



Property Insurance Policy

Issued to Eligible Emergency Resource
Providers by VMIA

For the period 1 July 2021
to 30 June 2022



Contents

Property Insurance Policy	3
Definitions applicable to all sections.....	4
Section 1: Material Loss or Damage	5
The Indemnity	5
Basis of Settlement	5
Memoranda to Section 1	6
Reinstatement or Replacement:	6
Extra Cost of Reinstatement:	7
Constructive Total Loss	7
Reinstatement of Damage by the Insured	8
Expediting Expenses	8
Outside Premises Storage	8
Property in Transit Extension	8
Boiler and/or Pressure Vessel Extension	9
Machinery Breakdown Extension	9
Property Exclusions:	10
Perils Exclusions:	10
Electronic Data Processing Equipment Extension	11
Section 2: Consequential Loss.....	12
The Indemnity:	12
Basis of Settlement	12
Definitions applicable to Section 2.....	13
Memoranda to Section 2	13
Exclusions Applicable to All Sections	14
Memoranda Applicable to All Sections	18
Conditions Applicable to All Sections	19
Privacy Statement.....	21

© State of Victoria 2021



You are free to re-use this work under a Creative Commons Attribution 4.0 licence, provided you credit the State of Victoria (Victorian Managed Insurance Authority) as the author, indicate if changes were made and comply with the other licence terms. The licence does not apply to any branding, including Government logos.

**VMIA is the Victorian
Government's insurer
and risk adviser**

Level 10 South,
161 Collins Street
Melbourne VIC 3000

P (03) 9270 6900
F (03) 9270 6949
contact@vmia.vic.gov.au

vmia.vic.gov.au

© Victorian Managed
Insurance Authority



Victorian Managed Insurance Authority (VMIA) acknowledges the Traditional Custodians of the land on which we do business and we pay our respects to Elders past, present and emerging. We acknowledge the important contribution that Aboriginal and Torres Strait Islander peoples make in creating a thriving Victoria.

Property Insurance Policy

This Policy incorporates the Schedule, Sections, Definitions, Conditions, Exclusions, Endorsements, Memoranda and Warranties (if any) and any other terms herein contained which are to be read together and any word or expression to which a specific meaning has been given in any part of this Policy shall bear this meaning wherever it may appear unless such meaning is inapplicable to the context in which the word or expression appears.

WHEREAS **The Insured** named in the Schedule has paid or agreed to pay to the Victorian Managed Insurance Authority (VMIA) the Premium shown on the Schedule, now VMIA agrees, subject to the terms, Conditions, Exclusions, Memoranda, Warranties, limitations and other provisions contained herein or endorsed hereon, to indemnify **The Insured** as specified herein against loss arising from any insured events which occur during a **Supply Period** and during the Period of Insurance stated in the Schedule or any renewal thereof.

PROVIDED THAT the total liability of VMIA shall not exceed the appropriate Limit or Sub Limit(s) of Liability as stated in the Schedule or such amount(s) as may be substituted therefore by endorsement or memorandum herein or attached hereto.

Definitions applicable to all sections

Wherever used in this Policy:

The Insured means an **Eligible Emergency Resource Provider**.

Eligible Emergency Resource Provider means:

- a. the Commonwealth of Australia and any State of the Commonwealth of Australia other than the State of Victoria, including any agency or instrumentality thereof having an emergency response function; or
- b. a company or person who supplies, for the purposes of responding to an **Eligible Emergency**, labour, professional services or Equipment but does not include:
 - i. a company which or person who, prior to the happening of an **Eligible Emergency**, is under an obligation (whether contractual or statutory) to supply or make available for reward labour, professional services, or Equipment for use in connection with or the purposes of, inter alia, an **Eligible Emergency**; or
 - ii. a volunteer emergency worker as defined in s.4 of the Emergency Management Act 1986.

Control Agency means an organisation which:

- a. is listed in Table 9 “Response control agencies” of the State Emergency Management Plan, and
- b. pays a premium to VMIA for the EmRePSS.

Supply Period means in relation to each **Insured** the period during which that **Insured** supplies or makes available, pursuant to a request by or on behalf of a **Control Agency**, labour, professional services or **Equipment** which is or are under the control and direction of a **Control Agency** for the purposes of responding to an **Eligible Emergency**. The **Supply Period** begins when the **Insured** supplies or makes available the labour, professional services or **Equipment** and ends when the personnel providing the labour, services and/or the **Equipment** return to the **Insured**'s usual place of business or cease to be under the control and direction of a **Control Agency**, whichever is the earlier.

Eligible Emergency means an emergency of a kind referred to in Table 9 “Response control agencies” of the State Emergency Management Plan, the response to which is handled by a **Control Agency**, and which emergency is due to the actual or imminent happening of an **Occurrence** or the manifestation of circumstances which harms or endangers, or threatens to harm or endanger, the safety or health of persons in Victoria or which destroys or damages, or threatens to destroy or damage, property in Victoria or an element of the Victorian environment. For the purpose of this insurance **Eligible Emergency** includes subsequent urgent post event activities where insurance cover is not otherwise available.

Property Insured means plant, machinery and equipment which is supplied or made available by an **Eligible Emergency Resource Provider** pursuant to a request by or on behalf of a **Control Agency** for the sole purpose of responding to an **Eligible Emergency**, but does not include vehicles or trailers registered or licensed to travel on public roads.

Section 1: Material Loss or Damage

The Indemnity

In the event of any physical loss, destruction or damage (hereinafter in Section 1 referred to as 'damage' with 'damaged' having a corresponding meaning) not otherwise excluded happening at the Situation to the **Property Insured** VMIA will, subject to the provisions of this Policy including the limitation on VMIA's liability, indemnify **The Insured** in accordance with the applicable Basis of Settlement.

Subject to the liability of VMIA not being increased beyond the Limit(s) of Liability already stated herein, VMIA will also indemnify **The Insured** for:

- a. costs and expenses necessarily and reasonably incurred for the temporary protection and safety of property hereby insured pending repair or replacement consequent upon damage recoverable hereunder.
- b. costs of replacing locks and/or keys and/or combinations where if as a result of burglary, theft or any attempt there at the keys and/or combinations are stolen or if there are reasonable grounds to believe the keys may have been duplicated also the cost of opening safes and/or strongrooms as a result of theft of keys and/or combinations.
- c. Costs and expenses necessarily and reasonably incurred in respect of:-
 - i. the removal, storage and/or disposal of debris or the demolition, dismantling, shoring up, propping, underpinning or other temporary repairs consequent upon damage to **Property Insured** by this Policy and occasioned by a peril insured against;
 - ii. **The Insured's** legal liability in respect of removal, storage and/or disposal of debris, notwithstanding Excluded Peril 7 in relation to premises, roadways, services, railway or waterways of others consequent upon damage to the **Property Insured** by a peril hereby Insured against, for such costs together with the cost of cleaning provided that such liability was not assumed by **The Insured** under an agreement entered into after the commencement of the Period of Insurance or any renewal thereof unless liability would have attached in the absence of such agreement;

Provided that the insurance under this section does not extend to any liability that **The Insured** may incur as a consequence of pollution of any kind.
 - iii. the demolition and removal of any property belonging to **The Insured** which is no longer useful for the purpose it was intended, providing such demolition and removal is necessary for the purpose of the reinstatement or replacement of **Property Insured** under this section and is consequent upon damage to the **Property Insured** by a peril hereby insured against.

Basis of Settlement

- a. On **Property Insured** other than those specified below; the cost of reinstatement, replacement or repair in accordance with the provisions of the Reinstatement and Replacement and Extra Cost of Reinstatement Memoranda as set out herein.

Provided that if **The Insured** elects to claim the indemnity value of any damaged property, VMIA will pay to **The Insured** the value of such property at the time of the happening of the damage or at its/their option reinstate, replace or repair such property or any part thereof. In any event VMIA will pay costs incurred by **The Insured** in accordance with the provisions of the Extra Cost of Reinstatement Memorandum.

- b. On computer systems records, documents, manuscripts, securities, deeds, specifications, plans, drawings, designs, business books and other records of every description; the cost of reinstating, replacing, reproducing or restoring same, including information contained therein or thereon but excluding the value to **The Insured** of the said information; or, if such is not required, the replacement cost of materials as blank stationery at the time and place of the damage.
- c. On glass; the cost of repairing or replacing the broken glass including:
 - temporary shuttering and/or hiring of security service pending
 - replacement of broken glass
 - sign writing or ornamentation on glass

- replacement burglar alarm tapes on glass
- removing and re-fixing of window and show case frames and fittings
- heat reflecting material or process on glass.

Memoranda to Section 1

Except to the extent that this Policy is hereby modified under the following Memoranda the terms, Conditions and limitations of this Policy shall apply.

Reinstatement or Replacement:

(Applicable to **Property Insured**; other than those specified in items (b) and (c) under Basis of Settlement).

The basis upon which the amount payable is to be calculated shall be the cost of reinstatement of the damaged **Property Insured** at the time of its reinstatement, subject to the following Provisions and subject also to the terms, Conditions and Limit(s) or Sub Limit(s) of Liability of this Policy.

For the purpose of the insurance under this memorandum 'reinstatement' shall mean:

- Where property is lost or destroyed the replacement thereof by similar property in a condition equal to, but not better or more extensive than, its condition when new.
- Where property is damaged: the repair of the damage and the restoration of the damaged portion of the property to a condition substantially the same as, but not better or more extensive than, its condition when new.

Provisions

- The replacing or repairing must be commenced and carried out with reasonable despatch, failing which VMIA shall not be liable to make any payment greater than the indemnity value of the damaged property at the time of the happening of the damage.
- When any **Property Insured** to which this memorandum applies is damaged in part only, the liability of VMIA shall not exceed the sum representing the cost which VMIA could have been called upon to pay for reinstatement if such property had been wholly destroyed.
- No payment beyond the amount which would have been payable under this Policy if this memorandum had not been incorporated herein shall be made until a sum equal to the cost of reinstatement shall have been actually incurred; provided that where **The Insured** reinstates or replaces any lost or destroyed property at a cost which is less than the cost of reinstatement (as defined) but greater than the value of such property at the time of the happening of its loss or destruction, then the cost so incurred shall be deemed to be the cost of reinstatement.
- Where any lost or destroyed property is replaced by smaller and/or cheaper property then VMIA shall pay to **The Insured**, (in addition to the cost of such replacement property) the difference between the cost which would have been incurred if the lost or destroyed property had been reinstated (in accordance with clause (a) of the definition of reinstatement) and the cost of the said smaller and/or cheaper replacement property.
- Where any lost or destroyed property is replaced by dissimilar property (whether or not such property is to be used for a similar purpose to the lost or destroyed property), VMIA shall pay to **The Insured** the cost of such dissimilar property.

Provided that, where the cost of such dissimilar property is less than the cost which would have been incurred if the lost or destroyed property had been reinstated in accordance with clause (a) of the definition of 'reinstatement', VMIA shall pay **The Insured** the amount of the difference between the cost of such dissimilar property and the cost of reinstatement which would otherwise have been incurred.

- Where any lost or destroyed property is replaced by property which is better or more extensive than its condition when new, VMIA shall pay to **The Insured** the cost which would have been incurred if the lost or destroyed property had been reinstated in accordance with the provisions of clause (a) of the definition of 'reinstatement'. **The Insured** shall bear the balance of the cost of such better or more extensive property.

Extra Cost of Reinstatement:

This Policy extends to include the extra cost of reinstatement (including demolition or dismantling) of damaged property necessarily incurred to comply with the requirements of any Act of Parliament or Regulation made thereunder or any By-Law or Regulation of any Municipal or other Statutory Authority; subject to the following Provisions and subject also to the terms, Conditions and Limit(s) or Sub Limits of Liability of this Policy.

Provisions

- i. The work of reinstatement must be commenced and carried out with reasonable despatch, failing which VMIA shall not be liable to make any payment beyond the amount which would have been payable under this Policy if this memorandum had not been incorporated herein.
- ii. The amount recoverable shall not include the additional cost incurred in complying with any such Act, Regulation, By-law or requirement with which **The Insured** had been required to comply prior to the happening of the damage.

Output Replacement

If any interest insured under this Policy constitutes property which has a measurable output and which is capable of replacement with a new item or items which perform a similar function then such property shall be valued for insurance purposes as follows, and values for the settlement of any damage in respect thereof shall be on the same basis:

- a. Where any damaged property is to be replaced by an item or items which have the same or a lesser total output, then the insurable value of such damaged property is the new installed cost of such replacement item or items as would give the same total output as the damaged property.
- b. Where any damaged property is to be replaced by an item or items which have a greater total output and the new installed cost of such replacement property is no greater than the replacement value of the damaged property, then no deductions shall be made from any claim for the improved output of the replacement property.
- c. If any damaged **Property Insured** is to be replaced by an item or items which have a greater total output and the new installed cost of such replacement property is greater than the replacement value of the damaged property, then the insurable value of such damaged property is either:
 - i. the estimated cost of reinstatement of such damaged property as defined in sub-clause (a) of the Reinstatement and Replacement Memorandum,
 - or
 - ii. that proportion of the new installed cost of the replacement item or items which the output of the damaged property bears to the output of the replacement item or items;whichever amount is the greater.

The difference between the insurable value as defined in this memorandum and the new installed cost of the replacement item or items shall be borne by **The Insured**.

Provided that where any damaged **Property Insured** is to be repaired VMIA shall pay the cost of restoration of such damaged property to a condition substantially the same as, but not better or more extensive than, its condition when new and the liability of VMIA shall not exceed the sum representing the cost which VMIA could have been called upon to pay if such **Property Insured** had been wholly destroyed.

Constructive Total Loss

If any **Property Insured** or any part thereof is reasonably abandoned:

- a. on account of its actual total loss or destruction appearing to be unavoidable,
- or
- b. because it could not be preserved from actual total loss or destruction without **The Insured** incurring an expenditure which would exceed its repaired and/or recovered value;

such property shall be regarded as lost or destroyed and the amount payable as indemnity shall be the cost of reinstatement as defined in sub-clause (a) of the Reinstatement and Replacement Memorandum.

Reinstatement of Damage by the Insured

In the event of any claim hereunder **The Insured** may, with the consent of VMIA, reinstate damaged **Property Insured** and VMIA shall pay the cost of such reinstatement (including the value of labour and other overhead charges expended thereon together with a margin for profit which would otherwise have been earned by **The Insured**); provided always that the liability of VMIA shall not exceed the amount which would otherwise have been payable hereunder had such reinstatement been carried out by outside contractors.

Expediting Expenses

This Policy extends to include costs and expenses necessarily and reasonably incurred for the sole purpose of expediting, reinstatement, replacement or repair of any physical loss, destruction of or damage to **Property Insured**, including but not limited to:

- express or chartered carriage or delivery, including delivery by sea or air;
- chartered or other travel, including by sea or air, or **The Insured's** directors, partners, officers, employees, agents, sub-contractors, consultants and representatives;
- overtime or penalty rates of labour and other related allowances or payments;
 - i. hire of additional labour, plant, machinery, equipment, materials, expertise or services;
 - ii. accommodation and boarding costs, including meals and other costs associated therewith;
 - iii. additional administrative and/or overhead expenses;
 - iv. additional costs to receive preferential treatment from a manufacturer or supplier.

Outside Premises Storage

Where **The Insured** enters into a contract for storage of goods and/or merchandise and the terms of such contract contain a disclaimer clause in favour of the bailee then the insurance herein shall not be prejudiced by **The Insured** agreeing to such terms.

Property in Transit Extension

Subject to the Sub-Limit specified in the Schedule, this Policy extends to cover **Property Insured** whilst in transit between places within the Commonwealth of Australia (including whilst being loaded on to or unloaded from conveying vessels and/or vehicles and/or aircraft), for the purpose of being delivered to or from an **Eligible Emergency**.

For the purpose of this extension only, the undernoted Exclusions to all Sections shall be deemed inoperative:

Property Exclusion - 1

Perils Exclusions - 3(a), 5(b), and 6(c).

This insurance also covers general average and salvage charges, adjusted or determined according to the contract of affreightment and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss which is insured hereunder.

VMIA shall not be liable under this insurance for:

- i. loss, damage or expense caused by inherent vice or nature of any **Property Insured**;
- ii. ordinary leakage, ordinary loss in weight or volume of any **Property Insured**;
- iii. loss, damage or expense proximately caused by delay; except for any expenses payable in connection with general average and salvage charges as mentioned above;
- iv. loss, damage or expense arising from insolvency or financial default of the owners, managers, charterers or operators of any vessel;

- v. loss, damage or expense arising from:
 - a. unseaworthiness of vessel or craft;
 - b. unfitness of vessel, craft, conveyance, container or liftman for the safe carriage of **Property Insured** hereunder;

where **The Insured** or their servants are privy to such unseaworthiness or unfitness at the time the **Property Insured** is loaded therein.

Boiler and/or Pressure Vessel Extension

This Policy extends to indemnify **The Insured** for sudden and unforeseen damage to **Property Insured** which consists of boilers, economisers or other pressure vessels including pipes, valves and other apparatus thereof and/or thereon (hereinafter referred to as the "Plant") in respect of which a certificate is required to be issued under the terms of any Statute or Regulation.

For the Purpose of this extension:

1. The following Exclusions to All Sections shall be deemed inoperative:
 - Property Exclusions 8 and 10
 - Perils Exclusions 3(c) and (e)
2. The following defects do not constitute insured damage even though repair or replacement may be necessary:-
 - i. wearing away or wasting of the material of the Plant, whether by leakage corrosion or by the action of the fuel or otherwise;
 - ii. slowly developing deformation or distortion of any part of the Plant;
 - iii. cracks, fractures, blisters, laminations, flaws or grooving even when accompanied by leakage or damage to tubes, headers or other parts of the Plant caused by over-heating or leakage at seams, tubes or other parts of the Plant;
 - iv. failure of joints; but, sudden and unforeseen damage arising from any such defect is insured hereunder.
3. The following Specific Exclusions shall apply:
 - VMIA shall not be liable for damage to any item of Plant if at the time of explosion or collapse thereof:
 - a. the load on the safety valve or safety valves upon the particular item of Plant was in excess of that permitted by the latest certificate issued in accordance with any Statute or Regulation thereunder applicable thereto; and/or
 - b. any safety valve limiting the pressure is removed or rendered inoperative; and/or
 - c. such Plant has not been duly certified where certificates of inspection are required by any Statute or Regulation thereunder;
 - d. such Plant is undergoing the application of any hydraulic test and the damage is occasioned thereby.

Machinery Breakdown Extension

Notwithstanding Property Exclusion 10, and subject to a Sub-Limit of Liability as specified in the Schedule, VMIA will (subject to the following terms, Definitions, Specific Exclusions, and the terms and conditions of the Policy) indemnify **The Insured** for damage to Machinery (as hereinafter defined) occasioned by or happening through any mechanical, electrical, electromechanical, electronic or hydraulic malfunction, failure, derangement, breakdown or nonoperation of whatsoever kind except as hereinafter specifically excluded.

For the purpose of this Extension:

Machinery means **Property Insured** of the following kind: any apparatus, including electronic control equipment, whether or not functioning independently or as part of a collection of apparatus which generates, contains, controls, transmits, receives, transforms or utilises any form or source of energy or power as now existing or hereafter acquired, **The Insured's** own, held in trust or on commission or for which **The Insured** is or may become liable or has accepted responsibility.

The following Specific Exclusions shall apply to this Extension:

Property Exclusions:

The following property is not insured under this Extension:

- i. any sewer piping, underground gas piping, piping forming part of any sprinkler system or water piping other than boiler feed water piping, boiler condensate return piping or water piping connecting to or used with an air-conditioning system;
- ii. any structure, foundation or setting (other than a bedplate) supporting or housing any Machinery, or the lining or fire wall of any unfired vessel;
- iii. any vehicle or mobile equipment whilst being driven on a public thoroughfare (but damage to such vehicle or mobile equipment whilst being used at any situation as a tool of trade is not excluded);
- iv. any aircraft or floating vessel;
- v. any elevator, crane, hoist, power shovel, dragline or conveyor but not excluding any pressure vessel or electrical equipment used with such items of Machinery;
- vi. any computing machine or electronic data processing equipment;
- vii. any x-ray machine, spectrograph, gauges or other apparatus using radioactive materials and radio and television apparatus;
- viii. any penstock, draft tube or well casing;
- ix. any steam or gas turbine - generator unit of capacity exceeding 250 horsepower or equivalent;
or
- x. electric wiring and fittings associated with lighting and power circuits.

Perils Exclusions:

VMIA shall not be liable in respect of:

- a. wear and tear and gradual deterioration whether by wasting, grooving, rust, corrosion, erosion or otherwise nor for the cost of maintenance work generally;
- b. gradually developing flaws, deformation, distortion, cracks or partial fractures;
- c. Provided that Perils Exclusions (a) and (b) shall be limited to the part(s) of the Machinery immediately so affected and shall not apply to any other part(s) of the Machinery which sustain sudden and unforeseen damage as a direct consequence thereof;
- d. repair or renewal of non-metallic parts and expendable tools, blades, edges, moulds, dies, templates, screens, sieves, ropes, belts and like items subject to rapid wear and tear unless repair or renewal thereof is necessitated by the occurrence of damage (as insured by this Extension) to any other part(s) of the Machinery;
- e. damage:
 - i) arising from the intentional application of any tool or process to the Machinery during the course of repair, alteration, modification, maintenance or overhaul thereof;
 - ii) to the Machinery resulting from the imposition of abnormal conditions relating to testing or intentional overloading of or experiments with the Machinery, unless VMIA shall have agreed in writing to grant indemnity under this Endorsement whilst the Machinery is being operated under such conditions;
 - iii) to the Machinery resulting from fault(s) or defect(s) therein known to **The Insured**, or to responsible employees of **The Insured** prior to the commencement of the **Supply Period** during which damage occurs;
 - iv) consequential loss due to lack of performance, loss of contract or payment in respect of any contractual fine or penalty due to late or non-performance of services by **The Insured**.

The insurance under this Endorsement shall include Expediting Expenses, which shall mean:

- penalty rates for wages during overtime, shift, night, Sunday or holiday working;

- payment for carriage by express passenger, fast-goods or other rail or road transport;
- payment for carriage by air freight via licensed airline(s) operating a regular scheduled service but not by aircraft chartered for such carriage unless agreed in writing with VMIA;

Provided such Expediting Expenses shall not exceed fifty percent (50%) of the normal cost of repair or replacement of the damaged Machinery.

Electronic Data Processing Equipment Extension

Notwithstanding Property Exclusion 10, and subject to a Sub-Limit of Liability as specified in the Schedule, VMIA will (subject to the terms and conditions of the Policy) indemnify **The Insured** for damage to **Property Insured** which consists of Electronic Equipment (as defined below) occasioned by or happening through any mechanical, electrical, electro-mechanical, electronic or other malfunction, failure, derangement, breakdown or non-operation of whatsoever kind.

For the purpose of this Extension:

Electronic Equipment means electronic data processing systems including peripheral and ancillary equipment (including air-conditioning plant associated therewith) and media against sudden and unforeseen damage whilst such property is working or at rest or being dismantled, moved, reassembled or reinstated for the purpose of cleaning, adjustment, inspection, repair, overhaul or relocation, as now existing or hereafter acquired, **The Insured's** own, held in trust or on commission or for which **The Insured** may be liable or have accepted responsibility.

Section 2: Consequential Loss

The Indemnity:

In the event of any **Property Insured** or any part thereof which is used by **The Insured** for the purpose of its Business being physically lost, destroyed or damaged during a **Supply Period** by any cause or event not hereinafter excluded (loss, destruction or damage so caused during a **Supply Period** being hereinafter termed "Damage") and the Business carried on by **The Insured** being in consequence thereof interrupted or interfered with, VMIA will, subject to the provisions of this Policy including the limitation on VMIA's liability, pay to **The Insured** the amount of loss resulting from such interruption in accordance with the applicable Basis of Settlement.

Provided that VMIA will not be liable for any loss under this Section unless **The Insured's** property lost, destroyed or damaged is insured against such Damage under this Policy and VMIA shall have paid for, or admitted liability in respect of, such Damage unless no payment shall have been made or liability admitted solely owing to the operation of a provision excluding liability for loss below a specific amount.

Basis of Settlement

Item No. 1

The Insurance under this item is limited to loss of Gross Profit due to:

- (a) Reduction in Turnover and
- (b) Increase in Cost of Working and the amount payable as indemnity thereunder shall be:-

In respect of Reduction in Turnover:

the sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period shall, in consequence of the Damage, fall short of the Standard Turnover.

In respect of Increase in Cost of Working:

the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in Turnover which, but for that expenditure, would have taken place during the Indemnity Period in consequence of the Damage, but not exceeding the sum produced by applying the Rate of Gross Profit to the amount of the reduction thereby avoided, less any sum saved during the Indemnity Period in respect of such of the charges and expenses of the Business payable out of Gross Profit as may cease or be reduced in consequence of the Damage.

Item No. 2

The insurance under this item is to cover such reasonable professional fees as may be payable by **The Insured**, and such other reasonable expenses necessarily incurred by **The Insured** and not otherwise recoverable, for preparation of claims under this Policy and VMIA shall indemnify **The Insured** for such reasonable fees and expenses.

Item No. 3

The Insurance under this item is limited to increase in Cost of Working (not otherwise recoverable hereunder) necessarily and reasonably incurred during the Indemnity Period in consequence of the Damage for the purpose of avoiding or diminishing reduction in Gross Profit and/or resuming and/or maintaining normal business operations and/or services.

Item No. 4

Subject to the Limit of Liability, this Section extends to indemnify **The Insured** in respect of fines and/or damages for breach of contract and the amount payable as indemnity thereunder shall be such sum(s) as **The Insured** shall be legally liable to pay and shall pay in discharge of fines and/or damages incurred in consequence of the Damage for non-completion and/or late completion of orders and/or non-performance and/or late performance of services.

Definitions applicable to Section 2

Gross Profit means the amount by which:

the sum of the Turnover and the amount of the Closing Stock and Work in Progress shall exceed,

the sum of the amount of the Opening Stock and Work in Progress and the amount of the following Uninsured Working Expenses:

Note: For the purposes of this definition of **Gross Profit**, Uninsured Working Expenses are any cost or expense which would be expected to reduce in proportion to a reduction in production or Turnover and include:

- cost of goods sold
- cost of materials consumed
- freight and cartage
- power and water
- maintenance
- advertising and marketing

The amounts of the Opening and Closing Stocks and Work in Progress shall be arrived at in accordance with **The Insured's** normal accountancy methods, due provision being made for depreciation.

Turnover means the money (less discounts, if any allowed) paid or payable to **The Insured** for goods sold and delivered and for services rendered in course of **The Insured's** Business.

Shortage in Turnover means the amount by which the **Turnover** during a period shall, in consequence of the Damage, fall short of the part of the Standard **Turnover** which relates to that period.

Rate of **Gross Profit** means the rate of **Gross Profit** earned on the **Turnover** during the financial year immediately before the date of the Damage.

Annual Turnover means the **Turnover** during the 12 months immediately before the date of the Damage.

Standard Turnover means the **Turnover** during that period in the 12 months immediately) before the date of the Damage which corresponds with the Indemnity Period to which such adjustments shall be made as may be necessary to provide for the trend of the Business and for variations in or other circumstances affecting the Business either before or after the Damage or which would have affected the Business had the Damage not occurred, so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the Damage would have been obtained during the relative period after the Damage.

Indemnity Period means the period beginning with the occurrence of the Damage and ending not later than the number of months specified in the Schedule thereafter during which the results of **The Insured's** Business shall be affected in consequence of the Damage.

Memoranda to Section 2

Except to the extent this Policy is hereby modified under the following Memoranda the terms, Conditions and limitations of this Policy shall apply.

Departmental Clause

If **The Insured's** Business be conducted in departments the independent trading results of which are ascertainable the provisions of clauses (a) and (b) of Item No. 1 shall apply separately to each department affected by the Damage.

Books of Account

Any particulars or details contained in **The Insured's** books of account or other business books or documents which may be required by VMIA for the purpose of investigating or verifying any claim hereunder may be produced and certified by **The Insured's** auditors and their certificate shall be prima facie evidence of the particulars and details to which such certificate relates.

The words and expressions used herein shall have the meanings usually attached to them in the books and accounts of **The Insured** unless otherwise defined in this Policy.

Exclusions Applicable to All Sections

Property Exclusions

This Policy does not cover physical loss, destruction of or damage to the following property or loss under Section 2 resulting therefrom:-

1. property whilst in transit.
2. property of every kind, including real and personal property, except for **Property Insured**.
3.
 - a. any watercraft (8 meters in length or longer)
 - b. any aircraft (including its accessories and/or spare parts)
 - c. any locomotives and rolling stock.
4. vehicles or trailers registered or licensed to travel on a public road.
5. property during the course of, and as a result of, its normal processing unless fire or explosion ensues in which event VMIA shall only be liable for the damage caused by such fire or explosion.
6. oil and gas drilling and/or production rigs whilst offshore.
7.
 - a.
 - i. total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data
 - ii. error in creating, amending, entering, deleting or using Electronic Data, or
 - iii. total or partial inability or failure to receive, send, access or use Electronic Data for any time or at all.

from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

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.

 - b. further, this exclusion does not apply in the event that a peril listed below (being a peril insured by this policy but for this exclusion) causes any of the matters described in paragraph (a) above
fire, explosion, lightning, windstorm, hail, tornado, cyclone, hurricane, earthquake, volcano, tsunami, flood, freezing, weight of snow, impact by aircraft or other aerial objects dropped therefrom, impact by any road vehicle or animal, bursting overflowing discharging or leaking of water tanks apparatus or pipes, or theft of electronic data solely where such theft is accompanied by theft of the computer hardware, firmware, medium, microchip, integrated circuit or similar device containing such Electronic Data.
 - c. for the purposes of the Basis of Settlement provision in this Policy, computer systems records include Electronic Data as defined in paragraph (a) above.
Any terrorism exclusion in this Policy or any endorsement thereto prevails over this exclusion.
8. any boiler economiser or other pressure vessel, including pipes, valves and other apparatus thereof in respect of which a certificate is required to be issued under the terms of any statute or regulation occasioned by or arising from explosion, rupture, collapse, bursting, cracking or overheating thereof provided that this exclusion shall be limited to the aforementioned items immediately affected and shall not extend to other property as a result of such loss or destruction or damage.
9. overhead transmission and distribution lines (including but not limited to transformers, poles, towers, wiring and equipment connected therewith).
10. all machinery (as defined in this exclusion), electronic data processing equipment or electronic control equipment occasioned by or happening through any mechanical, electrical, electro-mechanical, electronic or hydraulic malfunction, failure, derangement, breakdown or non-operation of whatsoever kind.

provided that Property Exclusion 10 shall not apply to any subsequent loss, destruction of or damage to such Machinery, electronic data processing equipment or electronic control equipment occasioned by or happening through any cause or event not otherwise excluded herein which results from any of the events referred to in this exclusion.

for the purpose of Property Exclusion 10, Machinery means:-

any apparatus whether or not functioning independently or as any component part of a collection of apparatus which generates, contains, controls, transmits, receives, transforms or utilises any form or source of energy or power.

Perils Exclusions

VMIA shall not be liable under Sections 1 and/or 2 in respect of:-

1. physical loss, destruction of or damage to the **Property Insured**
 - a. directly or indirectly occasioned by or happening through or connected with war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power
 - b. resulting from confiscation, nationalisation, requisition or damage to property by or under the order of any Government or Public or Local Authority.

Notwithstanding the provisions of Perils Exclusion 1(b) VMIA shall be liable for loss, destruction of or damage to, or the cost of removal of, sound property at the Premises for the purpose of preventing or diminishing imminent damage by, or inhibiting the spread of, fire or any other peril insured against under this Policy.

2.
 - a. physical loss, destruction of or damage to the **Property Insured**
 - b. any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:-
 - i. ionising radiations or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel.

For the purpose of this exclusion only, "combustion" shall include any self-sustaining process of nuclear fission
 - ii. nuclear weapons materials.

3. physical loss, destruction or damage occasioned by or happening through:-
 - a. moths, termites or other insects, vermin, rust or oxidation, mildew, mould, contamination or pollution, wet or dry rot, corrosion, change of colour, dampness of atmosphere or other variations in temperature, evaporation, disease, inherent vice or latent defect, loss of weight, change in flavour texture or finish, smut or smoke from industrial operations (other than sudden and unforeseen damage resulting therefrom)
 - b. wear and tear, fading, scratching or marring, gradual deterioration or developing flaws, normal upkeep or making good
 - c. error or omission in design, plan or specification or failure of design
 - d. normal settling, seepage, shrinkage or expansion in buildings or foundations, walls, pavements, roads and other structural improvements, creeping, heaving and vibration
 - e. faulty materials or faulty workmanship;

provided that this Exclusion 3(a) to (e) shall not apply to subsequent loss, destruction of or damage to the **Property Insured** occasioned by a peril (not otherwise excluded) resulting from any event or peril referred to in this exclusion.

4. physical loss, destruction or damage occasioned by or happening through:-
 - a. incorrect siting of buildings consequent upon
 - i. error in architectural design or specification

- ii. faulty workmanship
 - iii. non-compliance by **The Insured** (or anyone acting on behalf of **The Insured**) with the necessary permits issued by Government, Public or Local Authorities
- b. demolitions ordered by Government or Public or Local Authorities due to failure on the part of **The Insured** or their agents to obtain the necessary permits required.
5. physical loss, destruction or damage occasioned by or happening through:-
- a. unexplained or inventory shortage, disappearance resulting from clerical or accounting errors, shortage in the supply or delivery of materials to or from **The Insured**
 - b.
 - i. spontaneous combustion
 - ii. spontaneous fermentation or heating or any process involving the direct application of heat;

provided that Perils Exclusions 5(b)(i) and 5(b)(ii) shall be limited to the item or items immediately affected and shall not extend to other property damaged as a result of such spontaneous combustion, fermentation or heating or process involving the direct application of heat.
6. physical loss, destruction or damage occasioned by or happening through:-
- a.
 - i. fraudulent or dishonest acts, fraudulent misappropriation, embezzlement, forgery, counterfeiting data corruption, unauthorised amendment of data and erasure by electronic or non-electronic means involving the **Property Insured** by **The Insured** or any employee(s) of **The Insured** acting alone or in collusion with any other person(s)
 - ii. access by any person(s) other than **The Insured** or **The Insured's** employee(s) to **The Insured's** computer system via data communication media that terminate in **The Insured's** computer system;

provided that this exclusion shall not apply to theft consequent upon forcible and violent entry upon premises or felonious concealment upon premises committed by an employee of **The Insured** or theft of money whilst in transit
 - b.
 - i. the cessation of work whether total or partial
 - ii. the cessation, interruption or retarding of any process or operation as a result of strikes, labour disturbances or locked out workers

provided that Perils Exclusions 6(b)(i) and 6(b)(ii) shall not apply in respect of physical loss, destruction or damage directly caused by strikers, locked out workers or similar persons
 - c. erosion, subsidence, earth movement or collapse resulting therefrom provided that this Exclusion 6(c) shall not apply to any event caused by or resulting from earthquake, volcanic eruption, storm and tempest, flood or sudden and/or accidental discharge of water
 - d. kidnapping, bomb threat, threat of contamination, hoax, extortion or any attempt thereat;

provided that this Exclusion 6(a) to (d) shall not apply to subsequent loss, destruction or damage to the **Property Insured** occasioned by a peril (not otherwise excluded) resulting from any event or peril referred to in this exclusion.
7. any legal liability of whatsoever nature other than as herein provided.
8. consequential loss of any kind including consequential loss due to delay, lack of performance, loss of contract or depreciation in the value of land or stock, except as herein provided in Section 2.
9. any loss, damage, cost, claim or expense, directly or indirectly, proximately or remotely, whether in whole or part caused by, resulting from, contributed to, aggravated by or consisting of any malfunction, derangement or inability of:

the failure of any Electronic Equipment and/or Device to recognise, interpret, calculate, compare, differentiate, sequence or process data consisting of, dependent on or deduced from one or more dates or times or,

any change, repair, alteration, correction or modification of any part of an Electronic Equipment and/or Device to correct or prevent any anticipated or actual condition or circumstance stated in (a) above.

For the purpose of this exclusion, Electronic Equipment and/or Device includes but is not limited to computers, computer equipment, coding, programs, instructions or any software stored on electronic, electromechanical, electromagnetic data processing or electronically controlled equipment and media:

- computer hardware, including microprocessors;
- computer application software;
- computer operating systems and related software;
- computer networks;
- microprocessors (computer chips) not part of any computer system;
- any other computerised or electronic equipment or components;

whether the property of **The Insured** or not.

10. (notwithstanding any provision to the contrary within this policy or any endorsement thereto) loss, damage, cost or expense 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.

For the purpose of this endorsement 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 organisations(s) or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological or similar purposes or reasons, 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, 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.

11.

- a. total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data,
- b. error in creating, amending, entering, deleting or using Electronic Data, or
- c. total or partial inability to receive, send, access or use Electronic Data for any time or at all;

from any cause whatsoever regardless of any other contributing cause or event whenever it may occur.

However, in the event that a peril listed below (being a peril insured by this policy but for this exclusion) is caused by any of the matters in items (a), (b) and (c) above, this Policy, subject to all provisions, will insure:

- i. physical loss of or damage or destruction to **Property Insured** directly caused by such listed peril, and/or
- ii. consequential loss insured by this Policy.

Further, this exclusion does not apply in the event that a peril listed below (being a peril insured by this policy but for this exclusion) causes any of the matters described in items (a), (b) and (c) above:

fire, explosion, lightning, windstorm, hail, tornado, cyclone, hurricane, earthquake, volcano, tsunami, flood, freezing, weight of snow, impact by aircraft or other aerial objects dropped therefrom, impact by any road vehicle or animal, bursting overflowing discharging or leaking of water tanks apparatus or pipes, or theft of electronic data solely where such theft is accompanied by theft of the computer hardware, firmware, medium, microchip, integrated circuit or similar device containing such Electronic Data.

For the purposes of the Basis of Settlement provision in this Policy, computer systems records include Electronic Data as defined below.

For the purpose of this exclusion 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 codes instructions for such equipment.

Any terrorism exclusion in this Policy or any endorsement thereto prevails over this exclusion.

Memoranda Applicable to All Sections

Except to the extent that this Policy is hereby modified under the following Memoranda the terms, Conditions and limitations of this Policy shall apply.

Amount of Policy Not Reduced By Loss

The insurance under each section and/or item of this Policy and the Indemnity Period shall be automatically reinstated in the event of any loss in consideration of the payment by **The Insured** of a pro-rata additional premium calculated on the amount of the loss settlement at the rate(s) agreed for the Period of Insurance.

Event

Only for the purpose of the application of any deductible; all loss, destruction or damage arising in any period of 72 consecutive hours commencing from the time of the first happening of the loss, destruction or damage occasioned by or happening through:

- a. storm and tempest and/or rainwater and/or flood; or
- b. earthquake and/or subterranean fire and/or volcanic eruption;

shall be deemed to be one event.

Subrogation Waiver

VMIA agree(s) to waive any rights and remedies or relief to which it/they may become entitled by subrogation against:-

- a. any Insured named or described by this Policy (including its directors, officers, employees or servants);
- b. any corporation or organisation (including its directors, officers, employees or servants) owned or controlled by any Insured named herein or subsidiary to any Insured named herein or any co-owner of the **Property Insured** hereunder.

Conditions Applicable to All Sections

1. Notification of Claims

On the happening of any loss, destruction or damage, **The Insured** shall forthwith give notice thereof in writing to VMIA and shall as soon as practicable thereafter, at **The Insured's** own expense, deliver to VMIA a claim in writing containing as particular an account as may be reasonably practicable of the several articles or portions of property lost, destroyed or damaged and of the amount of loss, destruction or damage thereto, having regard to their value at the time of the loss, destruction or damage, together with details of any other insurances on any property hereby insured.

The Insured shall use due diligence and do and concur in doing all things reasonably practicable to minimise any interruption of or interference with the Business to avoid or diminish the loss and shall also deliver to VMIA a statement in writing of any claim certified by **The Insured's** auditor, with all particulars and details reasonably practicable of the loss and shall produce and furnish all books of accounts and other business books, invoices, vouchers and all other documents, proofs, information, explanations and other evidence and facilities as may reasonably be required for investigation and verification of the claim together with (if demanded) a statutory declaration of the truth of the claim and of any matters connected therewith.

2. Fraud

If any claim be in any respect fraudulent or if any fraudulent means or devices be used by **The Insured** or anyone acting on **The Insured's** behalf to obtain any benefit under this Policy, or if any destruction or damage be occasioned by the wilful act or with the connivance of **The Insured**, VMIA, without prejudice to any other right(s) VMIA might have under this Policy, shall be entitled to refuse to pay such claim.

3. Reinstatement

If VMIA elect(s) or become(s) bound to reinstate or replace any property, **The Insured** shall at **The Insured's** own expense produce and deliver to VMIA all such plans, documents and information as VMIA may reasonably require. VMIA shall not be bound to reinstate exactly or completely, but only as circumstances permit and in reasonably sufficient manner and shall not in any case be bound to expend more than the applicable Limit of Liability.

4. The VMIA'S Rights

On the happening of any loss, destruction or damage in respect of which a claim is or may be made under this Policy VMIA and every person authorised by VMIA may, without thereby incurring any liability, and without diminishing the right of VMIA to rely upon any Conditions of this Policy, enter, take or keep possession of any building or premises where the loss, destruction or damage has happened and may take possession of or require to be delivered to VMIA any of the property hereby insured and may keep possession of and deal with such property for all reasonable purposes and in any reasonable manner.

This condition shall be evidence of the leave and licence of **The Insured** to VMIA so to do. If **The Insured** or anyone acting on **The Insured's** behalf shall not comply with the requirements of VMIA or shall hinder or obstruct VMIA in doing any of the abovementioned acts, then all benefits under this Policy shall be forfeited. **The Insured** shall not in any case be entitled to abandon any property to VMIA whether taken possession of by VMIA or not.

5. Subrogation

- a. Any person claiming under this Policy shall at the request and at the expense of VMIA do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by VMIA for the purpose of enforcing any rights and remedies, or of obtaining relief or indemnity from other parties to which VMIA shall be or would become entitled or subrogated upon VMIA paying for or making good any destruction or damage under this Policy.
- b. Where VMIA, in exercising a right of subrogation in respect of any loss for which payment has been made hereunder, recover(s) an amount, **The Insured** may recover that amount from VMIA, provided always that **The Insured** may not recover:
 - i. an amount greater than the amount (if any) by which the amount recovered by VMIA exceeds the amount paid to **The Insured** by VMIA in relation to the loss; or
 - ii. an amount that, together with the amount paid to **The Insured** by VMIA in relation to the loss, is greater than the amount of **The Insured's** loss.

6. Precautions to Prevent Loss

The Insured shall take all reasonable precautions to prevent loss, destruction or damage to the **Property Insured** by this Policy.

7. Insured's Action After Theft or Damage

The Insured shall, upon becoming aware of any loss by theft or of any wilful or malicious damage which may give rise to a claim under this Policy, take all practicable steps to trace and recover any missing property and to discover by whom the property was stolen or damaged.

8. Termination of Cover Under Section 2

Notwithstanding anything contained herein to the contrary, if during any period in respect of which this Policy is in force:

- a. **The Insured** ceases to carry on the Business or any part of the Business is disposed of, permanently discontinued or **The Insured's** interest in the Business or such part thereof ceases otherwise than by death; or
- b. **The Insured** (being a corporation) is placed in liquidation (or provisional liquidation), is placed under Official Management, enters into a Scheme of Arrangement, has Receivers and/or Managers appointed over its assets or undertaking(s); or
- c. **The Insured** (being a natural person) becomes a bankrupt or enters into a scheme of arrangement or compromise or composition with creditors;

then the insurance cover provided under Section 2 of this Policy in respect of such Business or Insured shall automatically and forthwith cease.

In the event of the Indemnity Period having begun to run in respect of any claim relating to such Business or part thereof, the Indemnity Period shall thereupon be at an end, unless its continuance be admitted by memorandum signed for or on behalf of VMIA.

9. 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.

10. Progress Payments

Provided that liability has been admitted progress payments on account of any claim may be made to **The Insured** at such intervals and for such amounts as may be agreed upon production of a report by the Loss Adjuster (if appointed) provided such payment(s) shall be deducted from the amount finally determined upon adjustment of the claim.

11. Headings

Headings have been included for ease of reference and it is understood and agreed that the terms and Conditions of this Policy are not to be construed or interpreted by reference to such headings.

Privacy Statement

We are committed to protecting any personal information we collect, handle, store or disclose about you through our services. We will manage all personal information in accordance with the *Victorian Managed Insurance Authority Act 1996 (Act)*, the *Privacy and Data Protection Act 2014* and the *Health Records Act 2001*.

Collection and use of Personal Information

Personal information means information or an opinion that is recorded in any form, and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

We collect and record personal information through our client data collection processes which include our website, online forms and surveys. Some examples of when we may collect your personal information are when you:

- send us an email;
- use our online services, such as completing a form or survey electronically;
- register to attend training and events; and
- access our secure client portal on our website.

Personal information we collect can only be used for the purpose of performing functions under our Act and in accordance with all applicable laws and regulations.

Access and Correction

Please contact our Information Privacy Officer at privacy@vmia.vic.gov.au if you:

- want to access 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.