

RISK DETAILS - WORDING

Main Roads Western Australia

**LEGAL LIABILITY
INSURANCE POLICY**

in the name of

The Commissioner of Main Roads Western Australia

30th June 2022 to 30th June 2023

INSURING CLAUSES

The **Insurers** agree that they will subject to the limitations, **Exclusions**, terms and **Conditions** in this **Policy**:

1. indemnify the **Insured** in respect of all sums for which the **Insured** shall become legally obligated to pay as damages and/or compensation in respect of:
 - (i) **Personal Injury** and/or **Advertising Liability** suffered or alleged to have been suffered by any person or persons;
 - (ii) loss of and/or damage to and/or destruction of property and/or the **Loss of Use** thereof;in respect of and/or arising out of **Occurrences** happening anywhere in the **Geographical Limits** during the **Period of Insurance** in connection with the **Business of the Insured**.
2. defend in the name of and on behalf of the **Insured** any claim or suit against the **Insured** in respect of and/or arising out of **Occurrences** covered by this **Policy**.
3. pay in addition to the **Limit of Liability** (except in respect of claims brought in USA or Canada where the **Limit of Liability** shall apply on a costs inclusive basis):
 - (i) for immediate medical and/or surgical aid and/or for temporary repair and/or shoring up of property made necessary by any **Occurrence** covered by this **Policy**;
 - (ii) all expenses incurred by or with the permission of the **Insurers** for investigation, negotiation, settlement and defence of claims and suits;
 - (iii) all expenses incidental to the appeal from any judgement against the **Insured** and all costs taxed against the **Insured**;
 - (iv) all expenses incurred by the **Insurers** or the **Insured** for representation of the **Insured** at any coroners inquest or court of criminal justice plus all expenses incidental to the appeal from any judgement.
4. pay within the **Limit of Liability** for temporary repair and/or shoring up of property made necessary by any **Occurrence** covered by this **Policy**

EXCLUSIONS

This **Policy** does not cover liability:

- 1 for **Personal Injury** and/or **Advertising Liability** sustained by any person arising out of and/or in the course of their employment by the **Insured** under a contract of service or apprenticeship with the **Insured**.

However, this **Exclusion** 1 shall not apply to:

 - (i) a liability of others which has been assumed by the **Insured** under contract;
 - (ii) any liability arising out of the infringement by the **Insured** of the Australian Trade Practices Act, 1974 (as amended) or similar legislation of a state, territory or country;
- 2 for loss of and/or damage to property owned by the **Insured**;

- 3 caused by reason of the existence, maintenance, or use of aircraft or self-propelled marine craft or self propelled vessels exceeding 10 metres in length owned, maintained, hired, used or controlled by or for the **Insured**;

However, this **Exclusion 3** shall not apply in respect of:

- (i) plant or equipment or other property whilst temporarily mounted upon any marine craft or vessels;
 - (ii) the use of or existence of explosives on or from any marine craft or vessels whether in, over or under water or otherwise;
 - (iii) vessels operated by independent contractors;
- 4 compulsorily insurable under any legislation governing the use of motor vehicles. However, this **Exclusion 4** shall not apply to plant and equipment whilst on the **Worksite** provided such plant and equipment is not insured in accordance with any applicable legislation governing the use of motor vehicles;
- 5 for the cost of making good, replacing or reinstating workmanship performed by the Insured which is or is alleged to be or was faulty;

but this **Exclusion 5** does not apply to loss of and/or damage to and/or destruction of property and/or the **Loss of Use** thereof resulting from but not within the scope of the foregoing paragraph;

- 6 for the repairing, replacing, reconditioning, modifying or recalling of any defective product or any part thereof used or supplied by the **Insured**. However, this **Exclusion 6** shall be limited to liability for the defective product or part and shall not apply to liability for any other such product or part lost or damaged in consequence thereof;
- 7 in respect of:
- (i) **Personal Injury** and/or **Advertising Liability** or loss of, damage to, or **Loss of Use** of property directly or indirectly caused by a seepage, pollution or contamination, provided always that this **Exclusion 7 (i)** shall not apply to **Personal Injury** and/or **Advertising Liability** or loss of, damage to, or **Loss of Use** of property where such seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening during the **Period of Insurance**;
 - (ii) the cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances unless the seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening during the **Period of Insurance**.

This **Exclusion 7** shall not extend this **Policy** to cover any liability which would not have been covered under this **Policy** had this **Exclusion** not been included.

- 8 for any loss, cost or expense directly or indirectly arising out of, resulting as a consequence of, or related to the manufacture, mining, processing, distribution, testing, remediation, removal, storage, disposal, sale, use of or exposure to Asbestos or materials or products containing Asbestos whether or not there is another cause of loss which may have contributed concurrently or in any sequence to a loss.
- 9 for any loss, damage, claim or Defence Costs arising out of, alleging or attributable to the toxicity or toxic properties of any mould, fungus/fungi or spore(s), mildew(s), caused by the action of moist air on organic matter.
- 10 for awards or damages of a punitive or exemplary nature whether in the form of fines, penalties, multiplication of compensation awards or damages or aggravated damages or any other form whatsoever;

- 11 in respect of **Advertising Liability** for:
- (i) failure of performance of contract, but this shall not relate to claims for unauthorised appropriation of ideas based upon alleged breach of an implied contract;
 - (ii) infringement of registered trade mark, service mark, or trade name, other than titles or slogans, by use thereof on or in connection with goods or services sold, offered, for sale or advertised;
 - (iii) incorrect description of any articles or commodity;
 - (iv) mistake in advertised price.
- 12 arising out of any breach of the duty owed in a professional capacity by the **Insured** and/or persons for whose breaches of such duty the **Insured** may be legally liable, but this **Exclusion 12** shall not apply to:
- (i) **Personal Injury** and/or **Advertising Liability** suffered or alleged to have been suffered by any person or persons and/or loss of and/or damage to and/or destruction of property (other than the property forming or which formed part of the **Insured's** contract) and/or the **Loss of Use** thereof resulting therefrom, or
 - (ii) the rendering of or failure to render professional medical advice by medical persons employed by the **Insured** to provide first aid and other medical or welfare services.
- 13 for **Personal Injury** and/or **Advertising Liability** and/or loss of and/or damage to and/or destruction of property and/or the **Loss of Use** thereof whatsoever resulting or arising therefrom or any consequential loss directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.
- 14 arising as a consequence of war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, insurrection, revolution, conspiracy, military, naval or usurped power, martial law or state of siege or any of the events or causes which determine the proclamation or maintenance of martial law or state of siege, confiscation, destruction or requisition by order of government or any public authority.

Notwithstanding this **Exclusion 14**, this **Policy** shall cover legal liability: -

- (a) caused by missiles and/or mines and/or bombs and/or other explosives not discovered at the moment of commencement of the work at a site by the **Insured**, so long as no state of war exists in which the country in which the **Business of the Insured** directly involved is conducted;
 - (b) caused by strikers, locked-out workmen or persons taking part in labour disturbances, riots or civil commotions or persons acting maliciously;
 - (c) caused by shells and/or other missiles fired from military training grounds and/or dropped from military planes (in peacetime);
- 15 for **Personal Injury** and/or **Advertising Liability** and/or loss of and/or damage to and/or destruction of property and/or the **Loss of Use** thereof directly or indirectly caused by, arising out of, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this exclusion 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 exclusion also excludes liability for **Personal Injury** and/or **Advertising Liability** and/or loss of and/or damage to and/or destruction of property and/or the **Loss of Use** thereof directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

If the Underwriters allege that by reason of this exclusion, any **Personal Injury** and/or **Advertising Liability** and/or loss of and/or damage to and/or destruction of property and/or the **Loss of Use** thereof is not covered by this insurance the burden of proving the contrary shall be upon the Assured.

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

- 16 arising out of any wrongful act, error or omission committed or alleged to have been committed by a director or officer of the **Insured** in their respective capacity as such but this **Exclusion 16** shall not apply to liability in respect of **Personal Injury** and/or **Advertising Liability** and/or loss of and/or damage to and/or destruction of property and/or the **Loss of Use** thereof.
- 17 for pure financial loss which is not consequent upon **Personal Injury** and/or **Advertising Liability** and/or loss of and/or damage to and/or destruction of property and/or the **Loss of Use** thereof.
- 18 for the amount of the applicable Excess stated in the Schedule.
- 19 for any Occurrence outside the Geographical Limits stated in the Schedule.

DEFINITIONS

1. OCCURRENCE

Occurrence means an event, or continuous or repeated exposure to conditions, which results in:

- (i) **Personal Injury** and/or **Advertising Liability** suffered or alleged to have been suffered by any person or persons;
- (ii) loss of and/or damage to and/or destruction of property and/or the **Loss of Use** thereof;

provided the **Insured** did not intend that such injury or loss would result. All such exposure to substantially the same general conditions shall be deemed one **Occurrence**.

2. PERSONAL INJURY

Personal Injury includes, but is not limited to:

- (i) bodily injury and/or illness and/or sickness and/or disease (including death at any time resulting therefrom)
- (ii) disability, shock, fright, stress, mental anguish or mental injury;
- (iii) false or wrongful arrest, wrongful detention, wrongful imprisonment, wrongful accusation, malicious prosecution or malicious humiliation;
- (iv) libel or slander or other similar injury;

- (v) wrongful entry or wrongful eviction or other invasion of the right occupancy or possession of land including trespass, nuisance and interference with right-of-way;
- (vi) loss of consortium,
- (vii) loss of servitium and any loss of dependency or support.

However, for the purpose of this **Policy, Definition 2(iv)** does not apply when any publication or utterance is made in the course of or related to advertising, broadcasting or telecasting activities conducted by or on behalf of the **Insured** or the publication or utterance is made by or at the direction of the **Insured** with the knowledge of the falsity thereof.

3. **LOSS OF USE**

Loss of Use also includes economic loss suffered by any person or party consequent upon loss of and/or damage to and/or destruction of and/or **Loss of Use** of any other person's or party's property.

4. **WORKSITE**

Worksite means any place or places where any work is performed for and/or in connection with the **Business of the Insured** together with all areas surrounding the said place or places that the **Insured** shall use in connection with the **Business of the Insured** including all areas in between the said place or places.

5. **COMPLETED OPERATIONS**

Completed Operations means the Insured's liability in respect of **Personal Injury** and/or loss of and/or damage to and/or destruction of property and/or the **Loss of Use** thereof caused by an Occurrence arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the **Personal Injury** and/or loss of and/or damage to and/or destruction of property and/or the **Loss of Use** thereof occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the Insured. "Operations" include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

- (a) When all operations to be performed by or on behalf of the Insured under the contract have been completed, or
- (b) When all operations to be performed by or on behalf of the Insured at the site of the operations have been completed, or
- (c) When the portion of the work out of which the bodily injury or property damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed to be completed.

Completed Operations does not include **Personal Injury** and/or loss of and/or damage to and/or destruction of property and/or the **Loss of Use** thereof arising out of the existence of tools, uninstalled equipment or abandoned or unused materials.

6. **PRODUCTS LIABILITY**

Products Liability means liability in respect of and/or arising out of any goods and/or products (including food and/or drinks, software and other related computer-products) manufactured, assembled, processed, grown, extracted, imported, constructed, erected, installed, altered,

repaired, serviced, treated, sold, bottled, labelled, supplied, hired, leased, exchanged, held for storage and/or transport and/or distributed by the **Insured** including any container thereof (after such goods and/or products ceased to be in the possession and/or under the control of the **Insured**).

7. **ADVERTISING LIABILITY**

Advertising Liability means liability arising from:

- (i) unintentional libel, slander or defamation;
- (ii) infringement of copyright or title or slogan;
- (iii) piracy, plagiarism or unfair competition or idea misappropriation;
- (iv) invasion of the right of privacy;

committed or alleged to have been committed in any advertisement, publicity article, broadcast or telecast and arising out of the **Insured's** advertising activities during the **Period of Insurance**

8. **BUSINESS OF THE INSURED**

In addition to the **Business of the Insured** stated in the **Schedule** this **Policy** shall indemnify the **Insured** for all liability (subject to the **Limit of Liability** stated in the **Schedule**) arising from all the **Insured's** businesses, occupations and/or activities, but subject to the **Insuring Clauses, Exclusions, Definitions and Conditions** contained in the **Policy**.

The indemnity provided by this **Policy** also includes any liability arising from activities previously undertaken by the **Insured** but now discontinued.

9. **POLLUTION LIABILITY**

Pollution Liability means that coverage provided by the "write back" to Exclusion 7

10 **WORKER TO WORKER LIABILITY**

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.

CONDITIONS

1. **ASSAULT**

Personal Injury caused or alleged to have been caused by an assault shall be deemed to be within the scope of the coverage afforded by **Insuring Clause 1 (i)**, provided that the assault or alleged assault was not committed by or at the specific direction of the **Insured** other than for the prevention or elimination of danger to persons or property.

2. **LIMIT OF LIABILITY AND EXCESS**

The **Insurers'** liability under this **Policy** shall not exceed the amount stated as **Limit of Liability** for each **Occurrence**, other than as provided for in **Insuring Clauses 2 and 3**.

In respect of payments for loss under this **Policy** the **Insurers** shall not be liable for the amount of the **Excess** for each and every **Occurrence**.

3. **CO-OPERATION**

The **Insured** shall co-operate with the **Insurers** in the defence of claims and suits and in prosecuting appeals and upon the **Insurers'** request shall attend hearings and trials, and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits. The **Insured** shall not, except at his own cost, voluntarily make any payment, assume any obligation nor incur any expense other than for such immediate medical and/or surgical relief to others and/or temporary shoring and/or propping up of property as shall be imperative at the time of the **Occurrence**.

4. **DETERMINATION OF LIABILITY AND INSOLVENCY**

No action shall lie against the **Insurers** unless the **Insured** shall have fully complied with all of the terms and **Conditions** of this **Policy**.

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

In case of execution against the **Insured** of any final judgement covered by this **Policy** being returned unsatisfied by reason of such insolvency or bankruptcy, then an action may be maintained by the injured party or their representative against **Insurers** in the same manner, and to the same extent as the **Insured** but not in excess of the **Limit of Liability**.

Nothing contained in this **Condition** shall give any person or organisation any right to join the **Insurers** as co-defendant in any action against the **Insured** to determine the **Insured's** liability.

5. **SUBCONTRACTORS**

A subcontractor shall only be a party entitled to the benefit of this **Policy** where the terms of the contract the **Insured** and the subcontractor require the **Insured** to effect insurance coverage of this type on behalf of the subcontractor. In such circumstances and only in such circumstances the **Insurers** agree to waive any right of subrogation against such subcontractor.

6. **ADVICE OF LOSS**

(a) Upon the happening of any **Occurrence** likely to give rise to a claim under this **Policy** and/or upon the receipt by the **Insured** of any notice of any claim or of any subsequent proceedings, notice in writing with full particulars shall be given to the **Insurers** as soon as possible.

(b) Any notice of claim given to the **Insurers** by any **Insured** under this **Policy** shall be accepted by the **Insurers** as a notice of claim given on behalf of all **Insureds** under this **Policy**.

7. **ADJUSTMENT OF PREMIUM**

The **Premium** for this **Policy** is provisional and is based on the estimated contract values.

The **Insured** shall, as soon as practical after the expiry date, declare to the **Insurers** the total contract values.

The **Premium** shall be adjusted proportionately, a further payment being made to **Insurers** if applicable.

8. **AUSTRALIAN JURISDICTION**

In relation to all differences arising under this **Policy** the **Insurers** submit to the jurisdiction of all Australian courts. The parties hereto agree and acknowledge that the law of the contract of insurance is Australian law. The **Insurers** agree that service of legal process upon the **Nominee In Jurisdiction** shall be good and sufficient service and shall be equivalent to personal service upon them and each of them and that the **Insurers** will all abide and be bound by the ultimate decision in any action brought against any of them in relation to any matters or claims arising under this **Policy**.

9. **CLAIMS BROUGHT IN USA OR CANADA**

Subject to the **Geographical Limits**, this **Policy** extends to cover claims brought under the jurisdiction of courts in the United States of America and Canada.

In relation to claims brought under the jurisdiction of courts in the United States of America and Canada:

(i) the **Limit of Liability** applies on a "legal costs inclusive" basis;

(ii) **Exclusion 7(i)** is deleted and replaced by:-

"liability caused directly or indirectly by seepage, pollution or contamination (as well as the costs of removing, nullifying or cleaning up of any such seeping, polluting or contaminating substances);"

(iii) **Exclusion 7(ii)** is deleted and replaced by:-

"the cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances"

10. **ASSIGNMENT**

No assignment of interest under this **Policy** shall bind the **Insurers** until their consent is endorsed thereon. However, should the **Insured** die or be adjudged bankrupt or insolvent the **Insurers** will consent to the assignment of this **Policy** to the **Insured's** legal representative provided that written notice is given to the **Insurers** within 30 days after the date of such death, bankruptcy or insolvency.

11. **SUBROGATION**

Subject to the provisions of Part 8 of the Insurance Contracts Act, 1984 upon the payment of any claim under this **Policy**, save as provided in the **Cross Liability Condition**, 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 except that the **Insurers** hereby waive all rights which they may have acquired by payment of a claim under this **Policy** to recover the amount so paid from any person or corporation with whom the **Insured**, prior to the **Occurrence** of the loss or liability, shall have agreed in writing to waive their rights to recovery in respect of any loss damage or liability which may be caused by such person or corporation and such loss damage or liability is covered under this **Policy**.

Notwithstanding the above the **Insurers** hereby waive all rights of subrogation or action which they may have or acquire against any of the **Insureds** covered herein save that **Insurers** are entitled to exercise their rights of subrogation where the sub-contractor is not entitled to indemnity in accordance with **Condition 5**.

12. **INSURED**

Directors, officers and employees of the **Insured** are included as additional **Insureds** but only in respect of the **Business of the Insured**.

Any company of which the **Insured** assume management together with all other parties for whom the **Insured** is required under contract to provide insurance protection shall also be included as **Insureds**.

13. **NOTICES**

- (a) It is agreed that any notice(s) required by the **Conditions** of this **Policy** to be given to the **Insurers** can be given to Aon Ltd, Sydney.
- (b) The **Insurers** agree to provide written notification to any principal before cancelling or reducing the coverage provided under this **Policy**.
- (c) If the **Insured** fails to renew the **Policy** or to pay the **Premium**, the **Insurers** will give written notification to any principal prior to giving any notice of cancellation.

14. **CROSS LIABILITY**

Each of the parties comprising the **Insured** shall for the purposes of this **Policy** be considered as a separate and distinct unit and the words "the **Insured**" shall be considered as applying to each of such parties in the same manner as if a separate **Policy** had been issued to each of them in their name alone and the **Insurers** waive all rights of subrogation or action which they may have or acquire against any of such persons. Provided that nothing in this **Condition** shall be deemed to increase the **Limit of Liability** under this **Policy** in respect of any one **Occurrence**.

15. **BREACH**

The failure by any **Insured** to observe obligations of disclosure, good faith and/or compliance with the terms and **Conditions** of the **Policy** shall not prejudice the **Policy** in regard to any other of the **Insureds**.

16. **ALTERATION IN MATERIAL FACT**

Any alteration in any material fact or otherwise regarding construction methods or procedures or any other information contained in or omitted from any underwriting information supplied to **Insurers** shall not prejudice this **Policy** which shall be held covered subject to immediate notification to **Insurers** as soon as the alteration or omission becomes known to the **Insured**, and then subject to any variation in the terms and **Conditions** which may be agreed between the **Insured** and the **Insurers**.

17. **RELEASE**

Wherever the **Insured** is required by contractual agreement to release government or quasi-governmental bodies, landlords or any other parties from liability, such release is allowed without prejudice to this **Policy** and the **Insurers** agree to waive any rights and remedies or relief to which they may become entitled by subrogation against such bodies, landlords or other parties.

18. **CURRENCY**

The **Limit of Liability** and **Excess** are expressed in Australian currency. However, if a contract requires the **Insured** to insure in a different currency or at the **Insured's** option they elect to insure in a different currency then the currency of this **Policy** including **Sums Insured**, **Excesses**, **Premiums** and claim payments will be in the nominated currency selected by the **Insured**.

19. **CANCELLATION**

The **Insured** may cancel this **Policy** at any time by advising the **Insurers** in writing.

The **Insurers** may cancel this **Policy** in any of the circumstances set out in the Insurance Contracts Act 1984.

After cancellation, the **Insurers** will allow a refund of premium pro-rata to the unexpired **Period of Insurance**.

If the **Premium** is subject to adjustment, cancellation will not affect the obligation of the **Insured** to supply to the **Insurers** such information as is necessary to determine **Premium** adjustment to be calculated and to pay the adjustment applicable up to the date of cancellation.

ENDORSEMENTS

Attaching to and forming part of Legal Liability Insurance Policy issued to The Commissioner of Main Roads Western Australia

It is declared and agreed that:

1. DIFFERENCE IN CONDITIONS

In respect of any legal liability:

- (a) where the principal or any other party arranges a separate insurance policy which includes coverage for the **Insured**; or
- (b) where, due to insurance regulations or contract conditions, the **Insured** is required to arrange a separate insurance policy;

this **Policy** shall (subject to its terms, **Conditions** and **Exclusions**) apply to losses of the **Insured**

- (i) not recoverable under the separate policy (except as regards any excess applied under that separate insurance policy), and the **Excess** shall apply to losses recoverable under this **Policy**;
- (ii) in excess of amounts recovered by the **Insured** under the separate insurance policy, and the **Excess** shall not to apply to losses recoverable under this **Policy**;

It is further understood and agreed that in respect any such legal liability coverage hereunder extends to include security cover in the event of non-payment of otherwise indemnifiable claims under any such policy to the extent that the claim(s) would be indemnifiable under the terms and **Conditions** of this **Policy**, subject to the following additional **Conditions**:

- (a) This **Policy** is also to indemnify the **Insured** for any claims (considered valid by the **Insurers**) not paid under the principal's/local policy within six months of the date of final submission of a fully documented claim on the principal's/local policy. In the event of such a claim the **Insured** will, as far as is reasonable, pursue settlement under the principal's/local policy as if this **Policy** did not exist and all monies thereby recovered from the principal's/local policy shall be paid to the **Insurers**;
- (b) The **Insured** is not to intentionally disclose the existence of this **Endorsement** to any party other than the **Insured** parties unless with the authority of the **Insurers**;
- (c) In the event of any lapse and/or cancellation of the principal's/locally issued policy, coverage hereunder shall remain in full force and effect subject to the full **Policy** rate being applied pro-rata from the date of lapse or cancellation until completion of the contract.
- (d) Where, due to foreign insurance regulations or contract conditions, the **Insured** is required to arrange a separate insurance policy, this **Policy** shall apply (subject to this **Policy's** terms and **Conditions**) only to claims not recoverable (excluding any difference in excess), or in excess of the amount recoverable by the **Insured** under the separate insurance policy.

2. SECURITY

Where the **Insured** due to foreign insurance regulations or contract conditions is required to arrange a separate insurance policy, this **Policy** will also act as a reinsurance placement subject to all existing **Policy** terms and **Conditions** whereby the **Insured** can place insurance with an approved insurer of the foreign country (ceding company) and the ceding company reinsuring their policy of insurance with the **Insurers** of this **Policy**.

The agreed rates are subject to a loading commensurate with the ceding company's exchange commission.

In all other respects this **Policy** remains unaltered.

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
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
Post: GPO Box 3 Melbourne VIC 3001
Website: 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

UNMANNED AERIAL VEHICLE (UAV's) CONDITIONS

It is noted and agreed that liability is afforded under this policy for third party property damage and/or third party bodily injury arising out of the operation of UAV's, subject to all other policy terms, conditions and exclusions, provided that:

- UAVs that are restricted to 500m in altitude and
- UAVs are within 1km of the operator and
- Operators of UAVs are either qualified where required by local aviation authority or specifically trained in the operation of the specific device being used
- Excluding Military applications absolutely

Notwithstanding the above any UAVs that are to be used in USA airspace will need specific agreement by (re)insurers prior to operation of the device

CYBER and DATA LIMITED EXCLUSION ENDORSEMENT
(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, damage, liability, claim, cost, fines or penalties or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any 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 5.
- 2 In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.
- 3 This endorsement supersedes any other wording in the Policy or any endorsement thereto having a bearing on a **Cyber Act**, **Cyber Incident** or **Data**, and, if in conflict with such wording, replaces it.
- 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.
- 5 However, clause 1.1 of this Exclusion shall not apply in respect of any actual or alleged liability for and/or arising out of:
 - 5.1 any ensuing third party bodily injury (other than mental injury, mental anguish or mental disease); or
 - 5.2 any ensuing physical damage to or destruction of 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**.

Definitions

- 6 **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.
- 7 **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**.
- 8 **Cyber Incident** means:
 - 8.1 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

- 8.2 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**.
- 9 **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**.

LMA5469
4 November 2020

**INDUSTRIES, SEEPAGE, POLLUTION AND CONTAMINATION EXCLUSION
CLAUSE No.4**

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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