

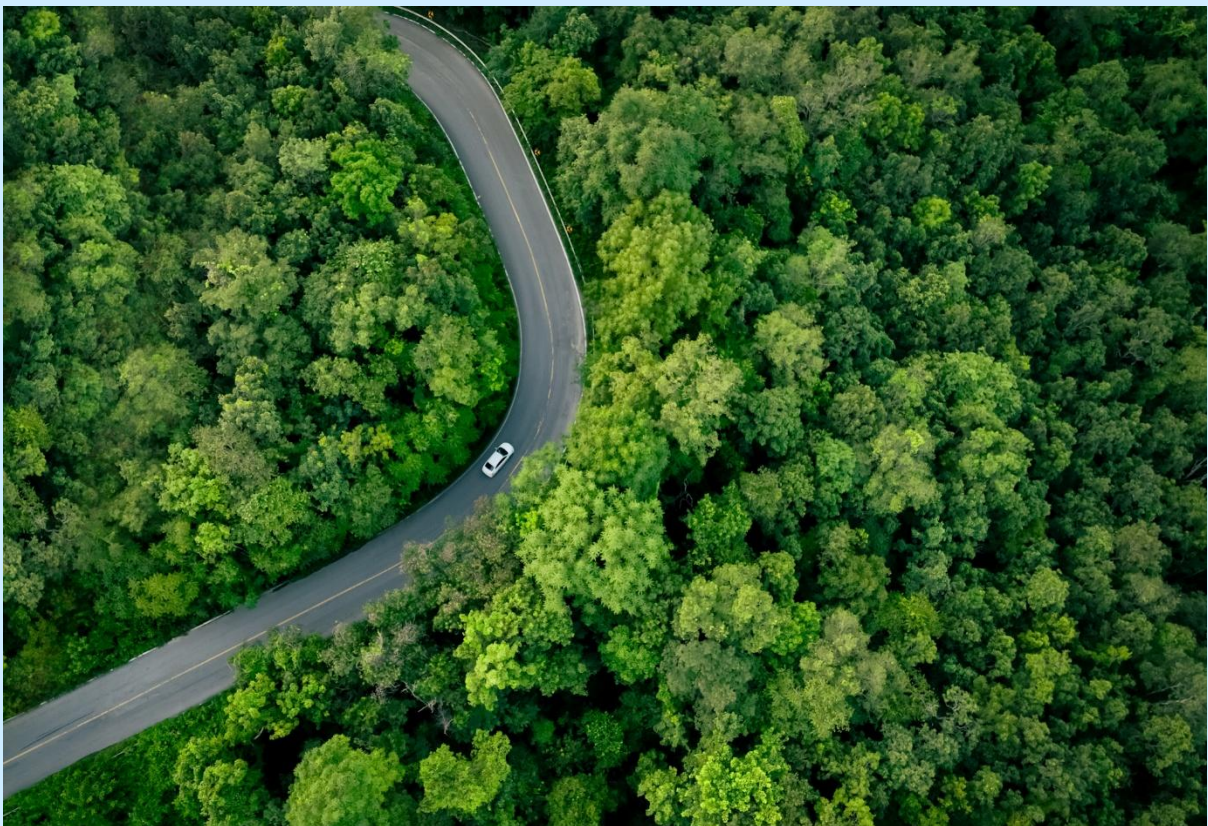
# MARSH

## Bruce Highway Targeted Safety Program

**Public & Products Liability / Environmental Impairment Liability Insurance Policy**

**Queensland Department of Transport and Main Roads**

**30 April 2026 to 31 December 2030**



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## Public & Products Liability & Environmental Insurance Policy

In consideration of the Named Insured having paid or agreed to pay the Premium, the Insurer (which term shall collectively include reference to all Insurers) agrees to indemnify the Insured in the manner and to the extent hereinafter provided, subject always to the Limits and Sub-limits of Liability, Conditions, Exclusions Definitions, limitations and other provisions contained herein or endorsed herein.

Provided that:


- (1) the Insurer shall not be liable under this Policy in any circumstances described herein for more than the Limit of Liability stated in the Schedule or such other amount(s) as may appear in this Policy or be substituted thereafter by endorsement or attached herein signed on behalf of the Insurer; and
- (2) the liability of the Insurer shall be limited to that proportion as is hereunder specified against its name.

Signed on behalf of each Insurer

### Section 1 – Public & Products Liability

INSURER	POLICY NUMBER	PROPORTION %	SIGNATURE	DATE
HDI GLOBAL SE, AUSTRALIA	110-01817359-14129	100%	 HDI Global SE Australia ARBN: 134 049 951 ABN: 55 490 279 016 <i>AC</i>	07/05/2026

### Section 2 – Environmental Liability

INSURER	POLICY NUMBER	PROPORTION %	SIGNATURE	DATE
HDI GLOBAL SE, AUSTRALIA	183-01817359-14130	100%	 HDI Global SE Australia ARBN: 134 049 951 ABN: 55 490 279 016 <i>AC</i>	07/05/2026

## The Schedule

<b>NAMED INSURED</b>	The State of Queensland represented by the Department of Transport and Main Roads (including its RoadTek division) (ABN 39 407 690 291), Queensland Rail Limited and Queensland Rail Transit Authority.
<b>ADDITIONAL INSUREDS</b>	<p>Any Prime Contractor.</p> <p>Queensland Motorways Pty Limited and all other Queensland Government agencies, bodies or Government Owned Corporations.</p> <p>Any alliance partner, sub-alliance partner, alliance participant and sub-alliance participant.</p>
<b>OTHER INSUREDS</b>	Other parties as specified in the definition of the Insured in the Policy, all for their respective rights and interests
<b>NAMED INSURED'S REPRESENTATIVE</b>	Director (Risk and Insurance) Program Management and Delivery Branch, Department of Transport and Main Roads, 313 Adelaide Street, Brisbane Qld 4000
<b>INSURED OPERATIONS</b>	<p><b>Contracts commenced during the Period of Insurance Basis</b></p> <p>All Contracts of any kind or description undertaken by or on behalf of the Named Insured and commenced during the Period of Insurance relating to the investigation, development, planning, design, off site fabrication, construction, testing and commissioning of the <b>Bruce Highway Targeted Safety Program</b> and all associated Works thereto as required by Contract or Agreement including any variations thereto, however, Referral Contracts are subject to Condition 3.16.</p>
<b>REFERRAL CONTRACTS</b>	<p>Are those Contract types listed below where the Insurer will grant interim cover as per Condition 3.16:</p> <p>(a) any Contract that includes bridge work where the original estimated Contract Value for any single bridge structure exceeds <b>\$50,000,000</b></p> <p>(b) any Contract where the original estimated Construction Period for the Contract exceeds <b>36 months</b></p> <p>(c) any Contract where the total original estimated Contract Value exceeds <b>\$150,000,000</b></p> <p>For the purpose of the Condition 3.16, the Contract Values or Construction Period stated above shall be the original</p>

estimated Contract Values or Construction Period at the commencement of the Contract.

## PERIOD OF INSURANCE

From: 30 April 2026 at 00:00 Australian Eastern Standard Time

To: 31 December 2030 at 23:59 Australian Eastern Standard Time

plus the Defects Liability Period – as more particularly defined herein.

## MAXIMUM CONSTRUCTION PERIOD

Maximum Construction Period at Contract commencement shall not exceed 36 months any one Contract including any Performance Testing Period (as estimated by the Insured at Contract commencement).

## DEFECTS LIABILITY PERIOD

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

## TERRITORIAL LIMITS

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

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

## LIMIT(S) OF LIABILITY

### Section 1 – Public & Products Liability

Limit in respect of each Occurrence \$20,000,000, however

- (a) \$20,000,000 each Occurrence but in the aggregate annually from inception of the Policy for all Occurrences in respect of Products Liability each Contract.
- (b) \$1,000,000 each inquest, inquiry or court hearing in respect of Insuring Clause 1.2 (b) and \$3,000,000 in the aggregate annually from Policy inception.
- (c) \$250,000 each Occurrence in respect of Insuring Clause 1.2 (d)

## **Section 2 – Environmental Liability**

Section 2 Limit of Liability is in addition to the Section 1 Limit of liability

In respect of each Pollution Condition: \$25,000,000 and in the aggregate annually from inception of the Policy.

- (a) \$250,000 per Claim and \$1,000,000 in the annual aggregate with respect to Environmental Damage.
- (b) \$50,000 per incident and \$250,000 in the annual aggregate with respect to Crisis Containment Expenses.

The Crisis Containment Expenses aggregate limit does not reduce or exhaust any other Limit of Liability under this Policy.

All Limits of Liability apply in excess of any applicable Excess.

## **EXCESS**

### **Section 1 – Public & Products Liability**

Each Occurrence in respect of Contracts where the original estimated Contract Value at Contract commencement is:

\$0 to \$10,000,000	\$25,000 (costs inclusive)
\$10,000,001 to \$30,000,000	\$50,000 (costs inclusive)
Greater than \$30,000,000	\$100,000 (costs inclusive)

Except for:

Worker to Worker Liability where the Excess will be:

\$0 to \$10,000,000	\$100,000 (costs inclusive)
\$10,000,001 to \$30,000,000	\$150,000 (costs inclusive)
Greater than \$30,000,000	\$250,000 (costs inclusive)

### **Section 2 – Environmental Liability**

Each Occurrence in respect of Contracts where the original estimated Contract Value at Contract commencement is:

\$0 to \$10,000,000	\$25,000 (costs inclusive)
\$10,000,001 to \$30,000,000	\$50,000 (costs inclusive)
Greater than \$30,000,000	\$100,000 (costs inclusive)

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## **NOMINEE FOR INSURERS' NOTICES:**

**Nominee**  
State Manager Queensland Construction  
Marsh Specialty  
111 Eagle Street  
Brisbane 4000

**PREMIUM** As agreed and adjustable

## 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, Insured Operations, goods or services.

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

**Asbestos** means

- i. that group of natural fibrous silicate minerals that comprises Actinolite, Amosite, Anthophyllite, Chrysotile, Crocidolite and Tremolite; or
- ii. that group of man-made mineral fibres that comprises mineral wool, rockwool, glass fibre, ceramic fibres and superfine fibres;

and includes Asbestos Products and Products containing Asbestos.

**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; or
- iii. expiry of the maximum Construction Period stated in the Schedule.

In the event of this Policy being cancelled, coverage shall continue subject to the same

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terms and conditions, in respect of all Contract(s) commenced prior to the date of such cancellation and shall remain in force until:

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

whichever occurs first.

**Contract** means all works, contracts or agreements, including early contractor involvement, undertaken by or on behalf of the Insured in connection with the Insured Operations.

**Contract Value** means the total value of work and construction costs incurred by or on behalf of the Insured in respect of the Insured Operations but excludes the value of principal-supplied and other materials.

**Contract Works** means all property formed or forming part of, or intended to form part of, a Contract.

**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 maintenance or other obligations under such Contract. This period shall not exceed the Defects Liability Period stated in the Schedule.

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.

Where any rectification work is commissioned prior to the expiration of the Defects Liability Period the coverage provided under Insuring Clause 1.1 of this policy shall continue until such rectification works has been completed and accepted by the Named Insured but not exceeding 12 months from the start of such rectification work.

**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 parts 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:

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- 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 for their Physical Activities;
  - f. any lessor, financier, mortgagee or trustee;
  - g. any government body;
  - h. suppliers for their Physical Activities. Such parties shall not be deemed to be contractors or subcontractors in iii c. or iii d. above;
  - i. any other party with an insurable interest in the Contract;
- iv. any director, executive officer, employee, contract staff or partner of any of the Insureds under parts i., ii. or iii. whilst acting as such; and
- v. any office bearer or member of any social, sporting, safety, security, medical or welfare facility of any of the insureds under parts i., ii., iii. (a), iii. (b), iii. (c) or iii. (d) whilst acting as such;

all for their respective rights and interests.

**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.

**Performance Testing Period** means the period for the testing and/or commissioning of the Contract Works or any of its component parts and begins when 'live load' is introduced, including the use of feedstock or other materials for processing or other media to simulate working conditions and in the case of electrical motors, electrical generating, transforming, converting or rectifying plant or machinery, connection to a grid or other load circuit, or as more particularly described in a Contract, and ends at the completion of testing and commissioning under the Contract.

Where Performance Testing is performed in stages any periods between the applications of 'live load' are not considered to be part of the Performance Testing Period. Simple functionality tests without the application of 'live load' are not considered to be part of the Performance Testing Period.

**Personal Injury** includes:

- i. bodily injury, illness, disease, disability, shock, fright, loss of consortium, mental anguish or mental injury, including any resultant death;

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- 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.

**Physical Activities** means the carrying out of physical construction work on the Worksite only and for the avoidance of doubt does not include any design, engineering, certification, inspection or supervision.

**Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant including but not limited to smoke, vapour, soot, fumes, cinders, dust, odours, acids, alkalis, 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;
- iii. expenses incurred by the Insured for temporary repair and or shoring up of property made necessary by an Occurrence, subject to the approval of the Insurers.

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**Terrorism** means an act or acts:

That are violent in nature or are dangerous to human life:

1. that are a violation of the criminal laws of the United States of America or Australia or of any State or Territory of the United States of America or Australia or that would be a criminal violation if committed within the jurisdiction of the United States of America or Australia or any State or Territory of the United States of America or Australia and that have the apparent intent of:
  - 1.1 intimidating or coercing any civilian population;
  - 1.2 influencing the policy of any government by intimidation or coercion; or
  - 1.3 affecting the conduct of any government by mass destruction, assassination or kidnapping,

or

2. that result in:
  - 2.1 the denial of access to or services from web sites, computer networks or telecommunication equipment; or
  - 2.2 the malfunction or degradation of web sites, computer networks, telecommunications equipment, mechanical equipment or the interruption to the functioning of web sites or such properties,

and that have the apparent intent of intimidating or coercing any civilian population or influencing the policy of any government by intimidation or coercion.

**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 12 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.

**Worksite** means any place where the Insured Operations and related Activities or any work is/are performed for and/or in connection with the Insured Operations, together with all surrounding areas.

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*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.

## Section 1

### 1. Insuring Clauses

The following Insuring Clauses apply to Section 1 of this Policy.

#### 1.1 Public & Products 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 Insured Operations 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 Queensland 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 Insuring 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;
- (d) all costs and expenses incurred by the Named Insured for the mitigation, containment, elimination or suppression of actual or possible losses under the Policy.

## 2. Exclusions Applying To Section 1 of this Policy

The following Extensions apply to this Policy Section 1 of 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 Watercraft;
- (e) the ownership, maintenance or use of unmanned aerial vehicles provided that the unmanned aerial vehicles are operated in compliance with the regulations of the Civil Aviation Safety Authority (CASA) or the regulations of an equivalent authority in other States or Territories; and provided that:
  1. cover applies only to unmanned aerial vehicles that are restricted to 500m in altitude and unmanned aerial vehicles that have a range of up to 1 km from the operator;
  2. operators of unmanned aerial vehicles are qualified, where required, by the Civil Aviation Safety Authority (CASA) or the regulations of an equivalent authority in other States or Territories;
  3. no cover applies for unmanned aerial vehicles in military use or used in USA airspace;

## 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 Worksite 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 Contract 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 other than in respect to Property Damage to the Contract Works;
- (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.

Notwithstanding the above this Exclusion 2.7 does not provide any indemnity in respect of any architectural, engineering, quantity surveying or other professional consulting services, or any contractors or subcontractors or any tier thereof.

## 2.8 Pollution and Contamination

the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants:

- (a) testing, monitoring, clean-up, removal, containment, treatment, detoxifying or neutralising of Pollutants or their effect;
- (b) the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any Product that has been discarded, dumped, abandoned or thrown away by others; or
- (c) any expenses for the prevention of actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants.

Provided always that Exclusions 2.8 (a), (b) and (c) shall not apply to liability which is directly caused by sudden, accidental, instantaneous, unintended, identifiable and unexpected happening which takes place in its entirety at a specific time and place.

## 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:

1. offences committed prior to the inception date of this Policy;
2. offences made at the direction of the Insured with knowledge of the illegality or falsity thereof;
3. breach of contract, other than misappropriation of advertising ideas under an implied contract;
4. incorrect description of the price of the products, goods or services;
5. 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;
6. failure of the Products, goods or services to conform with advertised performance, quality, fitness or durability;
7. 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 lead insurer policy numbers 3139766125CO / CY2322A26ZZA, 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

regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

War and military action, which includes without limitation the following:

- (1) war, including undeclared or civil war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), military or usurped power or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority;
- (2) warlike action by military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
  - (a) any actual or threatened act of domestic or international Terrorism committed by a person or persons acting:
    - (b) alone or on behalf of or in connection with any organisation; or
    - (c) with the goal of furthering any political, social, religious, ideological or similar objective.
- (4) action taken to prevent or defend against an act of Terrorism.

If an act of Terrorism involves chemical or biological weapons, this Exclusion 2.16 (4) will still apply.

If an act of Terrorism involves nuclear reaction, nuclear radiation or radioactive contamination, this Exclusion 2.16 (4) will apply to liabilities that result from such nuclear reaction or nuclear radiation or radioactive contamination in place of Exclusion 2.15.

Notwithstanding Exclusion 2.16 (1) and 2.16 (2), 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.

## 2.17 Liability arising out of dredging works

liability arising out of dredging works.

## 3. 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.

### 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 Insuring Clause 1.2 and Agreed Loss Adjuster fees under Condition 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

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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.
- (e) Any claim amount recovered shall be applied in the following order of priority:
  - (i) firstly, to reimburse the Insured for the uninsured proportion of the loss, which includes any Excess paid by the Insured;
  - (ii) secondly, to reimburse the insurers of any excess insurance over the indemnity by this Policy as their interest may appear;
  - (iii) thirdly, to reimburse the Insurers to the extent of their actual payment under this Policy;
  - (iv) fourthly, if any balance then remains unpaid, to reimburse the Insurers of any primary or Underlying Insurance as their interest may appear.

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

## 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 Condition 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 Personal Injury, Property Damage and/or Advertising Injury.
- (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 Policy 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

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against:

- (i) any Insured or any individual or organisation affiliated or associated with, parent of or a subsidiary of any Insured;
- (ii) at the option of the Insured, any other parties or persons, subject to the Insured, waiving rights of subrogation prior to the loss, but only when required to do so under Contract;

except

- (iii) 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;
- (iv) any architect, consultant, engineer, surveyor, manufacturer or supplier who does not form a part of the Insured; or
- (v) any architect, consultant, engineer, surveyor, manufacturer or supplier who is an Insured under the Policy, other than whilst on the Worksite and whilst acting within the scope of their duties in connection with any Contract in respect of their Physical Activities on the Worksite Site only.

## 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, Marsh Pty Ltd (Marsh) 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 Marsh constitutes notice upon Insurers. Any notice(s) given to Marsh is(are) to be forwarded by Marsh 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 Insured 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 Condition 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 60 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.

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- (a) Within 30 days of the conclusion of the Period of Insurance, the Named Insured will declare to the Insurers the final Contract Values for all Contracts:
  - (i) commenced and completed during the Period of Insurance; and
  - (ii) the projected Contract Values for Contracts commenced but not completed as at the expiry of the Period of Insurance (if any).
- (b) The provisional Premium for the completed Contracts will be adjusted (subject to the minimum Premium applicable) 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 by applying the agreed rate on the difference between the original estimated and final Contract Values.

Within 30 days of the completion of the final Contract that was not complete at the expiry of the Period of Insurance, the Named Insured shall declare to the Insurers the final Contract Values for such Contracts, at which time the provisional Premium for such Contracts shall be adjusted in the same manner as specified in the preceding paragraph for the Contracts completed at the expiry of the Period of Insurance.

- (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

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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) Marsh 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 1.2.

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 only 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 Condition 3.7.

## 3.17 Difference-in-Conditions (D.I.C.) / Difference-in-Limit (D.I.L) Clause

In respect of any Contract which commences during the Period of Insurance where any other party is obliged to arrange insurance on behalf of the Named Insured, this Policy shall apply (subject to the Policy's Limit of Liability, terms and conditions) only to claims:

- i. not recoverable by the Insured (excluding any difference in excess) under such other insurance (D.I.C.); or

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- ii. in excess of amounts recoverable by the Insured under such other insurance (D.I.L)

Notwithstanding any other provision in this Policy to the contrary, this Condition 3.17 shall operate to indemnify the State of Queensland represented by the Department of Transport and Main Roads (including its RoadTek division), Queensland Rail Limited and Queensland Rail Transit Authority only.

## 4. Endorsements applying to this Policy

The following endorsements apply to this Policy

### 4.1 Industries, Seepage, Pollution and Contamination Exclusion Clause No. 4:

In respect of USA/Canada Jurisdiction only, this insurance does not cover any liability for:

- (a) 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.
- (b) the cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances.
- (c) fines, penalties, punitive or exemplary damages.

(22/1/70 N.M.A 1686)

### 4.2 Punitive and Exemplary Damages Exclusion Clause:

In respect of USA/Canada Jurisdiction only and regardless of any other provision of this insurance, this insurance does not apply to punitive or exemplary damages.

(10/11/77 N.M.A. 1933)

### 4.3 Defence and Other Costs inclusive in Limits of Liability (USA/Canada):

In respect of USA/Canada Jurisdiction only and regardless of any other provision of this insurance, the Limits of Liability shall apply inclusive of Defence and Other Costs.

### 4.4 Sanctions

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 Australia, the European Union, United Kingdom or United States of America.

All other Policy terms and conditions remain unchanged.

## SECTION 2

# Contractors Pollution Liability Coverage

This Section 2 is an extension of coverage and whilst it attaches to and forms part of the Policy, it is not subject to the Conditions, Exclusions and other terms of the Policy unless specifically stated herein, it being subject to its own terms and Conditions.

### 1. Insuring Clauses

The following Insuring Clauses apply to this Section 2:

#### 1.1 Legal Liability

Subject to the Limits of Liability, Conditions, Exclusions and other terms of this Section 2, the Insurers under this Section 2 will indemnify the Insured against any Claim the Insured becomes legally liable to pay in respect of:

- (a) Personal Injury;
- (b) Property Damage;
- (c) Clean Up Costs;

happening within the Territorial Limits during the Construction Period or Defects Liability Period and arising from a Pollution Condition in connection with the Insured Operations.

Progressive, continuous, intermittent or indivisible Personal Injury, Property Damage or Clean Up Costs that occurs over a period of days, weeks, months or longer caused by a Pollution Condition shall be deemed to have occurred only on the date of first exposure to such Pollution Condition. The date of first exposure is:

- (i) in the case of Personal Injury, the date of the first exposure of any person to the Pollutants;

and

- (ii) in the case of Property Damage or Clean Up Costs, the date of the first discharge, dispersal, seepage, migration, release or escape of the Pollutants.

If the date of first exposure as described above is before the commencement date of the Period of Insurance, or cannot be immediately determined but the progressive, continuous, intermittent or indivisible Personal Injury, Property Damage, or Clean Up Costs continues in fact to exist during the Period of Insurance, the date of first exposure will be deemed to be the commencement date of the Period of Insurance of the first Endorsement issued to the Named Insured by the Insurer that is applicable to the Insured Operations from which the Personal Injury, Property Damage or Clean Up

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Costs caused by a Pollution Condition arose.

- (d) Environmental Damage happening within the Territorial Limits during the Construction Period or Defects Liability Period which is caused by an emission, event, incident or activity directly conducted by the Insured in the performance of Insured Operations.

Progressive, continuous, intermittent or indivisible Environmental Damage that occurs over a period of days, weeks, months or longer shall be deemed to have occurred only on the date of first exposure. The date of first exposure is the date of the first adverse change, emission, event, incidents or activity.

## 1.2 Crisis Containment Expenses

Subject to the terms and conditions of this Section 2, the Insurer will pay to or on behalf of the Insured all Crisis Containment Expenses incurred by the Insured during the Recovery Period to maintain or restore public confidence in the Insured to the extent that it has been actually or potentially damaged by significant adverse, regional or national media attention solely and directly relating to a Pollution Condition that is covered under this Policy and which first commences after the inception date of the Policy but during the Period of Insurance.

## 1.3 Defence Costs

The Insurer will pay all Defence Costs incurred with the written consent of the Insurer in connection with any legal liability covered by the Section 2 Insuring Clauses above. Such costs and expenses are included within the Limits of Liability.

## 2. Exclusions applicable to this Section 2

This Section 2 does not provide indemnity for:

### 2.1 Contractual Liability

liability assumed by the Insured in a contract or agreement. This exclusion does not apply to liability:

- (a) assumed in a contract or agreement that is an Insured Contract, provided the Personal Injury, Property Damage, Clean Up Costs or Environmental Damage happens subsequently to the execution and before the termination of the contract or agreement; or
- (b) that the Insured would have had in the absence of the contract or agreement.

### 2.2 Criminal Fines and Penalties

liability arising from or attributable to criminal fines or criminal penalties.

### 2.3 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 does not apply with respect to liability of others assumed by the Insured under written contract.

### 2.4 Insured v. Insured

liability arising from any Claim made by or on behalf of an Insured, including any trustee in bankruptcy, receiver or any other successor-in-interest to the Insured, against any other Insured.

This Exclusion shall not apply with respect to:

- (a) any Claim against the Insured made by any Insured who is a client for whom the Insured or any entity for which the Insured is legally liable is performing or has performed Insured Operations; or
- (b) any Claim that arises out of an indemnification given by one Insured to another Insured in an Insured Contract.

## 2.5 Intentional and Illegal Acts

liability arising from any dishonest, criminal, fraudulent, malicious, intentional or illegal act or omission of any Responsible Insured.

## 2.6 Known Circumstances and Non-Disclosure

liability arising from any Pollution Condition or Environmental Damage caused by Insured Operations which occurred prior to the Period of Insurance if any Responsible Insured knew or could reasonably have foreseen that such Pollution Condition or Environmental Damage would give rise to a Claim and the Insured did not disclose such Pollution Condition or Environmental Damage to the Insurer.

## 2.7 Non-compliance

liability arising from any Responsible Insured's intentional, willful or deliberate non-compliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order or instruction of any governmental agency or body.

## 2.8 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 sub-paragraph only, combustion shall include any self-sustaining process of nuclear fission;
- (b) nuclear weapons materials.

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

## 2.9 Principal Arranged Insurance (PAI) Construction Risks Public & Products Liability Policy

liability to the extent the Insured is indemnified under Section 1 of the Policy.

## 2.10 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 shall apply only to the part which is defective or deficient and shall not

apply to;

- (i) any other parts of the works, Products or any other property lost or damaged as a consequence
- (ii) Property Damage which first happens after Insured Operations have been completed.

## 2.11 Professional Liability

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

- (a) Personal Injury, Property Damage, Clean Up Costs or Environmental Damage arising therefrom;
- (b) the rendering of or failure to render any professional medical advice by medical persons employed by the Insured to provide first aid and other medical services on the Insured's premises; or
- (c) improper or inadequate supervision of any entity for which the Insured is legally liable when performing Insured Operations at a Worksite.

## 2.12 Property Damage to Cargo

liability arising from Property Damage to Cargo.

## 2.13 Property Damage to Covered Conveyances

liability arising from Property Damage to any Covered Conveyance.

## 2.14 Property Owned by or in Care, Custody or Control of the Insured

liability arising from damage to property owned, leased, loaned or rented by or to the Insured. However, this Exclusion does not apply to:

- (a) property damage to real or personal property of others in the Insured's care, custody or control for the purpose of having Insured Operations performed on such property, or
- (b) any person or organisation qualifying as a client of the Insured.

## 2.15 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 Pollution Condition, to be in force compulsory third party bodily injury liability insurance. In the absence of indemnity afforded by such insurance, this exclusion 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 Worksite or at the premises of the Insured; or
- (c) liability from Pollution Conditions arising from Transported Cargo which is carried by a Covered Conveyance in the performance of Insured Operations.

## 2.16 War and Terrorism

liability directly or indirectly caused by, resulting from or in connection with:

- (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 sub-paragraph (a), this Section 2 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 Section 2 as long as no state of war exists in the country where the loss occurs;
- (b) any action taken in controlling, preventing, suppressing or in any way relating to Exclusion 2.16 (a) above; or
- (c) any Act of Terrorism. For the purposes 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.

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

## 3. Conditions

The following Conditions apply to this Section 2:

### 3.1 Limits of Liability

The Limit of Liability for this Section 2 is in addition to the Public and Products Liability limit and is inclusive of Defence Costs.

The Limit of Liability in respect of each Pollution Condition and in the annual aggregate during the Period of Insurance is \$25,000,000, except in respect of loss relating to Environmental Damage where a Sub-Limit of \$250,000 per Claim and \$1,000,000 in the annual aggregate during the Period of Insurance shall apply.

#### **Crisis Containment Expenses Sub-Limit of Liability**

The most the Insurers will pay for all Crisis Containment Expenses to which this Condition applies is \$50,000 per incident and \$250,000 in the annual aggregate during the Period of Insurance. The Crisis Containment aggregate limit does not reduce or exhaust any other Limit of Liability under this Policy or this Section 2.

The Limits and Sub-Limits stated above apply in excess of the amount of the Excess stated in Condition 3.2 to this Section 2.

### 3.2 Excess

The Excess applicable to each Pollution Condition and Environmental Damage is as stated in the Schedule.

Should more than one Excess apply under this Policy including this Endorsement for each Occurrence and/or each Pollution Condition and Environmental Damage, such Excesses shall not be aggregated and the highest single level of Excess only shall apply.

### 3.3 Duties in the Event of Pollution Condition, Environmental Damage or Claim

The Insured must notify the Insurer in writing as soon as practicable of any Pollution Condition or Environmental Damage. As far as possible, such written notification should include:

- (a) how, when and where the Pollution Condition or Environmental Damage took place;
- (b) the names and addresses of any injured persons and of any witnesses; and
- (c) the nature and location of any Personal Injury or Property Damage arising out of the Pollution Condition or Environmental Damage.

Upon receipt of a Claim by any Insured, the Insured must:

- (i) record the specifics of the Claim and the date received;
- (ii) as soon as practicable
  - (a) notify the Insurer in writing of the Claim but in any event no later than the end of the Period of Insurance;
  - (b) send to the Insurer copies of any demand, notice, summons or legal paper received in connection with the Claim;
- (iii) authorise the Insurer in writing to obtain records and other information;
- (iv) co-operate with the Insurer in the investigation, settlement or defence of the Claim; and
- (v) assist the Insurer to enforce any right against any person or organisation which may be liable to the Insured because of Personal Injury, Property Damage, Clean Up Costs or Environmental Damage to which this Section 2 also applies.

The Insured shall have the duty to incur Mitigation Expenses and to clean up any Pollution Condition to the extent required by Environmental Laws by retaining competent professionals or contractors mutually acceptable to the Insurer and the Insured. The Insurer shall have the right but not the duty to review and approve all such actions, which approval shall not be unreasonably withheld or delayed. The Insured shall notify the Insurer as soon as practicable of actions and measures taken pursuant to this paragraph.

When Emergency Response Costs have been incurred in respect of any Pollution Condition, the Insured shall inform the Insurer within 7 days of the commencement of such Pollution Condition about the cause and location of such Pollution Condition together with any technical report, laboratory data, field notes, expert reports, investigations, data collected, invoices, regulatory correspondence or any other documents relating to such Emergency Response Costs.

### 3.4 Rights of Insurer in the Event of a Pollution Condition

The Insurer shall have the right but not the duty to clean-up or mitigate a Pollution Condition upon receiving written notice as provided above.

Any sums expended by the Insurer under the preceding paragraph will be deemed incurred or expended by the Insured, shall be subject to the applicable Excess and shall reduce the Limit of Liability.

### 3.5 Other Conditions

The following Conditions appearing in the Policy shall apply to this Section 2:

- (a) 3.5 Multiple Insureds Clause

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- (b) 3.8 Insolvency or Bankruptcy
- (c) 3.9 Hold Harmless Agreements
- (d) 3.10 Jurisdiction and Services of Proceedings
- (e) 3.11 Cancellation
- (f) 3.12 Alterations in Material fact/Error or Omission
- (g) 3.14 Currency

## 4. Definitions Applicable to Section 2

The following Definitions will apply to this Section 2:

**Biological Contaminants** means mould, mildew, fungi, or bacterial matter including any substance produced by, emanating from, or arising out of any such biological contaminants.

**Cargo** means waste, products or materials carried or delivered on or within a Covered Conveyance by on behalf of the Insured.

**Claim** means a written or oral demand received by the Insured seeking a remedy or asserting liability or responsibility on the part of the Insured and includes any writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counterclaim or third or similar party notice issued against or served upon the Insured.

**Clean Up Costs** means costs, charges and expenses including reasonable and necessary legal expenses incurred with the Insurer's written consent to investigate, neutralise, remove, remediate, monitor or dispose of Pollutants to the extent required by Environmental Laws or costs, charges and expenses that have actually been incurred by any governmental entity duly acting under the authority of Environmental Laws, or that have actually been incurred by third parties. Clean-Up Costs also includes Restoration Costs and Emergency Response Costs.

**Construction Period** and **Defects Liability Period** are as defined in the Policy.

**Covered Conveyance** means any motor vehicle, rolling stock or watercraft operated by the Insured or by any third party carrier acting on behalf of the Insured.

**Crisis Containment Expenses** means reasonable and necessary costs, charges:

- i) to retain a public relations or crisis management firm agreed by the Insurer subject to prior written consent from the Insurer);
- ii) for essential emergency travel expenses incurred by the principals, partners, directors or employees of the Insured;
- iii) for rental of temporary staging or meeting space necessitated by the unavailability of the space of the Insured; and/or
- iv) for any other services or activities to which the Insurer has given prior written consent.

**Defence Costs** means all legal costs and other fees, costs and expenses resulting from the investigation, adjustment, defence and appeal of a Claim incurred with the Insurer's prior written consent (such consent not to be unreasonably withheld or delayed) but without any obligation on the Insurer's part to appeal a Claim. Defence Costs shall not include the wages, overtime, or travel of the Insured's employees.

**Emergency Response Costs** means reasonable and necessary expenses, including legal expenses for the remediation of soil, surface water, groundwater, or other contamination in connection with a Pollution Condition. Provided that the Insurer shall not be liable for reasonable and necessary expenses, including legal expenses where indemnity is not provided by this Section 2 and at all times subject to the Insurer's consent.

**Environmental Damage** means:

- i) adverse change to water, land, protected species or natural habitats; or
- ii) impairment of Natural Resources which are caused by an emission, event, incident or activity directly conducted by the Insured in the performance of Insured Operations;

and for which the Insured is legally responsible under applicable Queensland or Australian federal environmental legislation and pursuant to any regulatory authority that implements it.

**Environmental Laws** means any legislatively or administratively enacted law, rule, regulation or order applicable within the jurisdiction in which Insured Operations are being or have been performed.

**Insured** is as defined in the Policy.

**Insured Contract** means:

- i) an obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- ii) that part of any other written contract or agreement pertaining to the Insured Operations (including an indemnification of a municipality in connection with work performed for a municipality) under which the Insured assumes the tort liability of another party to pay for Personal Injury, Property Damage or Clean Up Costs to a third party or organisation. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

**Insured Operations** means those operations described in the Schedule of the Policy as 'Insured Operations'.

**Mitigation Expenses** means:

- i) reasonable and necessary costs incurred to mitigate Pollution Conditions constituting an emergency situation whereby in the absence of such mitigation, Personal Injury or Property Damage to third parties is imminent; or

- ii) Clean-up Costs which are incurred pursuant to Environmental Laws.

**Named Insured** means the Named Insured specified in the Schedule of the Policy.

**Natural Resources** means land, fish, wildlife, biota, air, surface water, groundwater, drinking water supplies and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the Commonwealth, any state or local government, any foreign government or any native tribe.

**Personal Injury** means physical injury, sickness, disease, mental anguish, mental injury or emotional distress sustained by any person, including death resulting therefrom.

**Period of Insurance** means the period of time specified in the Schedule of the Policy.

**Policy** means the Principal Arranged Insurance Construction Risks Public and Products Liability Policy No 110-01817359-14129 to which this Section 2 is attached, any endorsements to it and the Schedule.

**Pollutants** means any solid, liquid, gaseous, thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals, Biological Contaminants, electromagnetic fields and waste. Waste includes but is not limited to materials to be recycled, reconditioned or reclaimed, infectious and pathological waste materials and abandoned or illicit materials.

**Pollution Condition** means the emission, discharge, dispersal, migration, release or escape of Pollutants. If the Pollutants are naturally occurring, these Pollutants only constitute a Pollution Condition to the extent they are exacerbated by Insured Operations. The entirety of any such emission, discharge, release or escape or any series of interrelated, associated, repeated, or continuous emissions, discharges, releases or escapes shall be deemed to be one Pollution Condition.

**Property Damage** means:

- i) physical damage to or destruction of Natural Resources and other tangible property of parties other than the Insured including all resulting loss of use and diminution in value of that property; or
- ii) loss of use but not diminution in value of Natural Resources and other tangible property of parties other than the Insured that is not physically damaged.

Property Damage does not include Clean-Up Costs.

**Responsible Insured** means:

- i) an officer, director or partner of any Insured; or
- ii) the manager or supervisor of any Insured responsible for environmental affairs, control or compliance.

**Recovery Period** means the period of 90 days starting on the date of the relevant Pollution Condition.

**Restoration Costs** means reasonable and necessary costs incurred by the Insured with the Insurer's consent, which shall not be unreasonably withheld or delayed, to restore, repair or replace Natural Resources and other tangible property of third parties to substantially the same condition it was in prior to being damaged during work performed in the course of incurring Clean Up Costs. However such restoration shall not exceed the

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net present value of such property immediately prior to incurring Clean Up Costs or include costs associated with improvements or betterments.

**Transported Cargo** means Cargo after it is moved from the place where it is accepted by the Insured for movement into or onto a Covered Conveyance, until the Cargo is moved from the Covered Conveyance to the place where it is finally delivered by the Insured. Transported Cargo also includes Cargo during the loading or unloading to or from a Covered Conveyance, provided that the loading or unloading is performed by the Insured. Transported Cargo does not include Cargo at rest for a period longer than 72 hours after it has been accepted by or on behalf of the Insured for movement into or onto a Covered Conveyance but before it reaches the place of final delivery.

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