurrence.
- (c) The total aggregate liability of the Insurers for all claims arising out of Products shall not exceed the Limit of Liability stated in the Schedule.
- (d) The total aggregate liability of the Insurers for all claims arising out of Pollution shall not exceed the Limit of Liability stated in the Schedule.

### 3.2 Application of Excess

- (a) The Insured shall be liable to pay the amount of the Excess in respect of each Occurrence. If a series of claims are made arising out of the one Occurrence then only one Excess shall apply.
- (b) The Excess is inclusive of Defence and Other Costs as described in clause 1.2 and Agreed Loss Adjuster fees under clause 3.13.

### 3.3 Insurers' Rights

The Insured shall, at the request and the expense of the Insurers, do and concur in doing all such acts and things as the Insurers may reasonably require to preserve and enforce any rights the Insured may have against anyone in respect of liability for Personal Injury, Property Damage or Advertising Injury.

### 3.4 Subrogation and Settlement of Claims

- (a) The Insured shall inform the Insurers as soon as reasonably practicable of the happening of any Occurrence that may give rise to a claim under this Policy.
- (b) Upon the payment of any claim under this Policy, subject to any restrictions imposed by the Commonwealth Insurance Contracts Act 1984, the Insurers shall be subrogated to all the rights and remedies of the Insured arising out of such claim against any person or corporation whatsoever.
- (c) No admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the Insured without the consent of the Insurers who shall be entitled, if the Insurers so desires, to take over and conduct in the name of the Insured the defence or settlement of any claim or to prosecute in the name of the Insured for the Insurer's own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings or in the settlement of any claim, however the Insurers shall discuss the conduct, defence, prosecution or settlement of any claim or proceeding with the Insured prior to taking action or effecting settlement.
- (d) The Insurers may pay to the Insured, the amount of the applicable Limit of Liability of the Insurers or such lesser sum for which the claim can be settled subject in either case to deduction of any sum or sums already paid as compensation in respect of such claim and the Insurers shall thereafter be under no further liability in respect of such claim except for

the payment of costs and expenses for which the Insurers are liable hereunder incurred prior to the date of such payment.

### 3.5 Multiple Insureds Clause

- (a) If the Insured comprises more than one insured party each operating as a separate and distinct entity then (save as provided in this clause 3.5), cover hereunder shall apply in the same manner and to the same extent as if individual policies had been issued to each such insured party provided that the total liability of the Insurers to all of the insured parties collectively shall not exceed the Limits of Liability or Sub-limits in this Policy. For the purposes of this Policy, each government department or government entity comprising the Named Insured shall be deemed 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 to or (as may be appropriate) claim damages from an insured party in circumstances of such insured party committing fraud, misrepresentation, material non-disclosure or breach of any warranty or Condition of this Policy referred to in this Condition 3.5 as a "Vitiating Act".
- (d) However a Vitiating Act or any other act or neglect committed by one insured party, either at the time of entering this contract or during the Period of Insurance, shall not prejudice the right to indemnity of any other insured party who has an insurable interest and who has not committed a Vitiating Act.
- (e) The Insurers agree to waive all rights of subrogation that they may have or acquire against:
  - (i) any Insured or any individual or organisation affiliated or associated with, parent of or a subsidiary of any Insured;
  - (i) at the option of the Insured, any other parties or persons, subject to the Insured, waiving rights of subrogation prior to the loss, but only when required to do so under contract;

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

### 3.6 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, after notification has been made or received by the Named Insured's Representative. Any notice(s) given to any office of the appointed broker constitutes notice upon Insurers. Any notice(s) given to Aon are to be forwarded by Aon to the 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. 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.

- (d) Subject to the Named Insured providing details to the Insurers of the name of the Nominee for Insurers' Notices and the relevant Contract provisions, the Insurers agree to provide 30 business days prior notice to that Nominee in the event of:
  - (i) insurance by this Policy expiring before the completion of the Construction Period and/or Defects Liability Period of the relevant Contract due to non payment of premium or any other cause;
  - (ii) the Insurers or the Named Insured cancelling this Policy;
  - (iii) the Insurers giving any notice under this Policy.

### **3.7 Declarations and Premium Payment**

If the Premium is shown in the Schedule as Adjustable, then the Premium is provisional and is calculated on the estimated Contract Values for the ensuing Period of Insurance.

- (a) Within 30 days of the expiry of each twelve (12) month period, commencing from inception of this Policy, the Named Insured will declare to the Insurers 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 Premium will be adjusted by payment to the Insurers of an additional premium or by allowance to the Insured of a return premium, as the case may be, calculated at the agreed rates on the difference between the estimated and final or projected Contract Values.
- (c) If at any time there shall be any dispute or difference between the Insurers and the Named Insured as to the actual declared values, then for the purposes of this clause, at the request of either party, such values shall be determined by the President for the time being of the Australian Institute of Quantity Surveyors, or his nominee, acting as an expert and not as an arbitrator. The cost of any such determination shall be borne equally by the Insurers and the Named Insured.

### **3.8 Insolvency or Bankruptcy**

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

### **3.9 Hold Harmless Agreements**

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

### **3.10 Jurisdiction and Service of Proceedings**

The Insurers agree that:

- (a) this Policy is governed by the laws of Australia;
- (b) in the event of a dispute arising under this Policy, Insurers at the request of the Insured will submit to the jurisdiction of any competent Court in the Commonwealth of Australia.

Such dispute shall be determined in accordance with the law and practice applicable in such Court;

- (c) any summons notice or process to be served upon the Insurers may be served upon the Nominee For Legal Service stated in the Schedule. Such Nominee has authority to accept service and to enter an appearance on the Insurers' behalf. If directed by the Insured the Nominee shall give a written undertaking that the Nominee will enter an appearance on the Insurers' behalf;
- (d) if proceedings are instituted against any one of the Insurers, all Insurers hereon will abide by the decision of such Court or any competent Appellate Court.

### 3.11 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 at any time by giving notice in writing to the Insurers.

- (c) After cancellation by the Named Insured or the Insurers, the Premium will be adjusted in accordance with Condition 3.7(a) and (b), except that the declared final or projected values shall be at the date of cancellation. The Named Insured will be obliged to supply to the Insurers such information as is necessary to determine adjustment of the Premium.

### 3.12 Alterations in Material Fact/Error or Omission

- (a) The Insured will not be prejudiced under this Policy in the event of any alteration in material fact or otherwise regarding construction methods or procedures, an unintentional or inadvertent error, omission or misdescription or any other information contained or omitted from any underwriting information supplied to the Insurers.
- (b) The Named Insured undertakes to immediately notify the Insurers as soon as the alteration or omission becomes known to them, and the Insurers shall be entitled to make reasonable variations to this Policy's terms and Conditions as may be mutually agreed between the Insurers and the Insured.

### 3.13 Engagement of Loss Adjusters

- (a) Aon is authorised to appoint a loss adjuster from the panel of Agreed Loss Adjusters to investigate and quantify losses that are potentially indemnifiable under this Policy. Loss adjuster fees and expenses shall be payable by the Insurers and shall form part of any Excess borne by the Insured.
- (b) The Insurers and Insured agree that the Agreed Loss Adjusters shall be agents of the Insurers and the Insured and all documents, transcripts, reports (verbal and written) shall be made available to the Insurers and the Insured.
- (c) If at any time there shall be any dispute or difference between the Insurers and the Insured in respect of the adjustment of a loss, then the Insurers or the Named Insured shall at their own cost be entitled to appoint an independent loss adjuster.

### 3.14 **Currency**

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

### 3.15 **Discharge of Liability**

The Insurers may at any time discharge their total liability to the Insured in respect of any one claim or series of claims arising from one Occurrence by paying to or on behalf of the Insured:

- (a) the total amount in respect of the said claim or claims to which the Insured is entitled to indemnity under this Policy, or
- (b) the total amount sought by the claimant(s) in the said claim or claims, or
- (c) the total amount for which the said claim or claims can be settled,

and in addition to such payment the Insurers will pay Defence Costs incurred up to the date of the said payment as provided for by Insuring Clause 5.2.

Upon such payment, the Insurers shall relinquish conduct or control of such claims and be under no further liability under this Policy in connection with such claim or claims.

### 3.16 **Referral Contracts**

Referral Contracts specified in the Schedule, will be held covered by the Insurers in accordance with the indemnity provided by this Policy for a period not exceeding 90 days from the commencement of the 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 Insured Operations in the Schedule shall be automatically covered if specified as an Endorsed Referral Contract in the Schedule, subject to any agreed alteration in this Policy's Excess, premium or other terms.

In the event that such terms and conditions are not acceptable to the Named Insured, the Named Insured shall be under no obligation to declare these Contracts to the Insurers after the Interim Cover Period. 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 Contract Value for such Contract in its declaration to the Insurers under clause 3.7.

## **ENDORSEMENTS APPLYING TO THIS POLICY**

### **INDUSTRIES, SEEPAGE, POLLUTION AND CONTAMINATION EXCLUSION CLAUSE**

This Insurance does not cover any liability for:

1. Personal Injury or Bodily Injury or loss of, damage to or loss of use of property directly or indirectly caused by seepage, pollution or contamination.
2. The cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances.
3. Fines, penalties, punitive or exemplary damages.

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## **PUNITIVE AND EXEMPLARY DAMAGES EXCLUSION CLAUSE**

Regardless of any other provision of this insurance, this insurance does not apply to punitive or exemplary damages.

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### **DEFENCE AND OTHER COSTS CLAUSE**

Notwithstanding anything to the contrary contained in this Policy all costs and expenses incurred in the defence and/or settlement of any claim hereunder shall be included in and not additional to the Limit of Liability hereon.

## **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

## AUSTRALIAN DISPUTE RESOLUTION

This Insurance is not subject to the provisions of the Insurance Council of Australia's General Insurance Code of Practice.

### Complaints and disputes

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact Aon Risk Solutions Australia in the first instance:

Aon Risk Solutions Australia  
Level 15  
28 The Esplanade  
Perth  
Western Australia 6000  
Australia

We will acknowledge receipt of your complaint and do our utmost to resolve the complaint to your satisfaction within 10 business days.

If we cannot resolve your complaint to your satisfaction, we will escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. Lloyd's contact details are:

Lloyd's Australia Limited  
Email: [ldraustralia@lloyds.com](mailto:ldraustralia@lloyds.com)  
Telephone: (02) 8298 0783  
Post: Suite 1603 Level 16, 1 Macquarie Place, Sydney NSW 2000

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

Telephone: 1800 931 678  
Email: [info@afca.org.au](mailto:info@afca.org.au)  
Post: GPO Box 3 Melbourne VIC 3001  
Website: [www.afca.org.au](http://www.afca.org.au)

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

The Underwriters accepting this Insurance agree that:

- (i) 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;
- (ii) 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;

- (iii) 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.

In the event of a claim arising under this Insurance immediate notice should be given to:

Aon Risk Solutions Australia

Level 15

28 The Esplanade

Perth

Western Australia 6000

Australia

LMA5545

17 May 2021

### **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