



Public and Products Liability Insurance Policy

(Policy number
PPL2722V1/2022)

Issued to clients of VMIA

For the period 1 July 2022
to 30 June 2023



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1. Insuring Clause

Victorian Managed Insurance Authority (VMIA) will indemnify the **Insured** for all amounts which the **Insured** becomes legally liable to pay as **Compensation** arising out of **Injury** and/or **Damage** occurring during the **Period of Insurance** and caused by an **Occurrence** in connection with the **Insured's Business**.

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 **Injury** and/or **Damage** and seeking **Compensation**. VMIA may make any investigation, negotiation and settlement of any **Claim** as it deems expedient.

2. Limit of Indemnity

2.1. Limit of Indemnity

VMIA's liability in respect of all **Compensation** for **Injury** and/or **Damage** under this policy arising out of any one **Occurrence** is limited to the amount specified in the Schedule as the **Limit of Indemnity**.

2.2. Sub-Limits

VMIA's liability in respect of all **Compensation** for:

- a. all **Claims** arising out of the **Insured's Products** and/or **Bushfires** are 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 4.1) are limited to the amount specified in the Schedule as the aggregate **Limit of Indemnity** in respect of Asbestos Liability;
- c. all **Claims** in respect of Marine Liability, are limited to the amount specified in the Schedule as the aggregate **Limit of Indemnity** in respect of any amounts which the **Insured** becomes legally liable to pay as **Compensation** arising out of **Injury** and/or **Damage** caused by an event in connection with the ownership, maintenance, use or operation by the **Insured** of a **Watercraft**;
- d. All **Claims** in respect of Aircraft Liability are limited to the amount specified in the Schedule as the aggregate **Limit of Indemnity** in respect of any amount which the **Insured** becomes legally liable to pay as **Compensation** arising out of **Injury** and/or **Damage** caused by an event in connection with the ownership, maintenance, use or operation by the **Insured** of a Remotely Piloted Aircraft System; and
- e. all **Claims** in respect of Terrorism Liability are limited to the amount specified in the Schedule as the aggregate **Limit of Indemnity** in respect of an **Act of Terrorism**.

3. Supplementary Payments

In addition to **Limit of Indemnity**, VMIA will pay all:

- a. reasonable expenses (other than loss of earnings), 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 expenses of legal representation and wages and salaries of the Insured incurred with **VMIA's** consent, for representation 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**; and
- d. expenses incurred by the **Insured** for the rendering of first aid to others at the time of **Injury** occurring during the **Period of Insurance** and for which the **Insured** is legally liable to pay.

However, in 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 is inclusive of Supplementary Payments described above.

4. Automatic Extensions

4.1 Asbestos Liability

In addition to Exclusion 5.2 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.

VMIA will indemnify the **Insured** against liability to pay **Compensation** and Supplementary Payments (as described in Section 3) 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**, and 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 **Claims** which form the subject of indemnity under this Extension then acceptance of such notification means that **VMIA** will deal with such **Claims** as if the **Claims** had first been made against the **Insured** during the **Period of Insurance**; and
2. **VMIA** will not indemnify the **Insured** for any **Claims** 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; that
 - 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 (as described in Section 3) 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.

4.2 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 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**.

4.3 Deemed Claim

Any settlement agreed with a third party, involving an **Occurrence** that is likely to give rise to a **Claim**, shall be deemed to be a **Claim**.

4.4 Coverage for Committees of Management

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 clause does not apply to:

- a. 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. 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, the policy does not extend to cover lessees, hirers or licensees of Crown land.

5. Exclusions

This Policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with:

5.1 Aircraft

the ownership, maintenance, use or operation by the **Insured** of any aircraft but this Exclusion 5.1 shall not apply with respect to;

- a. inflatable balloons used for advertising purposes, nor to inflatable balloons designed for the purpose of carrying persons;
- b. Remotely Piloted Aircraft Systems (RPAS) or drone operations compliant with Civil Aviation Safety Authority regulations.

5.2 Asbestos

- 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 5.2(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.

5.3 Construction Activities

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.

5.4 Contractual Liability

- a. Liability expressly assumed under any contract entered into by the **Insured**, except liability to indemnify a third party under the terms of a contract but only to the extent to which the Insured is required by the contract to grant such an indemnity.
- b. Liability for **Compensation** arising out of the deliberate or wilful breach of contract by the **Insured**.

5.5 Dishonesty Exclusion

- a. dishonest, fraudulent, criminal act or any wilful violation or breach of law by an **Insured** or any person the **Insured** is legally responsible; or
- b. any **Insured** who has gained any personal profit, remuneration or advantage to which such **Insured** is not legally entitled.

5.6 Employment

- a. **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 **Injury**; or
 - ii. not required to so insure or otherwise fund such liability by reason only that the **Injury** is to a person who is not a worker or employee for the purposes of the relevant workers' compensation law or the **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 5.5 (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**.

5.7 Insured's Property

Damage to property owned by the **Insured**.

5.8 Insured's Products

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 5.7 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.

5.9 Performance

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 5.8 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**.

5.10 Pollution

- a. 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 5.9 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.

5.11 Provision of Healthcare

The rendering of or failure to render **Healthcare** by a **Health Practitioner**.

This Exclusion 5.10 shall not apply to;

- a. the rendering of or failure to render **Healthcare** by a **Health Practitioner** or first aid attendants, employed by the **Insured** to provide first aid on the **Insured's** premises, other than where the **Insured's Business** is a hospital, community health centre, nursing home, ambulance or other business where the **Insured's** primary occupation involves provision of **Healthcare**; and
- b. the supply of **Insured Products** to entities or individuals outside the Victorian public health sector.

5.12 Punitive and other damages, Fines, Penalties

Fines, penalties, liquidated damages, punitive damages and/or exemplary damages.

5.13 Rail

The operation of, or any **Occurrence** involving, trains and trams.

5.14 Vehicles

- a. liability in respect of **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 **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 **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 5.13 (b) shall not apply to **Damage**:

- i. caused by or arising from the delivery or collection of goods to or from any **Vehicle** where such **Damage** occurs beyond the limits of any carriageway or thoroughfare;
- ii. 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**;
- iii. 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;
- iv. 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**;
- v. 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;
- vi. arising from any unregistered **Vehicle**, 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).

5.15 Terrorism

Loss, injury or damage directly or indirectly arising from an **Act of Terrorism** in excess of the amount of cover stated in the Terrorism Extension as specified in the Policy Schedule.

5.16 War

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;

5.17 Breach of any Local or Foreign Laws

Liability for which insurance is required to be affected 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 5.17 does not apply to the extent that **VMIA's** provision of indemnity under this policy does not breach any local or foreign laws.

6. Definitions

When used in this policy, the Schedule or endorsements, the following definitions apply: Defined terms will appear in bold.

6.1 Act of Terrorism

Means an action where:

- a. the action is done with the intention of advancing a political, religious or ideological cause; and
- b. the action is done with the intention of:
 - i. coercing, or influencing by intimidation, the government of the Commonwealth, State, Territory or foreign country, or of part of a State, Territory or foreign country; or
 - ii. intimidating the public or a section of the public.

(a) and (b) above are subject to the declaration of an Act of Terrorism as defined in the Terrorism Insurance Act 2003 and as amended. The exception to this subjectivity is loss solely and directly caused by an occurrence of an act of terrorism by;

- i. use of Nuclear or Radiological weapons or materials or;
- ii. use or operation, as a means of inflicting harm, of any computer, computer system, or computer software program, malicious code, computer virus or process or any other electronic system.

6.2 Bushfire

fire originating in or spreading through trees, grassland and/or other natural vegetation, irrespective of origin.

6.3 Claim

- a. a writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counter claim or third-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 Liability** and **Deductible**.

6.4 Clinical trials and health and medical research

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 **Injury** and/or **Damage**.

6.6 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.

6.7 Deductible

The amount that the **Insured** must first bear before indemnity from **VMIA** applies.

6.8 Healthcare

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.

6.9 Health Practitioner

means an individual who practises a **Healthcare** profession and is registered by a responsible Board pursuant to the Health Practitioner Regulation National Law Act 2009.

6.10 Injury

- a. Bodily injury, death, sickness, disease, disability, shock, fright, mental anguish or mental injury including loss of services resulting therefrom.
- b. the effects of false arrest, false imprisonment, wrongful entry, wrongful eviction, wrongful detention, invasion of privacy, malicious prosecution or humiliation;
- c. libel, slander or defamation;
- d. 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;
- e. the effects of racial, religious, sex or age discrimination or harassment (unless insurance in relation to this is prevented by law); or
- f. infringement of patent, copyright, trademark, service mark, trade name, title or slogan, piracy or unfair competition or idea misappropriation.

6.11 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. 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
- d. 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;
- e. 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;
- f. 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;
- g. 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;
- h. 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; and
- i. 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.

6.12 Insured's Business

The activities described as Business in the Schedule.

6.13 Insured's Products

Anything (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.

6.14 Limit of Indemnity

The amount specified in the Schedule as the **Limit of Indemnity**.

6.15 Occurrence

An event resulting in **Injury** and/or **Damage**; which is neither expected nor intended from the standpoint of the **Insured** [other than 6.8(d)].

All **Injury** and/or **Damage** arising out of continuous or repeated exposure to substantially the same general condition and/or consequent upon or attributable to one source or same originating cause will be considered to arise out of one **Occurrence**.

6.16 Period of Insurance

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

6.17 Pollutants

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

6.18 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.

6.19 Watercraft

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

7. Memoranda

7.1 Waiver of Subrogation Rights

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.

8. Conditions

8.1 Insured's Duty in the Event of an Occurrence

- 8.1.1.1 in the event of an **Occurrence** (or if an **Occurrence** appears reasonably likely to take place) the **Insured** will immediately, at its own expense, take all reasonable and responsible steps to prevent or minimise **Personal Injury** and/or **Damage**;
- 8.1.1.2 the **Insured** must give notice to **VMIA** as soon as practicable of an **Occurrence** involving **Personal Injury** and/or **Damage** which is likely to involve this **Policy** or to exceed an amount equal to or greater than 50% of the applicable **Deductible**, and must as soon as practicable forward to **VMIA** all information relevant to the **Occurrence** held by the **Insured**;
- 8.1.1.3 the **Insured** shall use its best endeavours to keep **VMIA** informed of all material developments likely to affect the costs of any claim or undertakes, insofar as is reasonably possible, to co-operate with **VMIA** and its representatives in the conduct and settlement of such claim and in the estimating of claim reserves;
- 8.1.1.4 the **Insured** must not, without **VMIA's** prior written consent, make any admission, offer, promise or payment in connection with any **Occurrence**; and
- 8.1.1.5 the **Insured** shall use its best endeavours to preserve all property, appliance and plant and all other things which may assist in the investigation or defence of a claim or in the exercise of rights of subrogation and so far as may be reasonably practicable no alteration or repair is to be effected without the consent of **VMIA** until **VMIA** has had an opportunity of inspection.

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 the **Insured's** right to indemnity under this **Policy**.

8.2 Application of Insured's Deductible

8.2.1

- 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** is inclusive of defence costs and Supplementary Payments as described in Section 3 of this policy.

8.2.2

When 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 hours shall be considered as one **Occurrence**;
- b. each period of one hundred and sixty-eight hours shall be deemed to have:
 - i. commenced at a date and time nominated by the **Insured**, the nomination will take place subsequent to the expiration of such period;
 - ii. expired one hundred and sixty-eight hours after the commencement of the period nominated by the **Insured**.
- c. should a period of one hundred and sixty-eight hours expire while a **Bushfire** incident or series of **Bushfire** incidents is continuing, then:
 - i. a new period of one hundred and sixty-eight hours will be deemed to have commenced immediately upon expiration of the prior period.
 - ii. such new period will 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** will be liable for the whole period of one hundred and sixty-eight consecutive hours, notwithstanding that this policy may expire or be cancelled during the nominated period of one hundred and sixty-eight consecutive hours.

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

This Condition applies 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 the **Limit of Indemnity**.

8.3 Fraudulent Claim

If any **Claim** is in any respect fraudulent or if any fraudulent means or devices are 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**.

8.4 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.

8.5 Applicable Law

Any dispute concerning this **Policy** shall be determined in accordance with the law of Australia and its States and Territories. The parties to this **Policy** agree to submit to the competent jurisdiction of Victoria.

8.6 Subrogation

In the event of payment of a claim for **Compensation** or **Supplementary Payments** under this **Policy**, **VMIA** will be subrogated to all of the **Insured's** rights of recovery against any person or organisation. The **Insured** agrees to execute and deliver all appropriate papers and instruments and allow **VMIA** to undertake necessary steps or what is reasonably required to:

- a. enforce any rights and remedies;
- b. obtain relief or indemnity from other parties; and
- c. recover against any amount paid by **VMIA** to the **Insured** in settlement of the **Insured's** claim.

If **VMIA** makes a successful recovery against a third party, **VMIA** is entitled to the following monies:

- d. amount paid by **VMIA** to the **Insured** in respect of a claim for **Compensation** or **Supplementary Payments** under this **Policy**; and
- e. amount paid by **VMIA** for administrative and legal costs incurred in connection with the recovery.

If there is an amount in excess of clause (d) and (e), the **Insured** is entitled to that recovered excess amount.

8.7 Defence and settlement

- a. in respect of any **Claim** for **Compensation** under this **Policy**, **VMIA** has the duty to defend, or take over the conduct in the name of the **Insured**, any legal proceedings against the **Insured** seeking **Compensation** and to bring any cross claim in the name of the **Insured**.
- b. **VMIA** will not be responsible to pay any claim or judgment or defend any suit after the **Limits of Indemnity** under this **Policy** has been exhausted;
- c. **Supplementary Payments** payable under Section 3 of this **Policy** are to be payable inclusive of the **Limit of Indemnity**;
- d. If a payment exceeding the **Limit of Indemnity** has to be made to dispose of a claim for **Compensation** under Section 1 Insuring Clause of this **Policy**, **VMIA's** liability for **Supplementary Payments** is limited to the proportion that **VMIA's** liability to pay **Compensation** under this **Policy** bears to that payment;

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- e. with respect to any claims for **Compensation** being made against the Insured in any court or legally constituted body in the United States of America or Canada or their respective protectorates and territories (or any order made anywhere to enforce such judgment, award or settlement either whole or in part), the **Limit of Indemnity** is inclusive of the **Supplementary Payments**;
- f. if the costs of the claim for **Compensation** are not likely to exceed the **Deductible VMIA** may elect not to defend the legal proceedings. In such circumstances **VMIA** will reimburse the Insured for all reasonable **Supplementary Payments** if any payment properly and reasonably made exceeds such **Deductible**; and
- g. the **Insured** must at all times co-operate with **VMIA** and comply with the terms and conditions of this **Policy** and assist where necessary in enforcing any right of contribution or indemnity from any third party, corporation or organisation.

8.8 Worldwide territory and jurisdiction

Coverage under this **Policy** shall extend anywhere in the world unless to the extent that trade or economic sanction or other laws or regulations prohibit **VMIA** from providing the insurance.

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.