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## MEMORANDUM OF INSURANCE

This Memorandum is to confirm that as the appointed insurance broker to the Named Insured, the following contract of insurance has been arranged as at the date of this Memorandum.

<b>CLASS OF INSURANCE</b>	Public & Products Liability Insurance – Project Specific
<b>NAMED INSURED</b>	Sydney Metro
<b>ADDITIONAL INSURED</b>	Contractors and Subcontractors of any tier
<b>PROJECT</b>	Sydney Metro West.
<b>PERIOD OF INSURANCE</b>	From: 3 December 2021 at 4pm Australian Eastern Standard Time To: 1 January 2030 at 4pm Australian Eastern Standard Time plus the Defects Correction Period.
<b>DEFECTS CORRECTION PERIOD</b>	From 1 <sup>st</sup> January 2030, for twenty-four (24) months.
<b>INSURED OPERATIONS</b>	All contracts of any kind or description relating to the Project.
<b>SCOPE OF COVER</b>	Legal liability to third parties for personal injury or property damage arising as a result of an occurrence in connection with the Insured Operations.
<b>LIMIT OF COVER</b>	\$500,000,000 each and every occurrence, unlimited during the Period of Insurance in respect of Public Liability; and \$500,000,000 in the aggregate in respect of Products Liability.
<b>TERRITORIAL LIMITS</b>	Anywhere in the world but excluding any operations of the Insured domiciled in the United States of America or Canada. Notwithstanding the above, cover 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 any person or firm engaged in a consultative capacity in such countries. In respect of USA & Canada, cover does not apply to any liability for award of damages of a punitive or exemplary nature whether in the form of fines, penalties, multiplication of compensation awards or damages or aggravated damages or in any other form whatsoever.
<b>INSURER(S)</b>	<b>Primary \$10m</b> HDI Global SE – 50% QBE 386 – 30% Starr International (Europe) Limited - 20%  <b>\$490m xs \$10m</b> Liberty Specialty Market and others
<b>POLICY NUMBER</b>	01815591-14000



**\*\*IMPORTANT NOTICE\*\***

This Memorandum is issued as a matter of information only and does not confer any rights upon the Memorandum holder. This Memorandum does not alter or override the terms and conditions of the contract of insurance. You must consult the policy wording for the terms, conditions and exclusions of the contract of insurance.

Issued on 9 February 2022

By Arthur J. Gallagher & Co (Aus) Pty Ltd.

Signed by its authorized signatory

**Roger Irvine**

**Head of Construction – Australia & Asia**

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Third Party Liability  
Insurance Policy

Sydney Metro West

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## Introduction

In consideration of the Named Insured having paid or agreed to pay the Premium, the Insurers agree to indemnify the Insured in the manner and to the extent provided herein, subject always to the Limits and Sub-limits of Cover, Conditions, Exclusions and other terms of or any Endorsements to this Policy.

The liability of all of the Insurers collectively will in no case exceed the Limits and Sub-Limits of Cover stated in this Policy. Furthermore, the liability of each of the Insurers individually will in no case exceed the proportion set against each Insurer's name below

**Insurer**

**Signature**

**Date**

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## Policy Schedule

<b>Named Insured:</b>	Sydney Metro
<b>Additional Insureds</b>	Contractors and subcontractors of any tier. And others as defined in the definition of Insured.
<b>Project</b>	Sydney Metro West
<b>Business</b>	Principally but not limited to the design, engineering, procurement, fabrication, construction, testing and commissioning of the Project including all related ancillary and associated, works as required by any Contracts, including variations thereto.
<b>Insured Operations:</b>	All Contracts of any kind or description relating to the Project
<b>Period of Cover:</b>	From: 3 December 2021 at 4pm Australian Eastern Standard Time; To: 1 January 2030 at 4pm Australian Eastern Standard Time plus the Defects Correction Period.
<b>Defects Correction Period:</b>	From 1 January 2030, for twenty four (24) months.
<b>Territorial Limits:</b>	Anywhere in the world but excluding any operations of the Insured domiciled in the United States of America or Canada.  Notwithstanding the above, cover is provided to the Insured in respect of: <ol style="list-style-type: none"><li>1. Products exported into those countries; and to</li><li>2. directors of the Insured or Employees who are non-resident in such countries; and any person or firm engaged in a consultative capacity in such countries.</li></ol> In respect of USA & Canada, cover does not apply to any liability for award of damages of a punitive or exemplary nature whether in the form of fines, penalties, multiplication of compensation awards or damages or aggravated damages or in any other form whatsoever.
<b>Limits of Cover:</b>	Limit in respect of each Occurrence but limited in aggregate for all Occurrences in respect of Products <span style="float: right;">\$500,000,000</span>
<b>Agreed Loss Adjuster:</b>	To be confirmed
<b>Excess:</b>	AUD750,000 each and every Occurrence (costs inclusive)

## **Part 1 – Cover**

### **1.1 Legal Liability**

Insurers will indemnify the Insured against the legal liability of the Insured to pay compensation or damages in respect of:

- (a) Personal Injury; or
- (b) Property Damage;

sustained as a result of an Occurrence during the Period of Cover within the Territorial Limits in connection with the Business.

### **1.2 Defence and other costs**

Insurers will pay the following costs and expenses in addition to the Limits of Liability specified in the Schedule:

- (a) all legal costs and other expenses incurred with the written consent of Insurers;
- (b) all charges expenses and legal costs recoverable from the Insured by claimants;
- (c) all costs and expenses incurred by the Insured for legal representation at any coroner's inquest, inquiry or hearing, fatal accident inquiry or court of summary jurisdiction or an indictment in a higher court;
- (d) all expenses incurred by the Insured for first aid rendered for Personal Injury to others at the time of an Occurrence, except any medical expenses which Insurers are prohibited by law from paying;
- (e) all expenses incurred by the Insured for temporary repairs, shoring up or protection of property of others that has been damaged as a result of an Occurrence;

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## Part 2 - Exclusions to Cover

Cover is not provided under this Policy for:

### 2.1 Employers' Liability

liability for which the Insured is entitled to indemnity under any 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 insurance.

This exclusion does not apply to:

- (a) Worker to Worker Liability;
- (b) claims for loss of consortium from the spouse of an Employee; or
- (c) 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 not exceeding 8 metres in length
- (b) liability arising in connection with construction plant or equipment mounted upon or operating from such Watercraft;
- (c) the use or existence of explosives on or from any marine craft or vessels whether in, over or under water or otherwise;
- (d) liability in respect of work undertaken on marine craft or vessels;
- (e) the use of any Aircraft or Watercraft by the Insured for Business entertainment.

### 2.4 Vehicles

liability arising from the ownership, possession or use by the Insured of any Vehicle whilst used in circumstances where such Vehicle is required by law to be registered.

Provided that this exclusion shall not apply to liability:

- (a) arising out of or in connection with the loading or unloading of or the delivery or collection of goods to or from any Vehicle;
- (b) caused by or arising out of or in connection with the Vehicle working as a tool of trade at or in the vicinity of any Work Site or premises of the Insured;
- (c) for Personal Injury to the extent that indemnity is not provided by a compulsory third party bodily injury liability insurance, including where no insurance has been arranged.

### 2.5 Loss of Use

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

### 2.6 Products and Work Performed

liability for:



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- (a) the cost of making good, replacing or reinstating workmanship performed by the Insured 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 any 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;

### **2.7 Professional Liability**

liability arising out of the rendering of or failure to render professional advice or service by the Insured, but this exclusion does not apply to:

- (a) Personal Injury or Property Damage arising therefrom; or
- (b) the rendering of or failure to render professional medical advice by medical persons employed by the Insured to provide first aid and other medical services at or in the vicinity of any Worksite or premises of the Insured.

### **2.8 Pollution and Contamination**

- (a) liability arising out of Pollution, but this exclusion does not apply where the liability arises from a sudden identifiable, unintended and unexpected event from the standpoint of the Insured which takes place in its entirety at a specific time and place.
- (b) any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such Pollution, but this exclusion does not apply where clean-up, removal or nullifying expenses are incurred consequent upon a sudden identifiable, unintended and unexpected event from the standpoint of the Insured which takes place in its entirety at a specific time and place.

### **2.9 Asbestos Liability**

liability arising out of, caused by or in connection with asbestos or materials containing asbestos.

### **2.10 Fines and Penalties**

Liability arising from or attributable to:

- (a) any fine or penalties or liquidated damages imposed by law or assumed by the Insured under any contract, warranty or agreement;
- (b) an award of aggravated, punitive or exemplary damages;

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

### **2.11 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 Contract Works [Policy No to be confirmed]

### **2.12 Nuclear Risks**

loss, damage or liability directly or indirectly caused by or contributed to by or arising from:

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- (a) ionising, radiations or contamination by radioactivity from any nuclear fuel, installation, reactor or other nuclear assembly, or from any nuclear waste from the combustion of nuclear fuel;

for the purpose of this exclusion only, combustion shall include any self-sustaining process of nuclear fission;

- (b) nuclear weapons materials.

This exclusion shall not apply to the use of commercial radioactive isotopes.

### **2.13 War and Terrorism**

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

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power. Notwithstanding this clause 1.2(a), this Policy shall cover loss, damage or liability caused by missiles and/or mines and/or bombs and/or other explosives not discovered at the moment of commencement of this Policy as long as no state of war exists in the country where the loss occurs; or
- (b) any act of terrorism.

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

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

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

### **2.14 Cyber and Data LMA5469 (Other than Bodily Injury or Property Damage arising out of a Cyber Incident)**

- (a) 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:
  - (i) 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
  - (ii) 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,

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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 2.15(e).

- (b) In the event any portion of this Exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.
- (c) This Exclusion 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.
- (d) If the Insurers allege that by reason of this Exclusion loss sustained by the Insured is not covered by this Policy, the burden of proving the contrary shall be upon the Insured.
- (e) However, 2.15(a) of this Exclusion shall not apply in respect of any actual or alleged liability for and/or arising out of:
  - (i) any ensuing third party bodily injury (other than mental injury, mental anguish or mental disease); or
  - (ii) 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

- (f) 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.
- (g) 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.
- (h) Cyber Incident means:
  - (i) 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
  - (ii) 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.
- (i) 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.

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## **2.15 Communicable diseases LMA5396**

Notwithstanding any provision to the contrary within this policy, this policy does not cover all actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.

For the purposes of this endorsement, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test for a Communicable Disease.

As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

- (a) the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
- (b) the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
- (c) the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or property damage.

## **2.16 Contact Works**

Property Damage insured or insurable under the Contract Works policy no: AH1155A21KZA issued by Starr International (Europe) Ltd and others

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## Part 3 - Conditions

The following Conditions apply to this Policy.

### 3.1 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) Non-aggregation of Excess  
Should more than one Excess apply for any claim or series of claims arising from the one Occurrence, such Excesses shall not be aggregated and only the highest single Excess shall apply.

### 3.2 Multiple Insured Entities Clause

- (a) If the Insured comprises more than one party each operating as a separate and distinct entity then (save as provided in this condition 2.2), cover hereunder shall apply in the same manner and to the same extent as if individual cover had been issued to each such party, provided that the total liability of Insurers to all of the Insured collectively shall not exceed the relevant Limits of Liability or Sub-limits in this Policy.
- (b) The Named Insured will, and will ensure all other Insureds will, to the extent allowed under contract, at all times preserve the various contractual rights and agreements entered into by the Insured and contractual remedies of such parties in the event of loss or damage.
- (c) Insurers shall be entitled to reduce or avoid liability to an Insured in circumstances of such Insured committing fraud, deliberate misrepresentation, material non-disclosure or deliberate breach of any warranty or condition of this Policy (referred to in this clause 3.2 as a "Vitiating Act").
- (d) However a Vitiating Act or any other act or neglect committed by one Insured, either at the time of obtaining this Policy or during the Period of Cover, shall not prejudice the right to cover of any other Insured who has not committed a Vitiating Act.
- (e) Insurers agree to waive all rights of subrogation that it may have or acquire against:
  - (i) any Insured or any individual or organisation affiliated or associated with, parent of or a subsidiary of any Insured;
  - (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 where the rights of subrogation or recourse are acquired in consequence or otherwise following a Vitiating Act, in which circumstances Insurers may enforce such rights against the party committing the Vitiating Act.

### 3.3 Notices

- (a) Any notice(s) required to be given to Insurers under this Policy shall be given by the Named Insured to Insurers or as Insurers may reasonably direct.
- (b) Any notice(s) given by Insurers to any party insured by this Policy shall also be given to the Named Insured for distribution as required.

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- (c) Any notice of claim given to Insurers by any party insured by this Policy shall be accepted by Insurers as a notice of claim given on behalf of all other parties Insured by this Policy.
  - (d) Subject to the Insured providing details to Insurers of the name of the Nominee for Notices and the relevant Contract provisions, in addition to the notice provisions in 3.3(a) to (c) above Insurers agree to provide 30 business days prior notice to that Nominee in the event of:
    - (i) the cancellation or expiry of this Policy before completion of the Construction Period and/or Defects Correction Period of the relevant Contract due to non-payment of premium or any other cause;
    - (ii) Insurers giving any notice under this Policy.

### **3.4 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, 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, whereupon 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 Named Insured.

### **3.5 Insolvency or Bankruptcy**

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

### **3.6 Cancellation**

- (a) By the Insurer

The Insurer 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 ninety (90) days notice in accordance with Section 59 of that Act, in which case the Named Insured will be entitled to a pro-rata refund of the Premium.

- (b) By the Insured

The Named Insured (on behalf of itself and all other Insured's unless otherwise specified) may cancel this Policy, in respect of any Contract thereof by giving notice in writing to the Insurer

After cancellation by the Named Insured, the Named Insured will be entitled to a pro-rata refund of premium with an adjustment for the time this Policy has been in force and the claims loss ratio.

### **3.7 Non-Contribution**

The Insurer agrees that the Insurer will not, under any circumstances, seek contribution for any Occurrence indemnified under the terms of this Policy from policies held by any of the Insureds under this Policy.

### **3.8 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

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other party in respect of any damage, defect or liability hereby Insured, 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 Insurers.

### **3.9 Notification and Claims Procedure**

Upon the Insured becoming aware of any Occurrence giving rise or likely to give rise to a claim under this Policy or upon receipt by the Insured of notice of any claim or subsequent proceeding, the Insured shall as soon as practicable thereafter:

- (a) give notice thereof in writing to Insurers;
- (b) preserve any property or things which might prove necessary or useful by way of evidence in connection with any claim and, so far as may be reasonably practicable, with due regard to safety, no alteration or repairs shall, without the consent of Insurers, be made after the Occurrence until Insurers shall have had an opportunity of inspection;
- (c) forward to Insurers every letter of demand, writ, summons or process as soon as practicable after receipt thereof and give notice to Insurers in writing as soon as practicable after the Named Insured shall have knowledge of an impending prosecution or inquest in connection with any Occurrence;
- (d) when called upon to do so, furnish to Insurers in writing all details of the Occurrence together with such information, evidence, explanations and assistance as Insurers may reasonably require.

Notwithstanding the provisions of this clause, this cover will not be prejudiced by any inadvertent delay, error or omission in notifying Insurers of any Occurrence that may give rise to a claim or claims under this Policy.

### **3.10 Settlement of Claims**

- (a) no admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the Insured without the consent of Insurers who shall have the right and duty 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 Insurer's own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings or in the settlement of any claim.
- (b) Insurers agrees to discuss the conduct, defence, prosecution or settlement of any claim or proceeding with the Named Insured prior to taking action or effecting settlement.
- (c) Insurers may pay to the Named Insured the amount of the applicable Limit of Liability 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 or damages in respect of such claim and Insurers shall thereafter be under no further liability in respect of such claim except for the payment of costs and expenses for which Insurers is liable hereunder incurred prior to the date of such payment, whether or not pursuant to an order made subsequently.

### **3.11 Rights of Recovery for Cover given**

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

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Upon the payment of any claim under this Policy, Insurers shall be subrogated to all the rights and remedies of the Insured arising out of such claim against any person or corporation whatsoever.

Any amount so insured shall be applied in the following order of priority:

- (a) first to the proportion of the loss suffered by the Insured which is not Insured by this Policy,
- (b) second to reimburse Insurers to the extent of its actual payment in respect of the claim,
- (c) third, to reimburse the Insured for any Excess borne by the Insured,
- (d) fourth, any balance insured which exceeds the loss shall be payable to the Named Insured.

The expenses of such recovery proceedings shall be apportioned as agreed between the Named Insured and Insurers. Should the parties be unable to agree on an appropriate apportionment then such expenses shall be paid by each party in the same proportion as their percentage share of all amounts insured. If there is no such recovery by Insurers, the expenses shall be borne by Insurers.

### **3.12 Governing Law**

This Policy is governed by the laws of the Commonwealth and the State of New South Wales;

### **3.13 Extension to period of Cover**

The Insurers agree to automatically grant any required alteration / extension to the estimated Period of Cover as stated in the Policy Schedule, the Insurers shall be entitled to charge the Named Insured an additional premium at a rate not exceeding pro-rata for the first 3 months and then at premium to be agreed.

### **3.14 Sanctions limitations LMA3100**

No Insurer shall be deemed to provide cover and no 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 Insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, United States of America or Australia.

## **DEFINITIONS AND INTERPRETATIONS**

For the purpose of this Policy the following definitions and interpretations apply to all Sections of this document unless specifically stated otherwise. Other terms may be defined within the Policy Schedule.

**Aircraft** means any craft or machine made or intended to fly or become airborne or move in or through the atmosphere or space.

**Business** means:

- (1) the Business specified in the Schedule;



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- (2) the provision and management of canteens, social, sports and welfare organisations, educational and child care facilities primarily for the benefit of the Insured's Employees;
  - (3) first aid, medical, security, fire and ambulance services;
  - (4) the maintenance of the Insured's premises or property for which such responsibility exists;
  - (5) private work undertaken by the Insured's Employees for any director, partner or senior executive of the Insured;
  - (6) any prior activities which have ceased or have been disposed of but for which the Insured may retain a legal liability;
  - (7) participation in exhibitions;
  - (8) hire or loan of plant to other parties;
  - (9) conducted tours of the Insured's premises;
  - (10) any other occupation ancillary or incidental to the Business.

**Computer Virus** means a set of corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature.

**Contract** means contracts or agreements in connection with the Business of the Insured and the Project.

**Contract Value** means the contract price or value stated in a Contract.

**Electronic Data** means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for such equipment.

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

**Insured** means:

- (1) The Named Insured stated in the Schedule;
- (2) The Additional Insured's named in the Schedule;
- (3) any parent, subsidiary company (including subsidiaries thereof), or agent of the Insured and any other organisation under the control of the Insured and over which it is exercising active management, whether now or hereafter incorporated;
- (4) any of the following persons or entities for such coverage and Limits of Liability as provided in this Policy:
  - (a) any construction manager or project manager or superintendent;
  - (b) any contractor or sub-contractor of any tier performing works in relation to the Insured Operations, other than those categories more specifically defined elsewhere in this Policy;
  - (c) any manufacturer, supplier, architect, engineer or other consultant for their onsite manual activities;
  - (d) any lessor, financier, mortgagee or trustee;

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- (e) any government body;
  - (f) any other party with an insurable interest in the Contract(s);
- (5) any director, executive officer, employee, contract staff or partner of any of the Insured or whilst acting as such;
- (6) any office bearer or member of any social, sporting, safety, security, medical or welfare facility of any of the Insured under clauses, (b) or (c) whilst acting as such;
- all for their respective rights and interests.

**Local Time** means the official government time (which includes daylight savings time where observed) at the designated place stated in the Period of Cover of the Policy Schedule.

**Material Fact** means any fact which may change the risk profile of works insured under this Policy in a way that might influence the Insurers to require changes to the terms or conditions of this Policy.

**Nominee for Notices** means those parties noted in accordance with Condition 3.3(d).

**Occurrence** means an event including continuous or repeated exposure to conditions that result in Personal Injury or Property Damage where such injury or damage is neither expected nor intended from the standpoint of the Insured. Occurrence extends to include any intentional act by or at the direction of the Insured which results in Personal Injury or Property Damage if such Personal Injury or Property Damage arises solely from the use of reasonable force for the purpose of protecting persons or property. Occurrence shall also include Personal Injury or Property Damage sustained during the Period of Cover.

**Period of Cover** means the period from the commencement date stated in the Policy Schedule and includes the Construction Period and Defects Correction Period.

1. **Construction Period** means; the period commencing on the dates stated in the Period of Cover in the Policy Schedule;

until:

- (a) the date the Project has been formally accepted in its entirety by the Named Insured as having achieved completion or the final payment schedule issued notwithstanding the fact that parts of the Project may have been handed over, put into use and accepted by the Named Insured prior to that time;
- (b) The Construction period expiry date stated in the Policy Schedule, or if such date is extended pursuant to clause 3.13, that extended date; or
- (c) any such later time that the Insured is required to maintain insurance in accordance with any relevant Contract.

2. **Defects Correction Period** means, for the purposes of this Policy, the period commencing immediately after the expiry of the Construction Period, during which an Insured is obliged or legally liable to correct defects, shrinkages, errors, omissions or other faults and/or to complete its obligations under a Contract (the initial Defects Correction Period), which may include the granting of a further period, following correction of defects under the initial period. The initial Defects Correction Period shall not exceed the Defects Correction Period stated in the Policy Schedule.

Where the Named Insured requires the Defects Correction Period to be extended upon rectification of a defect, the Defects Correction Period in respect of the

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rectification can be extended one or more times up to a period not exceeding the original Defects Correction Period following completion of the rectification works.

**Personal Injury** means:

- (1) bodily injury, death, illness, disease, disability, shock, fright, mental anguish and mental injury including loss of consortium or services;
- (2) false or wrongful arrest, detention or imprisonment and malicious prosecution, wrongful entry upon, wrongful eviction from or other invasion of right to private occupancy of property and humiliation;
- (3) libel, slander or defamation, except where the first publication or utterance happened prior to the commencement of this Policy; or
- (4) assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing Injury or Property Damage or eliminating or preventing danger to persons or property;
- (5) discrimination as a result of race, religion, sex, marital status, age, intellectual impairment, disability or otherwise (unless insurance thereof is prohibited by law) not committed by or at the intentional direction of the Insured, but only in respect to liability other than for fines and penalties imposed by law.

**Pollution** means the discharge, dispersal, seepage, release or escape of smoke, vapours, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or water.

**Products** means anything after it has left the custody or control of the Insured, which has been or is deemed by law to have been manufactured, grown, produced, processed, formulated, built and/or constructed, assembled, erected, installed, sold, supplied, imported, exported, distributed, treated, serviced, altered or repaired by the Insured, which includes works performed by or for 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, Product shall not include construction works of any kind or description undertaken by the Insured unless such construction works have been completed and handed over to the Named Insured

**Property Damage** means:

- (1) physical loss or destruction of or damage to tangible property including the loss of use thereof (total or partial); or any consequential loss resulting therefrom; or
- (2) total or partial interruption of or interference with or loss of use of or deprivation of premises, property, services, facilities, trade or vehicular or pedestrian traffic or the like.

**Public Relations Costs** means:

The cost of hiring a public relations firm to prevent or limit the adverse effects of negative publicity

**Trade Practices Legislation** means:

- (1) the Competition and Consumer Act 2010 (Cth);
- (2) the Fair Trading Act 1987 (NSW) or similar legislation regulating fair trading in other States and Territories of Australia.

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

**Watercraft** means any vessel, craft or thing in excess of 8 metres in length (measured at the waterline) made or intended to float on or travel on or through water.

**Worker to Worker Liability** means:

- (1) legal liability of the Insured in respect of recoveries of any payments by any workers' compensation Insurers under the provisions of any workers' compensation legislation or insurance policy, or at common law; or
- (2) 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 any work is performed for and/or in connection with the Project.

## Interpretations

The following Interpretations apply to this Policy where the context admits:

- (1) words denoting the singular shall include the plural and vice versa where the context admits;
- (2) reference to a person includes any other entity recognised by law and vice versa;
- (3) use of the word include or including is not to be taken as limiting the meaning of the words preceding it;
- (4) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated; and
- (5) Clause, sub-clause and paragraph 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 those headings.