

Directors and Officers Liability Master Policy

Insurance Policy Number D&O2014V1
Issued to clients of VMIA

For the period 30 June 2014 to 30 June 2015

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Section 1: Indemnity

In consideration of payment of the premium set by the **Authority**, and subject to all the terms and conditions of this **Policy** (including, without limitation, clause 17 in relation to the aggregate **Limit of Liability**, any applicable **Sub-limits**, the exclusions, the schedule and any endorsements), the **Authority** provides the indemnity set out in Sections 1 and 2 of this **Policy** in accordance with the indemnity under the **VMIA Act**. Where a liability of the **Officer** falls within clause 1.1 and one or more other clauses in Sections 1 or 2 of this **Policy**, the Authority's obligation to indemnify the **Officer** shall be determined by the clause which more specifically deals with that type of liability and is subject to any qualifications, conditions, exceptions or restrictions in that clause.

1. Indemnity for Officer

- 1.1 The **Authority** will indemnify the **Officer** against any amount the **Officer** becomes legally liable to pay in respect of a **Claim** made against him or her as an **Officer** of the **Public Body**, except to the extent the **Officer** has been indemnified by the **Public Body** for such legal liability.
- 1.2 In addition to clause 1.1, except to the extent the **Officer** has been indemnified by the **Public Body** for such **Professional fees** or other legal costs or other expenses, the **Authority** will indemnify the **Officer** for:
 - 1.2.1 all **Professional fees** incurred by the **Officer** as an **Officer** of the **Public Body** in respect of a **Claim** covered by this **Policy**; and
 - 1.2.2 all other legal costs and other expenses incurred by the **Officer** as an **Officer** of the **Public Body** that are specifically covered by this **Policy**.
- 1.3 The indemnity in this **Policy** is restricted to the following types of **Claim** and is subject to clause 16.1:
 - 1.3.1 a **Claim** that is first made against the **Officer** during the **Policy** Period, and is immediately notified to the **Authority** in writing either during the **Policy** Period or within 30 days after it ends; and
 - 1.3.2 a **Claim** that:
 - a) is first made against the **Officer**, and is immediately notified to the **Authority** in writing, later than the period set out in clause 1.3.1; and
 - b) arises from **Facts** notified to the **Authority** as soon as practicable after the **Officer** became aware of them, and either during the **Policy** Period or within 30 days after it ends.
 - 1.3.3 For the purpose of clause 1.3.2, where a subsequent **Claim** is made after the **Policy** Period that is directly related or based on a **Claim** notice of which has previously been provided or on **Facts** previously notified in accordance with this **Policy**, then the **Claim** will be deemed to have been made on the date that the first mentioned **Claim** or **Facts** were notified.
- 1.4 Any failure to notify **Facts** to the **Authority** shall not be deemed to be an omission within the meaning of Section 54 of the *Insurance Contracts Act 1984* (Cth).
- 1.5 Notwithstanding clause 1.3, the **Authority** will indemnify the **Officer** in accordance with this clause 1 in respect of a **Claim** that arises from **Facts** that were known to the **Officer**, but were not notified to the **Authority** during a previous **Policy** period to the **Policy** Period or within 30 days after that previous Policy period ended, if:
 - 1.5.1 the **Authority** had agreed to indemnify the **Officer** at the time the **Facts** first became known to the **Officer** ('the previous indemnity period') and has continued to agree to indemnify the **Officer** against such **Claims** from then until the date of actual notification;

- 1.5.2 but for the failure of the **Officer** to notify the **Authority** during the previous indemnity period, the **Officer** would have been entitled to indemnity from the **Authority** for the **Claim** during the previous indemnity period;
 - 1.5.3 but for the exclusion in clause 19.1.6 the **Officer** would be entitled to indemnity for the **Claim** under this **Policy**; and
 - 1.5.4 the **Officer** has not committed or attempted to commit fraudulent nondisclosure or fraudulent misrepresentation in respect of the **Claim**.
- 1.6 The **Authority** is only liable to indemnify the **Officer** under clause 1.5 to the extent that it would have been obliged to indemnify the **Officer** under the terms of indemnity in effect during the previous indemnity period. The **Authority** may reduce its liability to the **Officer** by the amount that fairly represents the extent to which the **Authority** has been prejudiced as a result of the late notification.

2. Indemnification of Public Body

- 2.1 The **Authority** will reimburse the **Public Body** for any payment made by it in respect of a liability incurred by an **Officer** that the **Public Body** is required or permitted to indemnify the **Officer** against, and in respect of which the **Officer** would otherwise be entitled to an indemnity under Sections 1 or 2 of this **Policy**.

Section 2: Additional indemnities

In addition to Section 1 of this **Policy**, the **Authority** will also provide the following indemnities in excess of any amount otherwise payable under Section 1 of this **Policy**:

3. Legal costs and other costs and expenses of investigations and raids

- 3.1 The **Authority** will indemnify the **Officer** or reimburse the **Public Body** to the extent that it has indemnified the **Officer** against reasonable legal costs and other costs and expenses (including reasonable travel, accommodation and meal expenses) incurred by or on behalf of the **Officer** as an **Officer** of the **Public Body** with the **Authority's** prior written consent (which consent shall not be unreasonably withheld or delayed) in:
- 3.1.1 responding to, preparing for, attending at or in connection with an **Investigation** that the **Officer** becomes aware of during the **Policy** Period; and
 - 3.1.2 responding to a **Raid**.

4. Advancement of legal costs and other costs and expenses and deemed approval of emergency costs

- 4.1 Except to the extent that the **Authority** has denied indemnity, the **Authority** will within a reasonable time after it receives an invoice containing all of the information requested by it, advance to the **Officer** or the **Public Body** to the extent that it has indemnified the **Officer**, the **Professional fees** and legal costs and other costs and expenses (as the case may be) that are covered by clauses 1, 2, 3, 5, 9, 10, 11 and 12 of this **Policy**, prior to the final resolution of the relevant **Claim, Employment practices violation, Investigation or Raid** (as the case may be).
- 4.2 Any amount advanced under clause 4.1 must be repaid by the **Officer** (or the **Public Body** if an amount is paid to it) to the **Authority** in the event and to the extent that it is ultimately determined by the **Authority** that the amount is not covered by this **Policy**.
- 4.3 In determining whether **Professional fees** or legal costs and other costs and expenses (as the case may be) in respect of a **Claim, Investigation or Raid** are not covered by this **Policy**, the **Authority** may not rely on exclusion 19.1.3, 19.1.4, 19.1.5, 19.1.10 or 19.1.11 unless the proviso in that exclusion is satisfied.
- 4.4 If there is any dispute between the **Authority** and the **Officer** or the **Public Body** on behalf of the **Officer** with respect to the application of this clause, it shall be resolved in accordance with the dispute resolution procedure set out in clause 31.
- 4.5 If, due to an emergency, the **Authority's** prior written consent cannot reasonably be obtained if required by this **Policy** before **Professional fees** or legal costs and other expenses (as the case may be) in respect of a **Claim or Raid** are incurred, then the **Authority** will be deemed to approve such **Professional fees**, legal costs or other expenses. The total aggregate amount of **Professional fees** or legal costs or other expenses deemed to be approved and payable as such under this extension is 10% of the **Limit of Liability**.

5. Employment Practices Violation

- 5.1 If an **Employment practices violation** Sub-limit is specified in the Schedule for **Employment practices violations (Public Body)**, the **Authority** will indemnify the **Officer** and the **Public Body** in respect of any **Claim** (including reasonable **Professional fees**) against it arising out of an **Employment practices violation**.

Always provided that:

- 5.1.1 The employment violation was committed in good faith by the **Insured**; and
- 5.1.2 The **Insured** was not aware of the wrongful nature of such violation and would not have been so aware after making reasonable inquiry, which includes independent external legal advice.

6. Presumptive Indemnification

- 6.1 In the event and to the extent that the **Public Body** fails to indemnify an **Officer** due to:

6.1.1 if the **Public Body** is a body corporate, **Financial impairment** of the **Public Body**; or

6.1.2 refusal of the **Public Body** to indemnify the **Officer**,

and provided the **Public Body** is permitted by or required by law to indemnify the **Officer**, then the **Authority** shall indemnify the **Officer** on behalf of the **Public Body**. The **Officer** will only be liable for the **Deductible** (if any) applicable to the **Officer** and not the **Deductible** (if any) applicable to the **Public Body**. In the event that the **Public Body** fails to indemnify the **Officer** due to (if the **Public Body** is a body corporate) **Financial impairment** of the **Public Body** no **Deductible** will be applicable.

7. Run off Cover

- 7.1 If during the **Policy** Period:

7.1.1 this **Policy** is not renewed or replaced with any other directors and Officers or managerial liability **Policy**; or

7.1.2 the **Public Body** or that part of the **Public Body** where the **Officer** performs his or her functions:

- a) ceases to exist; or
- b) due to a merger with or acquisition by another **Organisation**, ceases to be the same entity,

a run off period of 7 years shall be available under this **Policy** with the effect that any **Claim** may be notified during such period for indemnity under Section 1 and 2 of the **Policy**. For the avoidance of doubt, such run off cover shall be available to any **Officer** who retired prior to the end of the **Policy Period**.

- 7.2 The run off period shall commence from the date on which any of the events in clauses 7.1.1, or 7.1.2 first occurs.

- 7.3 Notwithstanding anything else to the contrary in this **Policy** the indemnity provided in clause 7.1 shall:

7.3.1 only apply in respect of acts or omissions of the **Officer** in the capacity as an **Officer** of the **Public Body** committed prior to the earliest of the events in clauses 7.1.1 and 7.1.2; and

- 7.3.2 only apply in excess of any other applicable insurance in force available to the **Officer** and of any indemnification provided to the **Officer** by a person other than the **Public Body**.
- 7.4 Where clause 7.3.2 applies, the **Officer** must take such steps as the **Authority** reasonably requests to obtain payment under the relevant Policy/ies or indemnification.

8. New officers and change in control

- 8.1 The **Authority** will automatically indemnify in accordance with this **Policy** a person who becomes an **Officer** of the **Public Body** and the **Public Body** to the extent it indemnifies such a person after the commencement of this **Policy**. A separate disclosure to the **Authority** regarding the new **Officer** is not required during the **Policy** Period for this automatic cover to apply.
- 8.2 If during the **Policy** Period there is a **Trigger event** in relation to a **Public Body** then the cover provided under this **Policy** only applies in relation to:
- 8.2.1 acts or omissions or matters occurring prior to the **Trigger event** in respect of that **Public Body**; and
 - 8.2.2 acts or omissions or matters the subject of an **Investigation**, where the act, omission or matter occurred or transpired prior to the **Trigger event**.

The **Public Body** shall give the **Authority** notice of the **Trigger event** as soon as practicable.

9. Spouses, estate and legal representatives

- 9.1 The **Authority** will indemnify in accordance with this **Policy** against any **Claim** brought against:
- 9.1.1 the spouse or domestic partner of the **Officer**;
 - 9.1.2 the estate or legal representative of the **Officer** if he or she is deceased, mentally incapacitated, bankrupt or otherwise not able to manage his or her own affairs, to the extent that the **Claim** is in respect of an act or omission of the **Officer** which **Claim** would, if it had been brought against the **Officer**, have been indemnified under this **Policy**.
- 9.2 The **Authority** will indemnify the spouse or domestic partner of the **Officer** for a **Claim** seeking to enforce a damages award made against marital community property, property jointly held by the **Officer** and the spouse or domestic partner, or property transferred from the **Officer** to the spouse or domestic partner to the extent that the **Claim** is in respect of an act or omission of the **Officer** which **Claim** would, if it had been brought against the **Officer**, have been indemnified under this **Policy**.

10. Protection of freedom

- 10.1 The **Authority** will indemnify the **Officer** and the **Public Body** to the extent it indemnifies the **Officer** for:
- 10.1.1 reasonable legal costs and other expenses to defend, resist or challenge:
 - a) extradition proceedings in any jurisdiction;
 - b) deportation on revocation of previously valid immigration status; or
 - c) custody or restriction of physical freedom by government, police, law enforcement agency or other government, legal or judicial agency;

- 10.1.2 the cost of procuring a guarantee or bond (other than any collateral) for an amount required by a court in connection with a **Claim** indemnified under Section 1 or clauses 3 or 5 of this **Policy**;
- 10.1.3 reasonable fees for counselling or tax advice associated with the events referred to in clauses 10.1.1(a), (b) or (c), incurred by or on behalf of the **Officer** as an **Officer** of the **Public Body** in connection with a **Claim** indemnified under Section 1 or clauses 3 or 5 of this **Policy** and incurred with the **Authority's** prior written consent (which shall not be unreasonably withheld or delayed).

Sub-Limit

The total amount payable under this clause 10.1 is limited to the **Protection of Freedom Sub-Limit** stated in the Schedule.

11. Protection of assets

11.1 The **Authority** will indemnify the **Officer** and the **Public Body** to the extent it indemnifies the **Officer** for reasonable legal costs and other expenses incurred by or on behalf of the **Officer** as an **Officer** of the **Public Body**:

- 11.1.1 in relation to any action or proceedings seeking the revocation of a disqualification of the **Officer** from acting as an **Officer** or an **Executive Officer** of a **Public Body**;
- 11.1.2 in relation to any action or proceedings seeking the revocation of a disqualification of the **Officer** from acting as an **Executive Officer** of another **Organisation**, which disqualification resulted from a **Claim** that is indemnified under Section 1 or clauses 3 or 5 of this **Policy**; or
- 11.1.3 in defending or resisting any action or proceedings in connection with a **Claim** that is indemnified under Section 1 or clauses 3 or 5 of this **Policy** seeking an order for the freezing of assets or bank accounts, creation of a caveat or a charge over assets or property, confiscation of assets or property, or suspending or limiting access to assets or property of the **Officer**, or in relation to any action or proceedings by the **Officer** seeking the revocation of such an order.

Sub-Limit

The total amount payable under this clause 11.1 limited to the **Protection of Assets Sub-Limit** stated in the Schedule. in the aggregate for all legal costs and other expenses.

12. Public media expenses

12.1 The **Authority** will indemnify the **Officer** and the **Public Body** to the extent it indemnifies the **Officer** for reasonable public media costs and expenses incurred by or on behalf of the **Officer** as an **Officer** of the **Public Body**:

- 12.1.1 in connection with any action or proceedings to extradite the **Officer**; or
- 12.1.2 to mitigate any adverse effect on the **Officer's** reputation following a successful final exoneration or defence of a **Claim**,
in connection with a **Claim** indemnified under Section 1 or clauses 3 or 5 of this **Policy** and incurred with the **Authority's** prior written consent (which shall not be unreasonably withheld or delayed).

Sub-Limit

The total amount payable under this clause 12.1 limited to the **Public Media Expenses Sub-Limit** stated in the Schedule in the aggregate for all media costs and expenses.

13. Legal representation

13.1 Where one or more Officers are entitled to legal representation under this **Policy**, and such representation by the same lawyers will cause a material conflict of interest, then the Officers shall be entitled to separate legal representation to the extent required to resolve the conflict of interest.

14. Indemnity in relation to fines and penalties

14.1 Unless prohibited by law, the **Authority** will indemnify the **Officer** and the **Public Body** to the extent it indemnifies the **Officer** against legally insurable fines or penalties imposed upon the **Officer** in respect of a **Claim** made, or **Facts** notified, in accordance with Section 1.

Sub-limit

The total amount payable under this clause 14.1 is limited to the **Fines and Penalties Sub-Limit** stated in the Schedule in the aggregate for all fines and penalties. For the avoidance of doubt, the Sub-Limit does not apply to **Professional fees** and legal costs and other expenses incurred in connection with a **Claim** resulting in a fine or penalty, where those **Professional fees**, costs or expenses are otherwise covered by this **Policy**.

Section 3: Conditions

15. Liability only to indemnify excess over other insurance

- 15.1 The Authority's liability to indemnify the **Officer** and the **Public Body** to the extent it indemnifies the **Officer** is restricted to a liability to indemnify (as applicable) the **Officer** or **Public Body** for the excess over the amount of any indemnity (as applicable) the **Officer** or **Public Body** is entitled to under any applicable **Policy** of insurance in force available to (as applicable) the **Officer** or **Public Body** and, where so provided, any indemnification provided to (as applicable) the **Officer** by a person other than the **Public Body** or to the **Public Body** by any person. The **Authority** will however indemnify the **Officer** or **Public Body** for any self Insured retention that the **Officer** or **Public Body** is required to pay under such other **Policy** but only for the amount that exceeds the Officer's or Public Body's self Insured retention or **Deductible** under this **Policy** (if any).

16. Liability only to indemnify excess over other indemnity

- 16.1 The **Authority** is not liable to indemnify the **Officer** to the extent that the **Public Body** is legally required or permitted to indemnify the **Officer**, and does so.

17. Limit of liability and deductible

- 17.1 The **Limit of Liability** is the total amount payable by the **Authority** under this **Policy**. Without limitation of the preceding sentence, the **Limit of Liability** is the total amount payable by the **Authority** in respect of all **Claims** in the aggregate made against Officers (or, in the case of alleged Employment practices violations, Officers and Public Bodies (or either)), in respect of the **Policy Period**, including any **Claim** accepted by the **Authority** pursuant to clause 1.3 and any **Professional fees** or legal costs and other costs and expenses incurred by the **Authority** under Section 1, Section 2 and clauses, 25 and/ or 26 of this **Policy**, and including any payment of a self-Insured retention under clause 15, and any reimbursement paid under clause 2.1. **Sub-limits** of liability are part of and are not payable in addition to the **Limit of Liability**. Consequently, the **Authority** is only liable to indemnify a particular **Officer** or **Public Body** or any other person it is liable to indemnify under this **Policy** up to the amount which, with all other amounts the **Authority** has paid or is liable to pay to or on behalf of Officers or Public Bodies or other persons in respect of the **Policy Period**, equals the **Limit of Liability** and the **Authority** shall have no further obligation to make any additional payments whatsoever under this **Policy**. For the purposes of this clause, a **Claim** is made in respect of the **Policy Period** if the **Officer** is entitled to an indemnity in respect of it under clause 1.

This clause 17.1 is subject to clause 30.

- 17.2 Only one **Deductible** will be applicable to all **Claims** or **Professional fees**, legal costs or other expenses covered by Sections 1 and 2 of this **Policy** arising out of the same related or repeated series of acts or omissions.

18. Renewal of the indemnity

- 18.1 At the end of a **Policy Period**, the **Authority** may, at its discretion, renew the **Policy** for another year if the following conditions are met:

- 18.1.1 before the **Policy Period** ends, the **Public Body** completes and lodges an application that is satisfactory to the **Authority**; and

- 18.1.2 the premium set by the **Authority** is paid within 30 days after the **Authority** sends an invoice in respect of that premium.

Section 4: Exclusions

19. Exclusion of claims arising from certain conduct or events

- 19.1 The **Authority** is not liable to indemnify the **Officer** or the **Public Body** in respect of a **Claim** (including, without limitation, **Claims** involving an alleged **Employment practices violation**), **Professional fees** or legal costs or other expenses that would otherwise be covered under Sections 1 or 2 of this **Policy** in connection with, arising from or based upon:
- 19.1.1 The issue of a prospectus, explanatory memorandum or other document which contains an offer for the issue, sale or transfer of securities, or any information or data obtained, developed or collated in the process of preparing such prospectus, explanatory memorandum or other document or the making of any written or verbal representations in connection with such prospectus, explanatory memorandum or other document.
 - 19.1.2 The provision of professional services or the failure to provide professional services in any capacity except that of an **Officer** of the **Public Body**.
 - 19.1.3 The **Officer** gaining a personal profit or advantage or receiving any remuneration to which he or she is not legally entitled, provided that this exclusion shall only apply where the above is established by a judgment or other finding (other than in proceedings brought by or against the **Authority**) by a court or tribunal with jurisdiction at law to finally determine the matter (including the outcome of any appeal) or by written admission by the **Officer**.
 - 19.1.4 The **Officer** improperly benefiting from a securities transaction as a result of using information that is not available to other purchasers and sellers of those securities, provided that this exclusion shall only apply where the above is established by a judgment or other finding (other than in proceedings brought by or against the **Authority**) by a court or tribunal with jurisdiction at law to finally determine the matter (including the outcome of any appeal) or by written admission by the **Officer**.
 - 19.1.5 A dishonest, fraudulent, criminal or malicious act or omission of the **Officer** (whether or not the **Officer** gained or will gain an advantage from it), provided that this exclusion shall only apply where the above is established by a judgment or other finding (other than in proceedings brought by or against the **Authority**) by a court or tribunal with jurisdiction at law to finally determine the matter (including the outcome of any appeal) or by written admission by the **Officer**.
 - 19.1.6 An act or omission or **Facts** that, at the time the **Authority** issues this **Policy**, the **Officer** or **Public Body** knows might give rise to a **Claim**.
 - 19.1.7 An act or omission or **Facts** notice of which has been provided under any **Policy** in force prior to the first day of the **Policy** Period and if such **Policy** covers such **Claim**, including, without limitation, a **Claim** involving an alleged **Employment practices violation**, **Professional fees** or legal costs or other expenses or would cover such but for the exhaustion of limits of liability.
 - 19.1.8 An act or omission or **Facts** the subject of any demand, suit or other proceeding pending, or order, decree or judgment entered against any **Officer** on or prior to the date specified in the Schedule as the **Antecedent Date** and failing a date being specified, the first day of the **Policy** Period.
 - 19.1.9 Any liability of a person other than an **Officer** for which the **Officer** assumes liability or is called upon to pay pursuant to contract and for which the **Officer** would not have been independently liable apart from contract.

- 19.1.10 Any amount for which the **Officer** incurs liability or is called upon to pay in consequence of any intentional breach of contract by the **Officer** or on his or her behalf, provided that this exclusion shall only apply where the above is established by a judgment or other finding (other than in proceedings brought by or against the **Authority**) by a court or tribunal with jurisdiction at law to finally determine the matter (including the outcome of any appeal) or by written admission by the **Officer**.
- 19.1.11 Any conduct or contravention in respect of which a liability is the subject of a prohibition in section 199B(1) of the Corporations Act 2001 (Cth), provided that this exclusion shall only apply where the above is established by a judgment or other finding (other than in proceedings brought by or against the **Authority**) by a court or tribunal with jurisdiction at law to finally determine the matter (including the outcome of any appeal) or by written admission by the **Officer**.
- 19.1.12 The discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere, or any water course or body of waters unless the discharge, dispersal, release or escape is sudden and accidental.

This exclusion shall only apply to the part of any **Claim** that exceeds the Pollution Liability Sub-limit, and does not apply to Professional Costs that are otherwise payable in accordance with this **Policy**. The Pollution Liability Sub-limit does not include **Professional fees**, which are payable up to the **Limit of Liability**

- 19.1.13 Any **Claim** brought or maintained outside the Commonwealth of Australia, resulting from conduct occurring in whole or in part outside of Australia, or resulting from the application of laws of any country, state or territory outside the Commonwealth of Australia.

This exclusion 19.1.13 shall not apply to the extent that it is permissible for the **Authority** to provide indemnity under this **Policy** and not in breach of any local or foreign laws.

- 19.1.14 Any action brought by or on behalf of any **Public Body** against any **Officer** who is an **Employee** in respect of any loss or liability which any **Public Body** may suffer or incur, directly or vicariously as a result of any conduct of the **Employee** in connection with their employment.

This exclusion 19.1.14 shall not apply to duties as a director, secretary, member of the board of management or other capacity in respect of the management of the **Public Body**.

- 19.2 The **Authority** is not liable to provide any indemnity whatsoever, including reimbursement under clause 2, to or in favour of an **Organisation** that is comprised within the term "**Public Body**" that an **Officer** serves as an **Outside director**.
- 19.3 The **Authority** is not liable to indemnify any **Insured** for the **Deductible**. Where the **Deductible** payable by the **Public Body** is the same or greater than the **Deductible** payable by the **Officer**, and the **Public Body** indemnifies the **Officer**, or is reimbursed by the **Authority**, then only the **Deductible** applicable to the **Public Body** will apply and the **Authority** must account for any **Deductible** paid by or on behalf of the **Officer** (whether it is directly paid, or paid by way of deduction from amounts payable under this **Policy**).

20. Exclusion of claims made by certain people

- 20.1 The **Authority** shall not be liable to make any payment under this **Policy** in respect of a **Claim** made against an **Officer** which is brought by or on behalf of the **Public Body** or the State of Victoria with the acquiescence, assent, concurrence, or approval of the

Officer (“**consent**”) where such consent is given voluntarily (rather than legally required) with the intention of encouraging the making of a **Claim**.

21. Exclusion of radioactivity risk

21.1 The **Authority** is not liable to indemnify the **Officer** or the **Public Body** in respect of a **Claim** arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the avoidance of doubt, this exclusion does not apply to radioactive materials or waste commonly found in hospitals and other medical or medical research institutions.

22. Exclusion of conduct occurring prior to retroactive date

The **Authority** is not liable to indemnify the **Officer** or the **Public Body** in respect of a **Claim** (including, without limitation, **Claims** involving an alleged **Employment practices violation**), **Professional fees** or legal costs or other expenses that would otherwise be covered under Sections 1 or 2 of this **Policy** in connection with, arising from or based upon any acts, errors or omissions or a **Wrongful act** which occurred prior to the **Retroactive Date** if one is stated in the Schedule.

Section 5: Making a claim to be indemnified

23. Conditions precedent to an officer's right to be indemnified

23.1 The following are conditions precedent to the Authority's liability under this **Policy** to indemnify an **Officer**:

- 23.1.1 the **Officer** must not admit liability for, or settle, a **Claim** including, without limitation, a **Claim** involving an alleged **Employment practices violation**, without the Authority's prior written consent (which consent shall not be unreasonably withheld or delayed);
- 23.1.2 the **Officer** must give the **Authority** any information or do anything else the **Authority** reasonably requires for the purpose of investigating, defending or settling a **Claim** including, without limitation a **Claim** involving an alleged **Employment practices violation**; and
- 23.1.3 the **Officer** must provide to the **Authority** a signed undertaking in a form provided by the **Authority** to the **Officer** whereby the **Officer** agrees to be bound, and abide, by the terms of this **Policy**.

24. Conditions precedent to Public Body's right to be indemnified

24.1 The following are conditions precedent to the Authority's liability under this **Policy** to indemnify the **Public Body**:

- 24.1.1 the **Public Body** must not admit liability for, or settle, a **Claim** including, without limitation, a **Claim** involving an alleged **Employment practices violation** without the Authority's prior written consent (which consent shall not be unreasonably withheld or delayed); and
- 24.1.2 the **Public Body** must give the **Authority** any information or do anything else that the **Authority** reasonably requires for the purpose of investigating, defending or settling a **Claim** including, without limitation, a **Claim** involving an alleged **Employment practices violation**.

25. Authority may settle claims with the officer's consent

25.1 The **Authority**:

- 25.1.1 is entitled (but not obliged), at its own cost, to take over and **Control** the conduct of the **Investigation**, defence and settlement of a **Claim** against an **Officer** including, without limitation, a **Claim** involving an alleged **Employment practices violation** against the **Officer**; and.
- 25.1.2 may with an Officer's consent settle a **Claim** against the **Officer** including, without limitation a **Claim** involving an alleged **Employment practices violation** against the **Officer**.

In relation to a **Claim** alleging an **Employment practices violation** by an **Officer** (but not otherwise), the **Officer** shall be entitled to effectively associate in the **Investigation**, defence and settlement of the **Claim** and shall be consulted in advance by the **Authority** regarding the **Investigation**, defence and settlement, including the negotiation of any settlement of such **Claim**.

If an **Officer** does not consent to a settlement proposed by the **Authority** of a **Claim** against the **Officer** including, without limitation, a **Claim** involving an alleged **Employment practices violation** by the **Officer**, the **Authority** may only settle the **Claim** in accordance with the dispute resolution procedure set out in clause 31.

If a **Claim** is made against an **Officer** by the **Public Body**, the **Authority** shall have no duty or obligation to communicate with any other **Officer** or any **Public Body** in relation to that **Claim**.

26. Authority may settle claims with the Public Body's consent

26.1 If indemnity is sought by the **Public Body** pursuant to clause 2, the **Authority** may settle the **Claim** including, without limitation a **Claim** involving an alleged **Employment practices violation** with the **Public Body's** consent. If the **Public Body** does not consent, the **Authority** may only settle the **Claim** in accordance with the dispute resolution procedure set out in clause 31. The **Authority** is entitled (but not obliged), at its own cost, to take over and **Control** the conduct of the **Investigation**, defence and settlement of a **Claim** where an **Employment practices violation** is alleged.

Section 6: General

27. Cancellation, avoidance and rescission

- 27.1 The **Authority** is entitled to cancel this **Policy** in respect of any **Officer** or **Public Body** that has:
- 27.1.1 failed to comply with the duty of disclosure that would apply if this **Policy** were a contract of insurance to which the *Insurance Contracts Act 1984* (Cth) applies;
 - 27.1.2 failed to comply with the duty of utmost good faith that would apply if this **Policy** were a contract of insurance to which the *Insurance Contracts Act 1984* (Cth) applies;
 - 27.1.3 made material misrepresentation before this **Policy** was issued;
 - 27.1.4 failed to comply with a material provision of this **Policy**; or
 - 27.1.5 made a fraudulent **Claim** under this **Policy**.
- 27.2 The **Authority** may exercise any right to cancel cover in respect of an **Officer** or **Public Body** under clause 27.1 by giving the **Public Body** not less than 21 days prior written notice of cancellation.
- 27.3 Without limitation of clause 27.4, the cancellation of this **Policy** in respect of any **Officer** or **Public Body** does not affect this **Policy** in respect of any other **Officer** or **Public Body**.
- 27.4 Subject to clause 27.1, the **Authority** must not avoid, rescind or otherwise terminate this **Policy** in whole or in part for any reason, other than a termination that is mutually agreed in writing between the **Authority** and the **Public Body** named as the **Policyholder**.

28. Obligations apply to officers separately and protection of innocent Insureds

- 28.1. Indemnity under this **Policy** for an **Insured** shall not be prejudiced by any act or omission by, or any knowledge or information possessed by, any other **Insured**. In particular:
- 28.1.1 no statement or omission in an application to the **Authority** for indemnity or any of its attachments, and no knowledge or information possessed by an **Insured** (whether before or after the commencement of this **Policy**), shall be imputed to any other **Insured**;
 - 28.1.2 for the purpose of determining the availability of indemnity under this **Policy** including (without limitation) the applicability of any exclusion:
 - a) no state of mind or knowledge or information possessed by any **Insured** (whether before or after the commencement of this **Policy**) shall be imputed to any other **Insured**; and
 - b) no act, statement, representation, conduct, breach (including, without limitation, a breach of this **Policy**), contravention, error or omission of any **Insured** (whether before or after the commencement of this **Policy**) shall be imputed to any other **Insured**.
 - 28.1.3 Without limiting clauses 28.1.1 and 28.1.2, where an act, omission, knowledge or information of an **Insured** entitles the **Authority** to refuse or reduce indemnity under this **Policy** (either in respect of a particular **Claim** or more generally), the **Authority** shall not refuse or reduce indemnity for any other **Insured** on the basis of the first **Insured's** act, omission, knowledge or information.
- 28.2 Without limiting clause 28.1 but subject to clause 27:

28.2.1 where:

- a) one or more Insureds:
 - i) breach a duty or obligation owed by the **Insured** to the **Authority** (whether the duty or obligation arises under this **Policy**, statute or otherwise and whether or not the breach is fraudulent and whether or not it occurred before or after the inception of this **Policy**); or
 - ii) engage in any other act, conduct or omission whether or not it is fraudulent and whether engaged in before or after the inception of this **Policy**; and
- b) the breach, act, conduct or omission enables the **Authority** to exercise any legal rights having the effect of denying cover in whole or in part (whether in respect of a particular **Claim** or more generally) ("**Cover Limiting Rights**");
- c) one or more innocent Insureds ("**Innocent Insureds**") were not knowingly involved in the breach, act, conduct or omission; and
- d) but for this clause the **Authority** is legally entitled to and intends to exercise the Cover Limiting Rights,

28.2.2 then:

- a) the **Authority**, if legally entitled to do so, may exercise the Cover Limiting Rights against the Insureds other than the Innocent Insureds ("**Breach Insureds**") subject to complying with any applicable legal requirements; and
- b) the **Authority** must not exercise the Cover Limiting Rights against any Innocent Insureds; and
- c) the exercise of any Cover Limiting Rights against any Breach Insureds must not affect the cover under this **Policy** for the Innocent Insureds.

28.3 Nothing in clauses 28.1 and 28.2 (or either) is to be construed as increasing the **Limit of Liability** specified in the Schedule.

29. Application of Insurance Contracts Act 1984 (cth)

29.1 Subject to clauses 29.2, 29.3 and 29.4, this **Policy** is to be construed as if it were a contract of insurance to which the *Insurance Contracts Act 1984* (cth) applies, on the basis that the **Authority** is an insurer and the **Public Body** and the **Officers** are the **Insured**.

29.2 Clause 29.1 does not apply:

29.2.1 where a provision of the *Insurance Contracts Act* is specifically excluded by this **Policy**; and

29.2.2 in all other cases, where a provision of the *Insurance Contracts Act* is inconsistent with a provision of this **Policy**, in which case the latter provision will prevail to the extent of any inconsistency.

29.3 The following sections of the *Insurance Contracts Act* are specifically excluded from applying to this **Policy**:

11A, 11AA 11AAA – 11E, 15, 21A, 22, 25, 29, 30, 32, 32A, 37, 38, 39, 40(2), 42, 43, 45, 48AA, 48A 52, 55A, 58, 69, 70, 71, 74, 75, 76, 76A

29.4 Notwithstanding anything to the contrary, under no circumstances will the **Authority** be deemed to incorporate any penalty provision in this **Policy** or be subject to any penalty or penalty provisions of the *Insurance Contracts Act*. For the purpose of this clause, payment

of penalty interest pursuant to section 57 of the *Insurance Contracts Act* is not considered to be a penalty or penalty provision.

30. Order of payments

30.1 Where at any time the **Authority** is obliged to make payment under this **Policy** to or on behalf of Officers and to or on behalf of Public Bodies and the **Limit of Liability** is insufficient to enable the **Authority** to make all of the payments in full as to 100 cents in the dollar, the **Authority** must make payments to or on behalf of the Officers in priority to the payments to and on behalf of Public Bodies so that any shortfall shall be borne by the Public Bodies.

31. Dispute resolution procedure

31.1 For the purposes of clauses 25 and 26, disputes shall be resolved by the opinion of a Queen's Counsel or Senior Counsel to be agreed between the parties, the cost of which will be paid for by the **Authority**. If agreement cannot be reached, the Queen's Counsel or Senior Counsel is to be appointed by the Chair of the Victorian Bar Council. Any opinion for the purposes of clauses 25 and 26 must state whether any proposed settlement is appropriate in all the circumstances and must take proper account of the interests of the **Officer** or of the **Public Body**.

32. Reinstatement of limit

32.1 Subject to clauses 32.1.3 and 32.1.4, in the event of the whole or any portion of the **Limit of Liability** being exhausted by a **Claim** or other indemnity provided under this **Policy**, the amount so exhausted shall be reinstated to the same amount, provided always:

32.1.1 the reinstatement does not apply to:

- a) Any existing **Claim**
- b) **Claims** arising from known **Facts**
- c) any existing **Claim** or indemnity provided or could have been provided if the **Officer** or **Public Body** had or should have notified the **Authority**, under Section 2 of the **Policy**

32.1.2 if the **Officer** or **Public Body** has other insurance, then the reinstatement will not apply until the other insurance has been exhausted.

32.1.3 The reinstatement shall only apply from the time that the **Public Body** and/or **Officer** confirms in writing to the **Authority** to provide the reinstatement. No extra premium will be charged by the **Authority** for the reinstatement pursuant to clause 32.1

32.1.4 The **Number of Reinstatements** pursuant to clause 32.1 any one **Policy** Period shall be limited to the **Number of Reinstatements** stated in the Schedule.

32. Definitions

Antecedent date means the date specified as such in the Schedule.

Authority means the Victorian Managed Insurance Authority.

Claim without limitation of clause 1.3, means:

- a) any written demand or civil, criminal, administrative, regulatory or arbitration proceeding or any mediation, conciliation or other alternative dispute resolution process seeking compensation, damages or other legal remedy (including extradition or disqualification) for an alleged **Wrongful act**, including any appeal therefrom by the **Insured** or any other party; or
- b) any **Investigation** (including any civil, criminal, administrative or regulatory proceeding against the **Officer** by or on behalf of an **Official body** conducting an **Investigation** and any appeal therefrom by any party) whether or not a **Wrongful act** has been alleged; or
- c) any matter involving the incurring by or on behalf of an **Officer** of costs and expenses described in clauses 10, 11, and 12.

Control of a **Public Body** includes the direct or indirect power to directly or indirectly:

- a) direct the management or policies of the **Public Body**;
- b) **Control** the membership of the board of directors or board of management of the **Public Body**; or
- c) **Control** the membership of the **Public Body**, whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights, and whether or not it arises by means of trusts, deeds, arrangements, understandings, practices, the ownership of any interest in shares or stock or otherwise.

Deductible means the **Deductible** stated in the Schedule, and is the first part of a **Claim**, **Professional fees**, or legal costs or other costs or expenses that shall not be covered by the **Policy** and shall remain to the **Officer's** or the **Public Body's** account.

Department means a **Department** or an office that is a '**Department**' pursuant to section 3 of the **VMIA Act**.

Employee means any person who is or has been (or who alleges that but for the **Employment practices violation** would have been) employed by the **Public Body** under a contract of service and includes such persons employed on a part time, seasonal or temporary basis. **Employee** does not include a person contracting his or her labour to the **Public Body** unless on a permanent and full time basis.

Employment practices violation means: actual or alleged conduct of the following kind against an **Employee** by the **Public Body**, or by another **Employee** in the course of that other **Employee's** employment with the **Public Body**:

- a) unlawful discrimination, wrongful demotion, wrongful discipline or failure or refusal to promote;
- b) actual or constructive termination of the contract of service in breach of the law;
- c) denial of natural justice in connection with failing to employ or promote, decision to demote, discipline, terminate or failure to comply with any actual or alleged breach of any oral or written employment contract;
- d) misrepresentation or defamation;
- e) the infliction of emotional distress;
- f) wrongful retaliatory or vindictive conduct;
- g) wrongful damage to deprivation of career opportunity;
- h) harassment (sexual or otherwise);
- i) failure or refusal to hire a potential **Employee**; or
- j) invasion or breach of the right of privacy.

Employment Practices Violation Sub-limit means the Employment practices violation Sub-limit stated in the Schedule.

Executive Officer means, in respect of the **Public Body** or another **Organisation**, a person:

- a) who makes or participates in making decisions that affect the whole or a substantial part of the business or operations of the **Public Body** or other **Organisation**; or
- b) who has the capacity to affect significantly the financial standing of the **Public Body** or other **Organisation**; or
- c) where the **Public Body** or other **Organisation** is a corporation under the *Corporations Act 2001* (Cth), in accordance with whose instructions or wishes the directors or Executive Officers of the **Public Body** or other **Organisation** are accustomed to act.

Facts means **Facts**, acts, omissions or circumstances that the **Officer** becomes aware of that will or may give rise to a **Claim** under this **Policy**.

Financial impairment in relation to a **Public Body** that is a body corporate means the happening of any of the events prescribed in regulation 7.5.02 of the *Corporations Regulations 2001* (Cth).

Fines and Penalties Sub-Limit means the Fines and Penalties Sub-Limit stated in the Schedule.

Insured means the **Officer** and the **Public Body**.

Investigation means any hearing, examination, **Investigation** or inquiry or administrative or regulatory proceeding (including, without limitation, a professional disciplinary proceeding) conducted by an **Official body** in respect of which:

- a) an **Officer** becomes legally compelled to attend or to provide documents or other information in his or her capacity as an **Officer** of the **Public Body**; or
- b) an **Officer** has reasonable grounds to believe that the **Officer's** conduct in his or her capacity as an **Officer** of the **Public Body** is being or is to be considered by the hearing, examination, **Investigation**, inquiry or proceeding.

Limit of Liability means the Limit of Liability stated in the Schedule.

Number of Reinstatements means the Number of Reinstatements stated in the Schedule

Officer means a person who:

- a) is a director or member of the board of management of the **Public Body**; or
- b) is a secretary, **Officer**, **Executive Officer** or other person concerned in, or who takes part in, the management of the **Public Body**; or
- c) where the **Public Body** is a **Statutory Authority** that does not have a board of management – is a member of the **Authority**; or
- d) where the **Public Body** is a cemetery trust established pursuant to the *Cemeteries and Crematoria Act 2003 (Vic)* – is a member of the cemetery trust; or
- e) where the **Public Body** is a rural health service – is an **Executive Officer** of the rural health service; or
- f) is an **Employee** of the **Public Body**, but only in respect of **Claims** involving an alleged **Employment practices violation** by the **Employee**; or
- g) is an **Outside director**; or
- h) for the purposes of clause 9 – is the spouse or domestic partner of a person who is an **Officer** under paragraphs (a), (b), (c), (d) or (e) of this definition; or
- i) was a person referred to in paragraphs (a), (b), (c), (d) or (e) of this definition prior to the commencement of this **Policy** and who is not such a person at the commencement of this **Policy**, but only in respect of **Facts**, acts, omissions or circumstances that occurred whilst that person occupied any of the positions referred to in those paragraphs.

Official body means any regulator, government, governmental body, governmental or administrative agency, self-regulatory body, professional body, **Authority**, royal commission, commission of inquiry, parliamentary committee, Coroner's Court or any other person or body having legal **Authority** to conduct an **Investigation**.

Organisation means any body, company, association, trust, **Authority** or entity.

Outside director means a person referred to in paragraphs (a), (b), (c), (d) or (e) of the definition of "**Officer**" who serves as a director or **Executive Officer** of an **Organisation** that is not within the ambit of paragraphs (a) to (c) of the definition of "**Public Body**" at the request of

or with the authorisation (whether explicit or tacit) of any **State company, Statutory Authority, Department, Participating body or Organisation or Subsidiary** referred to in paragraphs (a) to (c) of the definition of “**Public Body**”.

Participating body means any of the following:

- a) a ‘**Participating body**’ as defined in section 3 of the **VMIA Act**;
- b) a **Department** of the Parliament of Victoria declared by the relevant Minister (in compliance with section 4(2) of the **VMIA Act**) by notice published in the Government Gazette of Victoria pursuant to section 4(1) of the **VMIA Act** to be a **Participating body** for the purposes of the **VMIA Act**;
- c) a **Statutory Authority**, other than a **Statutory Authority** referred to in paragraph (b) of the definition of ‘**Participating body**’ in section 3 of the **VMIA Act**, declared by the relevant Minister by notice published in the Government Gazette of Victoria pursuant to section 4(1) of the **VMIA Act** (following compliance with section 4A(3) of the **VMIA Act**);
- d) a body corporate, other than a body corporate referred to in paragraph (c) of the definition of ‘**Participating body**’ in section 3A of the **VMIA Act**, in which the State of Victoria has a **Controlling** interest as defined in section 3A of the **VMIA Act**, declared by the relevant Minister by notice published in the Government Gazette of Victoria pursuant to section 4(1) of the **VMIA Act** (following compliance with section 4A(3) of the **VMIA Act**) to be a **Participating body** for the purposes of the **VMIA Act**.

Policy means this **Policy** document, including the **Policy** schedule and all endorsements to this **Policy**.

Policy period means the **Policy Period** stipulated in the Schedule.

Pollution liability claim means any **Claim** and/or Professional or other costs that may be covered under Sections 1 and 2 of this **Policy** arising directly or indirectly from the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere, or any water course or body of waters unless the discharge, dispersal, release or escape is sudden and accidental.

Pollution Liability Limit Sub-Limit means the Pollution Liability Sub-limit stated in the Schedule.

Professional fees means any reasonable legal, accounting and other **Professional fees** (including expert witness fees), incurred with the **Authority’s** prior written consent (which shall not be unreasonably delayed or withheld) by or on behalf of an **Officer** in the **Investigation**, defence, settlement or appeal of any **Claim** (whether civil or criminal) against the **Officer**, or otherwise indemnified by this **Policy**. **Professional fees** also includes travel and other costs that are reasonable and necessary in the **Investigation**, defence, settlement or appeal of any **Claim** against the **Officer**. **Professional fees** does not include salary and wages of the **Officer** or any **Public Body** personnel. For the purposes of this definition, **Claim** shall include an alleged **Employment practices violation**.

Protection of Freedom Sub-Limit means the Protection of Freedom Sub-Limit stated in the Schedule.

Protection Of Assets Sub-Limit means the Protection of Assets Sub-Limit stated in the Schedule.

Public Body means:

- a) the **State company, Statutory Authority, Department, Participating body or Organisation** named in the Schedule as the Policyholder;
- b) all Subsidiaries of the Policyholder referred to in paragraph (a) ;
- c) any **Organisation** that becomes a **Subsidiary** of the Policyholder referred to in paragraph (a), regardless of whether or not the **Authority** is given notice of the new **Subsidiary**; and
- d) any **Organisation** that an **Officer** serves as an **Outside director**.

Public Media Expenses Sub-Limit means the Public Media Expenses Sub-Limit stated in the Schedule.

Raid means the exercising, with or without warning, by a statutory, regulatory or other governmental body of a power or purported power by way of search warrant, court order or otherwise, to enter premises occupied by the **Public Body** or **Officer** ("**the premises**") for the purpose of inspecting, examining, investigating, seizing, copying or otherwise gaining access to property at the premises.

Retroactive Date means the Retroactive Date stated in the Schedule.

State company means a company that is a '**State company**' pursuant to section 25 of the **VMIA Act**.

Statutory authority means a **Statutory Authority** and includes a State body within the meaning of the State Owned Enterprises Act 1992 (Vic).

Sub-limits means any of the **Sub-limits** stated in the Schedule and includes (but not limited to) the **Fines and Penalties Sub-Limit**, the **Protection of Freedom Sub-Limit**, the **Protection of Assets Sub-Limit**, the **Public Media Expenses Sub-Limit**, the **Pollution Liability Sub-limit** and the **Employment practices violation Sub-limit**.

Subsidiary means any entity that is directly or indirectly Controlled by the **Public Body** named in the Schedule through ownership or **Control** of more than 50% of the issued voting shares or capital of the entity and including any entity whose financial accounts are incorporated in those of the **Public Body** named in the Schedule by virtue of accounting standard AASB 1024 or equivalent standard.

Trigger event in relation to a **Public Body** means:

- a) a change in **Control** of the **Public Body**;
- b) the **Public Body** consolidates with or is merged with, as applicable, any other **State company, Statutory Authority, Department, Participating body or Organisation**; or

- c) the business or substantially all of the business of the **Public Body** is transferred to or amalgamated with the business of any other **State company, Statutory Authority, Department, Participating body or Organisation**.

VMIA act means the Victorian Managed Insurance Authority Act 1996 (Vic).

Wrongful act means:

- a) any actual, or alleged or attempted breach of duty (including an **Employment practices violation**), breach of trust, neglect, error, misstatement misrepresentation, misleading statement, omission, breach of warranty of **Authority**, breach of statute or instrument made under or pursuant to statute, breach of contract, libel or slander, infringement of intellectual property rights, contravention of any directive, standard, declaration, direction, **Policy** statement, guidance notice or similar instrument issued by any competent government or regulatory body or other act done by any **Officer** in his or her capacity as such; or
- b) any liability asserted against an **Officer** in his or her capacity as such.

Privacy Statement

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

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

Collection and use of Personal Information

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

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

Access and Correction

If you:

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

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

Officer's undertaking

Officer's undertaking pursuant to clause 23.1.3 of the VMIA D&O Policy of Insurance effective between 30/6/2014 and 30/6/2015, copy of **Policy** attached.

Between: *[Name]*..... (**Officer**)

And

Victorian Managed Insurance Authority (VMIA)

In consideration of the VMIA agreeing to consider entitlement of indemnity, making any payment, providing any benefit, or agreeing to indemnify the **Officer**, the **Officer** agrees to the following:

1. The **Officer** will be bound by the **Policy** (including all express and implied terms, and any obligations that are implied by the common law) as if the **Policy** had been a direct contract between the **Officer** and the VMIA.
2. Agree that the duty of utmost good faith applies to this **Policy** and the **Officer** will act accordingly.
3. For the purpose of this deed, the definitions of the **Policy** will be applicable to this Agreement.
4. In the event that any part of these terms, conditions or provisions shall be deemed invalid, unlawful or unenforceable to any extent, such terms, conditions or provisions shall be severed from the remaining terms and conditions which shall continue to be valid and enforceable to the fullest extent permitted by law.

Signed by the)
Said Officer)
In the)
presence of)
)

Officer

Witness & Name

This day of.....201.....