

Professional Indemnity

Master Policy PRO2014V1

Issued to General Government Program
clients of VMIA

For the period 30 June 2014 to 30 June 2015

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Professional Indemnity Master Policy

This Policy incorporates the Schedule, Extensions, Memoranda and Endorsements (if any) which are to be read together, and any word or expression to which a specific meaning has been given in any part of this Policy shall bear this meaning wherever it may appear.

Whereas the **Insured**, carrying on the Profession(s) described in the Schedule, has made to the Victorian Managed Insurance Authority ("VMIA") a written proposal and declaration which shall be the basis of this contract and deemed to be incorporated herein.

And whereas the **Insured** has paid or agreed to pay the Premium referred to in the Schedule.

Insuring clauses

The VMIA hereby agrees subject to the limitations, terms and conditions hereinafter mentioned or endorsed hereon:

1. To indemnify the **Insured** against any claim or claims which may be made against the **Insured** and which are notified to the VMIA during the Period of Insurance specified in the Schedule:
 - (a) for breach of professional duty in the Profession(s) stated in the Schedule, by reason of act, error or omission committed or alleged to have been committed after the Retroactive Date if one is specified in the Schedule wherever the same was or may have been committed or alleged to have been committed on the part of the **Insured** in the conduct of any business carried on by or on behalf of the **Insured** in the professional capacity or capacities specified in the Schedule; and
 - (b) by reason of act, error or omission committed or alleged to have been committed after the Retroactive Date if one is specified in the Schedule arising in respect of any appointments held individually by any of the **Insured** when acting as Trustees or Executors of any deed or will or as Trustees, Receivers, Managers, Liquidators, Directors or Secretaries of companies or bodies corporate (including partial secretarial work such as share transfers and the like or as manager of a charity) provided the income or fees received from such appointments form part of the income of the business of the **Insured** and only if such claim or claims would have been covered under sub-paragraph (a) above but for the fact that such person was so acting; and
 - (c) for financial loss caused directly by a breach of Professional duty in the **Profession** stated in the Schedule by the **Insured** (which is neither deliberate nor fraudulent, and which occurs after the Retroactive Date if one is specified in the Schedule) which is misleading or deceptive conduct at law or under the Corporations Act 2001 (Cth), Australian Securities and Investments Commission Act 2001 (Cth), Competition and Consumer Act 2010 (Cth) or the equivalent Sections of the Fair Trading Act enacted by the States and Territories of Australia, except in respect of any part of any such **Claim** or **Claims** made pursuant to the penal or criminal provisions of those Acts;
 - (d) for libel and slander committed or alleged to have been committed after the Retroactive Date if one is specified in the Schedule by the **Insured** in the conduct of the Profession stated in the Schedule; and
 - (e) for breach of professional duty in the **Profession** stated in the Schedule arising out of or contributed to by the dishonest, fraudulent, criminal or malicious conduct committed or alleged to have been committed after the Retroactive Date if one is specified in the Schedule of employees, fellow directors or fellow officers but this

Policy does not provide indemnity to any person committing or condoning such dishonest, fraudulent, criminal or malicious conduct.

The indemnity provided by the VMIA under this sub-paragraph excludes claims for loss of money, negotiable instruments, bearer bonds or coupons, stamps and bank or currency notes;

- (f) for **Personal Injury** or **Property Damage** by reason of act, error or omission committed or alleged to have been committed after the Retroactive Date (if one is specified in the Schedule) but prior to 4.00PM AEST on 30 June 2010, and
2. In addition to the Limit of Indemnity to pay the costs and expenses incurred with the written consent of the VMIA in the defence or settlement of any such **Claim**, provided that if a payment in **Excess** of the amount of indemnity available under this Policy has to be made to finalise a **Claim**, the liability of the VMIA for such costs and expenses incurred with its consent shall be such proportion thereof as the amount of indemnity available under this Policy bears to the amount paid to finalise the **Claim**.

Definitions

Wherever used in this Policy, the following terms shall be deemed to have the meanings ascribed to them below:

1. Claim

A **Claims** or **Claims** means;

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

2. Excess

the amount referred to in the Schedule and includes the costs of investigating, defending and settling the **Claim**.

3. Insured

Each of the following is an **Insured** to the extent set forth hereunder:

- (a) the corporation, department, agency, division or other entity specified in the Schedule as the **Insured**;
- (b) all subsidiary corporations or entities (now or hereafter constituted) of the **Insured** or any other company or entity coming under the **Insured**'s control or in which it assumes participative management;

- (c) any minister, public servant, director, partner, executive, officer, employee, shareholder or appointee of the **Insured** designated in paragraphs (a) and (b) above, and any person serving in an official capacity of the **Insured** designated in paragraphs (a) and (b) above, but only whilst acting within the scope of their duties in such capacities;
- (d) any principal in respect of the liability of such principal arising out of the performance by the **Insured** or by a corporation or entity designated in paragraph (b) above or any contract or agreement for the performance of work for such principal, to the extent required by such contract or agreement;
- (e) any office bearer or member of any social and/or sporting welfare and/or child care facilities formed with the consent of the **Insured** (other than an **Insured** designated in paragraph (d) above) in respect of claims arising from duties connected with activities of any such club;
- (f) any incorporated or unincorporated associations or organisations (now or hereafter constituted) organised by the **Insured**, for the purpose of providing canteen, social, sports, welfare and/or child care organisations or first aid, medical, fire or ambulance services and/or educational activities for such employees and/or their families;
- (g) at the written request of the **Insured** designated in paragraphs (a) and (b) above; any director, partner or executive officer of such **Insured** in respect of private work undertaken by such **Insured**'s employees for such director, partner or executive officer;
- (h) any party who enters into an agreement with an **Insured** designated in paragraph (a) and (b) above for the purposes of the Business referred to in the Schedule but only to the extent to which such **Insured** is required by such agreement to grant such indemnity.

4. The Profession

shall include the Profession as described in the Schedule and:

- (a) the activities of any canteen, social, sports, welfare and/or child care organisations or first aid, medical, fire or ambulance services referred to in paragraph 3(f) above;
- (b) private work undertaken by employees of the **Insured** designated in paragraphs 3 (a) and (b) above, for any director, partner or executive officer of such **Insured**, subject to paragraph 3(g).

5. Personal Injury

- (a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and/or mental injury including loss of services resulting therefrom;
- (b) false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation.

6. Property Damage

- (a) physical loss or destruction of or damage to tangible property which occurs during the Period of Insurance, including the loss of use thereof at any time resulting therefrom; or
- (b) loss of use of tangible property which has not been physically lost, destroyed or damaged provided such loss of use is caused by an Occurrence during the Period of Insurance.

Exclusions

1. This policy does not apply to and does not provide indemnity in respect of:
 - (a) any **Claim** for **Personal Injury** or **Property Damage** by reason of act, error or omission committed or alleged to have been committed on or after 4.00PM AEST on 30 June 2010.
 - (b) any **Claim** brought about or contributed to by loss or damage to documents, save to the extent that indemnity may be provided by Extension 2;
 - (c) subject to the insuring clause 1(c) of the Policy, any liability which the **Insured** may incur pursuant to any provision of the Competition and Consumer Act 2010 (Cth) or any Fair Trading Act enacted by a State or Territory of the Commonwealth of Australia.

This exclusion does not apply to a liability which would have attached to the **Insured** pursuant to the Law of Tort in the absence of such statutory liability;

- (d) any legal liability of whatsoever nature imposed upon the **Insured** pursuant to a contract or agreement unless such liability would also have attached to the **Insured** notwithstanding such contract or agreement ;
- (e) any legal liability of whatsoever nature directly or indirectly arising:
 - (i) out of any act, error or omission committed or alleged to have been committed within the territorial limits of the United States of America, its Territories or Protectorates, or Canada; or
 - (ii) in accordance with and pursuant to the laws of the United States of America, or Canada;
- (f) any **Claim** brought against the **Insured** in a court of law outside the Commonwealth of Australia, Papua New Guinea or New Zealand; nor in respect of any action brought in a court of law within the Commonwealth of Australia, Papua New Guinea or New Zealand to enforce a foreign judgement whether by way of reciprocal agreement or otherwise;
- (g) any **Claim** for which the **Insured** is or would be entitled to any indemnity under any other Insurance required by law to be in effect or any other Insurance, Statutory Fund or Fidelity Fund of any description;
- (h) fines, penalties, punitive damages or exemplary damages.

2. This Policy shall not indemnify the **Insured** in respect of:

- (a) any **Claim** made against the **Insured** prior to the commencement of the Period of Insurance stated in the Schedule; or
- (b) any **Claim** or circumstances notified under any previous policy; or
- (c) any **Claim** or circumstances which may give rise to a claim which was known to the **Insured** at the inception date or any subsequent renewal of this Policy; or
- (d) any **Claim** or circumstance which is stated on the proposal or declaration, either of which is the basis of this contract. This Exclusion 2(d) relates to the act, error or omission from which any **Claim** or circumstance so disclosed in the proposal or declaration arises, irrespective of how such disclosure is expressed in the proposal or declaration.

- 2.1 Notwithstanding Exclusion 2 of this policy, the VMIA will indemnify the **Insured** in respect of any **Claim** that arises from facts that were known to the **Insured**, but were not notified to the VMIA during a previous period of indemnity, if:
- 2.1.1 the VMIA had agreed to indemnify the **Insured** at the time the facts first became known to it ('the previous indemnity period') and has continued to agree to provide such indemnity from then until the date of actual notification;
 - 2.1.2 but for the failure of the **Insured** to notify the VMIA during the previous indemnity period, the **Insured** would have been entitled to indemnity from the VMIA during the previous indemnity period;
 - 2.1.3 but for Exclusion 2 (c), the **Insured** would be entitled to indemnity under this policy;
 - 2.1.4 the **Insured** has not committed or attempted to commit fraudulent nondisclosure or fraudulent misrepresentation.
- 2.2 The VMIA is only liable to indemnify the **Insured** under clause 2.1 to the extent that it would have been obliged to indemnify it under the conditions in effect during the previous indemnity period. The VMIA may reduce its liability to the **Insured** by the amount that fairly represents the extent to which the VMIA has been prejudiced as a result of the late notification.
3. If any claim under this Policy shall be in any respect fraudulent or if any fraudulent means or devices are used by the **Insured** or anyone acting on the **Insured's** behalf to obtain any benefit under this Policy, all benefit hereunder shall be forfeited.
4. This Policy does not cover loss, damage or liability directly or indirectly occasioned by, or
- (a) happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power to confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority;
 - (b) (i) caused by or arising from or in consequence of or contributed to by nuclear weapons materials; or
 - (ii) arising from or in consequence of or contributed to by ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self-sustaining process of nuclear fission.
5. This Policy shall not indemnify the **Insured** in respect of any **Claim** made against the **Insured** which relates to any duty or obligation assumed by the **Insured** which is not assumed in the normal conduct of the **Insured's** profession as stated in the Schedule unless such duty or obligation has been stated in the proposal or declaration and is incorporated in this Policy by specific Endorsement appearing herein.
6. This Policy shall not indemnify the **Insured** in respect of any **Claim**, which arises directly or indirectly from, or is in any way connected with, the failure of any Computer Equipment to meet Year 2000 Conformity.

Year 2000 Conformity means that neither performance nor functionality is affected by dates prior to, during or after the year 2000. The conditions that must be met include the following:

- (a) no value for current date will cause any interruption in operation;
- (b) date based functionality must behave consistently for dates prior to, during and after the year 2000;
- (c) in all interfaces and data storage, the century in any date must be specified either explicitly or by unambiguous algorithms or inferencing rules;
- (d) year 2000 must be recognised as a leap year in terms of handling both 29 February and day 366;
- (e) 9 September 1999 must be recognised as that date.

These specific conditions do not in any way restrict the ambit of the general definition of Year 2000 Conformity.

7. This policy does not apply to, and does not provide indemnity, in respect of legal liability of the **Insured** or of any Professional Person for **Personal Injury**, loss or damage, caused by error, omission or breach of professional duty in the provision of Health Care Services, to a patient or client of a Professional Person.

“Professional Person” means any person appointed, engaged or employed by the **Insured** to provide Health Care Services and for whose conduct the **Insured** is liable at law.

“Health Care Services” means the provision of surgical, medical, radiological, anaesthetic, paramedical or nursing services rendered to patients, including the provision of diagnostic and therapeutic procedures.

Conditions

1. The liability of the VMIA hereunder shall not exceed in the aggregate for all **Claims** under this Policy (including any Extension hereto) the Limit of Indemnity stated in the Schedule, except that (subject to the provisions hereof) the VMIA will in addition pay the costs and expenses incurred in the defence or settlement of any **Claim**.
2. The **Insured** shall not admit liability for or settle any claim or incur any costs or expenses in connection therewith without the written consent of the VMIA which shall be entitled to take over conduct, in the name of the **Insured**, of the defence or settlement of any **Claim**.

The VMIA may, if it believes that a claim will not exceed the **Excess** stated in the Schedule, instruct the **Insured** to conduct the defence of such claim. In such circumstances the VMIA will reimburse the **Insured** for all reasonable defence costs in the event that any payment properly made by way of damages to dispose of the **Claim** exceeds such **Excess**.

3. The **Insured** shall as a condition precedent to their right to be indemnified under this Policy give to the VMIA immediate notice in writing of any **Claim** made against the **Insured** whether such claim be oral or in writing and shall upon request, give to the VMIA such information as the VMIA shall be entitled to **Claim** indemnity or contribution at any time in the name of the **Insured** from any party against whom the **Insured** may have such rights.
4. If during the currency of this Policy the **Insured** shall become aware of any circumstances which may subsequently give rise to a **Claim** against them for breach of professional duty as specified in the Schedule by reason of any act, error or omission and shall during the subsistence hereof give written notice to the VMIA of such occurrence, then any such **Claim** which may subsequently be made against the **Insured** arising out of the act, error or omission shall for the purposes of this Policy be deemed to have been made during the subsistence hereof.
5. All notifications to the VMIA including notification of **Claims** or circumstances, shall be given to the VMIA.

Cancellation

1. This Policy may be cancelled at any time at the request of the **Insured**, in which case the VMIA will retain the customary short-period rate for the time this Policy has been in force.
2. The VMIA may also cancel this Policy by giving the **Insured** written notice to that effect where:
 - (a) the **Insured** or any person who was at any time the **Insured** failed to comply with the duty of utmost good faith;
 - (b) the person who was the **Insured** at the time when this Policy was entered into failed to comply with the duty of disclosure;
 - (c) the person who was the **Insured** at the time when this Policy was entered into made a misrepresentation to the VMIA during the negotiations for this Policy but before it was entered into;
 - (d) the **Insured** or any person who was at any time the **Insured** failed to comply with a provision of this Policy, including a provision with respect to the payment of the Premium;
 - (e) the **Insured** has made a fraudulent claim under this Policy or any other policy of insurance (whether with the VMIA or some other insurer that provided insurance cover during any part of the period during which this Policy provides insurance cover;
 - (f) the **Insured** failed to notify the VMIA of any specific act or omission where such notification is required under the terms of this Policy; or
 - (g) the **Insured** acted in contravention of or omitted to act in compliance with any condition of this Policy which empowers the VMIA to refuse to pay, or reduce its/their liability in respect of, a claim in the event of such contravention or omission.
3. The VMIA notice of cancellation takes effect at the earlier of the following times:
 - (a) the time when another policy of insurance between the **Insured** and the VMIA or some other insurer, being a policy that is intended by the **Insured** to replace this Policy, is entered into; or
 - (b) 4.00 p.m. on the thirtieth business day after the day on which notice was given to the **Insured**.

In the event that the VMIA cancels this Policy, the VMIA will repay to the **Insured** a rateable proportion of the Premium for the unexpired period of insurance from the date of cancellation.

Extensions

1. Automatic Reinstatement

Upon notification to the VMIA during the Period of Insurance of any claim made against the **Insured** or of circumstances which are likely to give rise to a **Claim**, this Policy shall be deemed to be reinstated for such amount, if any, as may be ultimately paid by the VMIA in respect of such claim, so as to remain in force during the Period of Insurance for the Limit of Indemnity stated in the Schedule; provided always that the aggregate of the amounts so reinstated shall not exceed an amount equal to such original Limit of Indemnity, except that (subject to the provisions of the Policy) the VMIA will in addition pay the costs and expenses incurred in the defence or settlement of any claim.

2. Loss of Documents

If a Limit of Indemnity is specified in the Schedule for this Extension, the following coverage is provided and Exclusion 1(b) is deleted:

If, during the period of insurance, the **Insured** shall discover and with 7 days after the date of discovery gives written notice thereof to the VMIA that any Document(s) which in the conduct of the profession stated in the Schedule is/are entrusted to the **Insured** have within the territorial limits of Commonwealth of Australia, Papua New Guinea or New Zealand been destroyed or damaged or lost in mislaid and after diligent search cannot be found, this Policy shall indemnify the **Insured** for

- (a) legal liability which it may incur to third parties in consequence of such Documents having been destroyed, damaged, lost or mislaid; and
- (b) all costs, charges and expenses reasonably incurred by the **Insured** in replacing and/or restoring such Documents.

Provided always that:

- (i) the amount of any claim for costs, charges and expenses referred to above shall be supported by proper and adequate records and accounts.
- (ii) the VMIA shall not be liable for any loss brought about by wear or tear or any other gradually operating causes.
- (iii) the Limit of Indemnity under this policy shall not be increased by reason of this Extension.

3. Fidelity

If a Limit of Indemnity is specified in the Schedule for this Extension the VMIA will indemnify the **Insured**, up to but not exceeding in the aggregate for all claims under this Extension the sum stated in the Schedule, against any loss of money or any other property for which the **Insured** named in the Schedule is legally liable to third parties and which loss the **Insured** shall, during the Period of Insurance, discover has been sustained in consequence of any dishonest or fraudulent act or omission of any person for whose conduct the **Insured** named in the Schedule is legally liable.

The **Insured** shall forthwith notify the VMIA of any such loss and the VMIA shall not be called upon to indemnify the **Insured** until and unless prosecution of the person or persons responsible for such loss has resulted in a finding of guilt, in respect of such person or persons, by a competent court of law.

All costs incurred by the **Insured** to substantiate its loss are to be borne by the **Insured**. The Excess stated in the Schedule shall apply to each and every individual act of dishonesty or fraudulent act or omission, the subject of a claim hereunder.

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.