

Public and Products Liability

Master Policy Number PPL2722V1/1415

Issued to clients of VMIA

For the period 30 June 2014 to 30 June 2015

Contents

| | |
|--|-----------|
| Public and Products Liability Master Insurance Policy | 3 |
| 1. Insuring Clause | 3 |
| 2. Automatic Extensions..... | 4 |
| 3. Exclusions | 7 |
| 4. Memoranda | 14 |
| 5. Conditions..... | 14 |
| 6. Definitions..... | 19 |
| 7. Endorsements | 25 |
| 8. Privacy Statement..... | 26 |

Public and Products Liability Master Insurance Policy

Subject to payment of the premium set out in the **Schedule**, **VMIA** agrees with the **Insured** to provide insurance on the terms set out in this policy. This policy consists of this policy wording, the completed Insurance Questionnaire, written proposal and declaration made by the **Insured** to **VMIA**, the **Schedule**, extensions, memoranda and endorsements.

1. Insuring Clause

VMIA agrees to indemnify the **Insured** for all amounts which the **Insured** shall become legally liable to pay as **Compensation** and **Supplementary Payments** in respect of:

- (a) **Personal Injury** or **Property Damage** which first occurs during the **Period of Insurance** and caused by an event in connection with the **Insured's Business**; and/or
- (b) **Other Injury** caused by any **Injurious Act**, in connection with the **Insured's Business**, first committed (or alleged to have been committed) during the **Period of Insurance**.

With respect to indemnity afforded under this policy, **VMIA** will defend in the **Insured's** name and on behalf of the **Insured** any **Claim** against the **Insured** alleging such **Personal Injury**, **Other Injury** and/or **Property Damage** and seeking **Compensation** on account thereof, even if such **Claim** is groundless, false or fraudulent and **VMIA** may make such investigation, negotiation and settlement of any **Claim** as it deems expedient. However, **VMIA** shall not be obliged to pay any **Compensation** or to defend any **Claim** after the **Limit of Indemnity** has been exhausted by payment of **Compensation**.

1.1 Limit of Indemnity

Other than **Supplementary Payments**, the liability of **VMIA** under this policy for all claims arising out of any one Occurrence is limited to the amount specified in the **Schedule** as the **Limit of Indemnity**.

However, the liability of **VMIA** under this policy for:

- (a) all **Claims** arising out of the **Insured's Products** and/or **Bushfires** is limited to the amount specified in the **Schedule** as the aggregate **Limit of Indemnity** in respect of liability arising out of the **Insured's Products** and/or **Bushfires**;
- (b) all **Claims** in respect of Asbestos Liability (as provided under Automatic Extension 2.1) is limited to the amount specified in the **Schedule** as the aggregate Limit of Indemnity in respect of Asbestos Liability (as provided under Automatic Extension 2.1).

1.2 Supplementary Payments

In addition to the **Limit of Indemnity**, VMIA agrees to indemnify the **Insured** for **Supplementary Payments** in addition to the **Limit of Indemnity**, provided that if a payment for **Compensation**, to finalise a **Claim**, exceeds the **Limit of Indemnity** of this policy, VMIA's liability to pay **Supplementary Payments** shall be in same proportion as the proportion the **Limit of Indemnity** represents as a percentage of total **Compensation** to finalise the **Claim**.

1.3 Claims in USA or Canada

Notwithstanding clauses 1.2 and 1.3 above, with respect to any judgment, award or settlement made in the United States of America or Canada (or any order made anywhere to enforce such judgment, award or settlement either whole or in part) the **Limit of Indemnity** applies inclusive of **Supplementary Payments**.

2. Automatic Extensions

The following extensions are subject to the definitions, conditions, exclusions and other terms of this policy other than as amended by each Extension clause.

2.1 Asbestos Liability

In addition to Exclusion 3.4 of this policy, it is agreed that this policy shall not apply to:

- (a) liability directly or indirectly caused by or alleged to be caused by or contributed to in whole or in part by or arising from the existence of or exposure to asbestos and/or any asbestos containing materials;
- (b) any obligation to defend any **Claim** against the **Insured** alleging liability resulting from 2.1(a) above nor to VMIA's liabilities for **Supplementary Payments** arising therefrom.

Notwithstanding anything contained herein to the contrary VMIA will indemnify the **Insured** against liability to pay **Compensation** and **Supplementary Payments** under this policy arising from any **Occurrence** involving the existence of or exposure to asbestos and/or asbestos containing materials occurring after 30th June 2004 but only in respect of **Claims** first made against the **Insured** during the **Period of Insurance** but only in connection with handling, removal, stripping out, demolition, storage, transportation or disposal of asbestos and/or any asbestos containing materials from the Asbestos Management Plan.

Provided always that all the following conditions apply:

1. should the Insured notify VMIA during the Period of Insurance of any specific fact or circumstance which VMIA accepts may give rise to a Claim which forms the subject of indemnity under this Extension then acceptance of such notification means that VMIA will deal with such Claim as if the Claim had first been made against the Insured during the Period of Insurance; and

2. VMIA will not indemnify the Insured for any Claim arising from the existence of or exposure to asbestos and/or any asbestos containing materials where the Insured was aware of the fact or circumstance, which gave rise to the Claim, before the commencement of the Period of Insurance; and
 3. in respect of any liability which arises from any requirement to clean up or remove asbestos and/or asbestos containing materials from any building and/or structure; and
 - (a) such liability arises solely in consequence of a sudden specific and identifiable fire explosion impact or collapse; and
 - (b) the building and/or structure that is subject to the clean up or removal is not owned leased or hired by or under the hire purchase or on loan to the **Insured**; and
 4. **VMIA** will not indemnify the **Insured** for any liability in respect of the diminution in the value of property or loss of or potential loss of rental income or any other consequential losses (including business interruption) howsoever arising; and
 5. **VMIA's** total liability in respect of any one **Period of Insurance** for **Compensation** and **Supplementary Payments** shall not exceed the amount specified as Sub-Limit of Indemnity for this Extension in the **Schedule**; and
- It is a condition precedent to liability for any indemnity under this Extension:
- (a) that all conditions and recommendations set out in the Asbestos Management Plan and Guidance Notes issued by the **Insured** must be followed by the **Insured** and/or contractors; and
 - (b) that the **Insured** and/or contractors must also observe any other relevant existing replacing or subsequent legislation or regulations imposed; and
 - (c) that the **Insured** and/or contractors comply with all relevant legislation and guidelines and codes of practice relating to any work involving asbestos or any asbestos containing material.

2.2 Cross Liability

If there is more than one **Insured**, each **Insured** will be considered as a separate and distinct entity and this policy will apply to each **Insured** as if a separate policy had been issued to each **Insured**. However, nothing in this Extension clause will result in an increase in the **Limit of Indemnity** or the **Deductible** in respect of any one **Occurrence** or in the aggregate for the **Period of Insurance**.

2.3 Deemed Claim

Any settlement agreed with a third party, even where the third party has not made a **Claim** against the **Insured**, involving an **Occurrence** that is likely to give rise to a **Claim**, shall be deemed to be a **Claim**.

2.4 Watercraft/Marine Liability

Notwithstanding Exclusion 3.3 Aircraft & Watercraft if a Marine Liability Sub-limit is specified in the Schedule **VMIA** agrees to indemnify the **Insured** for all amounts which the **Insured** shall become legally liable to pay as **Compensation** and **Supplementary Payments** in respect of:

- (a) **Personal Injury** or **Property Damage** which first occurs during the **Period of Insurance** and caused by an event in connection with the ownership, maintenance, use or operation by the **Insured** of a **Watercraft** whilst afloat or any **Hovercraft**; and/or
- (b) **Other Injury** caused by any **Injurious Act**, in connection with the ownership, maintenance, use or operation by the **Insured** of **Watercraft** whilst afloat or any **Hovercraft**, first committed (or alleged to have been committed) during the **Period of Insurance**.

3. Exclusions

Indemnity provided by this policy does not apply in respect of:

3.1 AIDS

liability arising from any condition directly or indirectly caused by or associated with Human T-Cell Lymphotropic Virus type 111 (HTLV 111) or Lymphadenopathy Associated Virus (LAV) or the mutants derivatives or variations thereof or in any way related to Acquired Immune Deficiency Syndrome or any syndrome or condition of a similar kind howsoever it may be named.

3.2 Aircraft Products

liability caused by or arising out of any of the **Insured's Products** manufactured specifically for and installed in any **Aircraft** or caused by or arising out of any of the **Insured's Products** which the **Insured** knew would be so installed where such products are essential to the operation and/or navigation of such **Aircraft**.

3.3 Aircraft & Watercraft

liability caused by or arising out of or in connection with the ownership, maintenance, use or operation by the **Insured** of:

- (a) any **Aircraft** but this Exclusion 3.3(a) shall not apply with respect to inflatable balloons used for advertising purposes, nor to inflatable balloons designed for the purpose of carrying persons.
- (b) any **Watercraft** whilst afloat or any **Hovercraft** but this Exception 3.3(b) shall not apply to:
 - (i) **Watercraft** or **Hovercraft** not exceeding 8 metres in length;
 - (ii) **Watercraft** or **Hovercraft** operated by independent contractors.

3.4 Asbestos

liability directly caused by or arising from:

- (a) mining, processing, transportation, distribution and/or storage of asbestos;
- (b) manufacture of asbestos products or processing material containing asbestos;
- (c) any process of removal, decontamination, treatment or control of asbestos provided that this Exclusion 3.4(c) shall only apply to liability arising in consequence of inhalation of asbestos fibre or damage to or loss of use of property due to the presence of asbestos.

3.5 Construction Activities

liability arising directly or indirectly out of or caused by or happening in connection with earthworks or construction activities of any kind (including the construction, erection, demolition (whether partial or complete), alteration, addition or renovation of buildings, earthworks or structures) by or on behalf of the **Insured** where the total contract or estimated value of all earthworks and construction activities forming part of one project or a series of related projects exceeds five hundred thousand dollars (\$500,000), and

ten million dollars (\$10,000,000) in respect to VicRoads Design, GEOPave, Land Information and Survey, Information Services, Sprayline, Metropolitan Works Group and/or any other subsidiary VicRoads entities established for a similar purpose, when performing construction activities in the capacity of contractor outside of the indemnity provided under VMIA's Principal Controlled Construction Risks insurance policy.

3.6 Contractual Products Liability

liability directly or indirectly caused by or alleged to be caused by, in connection with, arising out of or contributed to, in whole or in part, by the **Insured's Products** where such liability has been assumed by the **Insured** under any contract or agreement, except to the extent that such liability would otherwise have attached notwithstanding such contract or agreement. This Exclusion 3.6 shall not apply to those written contracts designated in the **Schedule** nor to liability assumed by the **Insured** under a warranty of the fitness or quality of the **Insured's Products**.

3.7 Dieldrin

liability caused by or arising out of the use of or authorisation of Dieldrin.

3.8 Employment

(a) **Claims** in respect of **Personal Injury** to any person employed by the Insured or deemed to be employed by the **Insured** pursuant to any workers' compensation law. Provided that if the **Insured** is:

- (i) required by law to insure or otherwise fund, whether through self insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited or not) for such **Personal Injury**; or
- (ii) not required to so insure or otherwise fund such liability by reason only that the **Personal Injury** is to a person who is not a worker or employee for the purposes of the relevant workers' compensation law or the **Personal Injury** is not an injury which is subject to such law;

then this policy will respond to the extent that the **Insured's** liability would not be covered under any such fund, scheme, policy of insurance or self insurance arrangement had the **Insured** complied with their obligations pursuant to such law.

- (b) liability imposed by any workers' compensation law provided however that this Exclusion (b) shall not apply with respect to liability of others assumed by the **Insured** under a written contract.
- (c) liability imposed by the provision of any industrial award, agreement, or determination or any contract of employment or prospective employment of any person or persons by the **Insured**.

3.9 Insured's Property

Claims in respect of **Property Damage** to property owned by the **Insured**.

3.10 Insured's Products

Claims in respect of **Property Damage** to the **Insured's Products** if such damage is caused by any defect therein or the harmful nature or unsuitability thereof but this Exclusion 3.10 shall be restricted to the defective or harmful or unsuitable part of the **Insured's Products** and shall not apply to any resultant damage caused to the remainder of such product.

3.11 Libel, Slander and/or Defamation

liability arising out of the publication of a libel or other defamatory or disparaging material or the utterance of a slander:

- (a) made prior to the commencement of the **Period of Insurance**, or
- (b) made at the direction of the **Insured** with knowledge of the falsity thereof; or
- (c) related to advertising, broadcasting or telecasting activities conducted by or on behalf of the **Insured**.

3.12 Performance

Claims in respect of loss of use of tangible property which has not been physically injured or destroyed caused by:

- (a) a delay in or lack of performance by or on behalf of the **Insured** of any contract or agreement; or
- (b) the failure of the **Insured's Products** to meet the level of performance, quality, fitness or durability warranted or represented by the **Insured**.

but this Exclusion 3.12 does not apply to loss of use of other tangible property arising out of the sudden and accidental physical injury to or destruction of the **Insured's Products** or work performed by or on behalf of the **Insured** after such products or work have been put to use by any person or organisation other than an **Insured**.

3.13 Pollution

- (a) liability directly or indirectly arising out of the discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere or any water course or body of water;
- (b) **Claims** in respect of the cost of removing, nullifying or cleaning up Pollutants.

Provided that this Exclusion 3.13 shall not apply if such discharge, dispersal, release or escape is caused by a sudden, identifiable, unintended and unexpected event which takes place in its entirety at a specific time and place.

Provided further, however, that in respect of any **Occurrences** in the United States of America or Canada or any other territory coming under the legal jurisdiction of the United States of America or Canada, this policy will not cover any liability:

- (i) directly or indirectly caused by, arising out of or in connection with seepage, pollution or contamination;
- (ii) for the cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances;
- (iii) for fines, penalties, punitive or exemplary damages.

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant including (but not limited to) smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste. "Waste" includes material to be recycled, reconditioned or reclaimed.

3.14 Professional Capacity

Claims in respect of any breach of duty owed in a professional capacity (other than the rendering of or failure to render **Health Care** by **Registered Health Professionals**), including errors and omissions, by the **Insured** and/or persons for whose breaches of such duty the **Insured** may be legally liable. This Exclusion 3.14 shall not apply to **Claims** in respect of **Personal Injury**, **Property Damage** or **Other Injury**.

3.15 Provision of Health Care

Claims in respect of the rendering of or failure to render **Health Care** by **Registered Health Professionals**. This Exclusion 3.15 shall not apply to the rendering of or failure to render **Health Care** by **Registered Health Professionals** or first aid attendants, employed by the **Insured** to provide first aid on the **Insured's** premises, provided that such premises do not include a hospital, community health centre, nursing home, ambulance or other premises where the **Insured's** primary occupation involves provision of **Health Care**.

3.16 Punitive and other damages, Fines, Penalties

liability for fines, penalties, liquidated damages, punitive damages and/or exemplary damages.

3.17 Rail

liability arising from the operation of, or any **Occurrence** involving, trains and trams within the State of Victoria (which includes passenger liability outside the State of Victoria).

3.18 Recall & Re-performance

Claims in respect of:

- (a) the cost of making any refund on the price paid for any of the **Insured's Products**;
- (b) the cost of or damages claimed in relation to the withdrawal, recall, inspection, repair, replacement or loss of use of the **Insured's Products** if such products are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;
- (c) the cost of performing, completing, correcting or improving any work undertaken by the **Insured**.

3.19 Vehicles

- (a) liability in respect of **Personal Injury** arising out of the ownership, possession or use of any **Vehicle** where the **Insured** is indemnified as the owner or the driver of the **Vehicle** for liability for **Personal Injury** under part 6 of the *Transport Accident Act 1986* or a law of the Commonwealth or of another State which corresponds with the *Transport Accident Act 1986*.
- (b) liability in respect of **Property Damage** arising out of the ownership, possession or use by the **Insured** of any **Vehicle** which is registered or required to be registered by law.

This Exclusion 3.19 (b) shall not apply to **Property Damage**:

- (a) caused by or arising from the delivery or collection of goods to or from any **Vehicle** where such **Property Damage** occurs beyond the limits of any carriageway or thoroughfare;
- (b) arising out of the loading or unloading of or the delivery or collection of goods from any **Vehicle** used in work undertaken by or on behalf of the **Insured** but not in the physical or legal control of the **Insured**;
- (c) arising while a **Vehicle** is not being driven on roads and not used for conveyance or travel and arising solely out of the use of any tool or item of plant attached to or forming part of the **Vehicle** as a tool of trade;
- (d) arising from the use of any **Vehicle** (other than registered vehicles owned or used by or on behalf of the **Insured**) in the physical or legal control of the **Insured** where such occurs in a car park owned or operated by the **Insured**;
- (e) arising from damage to any bridge, weighbridge, road or anything beneath caused by the weight of any **Vehicle** or trailer or of the load carried thereon;
- (f) arising from any unregistered **Vehicles**, owned, operated or for which the **Insured** is responsible, other than whilst being used on a public street or road (which is defined as, any land opened or dedicated as a public road under any Act or law, including any bridge, tunnel, culvert, causeway or ford).

3.20 Silica

liability directly or indirectly caused by or alleged to be caused by or contributed to, in whole or in part, by or arising out of the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibres, silica dust or silica in any form, or to any obligation of the **Insured** to indemnify any party because of **Personal Injury** or **Property Damage** arising out of the presence, ingestion, inhalation or absorption of or exposure to silica products, silica fibres, silica dust or silica in any form.

3.21 Specifically Excluded Entities and Instrumentalities

liability incurred by or attaching to, any of the following entities and instrumentalities:

- Municipal Councils and Authorities (subject to coverage provided to Committees of Management under Endorsement)
- Port of Melbourne Authority
- Melbourne Water Corporation
- City West Water
- South East Water
- Yarra Valley Water
- Rural Water Corporations
- The Disaggregated entities of the former State Electricity Commission of Victoria (including VENCORP from midnight 30/06/2009).
- Transport Accident Commission (TAC), but only in respect of its statutory liabilities.
- The Public Transport Corporation (including the Office of the Director of Public Transport), Connex, Metrolink (Yarra Trams), V/Line Passenger, Metlink, Spencer Street Station Authority and Public Transport Ticketing Body with respect to all public transport activities previously performed by the Public Transport Corporation
- Metro Trains Melbourne Pty Ltd & KDR Victoria Pty Limited with respect to all public transport activities previously performed by the Public Transport Corporation
- Universities, being: Australian Catholic University Ltd, Deakin University, Latrobe University, Monash University, Royal Melbourne Institute of Technology, Swinburne University of Technology, The University of Melbourne, University of Ballarat, Victoria University but not Institutes of Technical and Further Education
- Australian Grand Prix Corporation
- Victorian WorkCover Authority (VWA), but only in respect of its statutory liabilities

This exclusion 3.21 does not apply to liability incurred by or attaching to other parties involved in joint ventures, research projects, co-operative research centres or other activities with any of the above entities and /or instrumentalities.

Nothing in this Exclusion shall be construed so as to include any other entity or instrumentality as an **Insured** under this policy.

3.22 Terrorism

liability of whatsoever nature directly or indirectly caused by, resulting from or in connection with any Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

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

This Exclusion also applies to loss, injury, 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 any Act of Terrorism.

If **VMIA** alleges that by reason of this Exclusion, any loss, injury, damage, cost or expense is not covered by this policy the burden of proving the contrary shall be upon the **Insured**. In the event any portion of this Exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

3.23 War & Nuclear

- (a) consequences of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power;
- (b) liability directly or indirectly caused by or alleged to be caused by, in connection with, arising out of or contributed to, in whole or in part, by:
 - (i) ionising radiations or contamination by radioactivity from any nuclear fuel 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.
 - (ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
 - (iii) nuclear weapons material.

3.24 Breach of any Local or Foreign Laws

Liability for which insurance is required to be effected with a local or domestic insurer in any country outside the Commonwealth of Australia due to the application of any laws of such country.

This exclusion 3.24 shall not apply to the extent that **VMIA's** provision of indemnity under this policy does not breach any local or foreign laws.

4. Memoranda

Except to the extent that this policy is hereby modified under the following Memoranda, the definitions, conditions, exclusions and other terms of this policy shall apply.

4.1 Policy Jacket

Wherever this policy is contained in **VMIA**'s own policy jacket, then the wording of this policy shall be deemed to replace all the definitions, conditions, exclusions and other terms contained in the said jacket.

4.2 Waiver of Subrogation Rights

Notwithstanding anything contained herein to the contrary, **VMIA** waives all rights of subrogation against all parties comprising the **Insured** and others who have contractually bound the **Insured** to waive rights of recovery, except that if the **Insured** is protected from such loss by any other policy of insurance, the right of subrogation is not waived to the extent and up to the amount of such other policy.

VMIA also waives all rights of subrogation against any employee or member of the **Insured**'s family unless the conduct of such persons which gave rise to an **Occurrence** was serious or wilful misconduct.

5. Conditions

5.1 Misrepresentation, Misdescription, Non Disclosure

This policy shall be voidable in the event of fraudulent misrepresentation, misdescription or non-disclosure. **VMIA** may deny a **Claim** or reduce a **Claim** amount or cancel this policy as hereinafter allowed should the **Insured** have failed to comply with the duties of utmost good faith or disclosure or should the **Insured** have made a false statement to **VMIA** before the contract as evidenced by this policy was entered into. In determining whether a non disclosure or misrepresentation are grounds for not meeting a **Claim** or reducing the **Claim** amount or cancelling this policy, **VMIA** shall apply the relevant provisions of the Insurance Contracts Act 1984 (as amended).

5.2 Changes

Every change materially affecting the facts or circumstances existing at the commencement of the **Period of Insurance**, or at any subsequent renewal date, shall be notified to **VMIA** in writing as soon as practicable after such change comes to the notice of the **Insured**'s officer responsible for insurance, in particular:

- (a) any alteration in the **Insured's Business**;
- (b) any matter or event inconsistent with the information previously given to **VMIA**.

5.3 Insured's Duty in the Event of an Occurrence,

- (a) In the event of an **Occurrence** (or the likelihood of an **Occurrence**) the **Insured** shall immediately, at its own expense, take all reasonable steps to prevent **Personal Injury, Property Damage** and/or **Other Injury** arising or continuing out of such **Occurrence**.
- (b) Whenever the **Insured** has information from which the **Insured** may reasonably conclude that an **Occurrence** covered hereunder involves **Personal Injury, Property Damage** and/or **Other Injury**, which, in the event that the **Insured** be held liable, is likely to involve this policy or to exceed an amount equal to or greater than 50% of the applicable **Deductible**, notice shall be given by or on behalf of the **Insured** to **VMIA** or any of its authorised agents as soon as practicable. The **Insured** shall use its best endeavours to keep **VMIA** informed of all material developments likely to affect the cost of any **claim** or **claims** and undertakes, insofar as is reasonably possible, to co-operate with **VMIA** and its representatives in the conduct and settlement of such **claim** or **claims** and in the estimating of **claim** reserves

Provided, however, that failure to give notice of any **Occurrence** which at the time of its happening did not appear to involve this policy, but which at a later date would appear to give rise to any **Claim** or liability hereunder, shall not prejudice such **Claim**.

5.4 Application of Insured's Deductible

5.4.1

- (a) The Insured shall be liable to pay the amount of the Deductible in respect of each Occurrence. If a series of claims are made arising out of the one Occurrence then only one Deductible shall apply.
- (b) Should more than one Deductible apply under this Policy for any claim (or series of claims arising out of continuous or repeated exposure to substantially the same general conditions) such Deductibles shall not be aggregated and only the highest single level of Deductible shall apply.
- (c) The Deductible shall also apply to defence costs and Supplementary Payments as described in Insuring Clause 1 and 1.2.

5.4.2

For the purpose of determining the application of the **Deductible** with respect to liability arising out of **Bushfire**, it is agreed that:

- (a) all related or unrelated **Bushfire** incidents which occur during any period of one hundred and sixty-eight (168) hours shall be considered as one **Occurrence**;
- (b) each period of one hundred and sixty-eight (168) hours shall be deemed to have:
 - (i) commenced at a date and time nominated by **Insured**, which nomination shall take place subsequent to the expiration of such period;
 - (ii) expired one hundred and sixty-eight (168) hours after the commencement of the period nominated by **Insured**.
- (c) should a period of one hundred and sixty-eight (168) hours expire while a **Bushfire** incident or series of **Bushfire** incidents is continuing, then:
 - (i) a new period of one hundred and sixty-eight (168) hours shall be deemed to have commenced immediately upon expiration of the prior period.

- (ii) such new period shall be deemed to constitute the commencement of a separate **Occurrence**.

Where any **Bushfire** incident or series of **Bushfire** incidents is nominated to commence prior to expiry or cancellation of this policy, then, **VMIA** shall be liable for the whole period of one hundred and sixty-eight (168) consecutive hours, notwithstanding that this policy may expire or be cancelled during the nominated period of one hundred and sixty-eight (168) consecutive hours.

This policy shall not apply to liability for any **Bushfire** commencing prior to the **Period of Insurance**.

This Condition shall apply to all **Bushfires**, whether continuous or sporadic in their nature and whether such **Bushfires** were due to the same climatic or other conditions.

Nothing contained in this Condition shall operate to increase **VMIA's Limit of Indemnity**.

5.5 Fraudulent Claim

If any **Claim** be in any respect fraudulent or if any fraudulent means or devices be used by the **Insured** or anyone acting on behalf of the **Insured** to obtain any benefit under this policy, **VMIA** may deny liability in respect of such **Claim** and may cancel this policy as hereinafter provided.

5.6 Other Insurance

If at the time of any **Occurrence** there is, or but for the existence of this policy would be, any other policy of indemnity or insurance in favour of or effected by or on behalf of the **Insured** applicable to such **Occurrence**, the insurance under this policy shall be excess insurance over and above the amount of liability covered under such other policy of indemnity or insurance.

5.7 Inspection of Premises

VMIA shall be permitted but not obliged to inspect the **Insured's** property and operations at any time. Neither **VMIA's** right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the **Insured** or others to determine or warrant that such property or operations are safe.

5.8 Cancellation

- (a) By the **Insured**

This policy may be terminated at any time by the **Insured** tendering notice in writing to **VMIA** to that effect, in which event the cancellation will become effective from the earlier of the date the notice is received by **VMIA** or the date on which the **Insured** arranged alternative insurance protection. **VMIA** will retain the premium which applies to the period this policy has been in force.

- (b) By **VMIA**

VMIA may cancel this policy in any of the relevant circumstances set out in the *Insurance Contracts Act 1984* (as amended), such cancellation to take effect within 60 days from the time of notification received by the **Insured**.

5.9 Application of the Insurance Contracts Act 1984 (Cth)

This policy will operate as if it were a policy which is subject to the *Insurance Contracts Act 1984 (Cth)* ("ICA") in all respects save and except that a provision of the ICA shall not apply where:

- (a) it is specifically excluded by the Policy;
- (b) in all other cases, where a provision of the ICA is inconsistent with a provision of the policy, in which case the latter provision will prevail to the extent of any inconsistency.; and
- (c) it is a penalty provision of the ICA.

In addition, the following provisions of the *Insurance Contracts Act 1984 (Cth)* shall not apply to this contract of insurance:

- (i) Section 11AA - Application of the Criminal Code
- (ii) Section 11AAA - Definition
- (iii) Section 11A - ASIC responsible for general administration of Act
- (iv) Section 11B - Powers of the ASIC
- (v) Section 11C - Supervisory powers—ASIC may obtain insurance documents
- (vi) Section 11D - Supervisory powers—ASIC may review administrative arrangements etc
- (vii) Section 11E - Examination of documents by ASIC not to imply compliance with relevant legislation
- (viii) Section 15 - Certain other laws not to apply
- (ix) Section 21A Eligible contracts of insurance—disclosure of specified matters
- (x) Section 22 - Insurer to inform of duty of disclosure
- (xi) Section 25 - Misrepresentation by life insured
- (xii) Section 29 - Life insurance
- (xiii) Section 30 - Misstatements of age
- (xiv) Section 32 - Non-disclosure or misrepresentation by member of scheme
- (xv) Section 32A - Non-disclosure or misrepresentation by hold of RSA
- (xvi) Section 37 - Notification of unusual terms
- (xvii) Section 38 - Interim contracts of insurance
- (xviii) Section 39 - Instalment contracts of general insurance
- (xix) Section 40(2) - Certain contracts of liability insurance
- (xx) Section 42 - Maximum cover for premium

- (xxi) Section - 43 Arbitration provisions
- (xxii) Section - 45 "Other insurance" provisions
- (xxiii) Section 48AA - Life policy in connection with an RSA for the benefit of another person
- (xxiv) Section 48A - Life policy for the benefit of another person
- (xxv) Section 52 - "Contracting out" prohibited
- (xxvi) Section 55A - Representative actions by the ASIC
- (xxvii) Section 58 - Insurer to notify of expiration of contracts of general insurance
- (xxviii) Section 69 - Giving of information to insureds
- (xxix) Section 70 - Notices to be given to life insureds in certain cases
- (xxx) Section 71 - Agency
- (xxxi) Section 74 - Policy documents to be supplied on request
- (xxxii) Section 75 - Reasons for cancellation etc. to be given
- (xxxiii) Section 76 - Contribution between insurers
- (xxxiv) Section 76A - Liability of directors and employees

5.10 Applicable Law

It is agreed that the proper law of this policy is the law of the State of Victoria. **VMIA** and the **Insured** agree to the exclusive jurisdiction of the appropriate Court of Victoria, in relation to all matters arising under or in connection with it.

5.11 Observance of Terms and Conditions

The due observance and fulfilment of these Conditions and the other terms of this policy by the **Insured**, insofar as the same are capable of being construed as such, are conditions precedent to any liability of **VMIA** to make any payment under this policy.

6. Definitions

Wherever used in this policy, the following terms shall be deemed to have the meanings ascribed to them below. Defined terms will appear in bold. Unless the context requires another meaning, a reference to the singular includes the plural and vice versa.

6.1 Aircraft

Any craft or object designed to transport persons or property through air or space.

6.2 Bushfire

fire originating in or spreading through trees, grassland and/or other natural vegetation, irrespective of origin, whether that be arson, power lines, escape of fire, lightning, or any other cause whatsoever, whether natural, or caused by human activity.

6.3 Claim

- (a) a writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counter claim or third or similar party notice served on the **Insured**; or
- (b) an oral or written demand for compensation made by a third party against the **Insured**.

All **Claims** arising directly or indirectly out of or in connection with the same source or originating cause shall be considered to arise out of a single **Occurrence**, for the purposes of the **Limit of Indemnity** and **Deductible**.

6.4 Clinical trials and health and medical research

Means participation in trials or research projects, that have been approved by a properly constituted Human Research Ethics Committee in accordance with National Health and Medical Research Council guidelines and where such trial and/or health and medical research has been conducted in accordance with any conditions or approvals made by such Human Research Ethics Committee.

6.5 Compensation

Monetary amount of judgment, award or settlement for **Personal Injury**, **Other Injury** and/or **Property Damage** excluding:

- (a) punitive or exemplary damages;
- (b) fines or penalties imposed by law or otherwise; or
- (c) liquidated damages.

6.6 Deductible

The amount that the **Insured** must first bear before indemnity from **VMIA** applies. The **Deductible** amount is set out in the **Schedule** and applies inclusive of **Supplementary Payments** as well as investigation, legal and other costs in relation to incidents, facts or

circumstances notified to **VMIA** by the **Insured** where a **Claim** has not yet been made against or served on the **Insured**.

6.7 Health Care

Any care, treatment, service or goods provided in respect of the physical or mental health of a person, including the conduct of **clinical trials and health and medical research** activities.

6.8 Hovercraft

Any vessel, craft or thing designed to transport persons or property over land or water supported on a cushion of air.

6.9 Injurious Act

Any act, error or omission which results in **Other Injury**.

6.10 Insured

- (a) the corporation, department, agency, division or other entity specified in the **Schedule** as the Named Insured;
- (b) all subsidiary corporations or entities (now or hereafter constituted) of the Named Insured or any other company or entity coming under the Named Insured's control or in which it assumes participative management;
- (c)
 - (i) any present or former minister, ministerial officers, ministerial advisors, public servant, director, partner, executive, officer, employee, volunteer, committee member, shareholder, appointee, student, research fellow or clinical observer of any entity referred to in paragraphs (a) or (b) above; or
 - (ii) any person serving in an official capacity of or with any entity referred to in paragraphs (a) or (b) above;but only whilst acting within the scope of their duties in such capacities;
- (d) any principal in respect of the liability of such principal arising out of the performance of work or provision of service by any entity designated in paragraphs (a) or (b) above under any contract or agreement, to the extent required by such contract or agreement;
- (e) any present or former office bearer or member of any social and/or sporting welfare and/or child care facilities formed with the consent of any entity referred to in paragraphs (a) or (b) above, in respect of claims arising from duties connected with activities of any such club;
- (f) any incorporated or unincorporated associations or organisations (now or hereafter constituted) organised by any entity referred to in paragraphs (a) or (b) above, for the purpose of providing canteen, social, sports, welfare and/or child care activities or services or first aid, medical, fire or ambulance services and/or educational activities or services for their employees and/or families of their employees;
- (g) at the written request of any entity referred to in paragraphs (a) or (b) above, any

minister, public servant, director, partner, executive or officer of such entity in respect of private work undertaken by the employees of such entity for such minister, public servant, director, partner, executive or officer;

- (h) any party who enters into an agreement with any entity referred to in paragraphs (a) or (b) above for the purposes of the **Insured's Business** but only to the extent to which the entity referred to in paragraphs (a) or (b) above is required by such agreement to grant such indemnity.

6.11 Insured's Business

The activities described as Business in the **Schedule**. The **Insured's Business** shall be deemed to include:

- (a) the activities of any canteen, social, sports, welfare and/or childcare facilities or first aid, medical, fire or ambulance services and/or educational activities;
- (b) private work undertaken by employees of any entity referred to in clause 6.10 (a) or 6.10 (b) for any minister, public servant, director, partner, executive or officer of such entity.

6.12 Insured's Products

Any thing (after it has ceased to be in the **Insured's** possession or control) which has been designed, specified, formulated, manufactured, grown, extracted, altered, produced, processed, assembled, constructed, erected, installed, treated, serviced, altered, repaired, sold, supplied, resupplied, imported, exported, parcelled, packaged, bottled, labelled or distributed by or on behalf of the **Insured** including any packaging or container of the thing including:

- (a) directions, markings, labels, instructions, warnings or advice given or omitted to be given in connection with the thing; and
- (b) anything in respect of which the **Insured** is taken or deemed to be the manufacturer by operation of a law of Australia or New Zealand.

6.13 Limit of Indemnity

The amount specified in the **Schedule** as the **Limit of Indemnity**, representing the maximum liability of **VMIA**, other than **Supplementary Payments**, under this policy in respect of any one **Claim** or in the aggregate for the **Period of Insurance**. **Limit of Indemnity** shall apply inclusive of any applicable **Deductible**.

6.14 Occurrence

- (a) Event resulting in **Personal Injury** and/or **Property Damage**; or
- (b) **Injurious Act** resulting in **Other Injury**;

which is neither expected nor intended from the standpoint of the **Insured** [other than 6.15(c)].

All **Personal Injury**, **Property Damage** and/or **Other Injury**:

- (i) arising out of continuous or repeated exposure to substantially the same general conditions; and/or
- (ii) consequent upon or attributable to one source or same originating cause;

will be considered to arise out of one **Occurrence**.

6.15 Other Injury

- (a) the effects of false arrest, false imprisonment, wrongful entry, wrongful eviction, wrongful detention, invasion of privacy, malicious prosecution or humiliation;
- (b) libel, slander or defamation;
- (c) the effects of 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;
- (d) the effects of racial, religious, sex or age discrimination or harassment (unless insurance in relation to this is prevented by law); or
- (e) infringement of patent, copyright, trademark, service mark, trade name, title or slogan, piracy or unfair competition or idea misappropriation.

6.16 Period of Insurance

The period specified in the **Schedule** as **Period of Insurance**.

6.17 Personal Injury

Bodily injury (including death), sickness, disease, disability, shock, fright, mental anguish or mental injury (other than **Other Injury**) including loss of services resulting there from.

6.18 Property Damage

- (a) physical damage to, physical loss or physical destruction of tangible property and any resultant loss of use; or
- (b) loss of use of tangible property which has not been physically damaged, lost or destroyed as long as such loss of use is caused by physical damage to or physical loss or destruction of some other tangible property. Such loss of use shall be deemed to have occurred at the time of the physical damage to or physical loss or destruction of the other tangible property that caused the loss of use.

6.19 Registered Health Professional

An individual is a Registered Health Professional if:

- (a) the individual practices a Health Care related vocation; and
- (b) the individual must be registered under a State or Territory law to practice that vocation.

6.20 Supplementary Payments

- (a) reasonable costs, charges or expenses (other than wages, salaries or fees of the **Insured**), incurred with **VMIA's** consent, in investigating, defending and/or settling Claims or in bringing or defending appeals in connection with **Claims**; and
- (b) costs taxed or awarded against the **Insured**; and
- (c) reasonable costs, charges and expenses of legal representation, incurred with **VMIA's** consent, at any coroner's inquest, inquiry, prosecution or hearing which the **Insured** is legally compelled to attend or wishes to attend, which relates to matters, facts or circumstances that may give rise to a **Claim** provided that:
 - (i) the notice that the **Insured** is required to attend the inquiry, prosecution or hearing was first received by the **Insured** during the **Period of Insurance**; or
 - (ii) the **Insured** first became aware of the inquiry, prosecution or hearing during the **Period of Insurance** and notified **VMIA** during the **Period of Insurance** of the matters, facts or circumstances (which are the subject of the inquiry, prosecution or hearing or which the inquiry, prosecution or hearing relate to) that may give rise to a **Claim**; and
- (d) expenses incurred by the Insured for the rendering of first aid to others at the time of **Personal Injury** occurring during the **Period of Insurance**.

6.21 Vehicle

Any type of machine on wheels or on self-laid or caterpillar tracks made or intended to be propelled by other than manual or animal power and any trailer or other attachment, but only whilst attached to such machine, made or intended to be drawn by any such machine.

6.22 VMIA

The Victorian Managed Insurance Authority.

6.23 Watercraft

Any vessel or craft or thing designed to float on or in or travel through water for the purpose of carrying persons or property.

7. Endorsements

Endorsements attaching to and forming part of Public and Products Liability Policy Issued to VMIA Clients:

1. Other Injury Retroactive Cover

Notwithstanding anything to the contrary contained in this policy, it is agreed that, with effect from 30th June 2010 at 4 p.m. Australian Eastern Standard Time, indemnity provided by this Policy shall be extended to include **Other Injury** which:

- (a) occurs after 30th June 2010 at 4 p.m. Australian Eastern Standard Time; and
- (b) is caused by an **Injurious Act** first committed after 1st October 1996 but prior to 30th June 2010 at 4 p.m. Australian Eastern Standard Time.

Other than as amended above, all other terms, conditions and exclusions of this Policy shall apply.

2. Coverage for Committees of Management

Notwithstanding Exclusion 3.21 of this policy, Committees of Management appointed under or deemed to have been appointed under the *Crown Lands (Reserves) Act 1978*, are included as an Insured under this policy but only to the extent that they are acting in their capacity as a Committee of Management. Coverage provided by this Endorsement does not apply:

- (a) to any liability in connection with responsibilities that would ordinarily be considered to be Council responsibilities and not responsibilities in their capacity as a Committee of Management.
- (b) to any liability for which the Committee of Management has valid and enforceable Public and Product Liability or similar insurance by whatever name called covering the Committee of Management in its capacity as a Committee of Management, or
- (c) if, by some other statute, valid decree, agreement or conditions imposed by the Governor in Council or relevant Minister in appointing the Committee of Management, or other enforceable agreement, the Committee of Management is required to maintain its own Public and Product Liability or similar insurance by whatever name called.

Notwithstanding anything else to the contrary in the policy [including Definition 6.10 (h) of the policy], the policy does not extend to cover lessees, hirers or licensees of Crown land.

8. Privacy Statement

VMIA is committed to protecting your privacy. Any personal information collected, handled, stored or disclosed about you through our services will be managed in accordance with the *Victorian Managed Insurance Act 1996*, *Information Privacy Act 2000* and the *Health Records Act 2001*.

Personal information means information or an opinion that is recorded about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Collection and use of Personal Information

VMIA will only collect and record personal information via this website if it is provided directly to us and is necessary for us to perform our functions or activities; for example VMIA will need to collect personal information, to send requested information, or to act on feedback provided. In particular, personal information is collected in the following situations:

- when you send us an email
- when you use our online services, such as completing a form electronically
- when you register as a site user
- when you provide feedback by email or by using the feedback form on our website.

Access and Correction

If you:

- want to have access to the personal information (if any) that we hold about you
- want to know more about what sort of information we hold, for what purposes and how we deal with that information
- believe that personal information that we hold about you is not accurate, complete and up to date; or
- have concerns about your privacy rights,

please contact VMIA's Information Privacy Officer on 03 9270 6912.