



# Construction Risks – Material Damage and Liability Annual Insurance Policy

Issued to clients of VMIA

For the period 1 November 2024  
to 31 October 2025





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Insurance Authority



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

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## 1. Introduction

In consideration of the Named Insured having paid or agreed to pay the Premium, VMIA agrees to indemnify the Insured in the manner and to the extent provided herein, subject always to the conditions, exclusions and other terms of or any Endorsements to this Policy. The liability of VMIA will in no case exceed the Limits of Liability and Sub-limits of Liability stated in the Schedule or elsewhere in this Policy.

## 2. Definitions and interpretation – applicable to all Sections

### Definitions

The following Definitions apply to all Sections of this Policy.

**Additional Insured** is any person stated in the Schedule or in an Endorsement as an Additional Insured.

**Advertising Injury** means:

- (a) libel, slander or defamation;
- (b) infringement of copyright or of title or of slogan;
- (c) piracy or unfair competition or idea misappropriation under an implied Contract; or
- (d) invasion of privacy,

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast and arising out of the Insured's advertising activities or any advertising activities conducted on behalf of the Insured, in the course of advertising the Contract, business, goods or services.

**Aircraft** means any craft or machine designed to transport persons or property through air or space.

**Basis of Settlement** is as stated in the Schedule.

**Bridge** means works comprising a structure built to span physical obstacles or ground conditions without closing the way underneath, such as a body of water, valley, road or rail, for the purpose of providing passage over the obstacle or ground conditions.

**Claims and Legal Service** is as stated in the Schedule.

**Completed Operations** means construction work of any kind or description, irrespective of when the work was commenced or completed, provided that such work has left the custody or control of the Insured.

**Construction Period** means the period commencing with the entering into of each Contract or the date when works first commence, provided such Contract is entered into or works commence during the Period of Insurance, until at the option of the Named Insured:

- (a) the Contract Works have been formally accepted in their entirety by the Principal as having achieved practical completion, notwithstanding the fact that portions of the Contract(s) may have been handed over, put into use and accepted by the Principal prior to that time, including any Performance Testing Periods; or
- (b) with respect to each Separable Portion of the Contract Works, the time it is taken over and put into use by the Principal, including any Performance Testing Periods.

In the event of this Policy being cancelled or not renewed, coverage shall continue subject to the same terms and conditions, in respect of all Contract(s) commenced prior to the date of such cancellation or non-renewal and shall remain in force until:

- (c) in accordance with (a) or (b) above; or
- (d) the Named Insured formally advises VMIA that the Contract(s) have been Insured elsewhere, whichever occurs first.

**Construction Plant and Equipment** means:

- (a) all construction plant, tools and equipment of every description including spare parts;
- (b) employees' tools, equipment and personal property at a Worksite, used in connection with a Contract.

**Contract** means all works, contracts, deeds or agreements undertaken by or on behalf of the Insured in connection with the Insured Operations.

**Contract Works** means property of every description used or to be used in part of or incidental to or having any connection whatsoever with the Insured Operations. It shall include but not be limited to:

- (a) the whole of the works, whether permanent or temporary works, structures, materials and supplies including free supplied materials where included in the Project Value;
- (b) temporary buildings, camp buildings and all other project buildings and their contents;
- (c) formwork, falsework, scaffolding, access platforms, hoardings, mouldings, and the like, whether the foregoing be consumable or reusable; and
- (d) consumables, drawings and other documents and Electronic Data, but always subject to exclusion 5.8,

but excluding Construction Plant and Equipment not specified above and Existing Property.

**Damage** means physical loss, physical destruction or physical damage with the word Damaged having a corresponding meaning.

**Defects Liability Period** means the period described in any Contract during which an Insured is obliged or legally liable to rectify defects, shrinkages, errors, omissions or other faults and/or to complete the obligations under such Contract (the original Defects Liability Period), which may include the granting of a further period, following rectification of any defect under the original period.

The original Defects Liability Period shall not exceed the Defects Liability Period stated in the Schedule in respect of any one Contract.

Where the Contract provides for the Defects Liability Period to be extended upon rectification of a defect, the Defects Liability Period in respect of the rectification is extended up to a period not exceeding the original Defects Liability Period following completion of the rectification works.

**Defined Peril** means, for the purposes of exclusion 5.8, fire, lightning, explosion, windstorm, hail, tornado, cyclone, hurricane, earthquake, volcano, tsunami, flood, freezing, weight of snow, impact by Aircraft or articles dropped there from, impact by any road Vehicle or animal, bursting, overflowing, discharging or leaking of water tanks, apparatus or pipes, or theft of Electronic Data solely where such theft is accompanied by theft of the computer hardware, firmware, medium, microchip, integrated circuit or similar device containing such Electronic Data.

**Directional Drilling** means works comprising a trenchless method of installing underground utilities such as pipe, conduit, or cables in a relatively shallow arc or radius along a prescribed underground path using a surface-launched directional boring or horizontal directional drilling rig.

**Employee** means any person under a contract of service or apprenticeship with the Insured.

**Electronic Data** means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for such equipment.

**Endorsement** means an amendment to this Policy's terms and conditions issued by VMIA which appears in the Endorsements attached to this Policy and/or is subsequent to this Policy's inception date. The provisions of this Policy shall apply to any Endorsement except to the extent that they may be expressly varied.

**Escalation Percentage** is as stated in the Schedule.

**Estimated Construction Period** means the Construction Period estimated at the time of award of the Contract.

**Estimated Project Value** means the Project Value estimated at the time of award of the Contract.

**Event** means an occurrence or series of occurrences consequent upon or attributable to one source or original cause.

**Excess** is the amount borne by the Insured in respect of each Event or Occurrence (as applicable), as stated in the Schedule.

**Excluded Contracts** means the Contract types identified in the Schedule which are not covered under this Policy, unless varied by Endorsement.

**Existing Property** means buildings, existing structures, plant, contents and real property of every description situated at the Worksite for which a value is declared in the Schedule. Damage to Existing Property is specifically excluded under Section 1 of this Policy unless an amount is specified against this item in the Schedule.

**Flood** means the inundation of normally dry land by water escaping or released from the normal confines of any natural watercourse or lake whether or not altered or modified or of any reservoir, canal or dam.

**Insured** means:

- (a) the Named Insured, and any State Entity to the extent of their interests in the Insured Operations;
- (b) any person directly contracted by the Named Insured and for whom the Named Insured has agreed to insure and to the extent of their interests in the Insured Operations;
- (c) any Additional Insured which the Named Insured has agreed to insure and only to the extent of their interests in the Insured Operations;
- (d) any office bearer or member of any social, sporting, safety, security, medical or welfare facility of the Name Insured;
- (e) any parent or subsidiary company (including subsidiaries thereof) of any Insured in paragraphs (b) or (c) above or any other organisation under their control and over which it is exercising active management, whether now or hereafter incorporated to the extent of their interests in the Insured Operations; and
- (f) any of the following persons for whom the insured parties under paragraphs (a), (b) or (c) above are obliged to arrange insurance by virtue of a Contract, statute or assumption of responsibility in connection with the Insured Operations, but only to the extent required by such Contract, statute or assumed responsibility and in any event only for such coverage and Limits of Liability as provided in this Policy:
  - (i) any project or construction manager;
  - (ii) any contractor, sub-contractor of any tier, other than those categories more specifically defined below;
  - (iii) any government, public, local or statutory authority or landlord;
  - (iv) any director, partner, executive officer, employee, contract staff, volunteer or shareholder of the Named Insured in the Schedule, but only whilst acting within the scope of their duties in such capacity;
  - (v) any supplier, consultant, architect or engineer for their manual activities only whilst at the site made specifically available by the Principal, but only whilst acting within the scope of their duties;
  - (vi) any banker, financier, mortgagee or other similar lending and/or credit institution, where an obligation exists under Contract to include their name as an Insured party; and

- (vii) any other party or person where an Insured in paragraphs (a), (b) or (c) above assumes an obligation under Contract to include their name as an Insured,

all for their respective rights and interests, provided that an entity falling within the definition of Insured above is only an Insured for the purpose of this Policy, insofar as they are insured against the particular risk indemnified under this Policy.

**Insured Operations** as defined in the Schedule and includes the provision and management of canteens, social, sports and welfare organisations for the benefit of the Insured's employees; first aid, security, fire and ambulance services; maintenance of the Insured's premises. The term shall include the activities of property owners, occupiers, lessees and lessors; plant and equipment owners, operators or hirers; and conducted tours of the Worksite.

**Insured Property** means:

- (a) Contract Works;
- (b) Construction Plant and Equipment; and
- (c) Existing Property.

Property defined in paragraphs (a), (b) and (c) above shall refer to property owned by the Insured or for which they are responsible or have assumed responsibility prior to any Event for which a claim may be made hereunder, or for which the Named Insured has agreed to insure, or in which the Named Insured otherwise has an insurable interest.

**Limit of Liability** is the amount stated in the Schedule against each Section of this Policy.

**Loss Adjuster** is the entity stated in the Schedule.

**Loss Payee** is as stated in the Schedule.

**Major Perils** means earthquake, landslip, fire, subterranean fire or volcanic eruption, subsidence, collapse, storm and/or tempest and/or rainwater and/or flood and/or tsunami and/or named cyclone.

**Named Insured** is the party stated in the Schedule.

**Nominee for VMIA Notices** is as stated in the Schedule.

**Occurrence** means an event including continuous or repeated exposure to conditions that results in Personal Injury, Property Damage or Advertising Injury where such injury or damage is neither expected nor intended from the standpoint of the Insured. All Personal Injury, Property Damage or Advertising Injury arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one Occurrence.

**Offsite Storage or Works** means locations where the Insured stores Insured Property or where pre-fabrication, repair or remedial works is undertaken in connection with the Insured Operations away from the sites and laydown areas made available by the Principal for the Insured Operations.

**Open Trench** means trench excavations that have not been completely backfilled and shall include any pipe and other items laid in such trench.

**Performance Testing Period** means the period of testing and/or commissioning of the Contract Works or any of its component parts and begins when 'live load' is introduced, including the use of feedstock or other materials for processing or other media to simulate normal working conditions and in the case of electrical motors, electrical generating, transforming, converting or rectifying plant or machinery, connection to a grid or other load circuit, or as more particularly described in a Contract, and ends at the completion of testing and commissioning under the Contract, but in no case exceeding the Performance Testing Period shown in the Schedule (if any stated).

Where Performance Testing is performed in stages any periods between the applications of 'live load' are not considered to be part of the Performance Testing Period. Simple functionality tests without the application of 'live load' are not considered to be part of the Performance Testing Period.

Performance Testing that exceeds the maximum period stated in the Schedule will only be covered subject to the prior approval of VMIA.

**Period of Insurance** is as stated in the Schedule.

**Personal Injury** includes:



- (a) bodily injury, death, illness, disease, disability, shock, fright, mental anguish and mental injury including loss of consortium or services;
- (b) false or wrongful arrest, detention or imprisonment and malicious prosecution, wrongful entry upon, wrongful eviction from or other invasion of right to private occupancy of property and humiliation;
- (c) libel, slander or defamation, except where:
  - (i) the first publication or utterance happened prior to the commencement of this Policy; or
  - (ii) the injury arises out of Advertising Injury as defined herein;
- (d) assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing Injury or Property Damage or eliminating or preventing danger to persons or property; and
- (e) discrimination as a result of race, religion, sex, marital status, age, intellectual impairment, disability or otherwise (unless insurance thereof is prohibited by law) not committed by or at the intentional direction of the Insured, but only in respect to liability other than for fines and penalties imposed by law.

**Pipelines** means any works for pipelines (e.g. for the transmission of oil, water, gas, offshore pipelines, sewage, etc.) either below or above ground or water surface levels, but excludes any stormwater, sewage, drainage, water, oil, gas or other pipeline works that are ancillary to, necessary or part of, the development, construction, relocation or upgrade of a road, Bridge or building works.

**Policy** means this policy wording, the Schedule and any Endorsement thereto.

**Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, chemicals or waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**Premium** is as stated in the Schedule.

**Principal** means the Named Insured and any other owner of the Insured Operations.

**Products** means anything after it has left the custody or control of the Insured, which has been or is deemed by law to have been manufactured, grown, produced, processed, formulated, sold, supplied, imported, exported, distributed, treated, serviced, altered or repaired by the Insured, which includes works performed by or for the Insured, containers, labels and packing materials, directions, instructions and advice given or omitted to be given in connection with such Products.

**Project Value** means the total value of work and construction costs incurred by or on behalf of the Insured in respect of the Insured Operations and includes the value of Principal supplied and other free supplied materials (if required to be insured under the Contract), however does not include any non-recurring costs.

**Property Damage** means:

- (a) physical loss or destruction of or damage to tangible property including the loss of use (total or partial) or any consequential loss resulting therefrom; or
- (b) total or partial interruption of or interference with or loss of use of or deprivation of premises, property, services, facilities, trade or vehicular or pedestrian traffic or the like.

**Reinstatement Value** means:

- (a) where the property is lost or destroyed, the cost of replacement thereof by similar property in a condition equal to, but not better nor more extensive than, its condition when new; or
- (b) where the property is Damaged and can be repaired, the cost necessarily incurred to restore the property to a condition substantially the same as, but not better nor more extensive than its condition when new, plus the cost of dismantling and re-erection incurred for the purpose of effecting the repairs.

**Schedule** means the Schedule issued with this Policy.

**Section** means either of Section 1 or Section 2 as applicable.

**Section 1** means indemnity provided by Section 1 – Material Damage including all relevant insuring clauses, condition, exclusions and other provisions of this Policy.

**Section 2** means indemnity provided by Section 2 – Liability including all relevant insuring clauses, condition, exclusions and other provisions of this Policy.

**Separable Portion** means a portion of the construction works as so designated in a Contract.

**State Entity** means the Crown in Right of the State of Victoria, Ministers of the Crown and a public body (as that term is defined under the Financial Management Act 1994 (Vic)), excluding municipal and/or local councils, authorities and/or associations.

**Sub-limits of Liability** is as stated in the Schedule.

**Territorial Limits** is as stated in the Schedule.

**Terrorism** means a Terrorist Act which is a Declared Terrorist Incident, as those terms are defined in the Terrorism Insurance Act 2003 (Cth) as amended. Notwithstanding the above, Terrorism shall also mean loss solely and directly caused by an occurrence of an act of terrorism by:

- (a) use of nuclear or radiological weapons or materials; or
- (b) use or operation, as a means of inflicting harm, of any computer, computer system, or computer software program, malicious code, computer virus or process or any other electronic system.

**Terrorism Extension** has the meaning in and only to the extent of the Limits of Liability stated in the Schedule against this item.

**Tunnels** means any works involving an artificial subterranean passage or shaft (including for the purposes of roads, railways or pipeline transmission facilities) whether with underground crew or remotely operated. The term includes micro-tunnelling, pipe jacking, other trenchless pipe installation operations and declines but does not include:

- (a) Directional Drilling;
- (b) open excavation work including station caverns, trenches, foundation works, pits, cuttings or Pipelines; nor
- (c) cut and cover work and similar excavation operations, provided the length is less than 100 metres and the depth less than 6 metres.

**Vehicle** means any type of machine on wheels or intended to be propelled by other than manual or animal power and any trailer made or intended to be drawn by any such machine whilst attached thereto.

**VMIA** means the Victorian Managed Insurance Authority ABN 39 682 497 841.

**Watercraft** means any vessel, craft or thing in excess of 15 metres in length (measured at the waterline) made or intended to float on or travel on or through water.

**Wet Works** means any works which is submerged in a permanent body of water or is below the high-water mark of any tidal body of water. The term shall include wharves, piers, marinas, causeways, breakwaters, jetties, dry docks and any Bridge where part of the structure is submerged in a permanent body of water or is below the high-water mark of any tidal body of water. Wet Works excludes land reclamation.

**Worker to Worker Liability** means:

- (a) legal liability of the Insured in respect of recoveries of any payments by any workers' compensation insurer under the provisions of any workers' compensation legislation or policy, or at common law; or
- (b) a claim made by an injured worker (as defined by the relevant workers' compensation legislation) against any Insured other than the worker's direct employer.

**Worksite** means any place where any work is performed for and/or in connection with the Insured Operations together with all surrounding areas, including Offsite Storage or Works.

## Interpretation

The following interpretation applies to this Policy where the context admits.

### Headings

Clause subclause and paragraph headings are for reference purposes only. The provisions of this Policy are not to be construed or interpreted by reference to such headings.

### Include or including

The use of the word "include" or "including" is not to be taken as limiting the meaning of the words preceding it.

### Meaning of terms

- (a) Terms that are not specifically defined in this Policy have the same meaning as in the relevant Contract, including variations made from time to time.
- (b) Terms that are not specifically defined in this Policy and not specifically defined in the relevant Contract, have the meaning normally attributed to them; and
- (c) Reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.

### Person

Reference to a person includes any other entity recognised by law and vice versa.

### Singular/Plural

In this Policy, where the context admits, words denoting the singular shall include the plural and vice versa.

### Use of or

The meaning of "or" will be that of the inclusive "or", that is meaning one, some or all of a number of possibilities.

## Section 1 – Material Damage

The following clauses apply to Section 1 of this Policy.

### 3. Insuring clause

#### 3.1 Construction Period

VMIA will indemnify the Insured in accordance with the Basis of Settlement, against Damage to the Insured Property other than from a cause specifically excluded, occurring at a Worksite or in transit within the Territorial Limits, in respect of all Insured Property during the Construction Period.

#### 3.2 Defects Liability Period (guarantee maintenance)

VMIA will indemnify the Insured in accordance with the Basis of Settlement, against Damage to the Insured Property from a cause not specifically excluded, provided such Damage:

- (a) manifests itself during the Defects Liability Period provisions of the Contract; and
- (b) originates from:
  - (i) a cause arising prior to the commencement of the Defects Liability Period within the Territorial Limits; or
  - (ii) an act or omission of any of the Insured parties, or some other cause occurring in connection with the Insured party complying with the Defects Liability Period provisions of the Contract.

#### 3.3 Basis of Settlement

In the event of Damage to Insured Property the amount payable shall be in accordance with the Basis of Settlement stated in the Schedule in respect of the property designated therein.

- (a) Reinstatement Value

Where the Basis of Settlement is Reinstatement Value the following provisions shall apply:

- (i) the work of rebuilding, replacing, repairing or restoring as the case may be (which may be carried out upon any other site(s) and in any manner suitable to the requirements of the Named Insured, but subject to the liability of VMIA not being thereby increased), must be commenced and carried out with reasonable dispatch;
  - (ii) where Insured Property has been Damaged and where the Named Insured elects not to reinstate such Insured Property, VMIA will pay to the Named Insured an amount equal to the cost necessary to replace, repair or rebuild the Insured Property to a condition substantially the same as but not better nor more extensive than its condition at the time the Damage occurred; or
  - (iii) if the Insured Property is reasonably abandoned because the cost of recovery would exceed the amount payable under Section 1 in respect of such property, it shall be deemed to be a constructive total loss and settlement shall be made in accordance with the above provisions (as applicable).
- (b) The total amount payable by VMIA will also include any additional amounts as provided in clauses 3.4 to 3.7 (as applicable).

### 3.4 Local authorities clause

The indemnity provided by this clause 3.4 shall, subject to the Sub-limit of Liability stated in the Schedule (if any), extend to include the extra costs (including demolition or dismantling) necessarily incurred to comply with the requirements of any Act of Parliament or regulation made thereunder or any by law or regulation of any municipal or other statutory authority, other than such extra costs as aforesaid with which the Insured had been required to comply prior to the Damage occurring.

### 3.5 Undamaged foundations

Where the Contract Works is destroyed but the foundations are not destroyed and due to the exercising of statutory powers and/or delegated legislation and/or authority by the government or any other statutory authority reinstatement of the Contract Works has to be carried out upon another site, then the abandoned foundations will be considered as being destroyed. The term "foundations" is deemed to include services such as, but not limited to, conduits, pipes, cables and wiring built into the footings and foundations (including concrete floor slabs).

### 3.6 Output replacement

If any item(s) of the Contract Works having a measurable output is Damaged (in whole or in part) and which is capable of replacement with a new item(s) which performs a similar function, then the amount payable by VMIA in respect of such property shall be on the following basis:

- (a) if any lost or destroyed Contract Works is to be replaced by an item(s) which has the same or a lesser total output, then the amount payable thereof is the new installed cost of such replacement item(s) as would give the same total output as the Damaged item(s);
- (b) if any Damaged Contract Works is to be replaced by an item(s) which has a greater total output and the replacement value is no greater than the value of the Damaged items(s) then the amount payable shall be the cost of the replacement item(s) and no deduction shall be made due to improved output; or
- (c) if any Damaged Contract Works is to be replaced by an item(s) which has a greater total output and the replacement value is greater than the value of the Damaged item(s) then the insurable value thereof is that proportion of the new installed cost of the replacement item(s) as the output of the Damaged item(s) bears to the output of the replacement item(s). The difference between the insurable value as defined and the new installed cost of the replacement item(s) shall be borne by the Insured.

### 3.7 Reasonable margin for profit

In all cases, the cost of reinstatement shall refer to the final cost to the Insured after completion of the repair, reinstatement or replacement work (including materials and wages incurred for the purpose of repairs and a reasonable margin for profit, administration costs and overheads).

## 4. Extensions applicable to Section 1 - Material Damage

The following extensions apply only to Section 1.

### 4.1 Additional costs and expenses

VMIA shall, in addition to the Limits of Liability, pay the following extra costs and expenses incurred by or on behalf of the Insured, subject to the Sub-limits of Liability stated in the Schedule (if any).

- (a) Removal of debris and other costs
  - (i) Debris

Costs and expenses necessarily incurred in respect of the demolition, removal, storage and/or disposal of debris, Insured Property (including Insured Property which is no

longer useful for the purpose it was intended) and any other property or substances affecting the Insured Operations arising out of Damage.

(ii) Temporary protection

Costs and expenses incurred by or on behalf of the Insured:

- A. for the removal of and/or the temporary protection and safety of Insured Property;
- B. in the purchasing and/or hiring and in the erection and dismantling of hoardings, barriers, fences and any other forms of protection which the Insured must provide in order to comply with the requirements of any government, municipal or other statutory authority.

Provided that the indemnity afforded shall only apply where the costs and expenses are incurred as a result of Damage.

(iii) Shoring, propping and other costs

Costs and expenses necessarily incurred in respect of shoring up, propping, underpinning and temporary repairs as a consequence of actual or imminent Damage.

(b) Expediting expenses

Costs and expenses necessarily and reasonably incurred in connection with or incidental to expediting the commencement, carrying out or completion of the repair, reinstatement or replacement of the Insured Property consequent upon Damage. Such costs and expenses shall include but not be limited to:

- (i) express or chartered carriage or delivery (including by sea or air);
- (ii) travel (including by sea or air) of the Insured's employees, agents, sub- contractors, consultants or representatives;
- (iii) overtime or penalty rates of wages and other related allowances and payments;
- (iv) hire of additional labour, plant, equipment, materials, expertise or services;
- (v) reasonable and necessary changes in the method of construction, the cost of earlier than usual delivery or manufacture and/or costs of purchasing resources;
- (vi) accommodation and boarding costs (including meals and other costs associated therewith); and
- (vii) additional administrative and/or overhead expenses.

(c) Idle / standby charges

Costs and expenses necessarily and reasonably incurred by the Insured and not recoverable under contract/agreement which arise out of the inability to utilise labour and/or materials and/or construction plant and equipment (whether in whole or part) and whether the construction plant and equipment is insured under Section 1 or not following an indemnifiable claim under Section 1 provided that VMIA will not indemnify the Insured under this clause in respect of any costs and expenses arising out of the failure to undertake the repair or reinstatement of the subject matter insured within a reasonable period of time.

(d) Extra expense

The indemnity under this clause is limited to:

- (i) increases in the cost of construction (not otherwise recoverable hereunder) necessarily and reasonably incurred during the Construction Period in consequence of Damage for the purpose of:
  - A. avoiding or diminishing the Insured's normal business activities;
  - B. minimising interruption with or delays to the Contract Works; or
  - C. avoiding or diminishing the amount payable by the Insured under a contract for the discharge of fines and/or damages incurred in consequence of delay

- for non- completion or late completion;
    - (ii) the non-recurring establishment and/or development costs and expenses of every description incurred by or on behalf of the Insured at any time in consequence of the Damage; and
    - (iii) the additional debt interest and any refinancing charges necessarily and reasonably incurred during the Construction Period in consequence of the Damage.
  - (e) Search and locate costs  
Leak search and other costs incurred following irregularities discovered in the results of a hydrostatic or other testing procedure. Such costs will include but not be limited to:
    - (i) the cost of hiring, operating and transporting apparatus; and
    - (ii) the cost of all associated earthworks;and are payable notwithstanding that Damage may not have occurred to the affected item.
  - (f) Professionals' fees  
The fees of project managers, architects, surveyors, quantity surveyors, engineers, legal and other consultants and clerks of works' salaries for estimates, plans, specifications, quantities, tenders and supervision necessarily incurred in reinstatement consequent upon Damage to the Insured Property, but not for preparing any claim under this Policy.
  - (g) Mitigation expenses  
Reasonable costs and expenses incurred by or on behalf of the Insured in connection with or incidental to mitigating, containing, eliminating, avoiding or suppressing actual or imminent threat to life or actual or imminent Damage occurring at or adjacent to or immediately threatening the Insured Property.  
Such costs and expenses shall include but not be limited to:
    - (i) the payment for additional labour (including the Insured's employees), services or resources;
    - (ii) the costs incurred for extinguishing fire at or in the vicinity of Insured Property including damage to gain access; and
    - (iii) the cost of replenishing firefighting appliances or systems and costs and charges incurred for the purpose of shutting off the supply of water or any other substance following the accidental discharge or escape from intended confines of any such substance, whether from fire protection equipment or otherwise.
  - (h) Claims preparation costs  
Reasonable costs and expenses necessarily incurred by the Insured and not otherwise recoverable in connection with or incidental to preparing, collating, auditing or qualifying actual or imminent Damage being claimed under this Policy.
  - (i) Government and other fees  
any fee, contribution or other impost (excluding fines and/or penalties) payable to any government, municipal or other statutory authority, where payment of such fee, contribution or impost is a condition precedent to the obtaining of consent to reinstate Insured Property.  
any fee contribution or other impost (excluding fines and/or penalties) payable to any government, municipal or other statutory authority for services rendered or equipment supplied for the purpose of helping to prevent, mitigate or confine further actual Damage at or in the vicinity of the Worksite.
  - (j) Sue and labour  
Sue and labour and other costs incurred for general average contributions, the salvage, rescue, recovery or retrieval of Contract Works, together with the cost of dismantling and transportation of property to an appropriate place for assessment of any Damage including any transportation costs returning the Insured Property to the Worksite or storage yard once it has been repaired or replaced.

For the purpose of claims for general average contributions and salvage charges recoverable hereunder, the Contract Works shall be deemed to be Insured for its full contributory value.

- (k) Where the scope of works in respect of a Contract includes provision for the types of costs and expenses under this clause 4.1 and such costs and expenses are included in the Project Value, then the Sub-limit of Liability shall apply in addition to any such costs and expenses as included in the Project Value.

## 4.2 Plot ratio indemnity

In the event of Damage to Contract Works and as a result of the exercise of statutory powers and/or authority by any government or statutory authority the replacement of Contract Works as before is prohibited or is only permissible subject to a reduced floor space ratio index and/or to the payment of certain fees and contributions as a prerequisite to replacement or reinstatement, then VMIA agrees to pay to the Insured in addition to any amount otherwise payable:

- (a) the difference between the actual cost of replacement or reinstatement incurred in accordance with a reduced floor space ratio index and the cost of replacement which would have been incurred had a reduced floor space ratio index not been applicable;
- (b) the amount of any fees, contributions or other impost payable to any government department, local government or other statutory authority where such fee, contribution or impost is a condition precedent to consent being given to the replacement of such property; and
- (c) the amount of any additional costs and expenses incurred by or on behalf of the Insured as a result of alterations to the specifications of such property brought about by the reduced floor space ratio index as aforesaid.

In arriving at the amount payable under clause (a) above, any amount paid by VMIA shall include any extra costs of reinstatement or replacement as Insured under clause 3.4.

## 4.3 Civil authority

Section 1 is extended to include loss resulting from Damage by civil authority during a conflagration or other catastrophe incurred for the purpose of retarding the same.

# 5. Exclusions applicable to Section 1 - Material Damage

VMIA shall not be liable to indemnify the Insured under Section 1 in respect of:

## 5.1 Consequential loss

liquidated damages or penalties for non-completion of or delay in completion of the Contract or non-compliance with Contract conditions or consequential loss, other than as specifically provided under Section 1.

## 5.2 Wear and tear

Damage directly caused by:

- (a) normal wear and tear, normal upkeep or normal making good; or
- (b) rust, oxidation, corrosion or gradual deterioration, in each case when due to normal atmospheric conditions or other gradual causes,

but this exclusion 5.2, shall be limited to that part of the Insured Property which is immediately affected and shall not apply to any other parts lost or Damaged in consequence thereof.



### 5.3 Defects

- (a) (LEG 3/06)  
all costs rendered necessary by defects of material, workmanship, design, plan or specification, and should Damage (which for the purposes of this exclusion 5.3(a) shall include any patent detrimental change in the physical condition of the Insured Property) occur to any portion of the Insured Property containing the said defects the cost of replacement or rectification which is hereby excluded is that cost incurred to improve the original material, workmanship, design, plan or specification; or
- (b) (LEG 2/96)  
all costs rendered necessary by defects of material, workmanship, design, plan or specification and should Damage occur to any portion of the Insured Property containing any of the said defects the cost of replacement or rectification which is hereby excluded is that cost which would have been incurred if the replacement or rectification of the Insured Property had been put in hand immediately prior to the said Damage.

For the purpose of Section 1, and not merely this exclusion 5.3, it is understood and agreed that any portion of the Insured Property shall not be regarded as Damaged solely by virtue of the existence of any defect of material, workmanship, design, plan or specification.

Notwithstanding anything in this exclusion 5.3 to the contrary, where a claim involves indemnity under exclusion 5.3(a) in whole or in part, the Insured, at its sole discretion, may elect to have VMIA apply indemnity as if exclusion 5.3(b) was the sole applicable defects exclusion under this clause 5.3 pertaining to such claim.

### 5.4 Aircraft or Watercraft

Aircraft or Watercraft or plant and equipment permanently mounted thereon.

### 5.5 Disappearance or shortage

loss due to disappearance or revealed by inventory shortage alone, unless the shortage can be reasonably attributed to burglary, theft, pilferage or like dishonesty of persons other than the Insured.

### 5.6 Money

Damage to cash, bank notes, treasury notes, cheques, postal orders and money orders, stamps or securities and the like.

### 5.7 Transits outside of Australia

Damage to Insured Property in the course of ocean marine shipment between countries or transit by air between countries.

### 5.8 Electronic Data

- (a) (i) total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data;
- (ii) error in creating, amending, entering, deleting or using Electronic Data; or
- (iii) total or partial inability or failure to receive, send, access or use Electronic Data for any time or at all from any cause whatsoever, regardless of any other contributing cause or Event whenever it may occur.
- (b) However, if a peril listed as a Defined Peril (being a peril under Section 1 but for this exclusion) is caused by any of the matters described in exclusion 5.8(a), then VMIA will indemnify the Insured, subject to all provisions of Section 1, against loss, destruction or Damage to the Insured Property directly caused by such listed peril.

Further, this exclusion does not apply if a peril listed as a Defined Peril (being a peril insured under this Policy but for this exclusion) causes any of the matters described in paragraph (a) above.

Exclusion 10.2 (War and Terrorism) prevails over this exclusion.

## 5.9 Breakdown of Construction Plant and Equipment

Damage to Construction Plant and Equipment caused by its own mechanical or electrical breakdown, however this exclusion 5.9 shall be limited to the smallest component part immediately affected and shall not extend to include other components or parts Damaged in consequence thereof.

## 5.10 Directional Drilling

with respect to Directional Drilling:

- (a) any loss or Damage directly or indirectly due to any corrections and/or re-routing as a result of deviations from the planned route;
- (b) loss of or any change in the drilling fluids (e.g. bentonite); or
- (c) loss of or Damage to the drilling head(s), reamer(s), and all other contractors' constructional plant, equipment and tools, and losses arising out of damage to or failure of these items.

## 5.11 Piling foundations & retaining walls

in respect of piling foundations and retaining walls, expenses incurred:

- (a) for replacing or rectifying piles or retaining wall elements:
  - (i) which have become misplaced or misaligned or jammed during their construction;
  - (ii) which are lost or abandoned or damaged during boring, driving or extraction; or
  - (iii) which have become obstructed by jammed or damaged piling equipment or casings;
- (b) for rectifying disconnected or declutched sheet piles;
- (c) for rectifying any leakage or infiltration of material of any kind;
- (d) for filling voids or for replacing lost bentonite;
- (e) as a result of any piles or foundation elements having failed to pass a load bearing test or otherwise not having reached their designed load bearing capacity; or
- (f) for reinstating profiles or dimensions.

This exclusion shall not apply to loss or Damage caused by Piling Perils. The burden of proving that such loss or Damage is covered shall be upon the Insured.

Where used in this exclusion, "Piling Perils" means fire, lightning, explosion, storm, windstorm, hail, tornado, cyclone, hurricane, earthquake, volcano, tsunami, flood, freezing, weight of snow, impact by Aircraft and other aerial devices or articles dropped therefrom, impact by any train or road or vehicle or animal, riot, civil commotion and strikes.

# 6. Conditions applicable to Section 1 - Material Damage

The following conditions apply only to Section 1.

## 6.1 Escalation

If during the Construction Period, the anticipated final Project Value of a Contract or series of Contracts in connection with one project exceeds the Limit of Liability for Contract Works, then the Limit of Liability for Contract Works shall be increased by the percentage that the anticipated final Project Value for such Contract(s) exceeds the Estimated Project Value of the Contract(s), provided that the Limit of Liability for Contract Works for such Contract(s) shall not increase by more than the Escalation Percentage.

The provisions of this clause shall not apply to any Sub-limits of Liability specified under the Limits of Liability in the Schedule.

## 6.2 Claims procedure

For estimated Damage up to \$50,000 the Insured is at liberty to immediately proceed with repairs or replacement and shall provide to VMIA's Claims and Legal Service full details of the cause and circumstances of the Damage, followed by written notification of the claim, supported by the necessary invoices and other details.

For estimated Damage exceeding \$50,000 the Insured is to defer proceeding with repairs or replacement until VMIA or their representatives have made a preliminary survey or have agreed to the Insured proceeding with repairs or replacement.

The amounts stated in this condition 6.2 refer to estimates made by the Insured of amounts payable by VMIA after application of any relevant Excess.

## 6.3 Limits of Liability

- (a) No liability shall attach to VMIA until the loss in respect of each Event exceeds the amount of any relevant Excess stated in the Schedule.
- (b) The liability of VMIA for any one Event at any one Worksite shall not exceed the Limits of Liability and the cumulative amounts of the Sub-limits of Liability stated in the Schedule (as applicable).
- (c) The Limits of Liability and Sub-limits of Liability shall apply in excess of the amount of the relevant Excess.

## 6.4 Application of Excess

- (a) The Insured shall be liable to pay the amount of the Excess in respect of each Event. If a series of claims are made arising out of the one Event then only one Excess shall apply.
- (b) Non-aggregation of Excess  
Should more than one Excess apply for any claim or series of claims arising from the one Event, such Excesses shall not be aggregated and only the highest single Excess shall apply.
- (c) 72 hour clause  
For the purpose of the application of any Excess, all Damage resulting from fire, bushfire, earthquake, landslip, erosion, subsidence, collapse, water, cyclone, flood, storm, tempest, snow and/or ice occurring during each period of 72 consecutive hours shall be considered as one Event where such peril is sporadic in its sweep and scope. The Insured shall select the time from which any such period shall commence but no two selected periods shall overlap.
- (d) Inland transit  
If a transit Excess is specified in the Schedule, such Excess shall apply to Insured Property in the course of loading of the Insured Property, whilst in transit, including any incidental storage until completion of unloading at the point of discharge at the final destination.

## 6.5 Cessation of work

If any unscheduled cessation of work occurs on a Contract for a period exceeding 30 consecutive days or if works are abandoned, the Insured shall:

- (a) immediately notify VMIA of any the cessation of work or abandonment of the works; and
- (b) take reasonable precautions to protect the Insured Property to avoid or diminish the potential or severity of any Damage resulting therefrom.

After 60 consecutive days from the time that worked ceased or was abandoned, VMIA reserves the right to alter the terms and conditions of this Policy, including cancellation of cover for the affected Contract under this Policy.

## 6.6 Progress payments

Provided that indemnity has been granted under Section 1, progress payments on account of any claim shall be made to the Insured, at such intervals and for such amounts as may be agreed upon production of an acceptable report by the Loss Adjuster (if appointed), provided quantum has reasonably been established and such payments shall be deducted from the amount finally determined upon adjustment of the claim.

## 6.7 Loss Payee

Any claim arising under Section 1 shall be settled with and paid to the Loss Payee stated in the Schedule or as they may direct. Where no Loss Payee is stated in the Schedule settlement shall be made in accordance with the direction of the relevant Victorian State Government Minister.

## Section 2 – Liability

The following clauses apply to Section 2.

### 7. Insuring clauses

#### 7.1 Legal liability

- (a) VMIA will under Section 2 indemnify the Insured against the Insured's legal liability to pay damages or compensation in respect of:
- (i) Personal Injury;
  - (ii) Property Damage; or
  - (iii) Advertising Injury,
- sustained during the Construction Period or Defects Liability Period in respect of the Insured Operations within the Territorial Limits as a result of an Occurrence.
- (b) VMIA will under Section 2 also indemnify the Named Insured against the Named Insured's legal liability to pay damages or compensation in respect of:
- (i) Personal Injury;
  - (ii) Property Damage; or
  - (iii) Advertising Injury,
- sustained during the Period of Insurance in respect of Completed Operations and Products within the Territorial Limits as a result of an Occurrence.

#### 7.2 Defence and other costs

In addition to any indemnity pursuant to clause 7.1 and the Limits of Liability, VMIA will pay in connection therewith:

- (a) all legal costs and other expenses incurred with the written consent of VMIA;
- (b) all charges expenses and legal costs recoverable from the Insured by claimants;
- (c) all costs and expenses incurred by the Insured for legal representation at any appeal, coroner's inquest, royal commission, fatal accident inquiry or court of summary jurisdiction;
- (d) expenses incurred by the Insured for first aid rendered for injury to others at the time of an Occurrence;
- (e) expenses incurred by the Insured for temporary repair and or shoring up of property made necessary by an Occurrence;
- (f) all post-judgement interest that accrues on VMIA's portion of any judgement after entry of judgement until VMIA has paid, tendered or deposited in court such part of the judgement as does not exceed the Limit of Liability; and
- (g) all premiums on appeal bonds and security for costs required in any suit and pay premiums on bonds to release attachments in any suit for an amount not in excess of the applicable Limit of Liability of Section 2, but VMIA shall have no obligation to apply for or furnish any such bonds or security for costs.

Even if the allegations of a suit are groundless, false or fraudulent, VMIA will defend any proceedings against the Insured for compensation to which indemnity under Section 2 applies (or would apply if the claim was sustained) and VMIA may make such investigations and settlement of any claim as VMIA deems expedient.

## 8. Exclusions applicable to Section 2 - Liability

VMIA shall not be liable under Section 2 only to indemnify the Insured in respect of:

### 8.1 Employer's liability

liability for which the Insured is entitled to indemnity under any policy of insurance required to be taken out pursuant to any legislation relating to workers and workmen's compensation, whether or not the Insured has effected such a policy.

This exclusion 8.1 does not apply to:

- (a) Worker to Worker Liability;
- (b) claims for loss of consortium from the spouse of an Employee; or
- (c) liability of others assumed by the Insured under written Contract.

### 8.2 Industrial awards

liability to or of any Employee of the Insured imposed by the provisions of any industrial award or industrial agreement or industrial determination where such liability would not otherwise have attached.

### 8.3 Aircraft and Watercraft

liability arising from the ownership, possession or use by the Insured of any Aircraft or Watercraft, but this exclusion 8.3 shall not apply to:

- (a) Aircraft or Watercraft which are not owned by the Insured when such craft are hired, leased or chartered to or by the Insured with a pilot/master or crew supplied;
- (b) liability arising in connection with construction plant or equipment or other property mounted upon or operating from any Watercraft;
- (c) the use or existence of explosives on or from any marine craft or vessels whether in, over or under water or otherwise;
- (d) liability in respect of work undertaken on marine craft or vessels; or
- (e) the ownership, maintenance or use of unmanned aerial vehicles provided that the unmanned aerial vehicles are operated in compliance with the regulations of the Civil Aviation Safety Authority (CASA) in Australia.

### 8.4 Vehicles

- (a) for Personal Injury insurable under any compulsory legislation governing the use of any Vehicle or trailer attached to such Vehicle; or
- (b) for Property Damage caused by or arising out of the use of any mechanically propelled Vehicle including any trailer attached to such Vehicle.

Provided that exclusion 8.4 shall not apply:

- (c) whilst such Vehicle or trailer is in use as a tool of trade in connection with the Insured Property;
- (d) whilst such Vehicle or trailer, in connection with the Insured Property, is in transit other than under the power of such Vehicle;
- (e) where caused by or arising out of the delivery or collection of goods to or from any Vehicle or trailer where such is located on any carriageway or thoroughfare which forms part of the site of the Insured Property; or

- (f) where caused by or arising out of the loading or unloading of, or the delivery or collection of, any goods to or from any Vehicle or trailer used in work undertaken by or on behalf of the Insured in connection with the Insured Property.

## 8.5 Loss of use

loss of use of tangible property that forms part of a Contract which has not been physically damaged or destroyed resulting from a delay in or lack of performance by or on behalf of the Insured of any Contract.

## 8.6 Products and work performed

liability for the cost of making good, replacing or reinstating workmanship performed by the Insured or of any Product which is or is alleged to be defective or deficient.

This exclusion 8.6 shall apply only to the smallest component part which is defective or deficient and shall not apply to any other parts of the works, Completed Operations, Products or any other property lost or damaged as a consequence of the defect or deficiency.

## 8.7 Professional liability

liability arising out of the rendering of or failure to render professional advice or service by the Insured or error or omission connected therewith, but this exclusion 8.7 does not apply to:

- (a) Personal Injury or Property Damage arising therefrom; or
- (b) the rendering of or failure to render professional medical advice by medical persons employed by the Insured to provide first aid and other medical services on the Insured's premises.

## 8.8 Pollution and contamination

- (a) liability arising out of discharge, dispersal, seepage, release or escape of Pollutants into or upon land, the atmosphere, or water; but this exclusion 8.8(a) does not apply if such discharge, dispersal, seepage, release or escape is sudden and accidental and neither expected nor intended from the standpoint of the Insured; or
- (b) any costs and expenses incurred in the preventing, removing, nullifying or clean-up of Pollutants, but this exclusion 8.8(b) does not apply where such preventing, removal, nullifying or clean-up expenses are incurred consequent upon a sudden and accidental happening neither expected nor intended from the standpoint of the Insured.

## 8.9 Fines and penalties

liability arising from or attributable to:

- (a) an award of punitive, liquidated, aggravated or exemplary damages; or
- (b) any fine or penalties, including but not limited to civil penalties,

but this exclusion 8.9 does not apply to civil awards in the nature of compensatory damages.

## 8.10 Advertising Injury

liability arising out of Advertising Injury for:

- (a) offences committed prior to the inception date of Section 2;
- (b) offences made at the direction of the Insured with knowledge of the illegality or falsity thereof;
- (c) breach of Contract, other than misappropriation of advertising ideas under an implied Contract;
- (d) the incorrect description of the price of the Products, goods or services;

- (e) the infringement of trade mark, service mark or trade name by use thereof as the trade mark, service mark or trade name of the Products, goods or services sold, offered for sale or advertised, but this exclusion does not apply to titles or slogans; or
- (f) the failure of Products, goods or services to conform with advertised performance, quality, fitness or durability.

### 8.11 Property owned by or in care, custody or control of the Insured

Damage to property:

- (a) owned by the Insured; or
- (b) held in trust or in the custody or control of the Insured,

but only to the extent that such damage is payable under Section 1 or other similar policy covering such property.

## 9. Conditions applicable to Section 2 - Liability

The following conditions apply to Section 2.

### 9.1 Notification and claims procedure

Upon the Insured becoming aware of any Occurrence giving rise or likely to give rise to a claim under Section 2 or upon receipt by the Insured of notice of any claim or subsequent proceeding, the Insured shall as soon as practicable thereafter:

- (a) give notice thereof in writing to VMIA's Claims and Legal Service;
- (b) preserve any property or things which might prove necessary or useful by way of evidence in connection with any claim and, so far as may be reasonably practicable, with due regard to safety, no alteration or repairs shall, without the consent of VMIA, be made after the Occurrence until VMIA shall have had an opportunity of inspection;
- (c) forward to VMIA every letter of demand, writ, summons or process as soon as practicable after receipt thereof and give notice to VMIA in writing as soon as practicable after the Insured shall have knowledge of an impending prosecution or inquest in connection with any Occurrence; and
- (d) when called upon to do so, furnish to VMIA in writing all details of the Occurrence together with such information, evidence, explanations and assistance as VMIA may reasonably require.

### 9.2 Limits of Liability

- (a) No liability shall attach to VMIA until the loss in respect of each Occurrence exceeds the amount of any relevant Excess. The Limit of Liability shall apply in excess of the amount of the Excess.
- (b) The liability of VMIA under Section 2 in respect of each Occurrence shall not exceed the Limit of Liability per Occurrence. This per Occurrence limit applies on a combined basis across all VMIA clients' construction risks annual liability policies as a result of the same Occurrence.
- (c) The total aggregate liability of VMIA for all claims arising out of Products or Completed Operations shall not exceed the Limit of Liability for all Insureds on a combined basis across all VMIA clients' construction risks annual liability policies for each Period of Insurance.

### 9.3 Application of Excess

- (a) The Insured shall be liable to pay the amount of the Excess in respect of each Occurrence. If a series of claims are made arising out of the one Occurrence then only one Excess shall apply.



- (b) Should more than one Excess apply under Section 2 for any claim (or series of claims arising out of continuous or repeated exposure to substantially the same general conditions) such Excesses shall not be aggregated and only the highest single level of Excess shall apply.
- (c) The Excess shall also apply to clause 7.2 (Defence and other costs) and to costs and expenses incurred relating to condition 11.10.

## 9.4 Master Policy

The following definitions apply to this condition only:

**Underlying Insurance** are the Project Specific Construction Risks insurance policies issued by VMIA to the Insured for specific risks, projects or agreements.

**Master Policy** means this Policy in circumstances where VMIA issues Underlying Insurance.

The following Condition applies to this Policy.

- (a) in the event of the Insured being indemnified by an Underlying Insurance in respect of a claim for which indemnity is available under this Master Policy, the insurance afforded by this Master Policy shall be excess insurance over any sum collectible under the Underlying Insurance.
- (b) should any such Underlying Insurance by virtue of its scope of cover, definitions, conditions or limits of liability or for any other reason not indemnify the Insured in whole or in part in respect of Personal Injury, Property Damage or Advertising Injury as herein provided or should any insurer(s) of such Underlying Insurance fail or refuse to indemnify the Insured for any reason in respect of such loss, destruction or damage as provided herein, this Master Policy, subject to its terms, Conditions and Exclusions, shall provide indemnity to the extent that such indemnity is not provided by the terms and conditions of such Underlying Insurance.

Provided that:

- (i) the Limit of Liability under this Master Policy shall be reduced by an amount equal to the indemnity recoverable under any Underlying Policy.
- (ii) the Insured shall maintain in force the Underlying Insurance. Any renewal or substitution of such Policies shall provide the same cover as the original unless specifically agreed otherwise by VMIA.
- (iii) No amount shall be recoverable under this Policy due to the application of any excess or deductible franchise, proportional co-insurance, self-insurance or other self-retained part of any risk under any Underlying Insurance.

## General provisions applicable to all Sections

### 10. General Exclusions applicable to all Sections

VMIA shall not be liable to indemnify the Insured under this Policy in respect of:

#### 10.1 Nuclear risks

except as provided in the Terrorism Extension, loss, damage or liability directly or indirectly caused by or contributed to by or arising from:

- (a) ionising, radiations or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel. For the purpose of this exclusion 10.1(a) only, combustion shall include any self- sustaining process of nuclear fission; or
- (b) nuclear weapons materials.

This exclusion 10.1 shall not apply to damage resulting from the use of commercial radioactive isotopes.

## 10.2 War and Terrorism

notwithstanding any provision to the contrary within this Policy or any Endorsement, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power. Notwithstanding this clause 10.2(a), this Policy shall cover loss, damage or liability caused by missiles and/or mines and/or bombs and/or other explosives not discovered at the moment of commencement of this Policy as long as no state of war exists in the country where the loss occurs; or
- (b) loss, injury, damage or liability directly or indirectly arising from Terrorism in excess of the relevant amount of cover stated in the Terrorism Extension.

This clause also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 10.2(a) and/or 10.2(b) above.

In the event any portion of this exclusion clause 10.2 is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

## 10.3 Asbestos

any loss, damage or liability resulting directly or indirectly caused by, contributed by or arising from exposure to asbestos or materials containing asbestos.

## 11. General conditions applicable to all Sections

The following general conditions apply to all Sections.

### 11.1 Subrogation

- (a) The Insured shall, at the request and the expense of VMIA, do and concur in doing all such acts and things as VMIA may reasonably require to preserve and enforce any rights the Insured may have against anyone in respect of liability for Personal Injury, Property Damage or Advertising Injury, Damage to Insured Property or any other indemnifiable event under this Policy.
- (b) Upon the payment of any claim under this Policy VMIA shall be subrogated to all the rights and remedies of the Insured arising out of such claim against any person or corporation whatsoever.

### 11.2 Settlement of claims

- (a) No admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the Insured without the consent of VMIA who shall have the right and duty to take over and conduct in the name of the Insured the defence or settlement of any claim or to prosecute in the name of the Insured for VMIA's own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings or in the settlement of any claim.
- (b) VMIA agrees to discuss the conduct, defence, prosecution or settlement of any claim or proceeding with the Insured prior to taking action or effecting settlement.
- (c) VMIA may pay to the Insured the amount of the applicable Limit of Liability or such lesser sum for which the claim can be settled subject in either case to deduction of any sum or sums already paid as compensation or damages in respect of such claim and VMIA shall thereafter be under no further liability in respect of such claim except for the payment of costs and expenses for which VMIA are liable hereunder incurred prior to the date of such payment, whether or not pursuant to an order made subsequently.

### 11.3 Multiple Insured's clause

- (a) If the Insured comprises more than one Insured party each operating as a separate and distinct entity then (save as provided in this clause 11.3), cover hereunder shall apply in the same manner and to the same extent as if individual policies had been issued to each such Insured party, provided that the total liability of VMIA to all of the Insured parties collectively shall not exceed the Limits of Liability and the Sub-limits of Liability.
- (b) The Insured parties will, to the extent allowed under Contract, at all times preserve the various contractual rights and agreements entered into by the Insured parties and contractual remedies of such parties in the event of loss or damage.
- (c) VMIA shall be entitled to avoid liability to or (as may be appropriate) claim damages from an Insured party in circumstances of such Insured party committing fraud, misrepresentation, material non-disclosure or breach of any warranty or condition of this Policy referred to in this condition 11.3 as a "Vitiating Act".
- (d) However a Vitiating Act or any other act or neglect committed by one Insured party, either at the time of entering this Contract or during the Period of Insurance, shall not prejudice the right to indemnity of any other Insured party who has an insurable interest and who has not committed a Vitiating Act.
- (e) VMIA agrees to waive all rights of subrogation that it may have or acquire against:
  - (i) any Insured or any individual or organisation affiliated or associated with any parent of or a subsidiary of any Insured, except in circumstances where the insured party is not entitled to indemnity under definition (e) (iv) of the Insured. Notwithstanding, VMIA will not be entitled to any recourse against an insured party in accordance with the

provisions of condition 11.7 (Hold harmless agreements) or with respect to any Victorian government-controlled department or entity (excluding municipal and/or local councils, authorities and/or associations); or

- (ii) any other parties or persons, subject to the Insured waiving rights of subrogation prior to the loss, but only when required to do so under Contract,

except where the rights of subrogation or recourse are acquired in consequence or otherwise following a Vitiating Act, in which circumstances VMIA may enforce such rights against the party committing the Vitiating Act.

## 11.4 Notices

- (a) Any notice of claim given to VMIA by any party Insured under this Policy shall be accepted by VMIA as a notice of claim given on behalf of all other parties insured under this Policy.
- (b) Any notice(s) given by VMIA to any party Insured under this Policy shall also be given to all other named parties.
- (c) Subject to the Named Insured providing details to VMIA of the name of the Nominee for VMIA Notices and the relevant Contract provisions, VMIA agrees to provide 30 business days' prior notice to that nominee in the event of:
  - (i) the cancellation or expiry of this Policy before the completion of the relevant Contract due to non-payment of premium or any other cause; or
  - (ii) VMIA giving any notice under this Policy.

## 11.5 Declarations and premium payment

- (a) If the premium with regard to an item of this Policy is shown in the Schedule as being adjustable, then the premium for the applicable item(s) is provisional and will be adjusted as follows.
- (b) For Named Insureds where the premium is agreed to be paid and adjusted annually:
  - (i) within 180 days of the expiry of each Period of Insurance, the Named Insured will declare to VMIA the final Project Values by Contract type for all Insured Operations commenced and completed during the expired period, and the projected Project Values by Contract type for the Insured Operations commenced during the expired period, but not completed as at the end of the Period of Insurance; and
  - (ii) subject to any minimum premium applicable, the provisional premium will be adjusted by payment to VMIA of an additional premium or by allowance to the Named Insured of a return premium, as the case may be, calculated at the agreed rate on the difference between the estimated and final or projected Project Values (as applicable) for the Insured Operations.
- (c) For Named Insureds where the premium is agreed to be paid at the time that the project has commenced:
  - (i) prior to the commencement of the project, the Named Insured will declare to VMIA the Estimated Project Value by Contract type for the project.
  - (ii) within 60 days of the expiry of the Construction Period of each project, the Named insured will declare to VMIA the final Project Value by Contract type for the completed project; and
  - (iii) subject to any minimum premium applicable, the provisional premium for the declared project will be adjusted by payment to VMIA of an additional premium or by allowance to the Named Insured of a return premium, as the case may be, calculated at the agreed rate on the difference between the estimated and final Project Value of the project.

## 11.6 Insolvency or bankruptcy

The insolvency or bankruptcy of any party comprising the Insured shall not release VMIA from any of their obligations assumed hereunder.

## 11.7 Hold harmless agreements

Where, in connection with or in relation to a Contract, the Insured enters into an agreement with another party and where such agreement provides, inter alia, that the Insured shall indemnify and/or hold harmless and/or release from liability such other party in respect of any liability hereby Insured against, it is understood and agreed that this Policy shall not be prejudiced or invalidated by the Insured agreeing to such provisions and that the indemnity and/or hold harmless and/or release from liability given by the Insured shall be equally binding upon VMIA.

## 11.8 Applicable law

Should any dispute arise between the Insured and VMIA over the application of this Policy, such dispute shall be determined in accordance with:

- (a) the law of the applicable Australian State or Territory where the business of the Insured is conducted; or
- (b) at the discretion of VMIA, and to take precedent over (a), the law of Victoria.

## 11.9 Cancellation

- (a) The State (on behalf of itself and all other Insured's unless otherwise specified) may cancel this Policy or any Section at any time by giving notice in writing to VMIA.
- (b) After cancellation by the Named Insured or VMIA, the Premium will be adjusted in accordance with condition 11.5, except that the declared values shall be at the date of cancellation. The Named Insured will be obliged to supply to VMIA such information as is necessary to determine adjustment of the Premium.
- (c) If this Policy or any Section is cancelled, any minimum premium shall be reduced in proportion to the time on risk and Project Values actually Insured.

## 11.10 Engagement of Loss Adjusters

- (a) VMIA is authorised to appoint a loss adjuster from the panel of Loss Adjusters to investigate and quantify losses that are potentially indemnifiable under this Policy. Loss adjuster fees and expenses shall be payable by VMIA.
- (b) VMIA and the Insured agree that the Loss Adjusters shall be agents of VMIA and the Insured and all documents, transcripts and reports (verbal and written) shall be made available to VMIA and the Named Insured.
- (c) If at any time there shall be any dispute or difference between VMIA and the Insured in respect of the adjustment of a loss, then VMIA or the Named Insured shall be entitled to appoint an independent loss adjuster at their own cost.

## 11.11 Currency

All monetary amounts expressed in this Policy are in Australian dollars. The premium and losses shall be paid in Australian dollars or as otherwise agreed between VMIA and the Insured.

## 11.12 Master and agreed rate Contracts

For the purpose of applying the maximum Construction Period, Project Value and other Policy provisions, each Contract or project undertaken under a separate Contract or work order or purchase order or similar arrangement will be considered as a separate Contract irrespective of the existence of a service agreement or agreed rate or similar Contract or master agreement which applies over more than one Contract.

## 12. Privacy statement

We are committed to protecting any information and data, including personal information and health information we collect, handle, store or disclose about you through our services. We manage all information and data, including personal and health information in accordance with the *Victorian Managed Insurance Authority Act 1996 (Act)*, the *Privacy and Data Protection Act 2014*, the *Health Records Act 2001*, the *Freedom of Information Act 1981*, and our [Privacy Policy](#).

From time to time, in accordance with our legislative and regulatory frameworks and applicable laws, we may be required to disclose information concerning policies or claims to government bodies authorised by Victorian or Commonwealth legislation.

### Collection and use of personal information

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

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

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

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

### Access and correction

Please contact our Information Privacy Officer at [privacy@vmia.vic.gov.au](mailto:privacy@vmia.vic.gov.au) if you:

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

End of Policy Wording