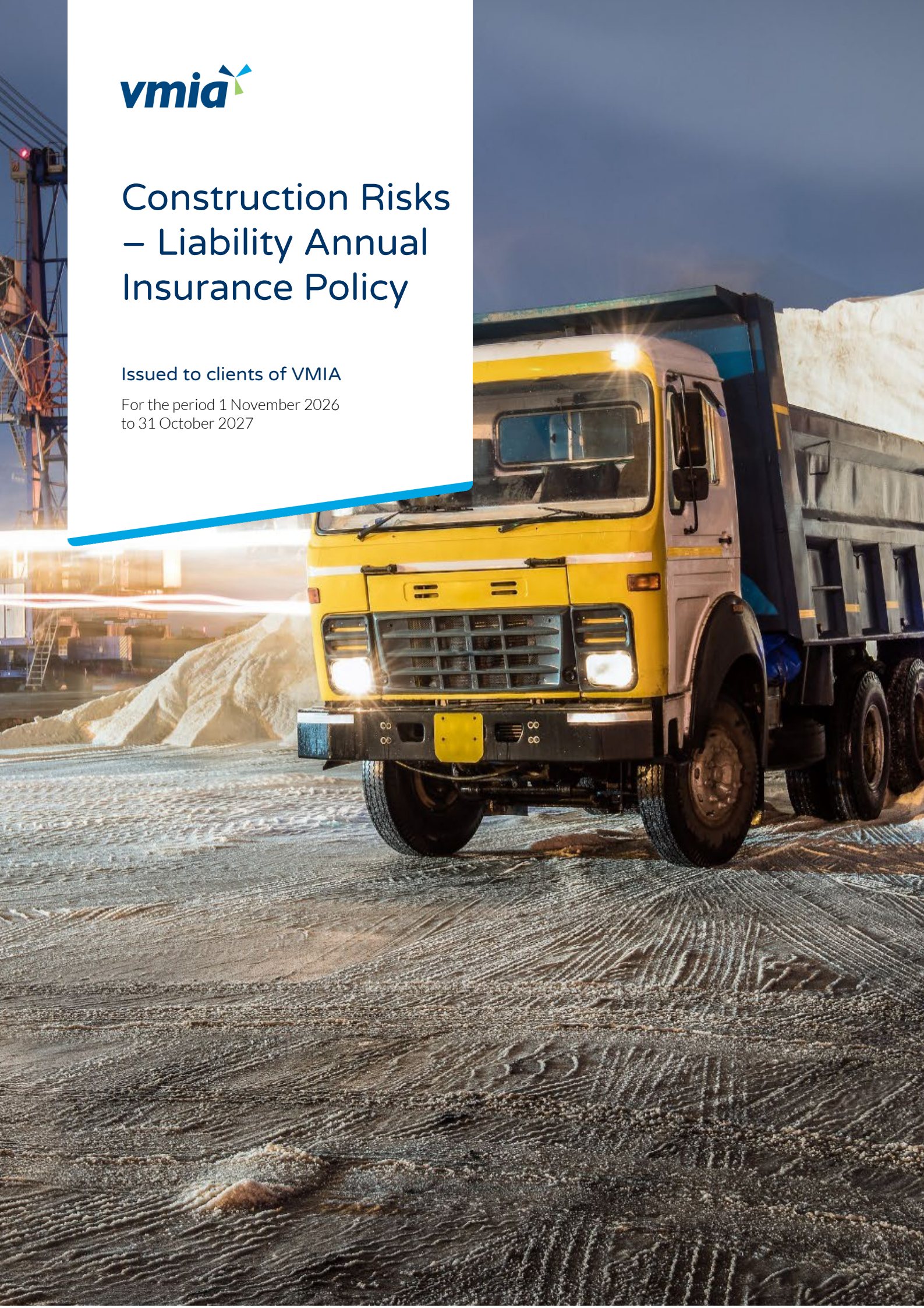
Construction Risks – Liability Annual Insurance Policy

Issued to clients of VMIA

For the period 1 November 2026
to 31 October 2027



© State of Victoria 2026

You are free to re-use this work under a Creative Commons Attribution 4.0 licence, provided you credit the State of Victoria (Victorian Managed Insurance Authority) as the author, indicate if changes were made and comply with the other licence terms. The licence does not apply to any branding, including Government logos.

VMIA is the Victorian Government's insurer and risk adviser

Level 10 South
161 Collins Street
Melbourne VIC 3000

P (03) 9270 6900
contact@vmia.vic.gov.au
ABN 39 682 497 841

vmia.vic.gov.au
© Victorian Managed 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, present and emerging. We acknowledge the important contribution that Aboriginal and Torres Strait Islander peoples make in creating a thriving Victoria.

Contents

1. Introduction 1
2. Definitions and interpretation 1
Definitions 1
Interpretation 6
3. Insuring clauses 7
3.1 Legal liability 7
3.2 Defence and other costs 7
4. Exclusions applying to this Policy 7
4.1 Employer's liability 8
4.2 Industrial awards 8
4.3 Aircraft and Watercraft 8
4.4 Vehicles 8
4.5 Loss of use 9
4.6 Products and work performed 9
4.7 Professional liability 9
4.8 Pollution and contamination 9
4.9 Asbestos liability 9
4.10 Fines and penalties 9
4.11 Advertising Injury 9
4.12 Property owned by or in care, custody or control of the Insured 10
4.13 Nuclear risks 10
4.14 War and Terrorism 10
5. Conditions applying to this Policy 10
5.1 Notification and claims procedure 11
5.2 Limits of Liability 11
5.3 Application of Excess 11
5.4 Subrogation 11
5.5 Settlement of claims 11
5.6 Multiple Insured's clause 12
5.7 Notices 12
5.8 Declarations and premium payment 13
5.9 Insolvency or bankruptcy 13
5.10 Hold harmless agreements 13
5.11 Applicable law 13
5.12 Cancellation 14
5.13 Engagement of Loss Adjusters 14
5.14 Currency 14
5.15 Master and agreed rate Contracts 14
5.16 Master Policy 14
6. Privacy statement 16

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

Definitions

The following Definitions apply to 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.

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

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.

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.

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

Excess is the amount borne by the Insured in respect of each 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.

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 Named 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 manager or construction manager or superintendent;

(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 and/or Additional Insured, 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 including associated community related functions and also 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 and 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 Services means the provision and management of canteens, social, sports and welfare organisations, for the benefit of the Named Insured's employees; first aid, security, fire and ambulance services; maintenance of the Named 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.

Limit of Liability is the amount stated in the Schedule.

Loss Adjuster is the entity stated in the Schedule.

Material Damage Insurance means any material damage insurance policy that provides indemnity to the Insured, against physical loss or damage to the Contract Works or Construction Plant and Equipment in connection with the Insured Operations.

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.

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

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 not indemnified by this Policy.

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.

Schedule means the Schedule issued with this Policy.

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

State Entity means the Crown in the 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, if any.

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.

(d) any works within the confines of a subterranean passage or shaft that are not directly related to the construction of the artificial subterranean passage or shaft.

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.

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.

3. Insuring clauses

3.1 Legal liability

(a) VMIA will indemnify the Insured under this Policy 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 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 Insured Services, Completed Operations and Products within the Territorial Limits as a result of an Occurrence.

3.2 Defence and other costs

In addition to any indemnity pursuant to clause 3.1 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, 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 this Policy applies (or would apply if the claim was sustained) and VMIA may make such investigations and settlement of any claim as VMIA deems expedient.

4. Exclusions applying to this Policy

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

4.1 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 4.1 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.

4.2 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.

4.3 Aircraft and Watercraft

liability arising from the ownership, possession or use by the Insured of any Aircraft or Watercraft, but this exclusion 4.3 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.

4.4 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 4.4 shall not apply:

(c) whilst such Vehicle or trailer is in use as a tool of trade in connection with the Insured Operations;

(d) whilst such Vehicle or trailer, in connection with the Insured Operations, 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 Operations; 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 Operations.

4.5 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.

4.6 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 4.6 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.

4.7 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 4.7 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.

4.8 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 4.8(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 4.8(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.

4.9 Asbestos liability

claims directly or indirectly caused by, contributed by or arising from exposure to asbestos or materials containing asbestos.

4.10 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 4.10 does not apply to civil awards in the nature of compensatory damages.

4.11 Advertising Injury

liability arising out of Advertising Injury for:

(a) offences committed prior to the inception date of this Policy;

(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.

4.12 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 the Material Damage Insurance or other similar policy covering such property.

4.13 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 4.13(a) only, combustion shall include any self- sustaining process of nuclear fission; or

(b) nuclear weapons materials.

This exclusion 4.13 shall not apply to damage resulting from the use of commercial radioactive isotopes.

4.14 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 4.14(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 4.14(a) and/or 4.14(b) above.

In the event any portion of this exclusion 4.14 is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

5. Conditions applying to this Policy

The following conditions apply to this Policy.

5.1 Notification and claims procedure

Upon the Insured becoming aware of any Occurrence giving rise or likely to give rise to a claim under this Policy 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.

5.2 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 this Policy 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.

5.3 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 this Policy 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 3.2 (Defence and other costs) and to costs and expenses incurred relating to condition 5.13

5.4 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.

(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.

5.5 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.

5.6 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 5.6), 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 5.6 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 5.10 (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.

5.7 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.

5.8 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 Project Value 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 Project Value and final Project Value of the project.

5.9 Insolvency or bankruptcy

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

5.10 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.

5.11 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.

5.12 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 5.8, 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.

5.13 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.

5.14 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.

5.15 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.

5.16 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.

6. 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 1982*, 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 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