

Medical Indemnity Master Insurance Policy

Issued to clients of VMIA

For the period 30 June 2014 to 30 June 2015

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Medical Indemnity Master Insurance 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.

1. Insuring clauses

The Victorian Managed Insurance Authority ('VMIA') hereby agrees subject to the limitations, terms and conditions hereinafter mentioned or endorsed hereon:

1.1 Claims

To pay up to the **Limit of indemnity** on behalf of the **Insured**, any amount for which the **Insured** becomes liable to pay (less any **GST** that forms part of that amount and for which the **Insured** is entitled to claim an **Input Tax Credit** or **Adjustment**) in respect of **Claims** made against the **Insured** seeking compensation for personal injury and which **Claims** arise directly out of a **Health care incident** that occurred during the period of insurance.

1.2 Costs and expenses

To pay the costs and expenses (less any **GST** that forms part of that amount and for which the **Insured** is entitled to claim an **Input Tax Credit** or **Adjustment**) 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**.

1.3 Multiple claims

Where the one act, error or omission results in more than one **Claim** against the **Insured** which is the subject of indemnity, all those **Claims** together shall constitute one **Claim** under the Policy when determining the **Limit of indemnity** pursuant to this policy.

1.4 Specific coverage for Good Samaritan Acts

The VMIA will indemnify the **Insured** in respect of healthcare or first aid services provided by the **Insured** at the scene of a medical emergency, accident or disaster during the **Period of insurance**, provided that when doing so the **Insured** is not acting in a personal professional capacity or for any other entity or person and provided the services without charging a fee or expecting payment of any kind.

1.5 Coronial Inquests

The VMIA will pay the reasonable costs, charges and expenses of legal representation, incurred with the VMIA's prior written consent, at any Coronial Inquest which the **Insured** is legally compelled to attend, which directly relates to matters, facts or circumstances directly arising from a **Claim**, or to matters, facts or circumstances which are likely in the opinion of VMIA to give rise to a **Claim**.

2. Definitions

'**Adjustment**', '**GST**' and '**Input Tax Credit**' have the meanings given in the A New Tax System (Goods and Services Tax) Act 1999 and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

'**Appropriately Credentialed**' means **Credentialing** in accordance with Department of Health Guidelines as are current from time to time.

'**Australian resident**' means Australian resident as specified in Section 3 of the Health Insurance Act 1973 (Cth) as amended from time to time but also includes a person who, by virtue of an agreement entered into by the Commonwealth of Australia, is to be treated as an **Australian resident** for the purposes of the provision of medical, hospital and other **Health care services**.

'**Claim**' means claim for compensation made against the **Insured** in relation to a **Health care incident**.

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

'**Credentialing**' means the formal process used to verify the qualifications, experience, professional standing and other relevant professional attributes of **Health Practitioners** for the purposes of forming a view about their competence, performance and professional suitability to provide safe, high quality health care services within specific organisational environments.

'**Health care incident**' means an act, omission or circumstance that occurs during the course of, or in connection with, the provision of **Health care services**.

'**Health care services**' means any care, treatment, advice, service or goods provided in respect of the physical or mental health of a patient or person, including **clinical trials and health and medical research** activities unless otherwise excluded by this policy.

'**Health Practitioner**' means a practitioner in one of the professions regulated by a responsible board pursuant to the Health Practitioner Regulation National Law (Victoria) Act 2009.

'**Honorary appointee**' means a **Registered medical practitioner** who holds an **Honorary appointment**.

'**Honorary appointment**' means an appointment of a **Registered medical practitioner** to a health service or organisation named in the Schedule whereby that **Registered medical practitioner** is credentialed to provide services to patients of the health service or organisation at no charge to either the patient or the health service or organisation.

'Insured' means and includes:

1. The health service or organisation or individual named in the Schedule.
2. Employees of the health service or organisation named in the Schedule whilst:
 - (a) providing **Health care services** to **public patients** of the health service or organisation;
 - (b) providing **Health care services** to **private patients** of the health service or organisation where such health care services were provided by the employee in that employee's capacity as an employee of the health service or organisation;
 - (c) providing **Health care services** to patients of the health service or organisation who are non-Australian residents;
 - (d) providing advice to a **Victorian Public Health Service** about the treatment of a patient of that **Victorian Public Health Service**;

but does not include any employee who at the time of the incident was required to be registered pursuant to the Health Practitioner Regulation National Law Act 2009 (the National Law) but was not so registered or who was so registered but was in breach of a term or condition of their registration.

3. Employees of the health service or organisation named in the Schedule who are **Registered medical practitioners** whilst providing advice to another health service or **Registered medical practitioner** in respect to the care or treatment of a patient of that health service or **Registered medical practitioner**.
4. Persons for whose conduct the health service or organisation named in the Schedule is liable at law whilst providing **Health care services** to **Public patients** of that health service or organisation, but does not include any person who at the time of a health care incident was required to be registered pursuant to the Health Practitioner Regulation National Law (Victoria) 2009 but was not so registered.
5. **Registered health practitioner** or other natural persons whilst providing **Health care services** to patients of the health service or organisation named in the Schedule in accordance with the exercise of a right of private practice granted to the **Registered health practitioner** in his or her capacity as a fulltime or part-time employee of the health service or organisation provided that the terms of the **Registered health practitioner's** employment contract require the **Registered health practitioner** to:
 - (a) remit all or part of the fees earned in respect of such patient to a Dillon Fund, special purpose fund, trust or like arrangement established by or in conjunction with the employing health service or organisation, or
 - (b) remit all of the **Registered health practitioner's** income to the employing health service or organisation.
6. Any student and / or practitioner of a University, College of Advanced Education or like institution appointed to or undertaking an examination or assessment at a health service or organisation named in the Schedule and whilst providing **Health care services** to patients of such health service or organisation.

7. A **Registered medical practitioner** holding an appointment to a health service or organisation named in the Schedule whilst providing **Health care services** after 30 September 1993 at premises associated with the health service or organisation provided that the patient to whom the **Health care services** were rendered was referred to the **Registered medical practitioner** either from the emergency department of the health service or organisation or for ongoing care following discharge as an inpatient from the health service or organisation and provided that any such patient when so treated at the emergency department or as an inpatient at the health service or organisation, was classified as a public patient.
8. A **Registered medical practitioner** holding an appointment to a health service or organisation named in the Schedule whilst providing **Health care services** to patients of the health service or organisation who are non-Australian residents but only in respect of those services for which the **Registered medical practitioner** does not render and is not entitled to render a fee to the patient.
9. A **Registered medical practitioner** holding an **Honorary appointment** to the health service or organisation named in the schedule whilst:
 - (a) providing **Health care services** to **Public patients** of the health service or organisation;
 - (b) providing **Health care services** to **private patients** of the health service or organisation where such services were provided by the **Registered medical practitioner** in that registered medical practitioners capacity as an **Honorary appointee** and in circumstances where that **Registered medical practitioner** did not, and, was not entitled to, render to the patient a fee for his/her services.
10. A **Registered medical practitioner** who refers a patient to a public hospital elective Surgery waiting list of a health service or organisation named in the Schedule but only to the extent that any legal liability arises from or in respect of placement of the patient on the public hospital elective surgery waiting list and not for any legal liability arising from or in respect of any private consultation between the **Registered medical practitioner** and the patient prior to the placement of the patient on the public hospital elective surgery waiting list and provided that:
 - (a) the **Registered medical practitioner** has referred the patient in accordance with the guidelines of such health service or organisation; and
 - (b) the patient had, at or before the time of placement on the public hospital elective surgery waiting list, indicated an intention to be admitted to such health service or organisation as a public patient.
11. A **Registered medical practitioner** who obtains a patient's consent to a procedure and refers the patient to a public hospital or a health service or organisation named in the Schedule to have the procedure as a **Public patient** but only to the extent that any legal liability arises from the information or lack of information given by the **Registered medical practitioner** to the patient at the time of obtaining the patient's consent to the procedure about the risks of the procedure and provided that:
 - (a) the **Registered medical practitioner** has admitting rights to the public hospital to which the patient is referred.
 - (b) the **Registered medical practitioner** both obtains the patient's consent and refers the patient in accordance with the guidelines of such health service or organisation.

- (c) the patient had, at or before the time of referral to the public hospital, indicated an intention to be admitted to such health service or organisation as a **Public patient**.
 - (d) the health service or organisation accepts the referral and the procedure is performed at the public hospital whilst the patient is a **Public patient**.
12. Persons who participate in **Multidisciplinary Meetings** under the control and/or auspices of an **Integrated Cancer Service** in Victoria but only in respect of **Health care incidents** that arise out of their participation in such **Multidisciplinary Meetings**.

'**Insured person**' means any of the people included in the definition of **Insured**.

'**Integrated Cancer Service**' means a cluster of hospitals and associated health services that deliver services for people with all types of cancer within a geographical area and which operate as part of the Victorian statewide system for the delivery of cancer treatment and care

'**Limit of indemnity**' means the limit of indemnity specified in the Schedule.

'**Multidisciplinary Meeting**' means a deliberate, regular, face-to-face (or videoconference) meeting of a team of people comprising a range of health professionals with expertise in the diagnosis of cancer. The purpose of the meeting is to facilitate best practice management of patients with cancer

'**Period of insurance**' means the period of insurance specified in the Schedule.

'**Personal injury**' means bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and/or mental injury including loss of services resulting therefrom.

'**Private patient**' means all patients other than public patients.

'**Public patient**' means an **Australian resident** in respect of whom a health service or organisation named in the Schedule has agreed to provide **Health care services**, including all necessary medical, nursing and diagnostic services (and if they are available at such health service or organisation, dental and paramedical services), by its own staff and contractors at the expense of the named **Insured**.

'**Registered health practitioner**' means a health practitioner registered by a responsible board pursuant to the Health Practitioner Regulation National Law Act 2009 (the National Law).

'**Registered medical practitioner**' means a medical practitioner registered with the Medical Board of Australia.

'**Registered nurse**' means nurse or midwife registered with the Nursing and Midwifery Board of Australia.

'**Victorian Public Health Service**' means a registered funded agency or a privately operated hospital within the meaning of the Health Services Act 1988 (Vic).

3. Exclusions

This Policy does not apply to and does not provide indemnity in respect of:

- 3.1 **Health care incidents** that did not occur during the **Period of insurance**.
- 3.2 The transmission by an **Insured person** of a contagious disease or virus carried by the **Insured person** which at the time knew or ought reasonably have known that the disease or virus was being carried. This exclusion does not operate against any **Insured or Insured person** who did not carry and transmit the disease or virus.
- 3.3 Any defective equipment or products supplied by an **Insured person**.
- 3.3A Any defective equipment or products supplied by a health service or organisation named in the schedule to another person or entity other than a **Victorian Public Health Service**.
- 3.4 Fines, penalties, punitive or exemplary damages.
- 3.5 **Personal injury** to any person alleged to have been caused or contributed to by, or arising from, the use of blood (including any product derived from blood or any part thereof):
 - 3.5.1 infected or allegedly infected with Hepatitis C taken from a blood donor prior to 1 July 1998;
 - 3.5.2 infected or allegedly infected by any form of human immunodeficiency virus taken from a donor prior to 1 May 1985.
- 3.6 The condition of the premises owned and/or occupied by the **Insured**.
- 3.7 Sexual harassment, sexual misconduct or unlawful discrimination.
- 3.8 **Health care incidents** occurring whilst the **Insured person** is under the influence of an intoxicant or narcotic.
- 3.9 Liability assumed by an **Insured** by agreement or contract unless liability would have attached to the **Insured** even in the absence of such agreement or contract.
- 3.10 Any legal liability of whatever 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.
- 3.11 Any **Claim** brought against the **Insured** in a court of law outside the Commonwealth of Australia, Papua New Guinea or New Zealand, or 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 judgment whether by way of reciprocal agreement or otherwise.

- 3.12 Injury to or death of an employee of the **Insured** arising out of or in the course of the employee's employment with the **Insured** or to **Claims** made against the **Insured** by any injured person or the dependent of any injured person under the provisions of any workers' compensation law or any other obligations for which the **Insured** may be held liable under any workers' compensation law.
- 3.13 **Personal injury**, loss, damage or liability directly or indirectly occasioned by, or:
- 3.13.1 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 or 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;
 - 3.13.2 directly or indirectly arising from or in conjunction with any act of terrorism.
 - 3.13.3 caused by or arising from or in consequence of or contributed to by nuclear weapons, materials, or
 - 3.13.4 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.

Exclusion 3.13 does not apply to any **Health care incident** arising out of **Health care services** provided as a result of those events described in 3.13.

- 3.14 Costs incurred in respect of any disciplinary tribunal hearing or inquiry, board of inquiry, investigation or hearing, criminal investigation, trial or proceeding.
- 3.15 Any claim where the **Health care incident** occurred before midnight on 31 December 1994, in relation to the operations of the hospital formerly known as the Heidelberg Repatriation Hospital, including any of the following;
- 3.15.1 the Commonwealth of Australia;
 - 3.15.2 the Repatriation Commission;
 - 3.15.3 the successor in law of the Repatriation Commission or the Heidelberg Repatriation Hospital;
 - 3.15.4 any person for whose conduct the Repatriation Commission or the Heidelberg Repatriation Hospital is liable at law.
- 3.16 The policy will not indemnify any person who commits any dishonest, fraudulent, criminal or malicious act.

- 3.17 **Health care incidents** arising out of the provision of **Health care services** to patients of a health care facility other than a **Victorian Public Health Service** named in the Schedule unless:
- (a) such **Health care services** have been agreed to by the VMIA and the health service or organisation named in the schedule prior to their commencement; or
 - (b) the **Health care incident** arises directly out of advice given by the **Insured**.
- 3.18 Any amount of **GST** in respect of which the **Insured** is entitled to claim an **Input Tax Credit** or **Adjustment**.

4. Conditions

4.1 Defence and settlement of claims

For any **Claim** for which the **Insured** is entitled to indemnity under this Policy, VMIA will defend any such **Claim** in the name of and on behalf of the **Insured** and, subject to the **Limit of Indemnity**, will pay the costs and expenses (less any **GST** that forms part of that amount and for which the **Insured** is entitled to claim an **Input Tax Credit** or Adjustment) incurred in defending the **Claim**. VMIA shall have a full discretion in the conduct of any negotiations, proceedings or settlement of any **Claim**.

4.2 Subrogation and other insurance

VMIA is entitled to all of the **Insured's** rights of recovery (before or after a **Claim** has been paid) and the **Insured** will co-operate with VMIA and provide such information and assistance (including but not limited to the signing of documents) which VMIA may reasonably require in the exercise of such rights of recovery.

VMIA shall have a full discretion in the conduct of any negotiations, proceedings or settlement when exercising such rights of recovery.

4.3 Co-operation with claims

The **Insured**, at its own expense, shall give such information and assistance as VMIA may reasonably require to determine liability under the policy and investigate, defend and settle a **Claim**.

4.4 Notice of claims and potential claims

The **Insured** must give VMIA:

- 4.4.1 Notice by email or in writing as soon as practicable after becoming aware of any incident, occurrence, complaint, investigation, inquiry or disciplinary proceeding which may give rise to a liability under this Policy; and
- 4.4.2 Notice by email or in writing as soon as practicable after becoming aware of any **Claim** against the **Insured** in respect of a **health care incident**.

In the event of the **Insured** failing to give notice to VMIA as required, to the extent of loss caused to VMIA by virtue of that failure to give notice, VMIA shall be entitled to deny indemnity to the **Insured** under the policy.

- 4.4.3 For the purposes of clauses 4.4.1 and 4.4.2 a health service or organisation named in the Schedule is deemed to have become aware of an incident, complaint, investigation, inquiry, disciplinary proceeding or **Claim** upon the date upon which any of the persons holding the following positions, or equivalent positions (whether permanently or temporarily) in the health service or organisation first became aware of the incident, complaint, investigation, inquiry, disciplinary proceeding or

Claim:

- (i) Chief Executive Officer;
- (ii) Chief Medical Officer;
- (iii) Director of Clinical Services;
- (iv) Director of Medical Services;
- (v) Director of Nursing;

- (vi) Corporate Counsel;
- (vii) Risk Manager;
- (viii) Manager;
- (ix) Medico-Legal Officer;
- (x) Freedom of Information Officer.

4.5 Suitable employees

The health service or organisation named in the Schedule shall at all times exercise reasonable care to ensure that:

- 4.5.1 only **Registered Health Practitioners** are employed and/or engaged by the health service or organisation;
- 4.5.2 all **Registered Health Practitioners** who have independent responsibility for patient care and who are appointed by the health service or organisation must be appropriately credentialed and have their scope of clinical practice defined in accordance with both their level of skill and experience and the capability of the health service or organisation;
- 4.5.3 students and/or **Registered Health Practitioners** undergoing training or qualification with the health service or organisation, act only under the supervision of suitably experienced and **Registered medical practitioners**;
- 4.5.4 trainee nurses, state enrolled nurses, nurse assistants and the like of the health service or organisation act only under the supervision of suitably experienced and **Registered nurses**;
- 4.5.5 properly qualified ambulance attendants are employed and/or engaged by the health service or organisation;
- 4.5.6 trainee ambulance attendants and the like act only under the supervision of suitably experienced and qualified ambulance attendants.

4.6 Reasonable safeguards

The **Insured** shall ensure that reasonable safeguards and precautions are taken to avoid injury to patients.

4.7 Contesting claims

In the event that VMIA and the **Insured** do not agree on the settlement of a **Claim** recommended by VMIA and the **Insured** elects to contest or continue any legal proceedings in connection with the **Claim**, VMIA shall only be liable to indemnify the **Insured** for an amount up to and including the amount for which the **Claim** could have been settled for including the costs and expenses (less any **GST** that forms part of that amount and for which the **Insured** is entitled to claim an **Input Tax Credit** or **Adjustment**) incurred with VMIA's consent up until the time of the failure to agree.

4.8 Alteration to risk

The **Insured** must give VMIA notice in writing as soon as practicable within the **Period of insurance** of any material change to the risk.

4.9 Governing Law

The construction, interpretation and meaning of this Policy will be determined in accordance with the laws of the Commonwealth of Australia. All disputes relating to this Policy must be submitted to the exclusive jurisdiction of the courts of the Commonwealth of Australia

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.

END OF POLICY