



icare

builders warranty / dust diseases care / lifetime care / self insurance / workers insurance

icare is the brand of Insurance & Care NSW

ICT Services Agreement

For the Provision, Implementation and Support of the icare Solution

Insurance and Care NSW on behalf of the Workers' Compensation Nominal Insurer (**Nominal Insurer**)

Capgemini Australia Pty Limited (**Service Provider**)

ICT Services Agreement

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Details

Parties

Name	Insurance and Care NSW on behalf of the Workers Compensation Nominal Insurer
ABN	16 759 382 489
Short form name	Nominal Insurer

Name	Capgemini Australia Pty Limited
ABN	11 092 284 314
Short form name	Service Provider

Background

- A The Nominal Insurer and the Service Provider wish to put in place an agreement under which the parties will work together collaboratively to deliver the icare Solution (or components of the icare Solution) to manage certain insurance and compensation schemes, for use by and benefit of each of the Licensees.
- B The Service Provider will design, build, deliver, configure, test, implement, integrate and provide the icare Solution in Phases, by way of separate Statements of Work in accordance with the terms and conditions of the Agreement.
- C The Service Provider has fully informed itself on all aspects of the work required to be performed and has represented that it has the skills, qualifications, resources and experience necessary to provide the icare Solution and the Services in accordance with the requirements of the Agreement.
- D The icare Solution will be utilised by the Licensees, each of which will be dependent on the icare Solution and the Services in order to discharge their respective functions and responsibilities and to meet their respective strategic business and ICT objectives.

Agreed terms

Defined terms and interpretation

1. Glossary

In the Agreement, except where the contrary intention is expressed, the definitions set out in Appendix B (Glossary) apply.

2. Interpretation

2.1 General

In the Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this document, and a reference to the Agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Sydney, Australia time;
- (g) a reference to a party is to a party to the Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local department or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (k) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (l) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (m) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the Agreement or any part of it;

- (n) if a Day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (o) headings are for ease of reference only and do not affect interpretation.

2.2 Documents forming part of the Agreement

The following documents form part of the Agreement:

- (a) clauses 1 to 88 and Appendix B (Glossary);
- (b) the icare Solution Requirements;
- (c) any executed Statement of Work;
- (d) the other Schedules, Attachments and Appendices to this document;
- (e) the most recent version of each of the Document Deliverables; and
- (f) any document annexed to, or incorporated by reference into, the Agreement, other than the Document Deliverables.

2.3 Precedence of documents

If there is any inconsistency between the provisions of the documents that together form the Agreement, unless expressly stated otherwise in any document forming part of the Agreement, the provisions of the earlier mentioned document in clause 2.2 will prevail to the extent of that inconsistency.

2.4 No exclusivity

The Service Provider acknowledges and agrees that the relationship with the Nominal Insurer is non-exclusive and the Nominal Insurer may, at any time, perform or procure, or engage or retain third parties to provide, any services or goods, or carry out any work that is the same as or similar to any part of the Services or work to be carried out by the Service Provider under the Agreement and that such engagement will not amount to:

- (a) a reduction in the scope of the Agreement;
- (b) grounds for the Service Provider to revise, or seek to revise the Charges;
- (c) a release or waiver in respect of any of the Service Provider's obligations under the Agreement; or
- (d) a repudiation of all or any part of the Agreement by the Nominal Insurer.

2.5 Pre-Contract Information

The Service Provider warrants, represents and agrees that it:

- (a) has reviewed and made its own assessment of all information provided to the Service Provider prior to signing the Agreement and relating to the Agreement (**Pre-Contract Information**);
- (b) relies wholly at its own risk on any Pre-Contract Information; and
- (c) does not require any further information for it to form the decision to enter into the Agreement and to satisfy itself that it is able to perform its obligations under the Agreement.

Scope of Agreement

3. Term

The term of the Agreement begins on the Effective Date and will remain in force until terminated in accordance with the Agreement.

4. Objectives

4.1 Statement of Objectives

The Service Provider acknowledges that, in engaging the Service Provider to provide the Services, the Nominal Insurer expects to achieve the following objectives (which are not expressed in any order of importance or precedence):

- (a) each part of the icare Solution will:
 - (i) at all times comply with the Final Design Documentation and each applicable Statement of Work;
 - (ii) be maintainable, in that it will be easy to Modify it to correct faults, improve performance or other attributes, or adapt it to a changed environment;
 - (iii) be reliable, in that it will be robust, resilient and failure-free; and
 - (iv) be useable, in that it will allow all users to effectively and efficiently use it;
- (b) the Service Provider will at all times be accountable to the Nominal Insurer for its performance under the Agreement, and will demonstrate its compliance, or report its non-compliance, with the terms of the Agreement; and
- (c) the Service Provider will at all times during the Term demonstrate the highest possible ethical standards in its dealings and conduct in the provision of the Services,

but the Service Provider does not warrant or guarantee achievement of the Objectives unless expressly provided for elsewhere in the Agreement.

4.2 Objectives do not limit obligations

The parties agree that achievement of the Objectives is but one expectation under the Agreement and the nature and extent of the Service Provider's obligations are not to be construed or interpreted solely by reference to the Objectives or their achievement.

4.3 Further assurances

In addition to and notwithstanding any other obligation under the Agreement:

- (a) the Service Provider must, to the extent practical, co-operate with the Nominal Insurer in the pursuit of the Objectives; and
- (b) both parties will, as soon as practicable, consult with each party on any matter arising which may materially affect the performance by such other party of its obligations under the Agreement.

5. Scope

5.1 Scope

- (a) The Service Provider must design, Build, deploy, supply, deliver, configure, Implement, test and host the icare Solution and provide the Services in accordance with the time

frames and specifications specified in executed Statements of Work entered into pursuant to the Agreement. Without limiting any of the Service Provider's other obligations arising under the Agreement, the Service Provider accepts responsibility for the provision of all relevant goods, equipment and services supplied to the Nominal Insurer by the Service Provider or by a third party (including an Approved Subcontractor) on behalf of the Service Provider under the Agreement.

5.2 Compatibility

Subject to any relevant Statement of Work, the Service Provider must design, Build, deploy, supply, deliver, configure and integrate the icare Solution and provide the Services so that:

- (a) they are compatible with the Nominal Insurer's Existing System, to the extent that any compatibility requirements are set out in the icare Solution Requirements and/or the relevant Statement of Work; and
- (b) unless otherwise agreed in the icare Solution Requirements and/or the relevant Statement of Work, they do not materially restrict or otherwise adversely affect, the performance of, the Nominal Insurer's Existing System, as such performance is objectively measured by the Nominal Insurer and agreed by the parties prior to the performance of any work that may impact that performance.

5.3 Acknowledgement

The Service Provider acknowledges that the Nominal Insurer will rely on the Service Provider's skills and expertise in assisting the Nominal Insurer to establish and maintain an environment that facilitates the compliance of the icare Solution with the Project Documentation.

Structure of the Project

6. Obligations

6.1 Service Provider obligations

- (a) The Service Provider must provide the icare Solution and Services and supply and deliver the Deliverables, including the Documentation, in accordance with the requirements set out in the Agreement, the icare Solution Requirements, and the Project Documentation, by the applicable Milestone Dates.

6.2 Nominal Insurer obligations

- (a) The Nominal Insurer must perform the obligations, functions, tasks and responsibilities attributed to it under an executed Statement of Work (**NI Tasks**).

6.3 Consequences of failure to perform NI Tasks

To the extent that the Service Provider is delayed in the performance of its obligations as a result of a failure by the Nominal Insurer to perform the NI Tasks (**NI Failure**):

- (a) the provisions of clause 45.6(c) apply; and
- (b) to the extent not recoverable under clause 45.6(c), the Service Provider is entitled to payment of, and Nominal Insurer must pay on demand on receipt of an invoice in accordance with clause 51.1, Service Provider's reasonable extra costs resulting from the NI Failure, except to the extent that the extra costs were incurred due to breach of the Agreement by the Service Provider.

The extent of any Service Provider entitlements under this clause shall be the Service Provider's sole remedy in respect of the NI Failure.

7. Phases

- (a) The Project may consist of the following Phases:
 - (i) **"Discovery Phase"**;
 - (ii) **"Build and Implement Phase"**, which will be delivered in two sub-Phases:
 - (A) Build and Implement of the Nominal Insurer Underwriting and Claims Platform; and
 - (B) Build and Implement of the Ancillary Systems and IT Uplift and may incorporate design and integration activities;
 - (iii) **"Run Phase"** – during which the Operational Services and Support Services will be performed.
- (b) The initial Discovery Phase will be undertaken pursuant to Statement of Work No. 1.
- (c) Subject to the Nominal Insurer's rights under clause 10, each subsequent Phase will be undertaken pursuant to agreed Statements of Work (and the parties acknowledge that a single Statement of Work may cover more than one such Phase and that Phases may run concurrently during the course of the Project).

8. Initial Statement of Work

- (a) Statement of Work No. 1 executed contemporaneously with the Agreement is issued under and forms part of the Agreement as per clause 9.2(c).
- (b) The Service Provider must provide the Services set out in Statement of Work No. 1 in accordance with that Statement of Work and the Agreement for the Charges specified in that Statement of Work.

9. Subsequent Statements of Work

9.1 Request for Quotation

- (a) The Nominal Insurer may at any time during the Term issue a Request for Quotation to the Service Provider setting out the details of the Services it is considering acquiring together with details of other relevant requirements.
- (b) The Service Provider must, within the timeframe (if any) specified in the Request for Quotation either provide the Nominal Insurer with:
 - (i) a written quotation specifying all proposed fees and charges relating to the proposal with all prices quoted conforming to the requirements specified by the Nominal Insurer in the Request for Quotation (for example, specifying the proposal to be on the basis of a fixed price, capped time and materials or time and materials basis) and the provisions of the Agreement;
 - (ii) a written proposal in the level of detail requested by the Nominal Insurer in the Request for Quotation setting out how the Service Provider will ensure all requirements specified by the Nominal Insurer in the Request for Quotation will be met; and
 - (iii) all other information or material specified by the Nominal Insurer in the Request for Quotation; or

- (iv) a written notice declining to provide a proposal and fully explaining the reasons for doing so.
- (c) Unless otherwise agreed by the Nominal Insurer in writing, all such quotations must:
 - (i) be based on rates that do not, to the extent applicable, exceed those rates set out in Schedule 3 – (Pricing), as updated by agreement from time to time in relation to Service Provider’s resources not included in the Schedule 3 – (Pricing) rate card at the Effective Date;
 - (ii) be firm offers open for acceptance by the Nominal Insurer for a minimum period of 90 days; and
 - (iii) not be on the basis of or subject to any terms and conditions other than those contained in the Agreement in respect of matters dealt with in the Agreement.
- (d) The Service Provider will not be entitled to charge for the cost of preparing a proposal or any other documentation (such as an estimate) under this clause 9.1.

9.2 Statements of Work

- (a) Where the Nominal Insurer issues a Statement of Work in response to a proposal from the Service Provider, the Service Provider must promptly on receipt of the Statement of Work either:
 - (i) sign a copy of the Statement of Work and return it to the Nominal Insurer to confirm its acceptance of the Statement of Work; or
 - (ii) if the Service Provider wishes to reject the Statement of Work, notify the Nominal Insurer that it has rejected the Statement of Work and provide full details of the reason/s why this has occurred. The parties will work together in good faith and in a collaborative manner to reach agreement as to the Statement of Work.
- (b) The terms and conditions of a Statement of Work are:
 - (i) the terms and conditions of the Agreement; and
 - (ii) the terms and conditions specified in the Statement of Work.
- (c) On execution of a Statement of Work by an authorised representatives of each party, which in the case of the Nominal Insurer will be a representative of the Nominal Insurer with delegated authority greater than or equal to the Nominal Insurer representative that executed the Agreement:
 - (i) the Statement of Work constitutes a discrete, binding contract incorporating the terms described in clause 9.2(b);
 - (ii) the Statement of Work becomes binding on both parties; and
 - (iii) the parties must perform their respective obligations set out in the Statement of Work in accordance with its terms and the terms of the Agreement.

10. Decision to proceed

10.1 Nominal Insurer rights

- (a) The Nominal Insurer may at its absolute discretion:
 - (i) at any time after the execution by the parties of Statement of Work No. 1, notify the Service Provider that it will not proceed with the remainder of the Discovery Phase, in which case Statement of Work No. 1 and the Agreement will terminate

with effect from the date of the notice, provided that the Nominal Insurer will use reasonable endeavours to give the Service Provider reasonable notice (up to 30 days' notice) of any such decision not to proceed;

- (ii) at any time after final Acceptance of the Discovery Phase but before the commencement of any subsequent Phase, notify the Service Provider that it will not proceed with any subsequent Phase as a whole, in which case the Agreement (including all executed Statements of Work) will terminate with effect from the final Acceptance of the Discovery Phase; or
 - (iii) at any time after final Acceptance of the Discovery Phase and after the commencement of any subsequent Phase, notify the Service Provider that it will not proceed with any part of a subsequent Phase, in which case the Service Provider must cease to deliver those remaining parts of that subsequent Phase from the date specified by the Nominal Insurer in the notice, in accordance with the Agreement and the relevant executed Statement of Work.
- (b) If the Nominal Insurer exercises its rights under clause 10.1(a)(i), 10.1(a)(ii) or 10.1(a)(iii):
 - (i) the Service Provider must immediately comply with any reasonable directions given by the Nominal Insurer and do everything possible to mitigate its losses arising in consequence of termination of the Agreement;
 - (ii) the Nominal Insurer will pay the Service Provider:
 - (A) Charges due and payable for the Services provided up until the date of termination;
 - (B) any amounts:
 - (I) set out in the relevant Statement of Work stated as being payable by the Nominal Insurer for termination for convenience, in respect of a decision pursuant to clause 10.1(a)(i) or clause 10.1(a)(iii); or
 - (II) equal to reasonable costs (excluding loss of prospective income or profits and redundancy costs) agreed by the parties and actually incurred by the Service Provider and directly attributable to the decision not to proceed pursuant to clause 10.1(a)(ii); and
 - (C) in the case of a decision not to proceed pursuant to clause 10.1(a)(i) or clause 10.1(a)(iii), to the extent not recovered by the Service Provider through the payment by the Nominal Insurer of amounts under clause 10.1(b)(ii)(B), reasonable costs (excluding loss of prospective income or profits and redundancy costs) actually incurred by the Service Provider and directly attributable to the decision not to proceed;
 - (iii) the Service Provider is not entitled to any compensation or payment additional to that specified in clause 10.1(b)(ii); and
 - (iv) clause 71 applies.
- (c) To avoid doubt, the Nominal Insurer may, exercising its absolute discretion, issue a decision not to proceed with a Phase under this clause 10 and elect to proceed with any activities, tasks or functions covered by that Phase without any assistance from the Service Provider.

11. Discovery and Design

11.1 Project preparation

The Service Provider must, by the applicable Milestone Dates, plan and prepare for the Project in accordance with the Project Documentation (and in particular Statement of Work No 1) and this clause 11.

11.2 icare Solution Design

- (a) The Service Provider must create the icare Solution Design:
 - (i) in accordance with the Project Documentation (and in particular the relevant Statement(s) of Work); and
 - (ii) by the applicable Milestone Dates.
- (b) Notwithstanding any assistance provided by the Nominal Insurer or Other Service Providers to the Service Provider in developing the icare Solution Design, the Service Provider acknowledges and agrees that:
 - (i) it is wholly responsible for the icare Solution Design and for ensuring that the icare Solution Design meets the requirements in the icare Solution Requirements; and
 - (ii) it must rectify any Problem in the icare Solution Design in accordance with clauses 14.2 and 14.3.

11.3 Services preceding Effective Date

The parties acknowledge and agree that:

- (a) the Pre-Agreement Services will be deemed to be Services under this Agreement;
- (b) any Material created, prepared, or delivered by the Service Provider in the performance of the Pre-Agreement Services will be deemed to be Contract Materials produced under the Agreement; and
- (c) any amounts paid by the Nominal Insurer for the Pre-Agreement Services, including under the LOI, will be deemed to be Charges paid under the Agreement,

and, in each case, will be governed by the terms of the Agreement.

12. Build and Implement Phase

12.1 General

Without limiting any of the Service Provider's other obligations arising under the Agreement, the Service Provider must in accordance with the times set out in the Project Documentation (and in particular the Statement(s) of Work covering the Build and Implement Phase):

- (a) build, deliver, configure, implement and deploy each System;
- (b) perform the Implementation Services and do all other work reasonably necessary to ensure that each System delivered, configured and implemented:
 - (i) conforms to the Project Documentation; and
 - (ii) is delivered in accordance with any applicable Milestone Dates;
- (c) prepare and deliver the Documentation; and
- (d) test each System in accordance with the Test Plan.

12.2 Integration

Without limiting any of the Service Provider's other obligations arising under the Agreement, the Service Provider must, in accordance with the times set out in the Project Documentation (and in particular the relevant Statement(s) of Work):

- (a) integrate each component of the icare Solution as required under the Project Documentation;
- (b) ensure that each component of the icare Solution is integrated with the Nominal Insurer's Existing System to the extent required in the Project Documentation;
- (c) perform all tasks (including Testing) allocated to the Service Provider and do all other work reasonably necessary to ensure that each component of the icare Solution:
 - (i) conforms to the Project Documentation; and
 - (ii) is implemented, integrated and deployed in accordance with any applicable Milestone Dates;
- (d) supply and deliver the Deliverables including the Documentation in accordance with the Project Documentation by any applicable Milestone Dates; and
- (e) transition any items or services to the Nominal Insurer, as set out in the relevant Statement of Work.

13. Run Phase

The Service Provider must provide the Operational Services and the Support Services in respect of each System as set out in any applicable Statement of Work (and in particular the Statement(s) of Work covering the Run Phase):

- (a) in accordance with that Statement of Work and the Agreement;
 - (b) so as to meet or exceed the applicable Service Levels;
 - (c) for the Charges specified in that Statement of Work; and
 - (d) in accordance with the times set out in the relevant Statement of Work,
- from the applicable System Operational Services Start Date.

14. Warranty Services

14.1 General

The Service Provider must provide the Warranty Services for the duration of the Warranty Period.

14.2 Problem in Deliverable, System or the icare Solution during Warranty Period

- (a) If, at any time during the Warranty Period, the Nominal Insurer believes that there is a Problem, the Nominal Insurer must notify the Service Provider of that Problem. If the Service Provider believes the relevant Problem is non-material, it must comply with its obligations under this clause 14, but the matter may also be treated as a Dispute. If, following the operation of the process set out in clause 68, the parties agreed that, or it is determined that, the Problem was non-material, then the Service Provider may recover from the Nominal Insurer and the Nominal Insurer must pay on demand on receipt of an invoice in accordance with clause 51.1, Charges for the performance of its obligations under this clause 14 for rectifying the non-material Problem.

- (b) The Service Provider must investigate the Problem notified to it pursuant to clause 14.2(a) and advise the Nominal Insurer if the alleged Problem is the responsibility of the Service Provider or its Subcontractors or suppliers. If the alleged Problem is not the responsibility of the Service Provider, its Subcontractors or suppliers, the Nominal Insurer must pay the Service Provider the reasonable cost of any investigation by the Service Provider of the alleged Problem.
- (c) Without prejudice to any other right of the Nominal Insurer, if the alleged Problem is the responsibility of the Service Provider or its Subcontractors or suppliers, the Service Provider must at its own cost remedy the Problem. Any other Problem may be corrected by the Service Provider if authorised by the Nominal Insurer on a time and materials basis or for a fixed price agreed by the parties, based on the rates that do not exceed, to the extent applicable, those rates set out in Schedule 3 (Pricing). The Nominal Insurer may require the Service Provider to provide a quote before correcting the Problem.

14.3 Remedial action

- (a) The Service Provider must take such measures as are appropriate in all the circumstances (including where appropriate, a work-around) to enable the Nominal Insurer to continue to productively use the Deliverable, System or the icare Solution.
- (b) The Service Provider must (in relation to the Warranty Services) ensure that appropriate members of the icare Solution Implementation Team remain actively involved in the Project until all outstanding Problems are resolved to the reasonable satisfaction of the Nominal Insurer. To avoid doubt, the Service Provider's operations and support team will not be responsible for the resolution of Problems unless expressly agreed by the Nominal Insurer in writing.
- (c) In the case of the Warranty Services, all remedial work or replacement of the whole or any part of a Deliverable, System or the icare Solution is warranted by the Service Provider to the same extent as the Deliverable, System and the icare Solution for the greater of either the period left until the end of the applicable Warranty Period or 90 Days from the date the work was completed or part was replaced.
- (d) If the Service Provider fails to remedy a notified Problem, the Nominal Insurer may have the work carried out by a person other than the Service Provider and recover the reasonable cost of that work from the Service Provider.
- (e) The Service Provider will not be liable for:
 - (i) any work (including any Material or Deliverable) carried out or created by a person other than the Service Provider or any person acting in accordance with Service Provider's direction; or
 - (ii) any Problems or Delays arising from any work performed by a person other than the Service Provider or any person acting in accordance with Service Provider's direction,
 under clause 14.3(d).
- (f) The Service Provider is not liable under clause 14.2 or this clause 14.3 to the extent that any Problem is caused by the Nominal Insurer or its Personnel.

14.4 Preventative action

The key priority is for the Problem to be resolved as soon as possible in accordance with clause 14.3. However, as may be necessary in the circumstances, the Service Provider must conduct a root cause or fault analysis to determine the underlying cause once the Problem is fixed or, as appropriate, in parallel with resolution of the Problem. The Service Provider must take all

reasonable steps to prevent the recurrence of the Problem taking into account the findings of the root cause analysis.

15. Data migration

15.1 Nominal Insurer Data

The Nominal Insurer will, in accordance with the Data Migration Plan and the relevant Statement of Work, provide the Nominal Insurer Data to the Service Provider for the purposes of data conversion and migration.

15.2 Data conversion, transformation and migration

The Service Provider must perform data conversion, transformation and migration in accordance with the Data Migration Plan and the relevant Statement of Work (which will also set out any additional tasks or responsibilities that must be performed by the Nominal Insurer in relation to data migration) and must ensure:

- (a) that the integrity of all migrated or converted data is preserved in its original state;
- (b) the completeness of all migrated or converted data;
- (c) that the data that is migrated is the same in form and has the same content as the data when it was in the existing system; and
- (d) the data that is converted has the same content as the data when it was in the existing system.

15.3 Service Provider's tools and methodologies

Where the data migration Software has been produced using software tools, object libraries, methodologies or other devices owned by the Service Provider or any other party, the Service Provider must inform the Nominal Insurer as to the nature and use of software tools, object libraries, methodologies or other devices in the production of the data migration Software.

15.4 Migrated Data warranty

- (a) The Service Provider warrants that it will use its best efforts to ensure that the integrity and completeness of the Nominal Insurer Data, when fully migrated, will not be altered from the data that was provided to the Service Provider by the Nominal Insurer.
- (b) If the Nominal Insurer Data is amended or otherwise edited or enhanced by the Service Provider in the course of and as part of the Services, the Service Provider warrants that the Nominal Insurer Data, when migrated in accordance with the Agreement, complies with the Data Migration Plan and the relevant Statement of Work.

16. Business change and stakeholder management

The Service Provider must assist the Nominal Insurer with business change and stakeholder management as specified in any relevant Statement of Work.

17. Cloud Services

17.1 General

The Service Provider must provide the Cloud Services in accordance with, and for the Charges set out in, the relevant Statement of Work.

17.2 Cloud Services Term

- (a) The Cloud Services will be provided for the term as set out in the relevant Statement of Work (**Initial Cloud Services Term**).

- (b) The Nominal Insurer may, at its absolute discretion, elect to extend the Initial Cloud Services Term for such further periods each of such duration as may be set out in the relevant Statement of Work on the terms and conditions then in effect by giving at least 180 Days written Notice to the Service Provider.

17.3 Service Provider obligations

The Service Provider must:

- (a) provide the Cloud Services specified in the relevant Statement of Work;
- (b) comply with the requirements set out in the relevant Statement of Work when providing the Cloud Services;
- (c) provide the Cloud Services so as to meet or exceed the Service Levels;
- (d) if Service Levels are not specified in the relevant Statement of Work, provide the Cloud Services:
 - (i) at a professional standard and in accordance with the Agreement;
 - (ii) in a prompt and cost-effective manner;
 - (iii) in a manner that ensures they are fit for the specific purposes as set out in the Agreement; and
 - (iv) exercising professional standards of skill, care and diligence used in well managed operations performing services similar to the Cloud Services;
- (e) install and host the icare Solution in accordance with the requirements of the Agreement; and
- (f) ensure that the icare Solution is wholly located within Australia, including data storage and backups, including to meet the requirements of clause 59 and clause 64;
- (g) provide sufficient computer facilities to host the icare Solution in accordance with the Agreement;
- (h) install the icare Solution on the premises approved by the Nominal Insurer;
- (i) support and maintain the icare Solution in accordance with the Agreement;
- (j) ensure that the icare Solution is used solely for the purpose specified by the Nominal Insurer;
- (k) on receipt of notification that the Nominal Insurer no longer requires the Cloud Services, provide all reasonable assistance in accordance with the relevant Disengagement Plan to enable the Nominal Insurer to relocate the icare Solution to an alternative location as specified by the Nominal Insurer;
- (l) promptly inform the Nominal Insurer of any loss, destruction or damage (except due to fair wear and tear) to the icare Solution and if caused by the Service Provider, must promptly remedy that loss, destruction or damage to the icare Solution, at the Service Provider's own cost; and
- (m) not Modify the icare Solution without the Nominal Insurer's prior written approval (but without prejudice of the Service Provider's (or that of the nominated Approved Subcontractor providing the Cloud Services) to improve its cloud offering, including the core technology used in the provision of the Cloud Services from time to time).

17.4 Access and usage rights

- (a) The Service Provider grants to the Licensees for the Term (including any Disengagement Period) a right to access, receive and use (with no right to resale) the Cloud Services in accordance with the Cloud Services terms and conditions set out in the Statement of Work (**Cloud Services Terms**).
- (b) Licence rights and Intellectual Property Rights to the Cloud Services and related Material are as set out in Cloud Services Terms.
- (c) To the extent that any provision of the Agreement or a Statement of Work is inconsistent with the provisions of Cloud Services Terms, the provisions of Cloud Services Terms prevail to the extent of the inconsistency.

18. Software Support and Maintenance Services

18.1 Software support requirements

- (a) Where Service Provider, in accordance with an executed Statement of Work, supplies or procures the provision by a third party of, any Software, the Service Provider must, subject to clauses 18.1(b) and 18.3:
 - (i) supply any Updates as required to rectify Problems; and
 - (ii) subject to clause 18.1(b), supply all New Releases, enhancements and other changes (and appropriate Documentation for those New Releases, enhancements and other changes).
- (b) In respect of the Guidewire Software, the Service Provider will install and implement all additional New Releases for the Nominal Insurer as described in, and at the cost set out in, the relevant Statement of Work.

18.2 Updates and New Releases

If clause 18.1 applies, the Service Provider must promptly provide the Nominal Insurer with the following information for any Update or New Release it may make or has made available to the Nominal Insurer from time to time:

- (a) the nature of the improvements and/or corrections contained in the Update or New Release;
- (b) any adverse effects that the Update or New Release may be expected to have on the Licensees' use of the icare Solution, including any expected degradation in reliability, performance or functionality; and
- (c) sufficient information to enable the Nominal Insurer to determine whether the Update or New Release will suit the Nominal Insurer's requirements and comply with the icare Solution Requirements.

18.3 No obligation to take Updates or New Releases

- (a) A refusal by the Nominal Insurer to install an Update or New Release does not affect its entitlement to Cloud Services (if applicable), provided that the software or hardware is supported by its vendor. In the event that any part of the icare Solution is operating on vendor-unsupported hardware or software, the Service Provider shall not be liable for any failure to meet any Service Levels, Defect Service Levels or Critical Service Levels caused by the unsupported nature of the hardware or software. The Service Provider is not liable for a failure to remedy a Problem or meet a Service Level to the extent that the failure is a direct result of the Nominal Insurer refusing to install an Update or New Release.

18.4 Exclusions

- (a) Unless reasonably incidental to the Cloud Services (if applicable) or unless, and to the extent, specified otherwise in a Statement of Work, the Service Provider is not required to provide services involving:
 - (i) correction of Problems caused by operation of the icare Solution in a manner other than that expressly or by implication authorised by the Service Provider;
 - (ii) rectification of Problems caused by misuse or incorrect use of the icare Solution by the Nominal Insurer;
 - (iii) assistance for user difficulty or user inexperience; or
 - (iv) correction of Problems that are a direct result of the icare Solution being wholly or partially unsupported by the applicable Software vendor.
- (b) The Nominal Insurer may require the Service Provider to provide services in respect of the items specified in clause 18.4(a) on a time and materials basis or for a fixed price agreed by the parties, based on the rates specified in Schedule 3 (Pricing). The Nominal Insurer may require the Service Provider to provide a quote before providing the requested services.

19. Training Services

The Service Provider must provide Training Services to the Nominal Insurer Personnel, as set out in the relevant Statement of Work and the Training Plan.

Service Provider obligations

20. Scope of Services

20.1 Perfecting scope

- (a) The Nominal Insurer and the Service Provider acknowledge that, as at the Effective Date, the description of the activities, products, materials, items and services to be carried out, provided or supplied by the Service Provider under the Agreement may not be a complete list of the activities, products, materials, items and services required to properly design, Build, supply, deliver, test, configure, deploy, Implement, run and operate, support and maintain the icare Solution or to properly and efficiently Implement the icare Solution in furtherance of the Objectives.
- (b) The parties agree that it is intended that the Service Provider will carry out, provide or supply such other activities, products, materials, items and services that:
 - (i) are incidental to the provision of the Services;
 - (ii) are necessary to effect the proper design, Build, supply, delivery, deployment, Implementation and testing of the Services; or
 - (iii) are required to properly and efficiently Implement the icare Solution in furtherance of the Objectives.

20.2 Acknowledgment

The Service Provider acknowledges that the Nominal Insurer will rely on the Service Provider's skills and expertise in assisting the Nominal Insurer to establish and maintain an environment that facilitates the compliance of the icare Solution with the Project Documentation.

21. Co-operation with the Nominal Insurer and Other Service Providers

21.1 Working with the Nominal Insurer and Other Service Providers

- (a) The Service Provider acknowledges that the Services in respect of the design, build and implementation of, and impacting the availability and performance of, the icare Solution provided under the Agreement are critical to the Nominal Insurer's ability to perform its functions to the extent that those functions are or will be discharged using the icare Solution.
- (b) The Service Provider must co-operate with the Nominal Insurer and its Other Service Providers, and comply with the Nominal Insurer's reasonable directions, in providing the Services so as to facilitate the delivery of the Project.
- (c) It is essential to the Nominal Insurer achieving its objectives in relation to the Project and the icare Solution, that the Service Provider and each of the Other Service Providers establish relationships between themselves through which they:
 - (i) work collaboratively together;
 - (ii) co-ordinate their activities;
 - (iii) co-operate fully and comprehensively with each other;
 - (iv) interface their operations in a manner which is seamless from the Nominal Insurer's viewpoint;
 - (v) integrate the hardware, software and services they each supply; and
 - (vi) agree the scope of obligations and interactions needed between themselves to obviate the need for the Nominal Insurer to be involved in resolving service problems or managing their relationship.
- (d) The Service Provider must, as part of the Services, participate in any taskforce or committee established for liaison between the Nominal Insurer, the Service Provider and the Other Service Providers.

22. Harmful Code

22.1 Service Provider responsibility to prevent Harmful Code

The Service Provider must take all reasonable steps to detect and prevent any Harmful Code from being introduced by the Service Provider into (or sent from) any Deliverables, the icare Solution or the Nominal Insurer's systems, including by:

- (a) use of the most appropriate and up-to-date virus detection software for preventing and detecting Harmful Code;
- (b) implementing practices and procedures that are consistent with industry best practice;
- (c) pro-actively monitoring threats of Harmful Code which are generally known to the public or to responsible IT service providers, or are known to the Service Provider; and
- (d) informing the Nominal Insurer Personnel of any Harmful Code and the steps necessary to avoid the introduction of Harmful Code.

22.2 Nominal Insurer obligations

The Nominal Insurer shall, in accordance with its standard business practices and applicable Nominal Insurer Policies:

- (a) take all reasonable steps to install, operate and maintain standard industry processes for the prevention of Harmful Code on any computer, storage or other system owned or operated by it that may be affected by Harmful Code; and
- (b) except to the extent that the Service Provider has obligations to take backups under a Statement of Work, make and keep backups of computers, storage or other systems owned or operated by it in accordance with industry standard processes to permit restoration of applications and data.

22.3 Procedure if Harmful Code is found

- (a) If the Service Provider becomes aware that any Harmful Code is found to have been introduced into any Deliverables, the icare Solution or the Nominal Insurer's systems, the Service Provider must:
 - (i) notify the Nominal Insurer immediately;
 - (ii) provide all information reasonably requested by the Nominal Insurer in relation to the Harmful Code, its manner of introduction and the effect the Harmful Code has had or is likely to have;
 - (iii) take all necessary remedial action to eliminate the Harmful Code and prevent re-occurrence and rectify any consequences (to the extent that they are capable of rectification);
 - (iv) if the Harmful Code causes a loss of data or loss of operational efficiency, assist the Nominal Insurer to mitigate the losses and restore the efficiency and/or data;
 - (v) retain evidence and logs regarding the incident to help in determining the cause, damage and likely source; and
 - (vi) ensure that sufficient Service Provider resources and technology are available to meet its obligations under this clause 22.3.
- (b) Subject to clause 22.3(d), the Service Provider must perform its obligations under clause 22.3(a) at no additional cost to the Nominal Insurer.
- (c) To the extent that the Harmful Code was introduced by the Service Provider or its Personnel, the Service Provider must:
 - (i) take all necessary remedial action to eliminate the Harmful Code and prevent re-occurrence and rectify any consequences (to the extent that they are capable of rectification);
 - (ii) if the Harmful Code causes a loss of data or loss of operational efficiency, assist the Nominal Insurer to mitigate the losses and restore the efficiency and/or data; and
 - (iii) pay the costs and expenses incurred by the Nominal Insurer in connection with the restoration activities contemplated by clauses 22.3(c)(i) and 22.3(c)(ii).
- (d) If the Harmful Code was introduced by the Nominal Insurer or a third party and the Service Provider incurs costs and expenses in connection with the restoration activities set out in clauses 22.3(a)(iii), the Nominal Insurer will reimburse the Service Provider its reasonable costs and expenses for the performance of these activities. To avoid doubt, the

Service Provider's immediate priority must be to conduct, or assist the Nominal Insurer to conduct, the remedial activities contemplated in clause 22.3(a).

23. Contributions and resources

23.1 Service Provider responsibility and cost unless specified otherwise

Unless otherwise agreed between the parties or specified in the Agreement, the Service Provider must provide all accommodation, facilities, equipment, fixtures and support that it needs to provide the Services.

23.2 General commitment

The Nominal Insurer will provide the contributions and resources (including Nominal Insurer Furnished Items), as specified in the relevant Statement of Work.

Agreement processes

24. Document Deliverables

24.1 Document Deliverables

- (a) The Service Provider must develop and deliver to the Nominal Insurer the Document Deliverables containing the details specified in the relevant Statement of Work (including any other information reasonably required by the Nominal Insurer Representative), in accordance with time frames specified in the relevant Statement of Work.
- (b) The Service Provider must submit Document Deliverables to the Nominal Insurer for review at least seven Business Days prior to the applicable Milestone Date, to enable the Nominal Insurer to thoroughly review them for Approval and with sufficient time for the Service Provider to make such further amendments as may be required to ensure its Approval by the applicable Milestone Date.
- (c) The Service Provider must maintain and update the Document Deliverables to ensure that they are current and address all operational, technical and other requirements, and provide the updated Document Deliverables to the Nominal Insurer Representative for review in accordance with this clause 24.
- (d) The Service Provider must comply with all obligations specified in the Document Deliverables, including any amendments made to the Document Deliverables in accordance with the Agreement.

24.2 Standard of Document Deliverables

The Document Deliverables must:

- (a) be accurate and provided in accordance with the Agreement;
- (b) comply with the applicable requirements in the Project Documentation;
- (c) be the most current and up-to-date versions available;
- (d) be in the English language;
- (e) contain adequate definitions of all key terms, words and symbols; and
- (f) be prepared in a professional manner which meets or exceeds accepted industry practice.

24.3 Review of Document Deliverables

- (a) The Nominal Insurer may provide the Service Provider with any comment, information or advice it considers appropriate to provide in relation to the Document Deliverables. Any comment, information or advice provided:
 - (i) will align with the applicable requirements in the Project Documentation;
 - (ii) is intended to be of assistance to the Service Provider and will not be construed as a direction from the Nominal Insurer to the Service Provider;
 - (iii) will not be taken as approval of Deliverables or work that does not conform to the Agreement;
 - (iv) does not waive any provisions of, or release the Service Provider from any of its obligations under, the Agreement; and
 - (v) must be addressed by the Service Provider within the timeframe specified by the Nominal Insurer, acting reasonably.
- (b) After receiving the Document Deliverable in accordance with this clause 24, the Nominal Insurer Representative must in accordance with the timeframes set out in the relevant Statement of Work, give the Service Provider written notice that:
 - (i) the Nominal Insurer Approves the Document Deliverable by issuing an Acceptance Certificate to that effect to the Service Provider; or
 - (ii) the Nominal Insurer does not Approve the Document Deliverable for a reason set out in clause 24.3(d).
- (c) If the Nominal Insurer gives the Service Provider notice that the Nominal Insurer does not Approve a Document Deliverable, the Nominal Insurer will notify the Service Provider of the reasons for not Approving the Document Deliverable, and may provide details of any corrective action to be taken by the Service Provider before the Document Deliverable will be reconsidered for Approval.
- (d) The Nominal Insurer may reject a Document Deliverable submitted by the Service Provider because in its reasonable judgement any or all of the following apply:
 - (i) it does not meet the requirements of clause 24.2;
 - (ii) it contains omissions or defects;
 - (iii) is not clearly understandable;
 - (iv) does not provide adequate detail;
 - (v) is inconsistent with the Agreement, including a related Document Deliverable;
 - (vi) will not meet the objective of the Document Deliverable; and
 - (vii) does not address omissions or defects previously notified to the Service Provider by the Nominal Insurer.
- (e) If the Nominal Insurer gives the Service Provider notice that the Nominal Insurer does not Approve a Document Deliverable, the Service Provider must, in accordance with the timeframes set out in the relevant Statement of Work, correct the Document Deliverable so that it meets the requirements of clause 24.3(d) and resubmit a revised version to the Nominal Insurer for Approval by the Nominal Insurer under this clause 24.

24.4 Responsibility for the Document Deliverables

The Service Provider acknowledges and agrees that it is wholly responsible for the Document Deliverables and for ensuring that the Document Deliverables meet the requirements in the relevant Statement of Work and that it must rectify any deficiency, error or other inadequacy in the Document Deliverables in accordance with the process in clauses 24.3(c) to 24.3(e) at no additional cost to the Nominal Insurer.

24.5 No reduction in obligations

Provided that any assistance provided by the Nominal Insurer is in accordance with applicable requirements of the Nominal Insurer agreed in the Project Documentation, no Approval or assistance provided by the Nominal Insurer in relation to the Document Deliverables under this clause 24, or any Approval or assistance provided by the Nominal Insurer for any subsequent variation amending any Document Deliverable, will:

- (a) relieve the Service Provider from responsibility for the Document Deliverables;
- (b) entitle the Service Provider to claim postponement of any Milestone Date or any other times in a Statement of Work or the Agreement; or
- (c) otherwise limit or affect the Service Provider's obligations or warranties under the Agreement.

24.6 No Deemed Approval

The Nominal Insurer will not be deemed to have Approved a Document Deliverable, by the use of the Document Deliverable or any other act or omission other than the provision of written notice Approving the Document Deliverable.

25. Technical Documentation

25.1 Provision of Technical Documentation

The Service Provider must provide the Nominal Insurer with up to date Technical Documentation containing sufficient information to enable the Nominal Insurer to make full use of the icare Solution at all times. The Technical Documentation must be provided in accordance with the icare Solution Requirements and relevant Statement of Work.

25.2 Technical Documentation requirements

The Technical Documentation must at the time of delivery:

- (a) be current and accurate and consistent with the icare Solution Specification;
- (b) adequately explain key terms and symbols; and
- (c) be in English.

26. Testing and Acceptance

26.1 Objective

The objective of the Tests is to demonstrate that the relevant Deliverables (except Document Deliverables), each System and the icare Solution, meet the applicable icare Solution Specifications, the Acceptance Criteria and other requirements of the Agreement.

26.2 Test principles

- (a) The Service Provider must carry out the Testing in accordance with the testing principles set out in the Test Plan.
- (b) The Nominal Insurer may carry out any additional Testing that it considers appropriate.

- (c) The Nominal Insurer reserves the right to require the undertaking of any Tests that are in addition to those set out in the Test Plan or the relevant Statement of Work.
- (d) The Service Provider acknowledges and agrees that it does not have a right to object to any Test or other test that the Nominal Insurer may reasonably wish to define or undertake for the icare Solution, a System or a Deliverable. If any delay is caused by the Nominal Insurer exercising its rights to carry out additional testing under clause 26.2 and such testing does not reveal a defect, the Service Provider shall be entitled to a reasonable extension of time and reimbursement of reasonable extra costs or expenses directly incurred as a result of the delay.

26.3 Test reports

The Service Provider must provide to the Nominal Insurer, in accordance with the relevant Statement of Work and the Test Plan, detailed reports on the conduct of the Testing.

26.4 Timeframe for notice

- (a) The Nominal Insurer will, within the timeframes set out in the Test Plan (or such longer period as agreed between the parties in writing) either Accept or reject the icare Solution, System or Deliverable.
- (b) If the Nominal Insurer rejects the icare Solution, System or the Deliverable it will provide a list of defects and deficiencies to the Service Provider at the time of rejection.

26.5 Failure to meet Acceptance Criteria

If, in the Nominal Insurer's reasonable opinion, a Deliverable, System or the icare Solution does not meet the Acceptance Criteria, the Service Provider must, at no additional cost to the Nominal Insurer:

- (a) within the timeframes set out in the Test Plan (or such longer period as may be agreed between the parties in writing) correct, or assist the Nominal Insurer to correct, the Deliverable, System or the icare Solution so that it meets the applicable Acceptance Criteria; and
- (b) resubmit the Deliverable, System or the icare Solution at the times specified by the Nominal Insurer, in which case the Testing will be conducted as if it were the original round of Testing, in the sense that all Deliverables, the relevant System or the icare Solution (including those parts that materially satisfied the earlier Tests) will be Tested.

26.6 Failure to comply

If the Deliverable, System or the icare Solution fails to pass the repeat Tests referred to in clause 26.5 then the Nominal Insurer may, at its absolute discretion:

- (a) set a new date for repeating the Tests (in which case clause 26.5 applies);
- (b) conditionally Accept the Deliverable, System or the icare Solution in accordance with clause 26.7; or
- (c) reject the Deliverable, System or the icare Solution (**Rejected Item**), and if two rounds of repeat Tests have taken place, or fewer than two rounds of repeat Tests have taken place but the Deliverable, System or the icare Solution has failed to pass the Tests within an agreed timeframe in the relevant Statement of Work and/or Test Plan, terminate the relevant Statement of Work and any Linked SOW for cause under clause 69.2.

If the Nominal Insurer terminates the relevant Statement of Work and any Linked SOW:

- (d) the Service Provider will not be entitled to any payment for the Rejected Item under the terminated Statement of Work, including (subject to clause 26.6(f)) any Milestone Payment;
- (e) the Service Provider will be entitled to payment for Services performed up to the date of termination of the relevant Statement of Work and the Linked SOW, but not to any further amounts in respect of such termination; and
- (f) any Milestone Payment of the terminated Statement of Work will be reduced on a pro rata basis to reflect that the Rejected Item has not been provided, which may be a reduction to zero where the Milestone Payment only covers that Rejected Item.

26.7 Conditional Acceptance

- (a) The Nominal Insurer may, at any time, conditionally Accept a Deliverable, System or the icare Solution, notwithstanding that the Deliverable, System or the icare Solution does not meet the Acceptance Criteria, by giving the Service Provider a notice that:
 - (i) includes a statement that the Nominal Insurer accepts the Deliverable, System or the icare Solution, subject to certain conditions which the Service Provider must satisfy;
 - (ii) specifies the Problem that prevent the Deliverable, System or the icare Solution from passing the Tests;
 - (iii) specifies the remaining conditions which the Deliverable, System or the icare Solution must satisfy to achieve Acceptance for that Deliverable, System or the icare Solution from the Nominal Insurer; and
 - (iv) specifies the Problem rectification work to be performed by the Service Provider and the time period for performing such work.
- (b) If the Service Provider does not correct the Problems within the time frame specified in the notice, the Nominal Insurer may:
 - (i) reject the Deliverable, System or the icare Solution, terminate the relevant Statement of Work and any Linked SOW for cause under clause 69.2 and the provisions of clause 26.6(d) to 26.6(f) shall apply; and
 - (ii) pursue any other remedy available under the Agreement or at Law or in equity.
- (c) Depending on the Deliverable or Milestone and the nature of the deficiency, the Nominal Insurer may also consider waiving the requirement for the Acceptance Criteria to be met and:
 - (i) Accept the Deliverable or Milestone or any component of them; or
 - (ii) Accept the Deliverable or Milestone or any component of them, subject to an agreed reduction in the associated Charges.

26.8 Issue of an Acceptance Certificate

If a Deliverable, System or the icare Solution meets the Acceptance Criteria, the Nominal Insurer must issue an Acceptance Certificate to that effect to the Service Provider.

26.9 Assistance

Each party must provide all assistance reasonably requested by the other in connection with the Tests.

26.10 No Deemed Acceptance

The Nominal Insurer will be not be deemed to have Accepted a Deliverable, System or the icare Solution by the use of the Deliverable, System or the icare Solution, or any other act or omission other than the provision of an Acceptance Certificate

26.11 Discretion

- (a) Notwithstanding any other provisions of the Agreement, the Nominal Insurer may, at its absolute discretion, other than in respect of End-to-End Testing of the icare Solution under clause 27, elect not to submit a Deliverable or System, or any part of a Deliverable or System or of the icare Solution to Testing (**Testing Waiver**).
- (b) If there is a Testing Waiver:
 - (i) the Warranty Period and Service Levels in respect of the relevant item(s) to which the Testing Waiver applies, does not commence until such time as that item is Tested and Accepted; and
 - (ii) the Service Provider shall have, in respect of the item(s) to which the Testing Waiver applies, no liability for any breach of the warranty at clause 31.1(g) where the relevant non-compliance with the icare Solution Requirements would have become apparent through the applicable Testing, and the Service Provider would have had the opportunity to remedy that non-compliance as part of the Testing and retesting process,

but otherwise the fact that there has been a Testing Waiver does not detract from the representations or warranties given by the Service Provider under the Agreement.

26.12 Milestone Payments

If Acceptance of a Deliverable or System triggers a Milestone Payment under the relevant Statement of Work, and the Nominal Insurer fails to submit the Deliverable or System to Testing or to notify the Service Provider of the outcomes of the Testing in accordance with the applicable timeframes for so doing under the relevant Statement of Work or Test Plan, then the Milestone Payment will become due and payable 10 Business Days after the relevant date for Testing in the Statement of Work or Test Plan, provided that if the Nominal Insurer subsequently submits the Deliverable or System for Testing, and it fails to pass the relevant Tests and a termination right arises under clause 26.6(c) or 26.7(b), then the Service Provider must promptly reimburse the Nominal Insurer the Milestone Payment previously paid to it, less any amounts that the Service Provider would have been entitled to retain or be paid under clause 26.6(f) had the Deliverable or System been tested in accordance with timeframes for so doing under the relevant Statement of Work or Test Plan, and rejected by the Nominal Insurer.

27. End-to-End Testing of the icare Solution

27.1 Service Provider to conduct End-to-End Testing

Without limiting the Service Provider's obligations under clause 26, the Service Provider must conduct End-to-End Testing of the icare Solution in accordance with the Test Plan.

27.2 End-to-End Testing principles

- (a) The Service Provider must carry out the End-to-End Testing in accordance with the end-to-end testing principles set out in the Test Plan.
- (b) The Nominal Insurer may carry out any additional End-to-End Testing that it considers appropriate.

- (c) The Nominal Insurer reserves the right to require the undertaking of any End-to-End Tests that are in addition to those set out in the Test Plan.
- (d) The Service Provider acknowledges and agrees that it does not have a right to object to any End-to-End Test or other test that the Nominal Insurer may reasonably wish to define or undertake for the icare Solution.
- (e) If any delay is caused by the Nominal Insurer exercising its rights to carry out additional testing under this clause and such testing does not reveal a defect, the Service Provider shall be entitled to a reasonable extension of time and reimbursement of reasonable extra costs or expenses directly incurred as a result of the delay.

27.3 End-to-End Test environment

- (a) The Service Provider must establish, maintain and manage an environment and facilities in accordance with the relevant Statement of Work and Test Plan that will allow for the performance of the End-to-End Tests in a controlled, repeatable and verifiable manner, which environment must be approved in writing by the Nominal Insurer before the End-to-End Tests commence (**End-to-End Test Environment**).
- (b) To avoid doubt, the Nominal Insurer may use the End-to-End Test Environment for the purposes of conducting its own End-to-End Tests or any other testing whatsoever under the Agreement. If any delay is caused by the Nominal Insurer exercising its rights to carry out additional testing under this clause and such testing does not reveal a defect, the Service Provider shall be entitled to a reasonable extension of time and reimbursement of reasonable extra costs or expenses directly incurred as a result of the delay.

27.4 End-to-End Test reports

The Service Provider must provide to the Nominal Insurer, in accordance with the relevant Statement of Work and the Test Plan, detailed reports on the conduct of the End-to-End Testing.

27.5 Rectification of Defects

If the End-to-End Testing reveals or identifies a defect or error in, or failure or inadequacy in performance of the icare Solution, without limiting the Nominal Insurer's other rights and remedies under the Agreement or otherwise, the Service Provider must promptly rectify that defect, error or failure or inadequacy in performance.

27.6 Re-performance of the End-to-End Tests

Once any defect, error or failure or inadequacy in performance identified in accordance with this clause 27 has been rectified, the Service Provider must re-perform the End-to-End Tests in accordance with this clause 27 except to the extent that the Nominal Insurer, acting reasonably, agrees that any part of the End-to-End Tests does not need to be re-performed.

27.7 Final Acceptance of the icare Solution

- (a) The icare Solution will not be finally Accepted until:
 - (i) all of the End-to-End Tests have been successfully completed in accordance with the Test Plan; and
 - (ii) the Nominal Insurer Accepts the icare Solution by issuing a Final Acceptance Certificate.
- (b) The Nominal Insurer may reject the icare Solution and terminate the Agreement (and all then current Statements of Work) for cause under clause 69.2, if:
 - (i) the icare Solution as a whole fails to meet the End-to-End Acceptance Criteria in accordance with the Test Plan unless the Service Provider can clearly and

unequivocally demonstrate to the Nominal Insurer's reasonable satisfaction that the failure to meet the End-to-End Acceptance Criteria is a direct result of a failure, defect or problem in respect of a part of the icare Solution for which the Service Provider has no responsibility under the Agreement including services provided by a third party in relation to the icare Solution not engaged by or acting on behalf of the Service Provider. To avoid doubt, this will not be the case where the failure, defect or problem relates to the Software, a System, any Third Party Material provided by the Service Provider, the Contract Material, or results from a failure of the Service Provider to perform the Services in accordance with the Agreement (including the performance standards at clause 29.1 and the warranties at clause 31.1); or

- (ii) the testing referred to in this clause 27 identifies a material defect in the icare Solution, or any other material failure to perform or inadequacy in perform of any component of the icare Solution which is not remedied after two instances of re-performance of the End-to-End Tests (or within an agreed timeframe as set out in the Test Plan) in accordance with clause 27.6,

even if the Nominal Insurer has previously Accepted some or all components of the icare Solution.

27.8 Conditional Acceptance

The Nominal Insurer may at any time during the End-to-End Testing process exercise its right to conditionally Accept the icare Solution, in which case clause 26.7 applies.

28. Change Control Procedure

28.1 Change Control Procedure

Subject to clause 69, a variation to the nature or extent of the Services, or a variation to any Project Documentation, will not be binding on either party unless and until such variation is agreed by the parties in accordance with clauses 28.2 to 28.9.

28.2 Change request

Either party may propose a variation to the nature or extent of the Services or the Project Documentation by giving to the other party a written notice specifying the proposed variation (**Change Request**).

28.3 Exception to Change Control Procedure

To avoid doubt, the Change Control Procedure does not apply to changes to the terms and conditions of the Agreement, which will be effected by a formal deed of variation, signed by an authorised representative of both parties.

28.4 Variation Order

If a Change Request is issued by a party, then the Service Provider must, within seven Business Days of the date of issue of that Change Request (or such longer period as is agreed in writing by the parties), prepare a draft Variation Order (or such other form agreed by the Nominal Insurer), which must be executed by the Service Provider, setting out:

- (a) if the Change Request was issued by the Service Provider, detailed reasons and justifications for issuing the Change Request;
- (b) a detailed description of the changes proposed in the Change Request, including any changes to:
 - (i) the Services;

- (ii) any Deliverables previously delivered to the Nominal Insurer under the Agreement; and
 - (iii) the applicable Project Documentation;
- (c) if the Change Request was issued by the Service Provider, a detailed description of:
 - (i) the benefits to the Nominal Insurer arising from the proposed change; and
 - (ii) the risks to the Nominal Insurer should it decide against effecting the proposed change;
- (d) any changes to the Charges required to give effect to the Change Request;
- (e) any reasonably foreseeable material impacts that the proposed change may have on:
 - (i) the functionality, interoperability or performance of existing equipment used by, or on behalf of, the Nominal Insurer;
 - (ii) project scheduling, the achievement of Milestones, and the Nominal Insurer and Service Provider Personnel resourcing; and
 - (iii) any support arrangements in relation to the icare Solution; and
- (f) such other matters as the Nominal Insurer may reasonably request from time to time in writing.

28.5 Required amendments to be specified

The parties agree that, to the extent practicable, a Change Request and Variation Order must:

- (a) specify particular amendments to the Project Documentation; or
- (b) indicate the nature of the amendments to the Project Documentation,

that will be required to give effect to that Change Request and Variation Order (should they be approved).

28.6 Response to Variation Order

- (a) The Nominal Insurer will notify the Service Provider, within 10 Business Days of receiving the Variation Order, whether it:
 - (i) approves the Variation Order;
 - (ii) rejects the Variation Order; or
 - (iii) requires variations to or explanations of any aspect of the Variation Order (or corresponding Change Request).
- (b) If the Nominal Insurer does not approve or reject a Variation Order within the time period specified in clause 28.6(a), the Variation Order will be deemed to be rejected.

28.7 Renegotiation and rejection

If the Nominal Insurer rejects a Variation Order, the Agreement will remain unchanged, but it will be open to the party who issued the corresponding Change Request to re-issue amended Change Requests in respect of the particular variation (or variations) sought by it.

28.8 Binding orders

A Variation Order will not be binding on either party until the Variation Order has been signed by an authorised representative of each party, which in the case of the Nominal Insurer will be a representative of the Nominal Insurer with the status of the person who executed the Agreement or higher, or with appropriate delegated authority to sign the Variation Order.

28.9 Cost of preparation

Each party will bear its own costs of complying with this clause 28.

28.10 Mandatory or expedited changes

- (a) The Service Provider acknowledges that, from time to time, the Nominal Insurer may require a Mandatory/Expedited Change
- (b) If a Mandatory/Expedited Change is required, then the Service Provider must prepare, negotiate and discharge its obligations under any Variation Order to take into account the need for the Mandatory/Expedited Change, including (without limitation):
 - (i) meeting reasonable shorter timeframes than would otherwise be required under this Agreement;
 - (ii) adding or (in consultation with the Nominal Insurer) re-directing resources to give effect to the Mandatory/Expedited Change; or
 - (iii) in consultation with the Nominal Insurer, re-arranging or re-prioritising other work so as to give priority to the Mandatory/Expedited Change.
- (c) The Nominal Insurer may instruct the Service Provider to commence work in accordance with a Change Request that relates to a Mandatory/Expedited Change pending the agreement of a Variation Order for that Change Request, and the Service Provider must commence work in accordance with that Change Request when so instructed. The Nominal Insurer acknowledges that this may require the Service Provider to re-prioritise existing work being performed by the Service Provider at the relevant time, which shall be addressed through a written agreement of the parties or the Variation Order.
- (d) If the parties cannot agree a Variation Order for a Change Request relating to an Mandatory/Expedited Change within 10 Business Days of that Change Request being issued, then:
 - (i) the Service Provider must continue to comply with the Change Request and the Nominal Insurer's instructions; and
 - (ii) the Nominal Insurer will pay the Service Provider such fees relating to the implementation of that Change Request in accordance with the time and materials rates in respect of the Service Provider Personnel performing such work as set out in Schedule 3– (Pricing).

Agreement performance

29. Performance standards

29.1 Standards

The Service Provider must:

- (a) provide the Services in a proper, timely and efficient manner using the standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of equipment and services which are similar to the Services;
- (b) supply the Services to meet or exceed the Service Levels;
- (c) comply with the standards specified in the Project Documentation and the Agreement;

- (d) supply the Services in accordance with Nominal Insurer Policies;
- (e) where:
 - (i) Specified Personnel are specified, ensure that the provision of the Services are carried out personally by the relevant Specified Personnel; and
 - (ii) no Specified Personnel are specified, ensure that the provision of the Services is carried out by sufficient and suitably skilled Personnel;
- (f) ensure that the Services are provided in accordance with all relevant time frames, Milestone Dates and other requirements set out in the Agreement;
- (g) act with all proper diligence and in good faith;
- (h) respond promptly in writing to any reasonable queries by the Nominal Insurer in relation to the Services;
- (i) promptly notify the Nominal Insurer if an act or omission of the Service Provider, a Subcontractor or its or their officers, employees or agents causes a problem or delay that has a material impact on the Service Provider's ability to provide the Services; and
- (j) provide the Services in accordance with the reasonable directions provided by the Nominal Insurer from time to time in order to minimise the disruption to the Nominal Insurer.

30. Subcontracting

30.1 No subcontracting without consent

- (a) Subject to clause 30.3, the Service Provider must not subcontract to any third person (except a Related Company) any aspect of the provision of the Services without the prior written consent of the Nominal Insurer. The Nominal Insurer may grant or withhold its consent in its absolute discretion and, if consent is given, it may be subject to conditions. The entities specified in item 4 of Appendix A are approved as at the Effective Date for the purposes of this clause.
- (b) If a Subcontractor has been approved by the Nominal Insurer in accordance with clause 30.1(a), that Subcontractor will be an Approved Subcontractor (but only for the purpose of the subcontract in relation to which the Nominal Insurer has provided its approval).

30.2 Use of Related Companies

- (a) The Service Provider may utilise a Related Company to provide the Services without obtaining the Nominal Insurer's prior written consent.
- (b) If the Service Provider utilises a Related Company in providing the Services, it must notify the Nominal Insurer in writing within 30 Days of the Related Company commencing the Services of the nature and scope of the Services to be performed by the Related Company.

30.3 Use of resource augmentation third parties

- (a) The Service Provider may utilise third party entities for the purposes of supplementing Service Provider staff with employees or other personnel of those third party entities (**Bodyshopping**) without obtaining the Nominal Insurer's prior written consent.
- (b) If the Service Provider enters into a Bodyshopping arrangement, it must notify the Nominal Insurer in writing within 30 Days of the arrangement being entered into.

30.4 Service Provider responsibility

- (a) Any approval of a Subcontractor under clause 30.1, use of any Related Company to provide any portion of the Services under clause 30.2, or Bodyshopping under clause 30.3, will not relieve the Service Provider from any liability under the Agreement.
- (b) The Service Provider remains responsible for all obligations, services and functions performed by any Subcontractors (whether approved or not) and any Related Company performing any part of the Services, to the same extent as if those obligations, services and functions were performed by the Service Provider.
- (c) Any third party employees or personnel supplementing the Service Provider's staff under a Bodyshopping under clause 30.3 will be deemed to be Service Provider Personnel for the purposes of the Agreement, and the Service Provider remains responsible for, and will be liable for the acts and omissions of those third party employees or personnel to the same extent as for its own Personnel.

30.5 Replacement

- (a) If the Nominal Insurer has concerns about an Approved Subcontractor's or a Related Company's performance, or concerns arising from a Change in Control of an Approved Subcontractor, or if the Nominal Insurer reasonably believes that an Approved Subcontractor is or is likely to be subject to an Insolvency Event (with references in the definition of "Insolvency Event" to "Service Provider" being deemed to be references to "Approved Subcontractor" for the purposes of this clause), the Nominal Insurer will notify the Service Provider and the Service Provider must discuss those concerns with the Nominal Insurer. If after those discussions, the Service Provider cannot demonstrate to the Nominal Insurer's reasonable satisfaction that it is able to address those concerns in a reasonable time frame:
 - (i) the Nominal Insurer may (as relevant):
 - (A) revoke its approval of the Approved Subcontractor in accordance with the procedures in clauses 30.5(a)(ii) and 30.5(a)(iii); or
 - (B) require that the Service Provider cease utilising the resources of the relevant Related Company;
 - (ii) in the case of the Cloud Services Approved Subcontractor, the Nominal Insurer may direct, by providing a minimum of three months' written notice, that the Service Provider replace the Cloud Services Approved Subcontractor and the Service Provider must (at no cost to the Nominal Insurer) comply with that direction; and
 - (iii) in the case of any other Approved Subcontractor, the Nominal Insurer may direct, by providing a minimum of 20 Business Days written notice, that the Service Provider replace that Approved Subcontractor and the Service Provider must (at no cost to the Nominal Insurer) comply with that direction.
- (b) The Service Provider must at all times continue to perform its obligations under the Agreement, notwithstanding the default, or the removal, of an Approved Subcontractor.
- (c) Clause 30.5(a) does not apply in respect of the licensor of any Base Software.

30.6 Novation

- (a) Subject to clause 30.6(b), on termination or expiration of the relevant Statement of Work or the Agreement, the Service Provider must use best endeavours to procure the novation

to the Nominal Insurer of any subcontract with an Approved Subcontractor on the Nominal Insurer's request.

- (b) Where any subcontract with an Approved Subcontractor comprises or is part of a global arrangement of the Service Provider, the Service Provider will be under no obligation to procure its novation to the Nominal Insurer, but must use best endeavours to procure that the Approved Subcontractor enters into a new contract with the Nominal Insurer on reasonable commercial terms in respect of the relevant subcontracted Services.

30.7 Terms of subcontract

- (a) The Service Provider must enter into a written subcontract with each Approved Subcontractor.
- (b) Unless otherwise agreed by the Nominal Insurer, for each Approved Subcontractor, the Service Provider must ensure that:
 - (i) the written subcontract includes a right of termination to take account of the Nominal Insurer's right of termination under clauses 69.1 and 69.2 and the Nominal Insurer's right of revocation under clause 30.5;
 - (ii) the written subcontract includes a requirement that the Approved Subcontractor consents to a novation of the subcontract as required under clause 30.6, except where such subcontract comprises or is part of a global arrangement of the Service Provider;
 - (iii) the terms of the written subcontract with the Approved Subcontractor includes a requirement for the Approved Subcontractor to comply with all applicable Laws and:
 - (A) clause 43 (Work health and safety);
 - (B) clause 58 (Confidentiality);
 - (C) clause 59 (Protection of Nominal Insurer Data);
 - (D) clause 60 (Protection of Personal Information);
 - (E) clause 63 (Disclosure);
 - (F) clause 64 (Security); and
 - (G) to the extent relevant, clause 70 (Disengagement); and
 - (iv) the Approved Subcontractor will comply and co-operate with the Nominal Insurer if the Nominal Insurer exercises its Step-in Rights under the Agreement.

31. Warranties

31.1 Service Provider performance related warranties

The Service Provider warrants and represents that:

- (a) the Services will meet the requirements set out in the Agreement;
- (b) it will supply the Services promptly, diligently and with due care and skill, in accordance with the practices and professional standards used in well-managed operations providing equipment and services similar to the Services and in a manner that will cause minimal disruption to the Nominal Insurer's operations;

- (c) it has, or will have at the relevant time, the resources, capacity, expertise and ability in terms of equipment, know-how and Personnel to provide the Services in accordance with the Project Documentation;
- (d) it has the right and authority to grant any licences granted or required to be granted under the Agreement (and to assign or novate if applicable);
- (e) it has all the necessary rights and authority to provide the Services and that the provision of the Services and the use of, or other dealings with Contract Material in accordance with the Agreement and the applicable third party licence will not infringe the Intellectual Property Rights of any person;
- (f) the icare Solution Design will map accurately to the Functional Requirements and the Non-Functional Requirements;
- (g) the Deliverables and icare Solution will meet the icare Solution Requirements; and
- (h) it will provide the Services in accordance with all Laws.

31.2 Service Provider general warranties

The Service Provider warrants and represents that:

- (a) its signing, delivery and performance of the Agreement will not constitute:
 - (i) a violation of any judgment, order or decree;
 - (ii) a material default under any material contract by which it or any of its assets are bound; or
 - (iii) an event that would, with notice or lapse of time, or both, constitute such a default;
- (b) it has the requisite power to enter into the Agreement and to carry out the obligations contemplated by the Agreement; and
- (c) if the Service Provider is a trustee, the Service Provider enters the Agreement personally and in its capacity as trustee and warrants that it has the power to perform its obligations under the Agreement.

Contract management

32. Governance processes

32.1 General responsibilities of the parties

Each party will:

- (a) comply with and work within the Governance Framework;
- (b) fully cooperate with the other to ensure timely progress and fulfilment of the Agreement;
- (c) act reasonably and in good faith with respect to matters that relate to the Agreement;
- (d) to the extent specified in the relevant Statement of Work, hold meetings (including meetings relating to planning, review and issue resolution) and report to the other party on a regular basis in order to keep the other party fully informed of the progress of work required under the Agreement;
- (e) perform its obligations and responsibilities by the dates specified in the Agreement; and

- (f) comply with the additional governance and management requirements set out in the relevant Statement of Work.

32.2 Overview of relationship and governance

The parties agree to maintain full communication at all levels within their respective organisational structures, in accordance with the Governance Framework and any Statement of Work.

32.3 Appointment of Nominal Insurer Representative and Service Provider Representative

The Nominal Insurer must appoint a Nominal Insurer Representative and the Service Provider must appoint a Service Provider Representative to perform the roles set out in the Agreement. The Nominal Insurer Representative and the Service Provider Representative will represent that party (either in person or through a delegate) in all day to day dealings with the other party in connection with the Agreement.

32.4 Service Provider Representative

- (a) The Service Provider must ensure that its Service Provider Representative:
 - (i) is the single point of contact for the Nominal Insurer for the purposes of the Agreement;
 - (ii) has the authority and is given the responsibility to perform for the Service Provider each of the relevant tasks referred to in the Project Documentation; and
 - (iii) is a full-time employee or contractor of the Service Provider.
- (b) The Nominal Insurer may reasonably direct that the Service Provider replaces the Service Provider Representative in accordance with the process set out in clause 48.3.
- (c) The Service Provider must, as soon as possible after receiving a direction under clause 32.4(b) to replace the Service Provider Representative, replace that Service Provider Representative with a person acceptable to the Nominal Insurer.

33. Reports

33.1 Obligation to report

The Service Provider must prepare and submit to the Nominal Insurer:

- (a) the reports described in the Governance Framework and any Statement of Work, at the times specified in the Governance Framework or Statement of Work, as the case may be; and
- (b) any other reports reasonably requested by the Nominal Insurer from time to time.

33.2 Contents of report

The Service Provider must prepare each report in good faith and certifies that to the best of its knowledge all information contained in each report is accurate, complete and up to date as at the time it is provided to the Nominal Insurer.

34. Meetings

- (a) The parties will meet at the times and manner set out in the Governance Framework and any Statement of Work (or as otherwise agreed in writing between the parties) to discuss any issues in relation to the Agreement or the progress of the provision of the Services.

- (b) The Service Provider must ensure that the Service Provider Representative, and the Nominal Insurer must ensure the Nominal Insurer Representative, is reasonably available to attend such meetings and answer any queries relating to the provision of the Services raised by either party.

35. Nominal Insurer Furnished Items

35.1 General obligations

The Service Provider must not (and must ensure that its Personnel do not):

- (a) use Nominal Insurer Furnished Items provided to the Service Provider, or which the Service Provider has access to, other than for the purposes of fulfilling its obligations under the Agreement;
- (b) purport to sell, let for hire, assign rights in or otherwise dispose of Nominal Insurer Furnished Items;
- (c) purport to commercially exploit Nominal Insurer Furnished Items (or allow any Subcontractor or a Subcontractor's Personnel to do so); or
- (d) alter Nominal Insurer Furnished Items in any way, other than in providing the Services as required under the Agreement.

35.2 Safeguarding Nominal Insurer Furnished Items

The Service Provider must establish and maintain safeguards for the control, handling, preservation, protection and maintenance of Nominal Insurer Furnished Items in the possession or control of the Service Provider that:

- (a) are no less rigorous than those notified by the Nominal Insurer from time to time and will be no less rigorous than the safeguards that can be reasonably expected in well run projects; and
- (b) comply with all Laws and any procedures or requirements specified by the Nominal Insurer from time to time.

36. Nominal Insurer Furnished Facilities

The Service Provider must (and must ensure that its Personnel):

- (a) only use Nominal Insurer Furnished Facilities for the purposes of fulfilling its obligations under the Agreement;
- (b) not grant a third party access Nominal Insurer Furnished Facilities, except where that third party is an Approved Subcontractor, Related Company or subcontractor for Bodyshopping, and the access is necessary in order for the Service Provider to fulfil its obligations under the Agreement;
- (c) comply with all Nominal Insurer Policies (including any lease requirements) relating to the access to and use of Nominal Insurer Furnished Facilities as advised by the Nominal Insurer from time to time, including as required under clause 41 and as set out in the relevant Statement of Work; and
- (d) comply with all reasonable directions and procedures relating to work health and safety in operation at Nominal Insurer Furnished Facilities whether specifically drawn to the attention of the Service Provider or as might reasonably be inferred from the circumstances, including compliance required under clause 42.2.

37. Books and records

37.1 Service Provider to keep books and records

The Service Provider must:

- (a) keep, and must require its Subcontractors to keep, adequate books and records, in accordance with Accounting Standards, in sufficient detail to enable the amounts payable by the Nominal Insurer under the Agreement to be determined; and
- (b) retain, and require its Subcontractors to retain, for a period of seven years after termination or expiration of the Agreement all books and records relating to the icare Solution, Deliverables or the Services.

37.2 Costs

The Service Provider must bear its own costs of complying with this clause 37.

37.3 Survival

This clause 37 applies for the Term and for a period of seven years from the termination or expiry of the Agreement.

38. Audit and access

38.1 Right to conduct audits

The Nominal Insurer may conduct, or may engage a Permitted Auditor to conduct one audit per year relevant to the performance of the Service Provider's obligations under the Agreement.

Audits may be conducted of:

- (a) the Service Provider's operational practices and procedures as they relate to the Agreement, including security procedures;
- (b) the manner in which the Service Provider performs its obligations under the Agreement;
- (c) the accuracy of the Service Provider's invoices and reports in relation to the provision of the Services;
- (d) the Service Provider's compliance with its confidentiality, privacy and security obligations under the Agreement;
- (e) the Service Provider's compliance with all its obligations under the Agreement;
- (f) the Service Provider's compliance with its obligations in relation to Nominal Insurer Policies under the Agreement;
- (g) the Service Provider's compliance with its quality assurance obligations under the Agreement;
- (h) any other matters reasonably determined by the Nominal Insurer to be relevant to the performance of the Service Provider's obligations under the Agreement; and
- (i) material (including books and records) in the possession of the Service Provider relevant to the Services or the Agreement, excluding information related to costs and margins of the Service Provider.

38.2 Access by the Nominal Insurer

- (a) For the purpose of conducting an audit as set out in clause 38.1, the Nominal Insurer or the Permitted Auditor (as applicable) may, at reasonable times and on giving reasonable notice to the Service Provider:

- (i) access the premises of the Service Provider to the extent relevant to the performance of the Agreement;
 - (ii) require the provision by the Service Provider or Service Provider Personnel of records and information in a data format and storage medium accessible by the Nominal Insurer by use of the Nominal Insurer's existing computer hardware and software; and
 - (iii) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Service Provider or Service Provider Personnel, excluding information related to costs and margins of the Service Provider.
- (b) The Service Provider must provide access to its computer hardware and software to the extent necessary for the Nominal Insurer to exercise its rights under this clause 38 (either by itself or through the Permitted Auditor), and provide the Nominal Insurer or Permitted Auditor with any reasonable assistance requested by the Nominal Insurer or Permitted Auditor to use that hardware and software.
 - (c) In accessing the Service Provider's premises, the Nominal Insurer will, or (if applicable) will procure that the Permitted Auditor will, comply with the Service Provider's or (to the extent relevant and applicable) its Related Company's reasonable security and office policies.

38.3 Conduct of audit and access

- (a) The Nominal Insurer must use reasonable endeavours to ensure that:
 - (i) audits performed pursuant to clause 38.1; and
 - (ii) the exercise of the general rights granted by clause 38.2 by the Nominal Insurer, do not unreasonably delay or disrupt in any material respect the Service Provider's performance of its obligations under the Agreement or the provision of services to any of the Service Provider's or its Related Company's other customers or its operations.
- (b) To avoid doubt, the Nominal Insurer's obligations under clause 58 apply to any Service Provider Confidential Information (including its Related Company's Confidential Information) that is disclosed or otherwise obtained by the Nominal Insurer during an audit.

38.4 Costs

Each party must bear its own costs of any reviews and/or audits.

38.5 No reduction in responsibility

The requirement for, and participation in, audits does not in any way reduce the Service Provider's responsibility to perform its obligations in accordance with the Agreement.

38.6 Subcontractors

The Service Provider must ensure that any subcontract entered into with an Approved Subcontractor for the purpose of the Agreement contains an equivalent clause granting the rights specified in this clause 38 with respect to the Subcontractor's premises, data, records, accounts, financial material and information and those of its Personnel.

38.7 Provision of financial statements

- (a) The Service Provider must provide to the Nominal Insurer at least annually during the Term its audited accounts (**Accounts**) to enable the Nominal Insurer to monitor the financial position of the Service Provider from time to time.

- (b) If the Nominal Insurer, acting reasonably, forms the view that any Accounts provided to it under this clause demonstrate a material deterioration in the Service Provider's financial position (**Deterioration**), it will discuss the relevant issue at the appropriate forum described in the Governance Framework. At such meeting, the Service Provider must provide responses to the Nominal Insurer's queries and concerns in respect of the Deterioration, and will be given the opportunity to seek to demonstrate to the Nominal Insurer that the Deterioration is a temporary situation which will be rectified promptly, or that the Service Provider's ability to perform the Services is not impacted by the Deterioration.
- (c) If, following such meeting (and the provision of any subsequent information or documentation by the Service Provider) the Nominal Insurer remains concerned (acting reasonably) that the Deterioration creates a significant risk of default by or insolvency of the Service Provider, then the Nominal Insurer may, notwithstanding that the Deterioration may not constitute an Insolvency Event, terminate the Agreement and all then-current Statements of Work under clause 69.2(b).

38.8 Survival

This clause 38 (except clause 38.7) applies for the Term and for a period of seven years from the termination or expiry of the Agreement.

Compliance

39. Approvals

39.1 Import and export approvals

- (a) The Service Provider must obtain all necessary import and valid export licences with respect to the Services and all other approvals necessary to meet the requirements of the Agreement.
- (b) The Service Provider must provide, on request by the Nominal Insurer Representative, a copy of any licence or approval, or proof acceptable to the Nominal Insurer Representative that such licence or approval has been obtained.

39.2 Required Consents

- (a) The Service Provider must obtain:
 - (i) all licences, permits and authorisations that may be required in connection with the provision of the Services; and
 - (ii) all consents required to implement any transfer of assets or to secure any rights of use or access to any assets required by the Service Provider in providing the Services,

(Required Consents).
- (b) The Service Provider must pay all costs of obtaining Required Consents (including any transfer or upgrade fees).

40. Compliance with applicable Laws

- (a) The Service Provider and Service Provider Personnel must comply with all Service Provider Laws, including, to the extent that the following are Service Provider Laws:

- (i) Crimes Act 1914 (Cth);
 - (ii) Criminal Code Act 1995 (Cth);
 - (iii) Racial Discrimination Act 1975 (Cth);
 - (iv) Sex Discrimination Act 1984 (Cth);
 - (v) Disability Discrimination Act 1992 (Cth);
 - (vi) Age Discrimination Act 2004 (Cth);
 - (vii) Government Information (Public Access) Act 2009 (NSW);
 - (viii) State Records Act 1998 (NSW);
 - (ix) Privacy and Personal Information Protection Act 1998 (NSW);
 - (x) Work Health and Safety Act 2011 (NSW);
 - (xi) Anti-Discrimination Act 1977 (NSW); and
 - (xii) relevant workers compensation legislation.
- (b) Nominal Insurer acknowledges and agrees that the icare Solution, if it is built, tested and deployed in accordance with the requirements of this Agreement, will, as at the date of its deployment, comply with all applicable Laws, including those related to compensation and insurance (**Relevant Laws**).
- (c) Nominal Insurer acknowledges and agrees that it will monitor any upcoming changes in Relevant Laws, and will notify the Service Provider during the Term if it becomes aware of any upcoming changes in Relevant Laws that may impact the icare Solution and its compliance with Relevant Laws. The Service Provider agrees that if it becomes aware during the Term of any upcoming change in Relevant Laws that may impact the icare Solution and its compliance with Relevant Laws, it will notify the Nominal Insurer. In such circumstances, the parties will agree a Variation Order in accordance with clause 28.10 to implement such changes to the icare Solution as are required to ensure the continued compliance of the icare Solution with Relevant Laws when such changes to them come into force.

41. Compliance with government policies

The Service Provider and Service Provider Personnel must comply with all applicable government policies as those policies relate to it solely as a private entity in the information technology industry or as they are applicable to it in its capacity as a service provider to the Nominal Insurer, including:

- (a) NSW Procurement Board Goods and Services Policy Framework;
- (b) NSW Government Procurement: Small and Medium Enterprises Policy Framework;
- (c) NSW Department of Finance, Services and Innovation (DFS) Business Ethics Statement;
- (d) NSW Government Digital Information and Security Policy; and
- (e) NSW Government Information Classification and Labelling Guidelines.

42. Compliance with Nominal Insurer Policies

42.1 Nominal Insurer Policies

The Service Provider and Service Provider Personnel must comply with Nominal Insurer Policies, and the security requirements and procedures as specified by the Nominal Insurer from time to time to the extent that:

- (a) they are applicable to the Services and the Service Provider in its capacity as a service provider to the Nominal Insurer; and
- (b) they are not inconsistent with any other requirement of the Agreement.

42.2 Compliance with Laws, Policies & Directions

If the Service Provider is delayed in the performance of, incurs extra cost in the performance of, or is unable to perform, certain of its obligations under the Agreement or a Statement of Work (**Service Provider Impact**) due to:

- (a) a change in applicable Laws, government policies or Nominal Insurer Policies;
- (b) a direction by the Nominal Insurer to do or not do anything that is not dealt with in a Statement of Work or this Agreement; or
- (c) a requirement that the Service Provider cooperate with the Nominal Insurer or is contractors other than as set out in the Agreement or a Statement of Work,

(**Relevant Cause**), then notwithstanding any other clause of the Agreement, but subject to anything contained in the relevant Statement of Work, the Service Provider shall be entitled to (as applicable):

- (d) a reasonable extension of time with respect to the delay;
- (e) payment of its reasonable extra costs, except to the extent that the extra costs were incurred due to breach of the Agreement by the Service Provider; and
- (f) be excused from the performance of the relevant obligations,

except to the extent that the Service Provider Impact was caused or contributed to by breach of the Agreement by, or other act or omission of, the Service Provider, and provided that the Service Provider has used its reasonable endeavours to mitigate the Service Provider Impact notwithstanding the Relevant Cause. The extent of any Service Provider entitlements under this clause shall be the Service Provider's sole remedy in respect of the Relevant Cause and Service Provider Impact, and shall be subject to agreement by the parties of a Variation Order in accordance with the Change Control Procedure.

43. Work health and safety

43.1 Definitions

In this clause 43, **Inspector**, **Notifiable Incident**, **Regulator** and **WHS Entry Permit Holder** have the meanings given in the WHS Act.

43.2 General obligations

- (a) The Service Provider must ensure the Services are performed in a safe manner.
- (b) The Service Provider must not, and must ensure its Personnel do not, by act or omission place itself or the Insurance and Care NSW in breach of its obligations under the WHS Laws.

- (c) The Service Provider must, and must ensure its Personnel, if using or accessing Insurance and Care NSW's premises or facilities, comply with all reasonable instructions, directions, policies and procedures relating to work health and safety in operation at those premises or facilities whether specifically drawn to the attention of the Service Provider or as might reasonably be inferred from the circumstances.
- (d) Where the health and safety of any person may be affected by the performance of the Services, the Service Provider must consult, cooperate and coordinate with Insurance and Care NSW in relation to the health and safety issue.
- (e) The Service Provider must inform itself, and ensure its Personnel inform themselves, of the Insurance and Care NSW's work health and safety policies and procedures relevant to the Services.
- (f) The Service Provider must, and must ensure its Personnel:
 - (i) comply with the WHS Laws in relation to Services performed by Covered Workers;
 - (ii) in relation to Services performed by Covered Workers, comply with all relevant work health and safety policies and procedures as notified by the Insurance and Care NSW;
 - (iii) immediately comply with any reasonable instruction from Insurance and Care NSW regarding work health and safety in relation to Services performed by Covered Workers; and
 - (iv) immediately comply with any direction in relation to Services performed by Covered Workers from any person having authority under the WHS Laws to give directions.

43.3 Notifying Insurance and Care NSW

- (a) The Service Provider must notify Insurance and Care NSW as soon as practicable of any concern the Service Provider has regarding work health and safety in relation to Services performed by Covered Workers.
- (b) The Service Provider must immediately notify Insurance and Care NSW of any:
 - (i) breach or suspected breach of the WHS Laws in relation to Services performed by Covered Workers;
 - (ii) cessation of work on the Services, or direction to cease work on the Services from any person having authority under the WHS Laws to do so, due to unsafe work;
 - (iii) entry by a WHS Entry Permit Holder or Inspector to any place where Services are being performed by Covered Workers; or
 - (iv) proceedings against, decision by the Regulator in relation to, or request from the Regulator to, the Service Provider or its Personnel under the WHS Laws.
- (c) The Service Provider must provide to Insurance and Care NSW a copy of any notice issued to the Service Provider under the WHS Laws in relation to Services performed by Covered Workers as soon as possible and in any event within 24 hours after receipt.
- (d) If the Service Provider is required by the WHS Laws to report a Notifiable Incident to the Regulator in relation to Services performed by Covered Workers, the Service Provider must:

- (i) as soon as is practicable in the circumstances, notify Insurance and Care NSW of the Notifiable Incident and, if requested by Insurance and Care NSW, provide a copy of any written notice given to the Regulator; and
- (ii) if requested by Insurance and Care NSW, provide within the timeframe specified by Insurance and Care NSW a report on the Notifiable Incident, the results of any investigations into its cause, and any recommendations for prevention in the future.

43.4 Investigations

- (a) The Service Provider must cooperate with any investigation undertaken by Insurance and Care NSW in relation to a Notifiable Incident, or breach or suspected breach of the WHS Laws, arising out of or in respect of the Services.
- (b) The requirement for, and cooperation with, investigations does not in any way reduce the Service Provider's responsibility to perform its obligations in accordance with this Agreement.

43.5 Non-compliance

- (a) If, during the performance of any work under the Agreement, Insurance and Care NSW notifies the Service Provider in writing that Insurance and Care NSW is satisfied that the Service Provider is:
 - (i) not performing the Services in compliance with the Service Provider's health and safety plan, health and safety management procedures, relevant legislation or health and safety procedures provided by the Nominal Insurer from time to time; or
 - (ii) performing the Services in such a way as to endanger the health and safety of the Service Provider Personnel,

(WHS Non-Compliance) the Service Provider must promptly remedy that breach of health and safety.

- (b) Insurance and Care NSW may direct the Service Provider to suspend the Services causing the WHS Non-Compliance (and any related Services) until such time as the Service Provider reasonably satisfies Insurance and Care NSW that the Services will be resumed in conformity with applicable health and safety provisions. During periods of suspension referred to above, the Nominal Insurer will not be required to make any payment whatsoever to the Service Provider in respect of the suspended Services.
- (c) If the Service Provider fails to rectify any WHS Non-Compliance for which Services have been suspended within a reasonable period but no later than 10 Business Days after receiving notification from the Nominal Insurer to do so, or if the Service Provider's performance has involved recurring breaches of health and safety, the Nominal Insurer may, at its option, immediately terminate the relevant Statement(s) of Work for cause, without further obligation to the Service Provider. In this event, the Nominal Insurer's liability will be limited to payment for the work performed and costs incurred by the Service Provider up to the time of termination.

43.6 Relationship to other obligations

- (a) Where there is any inconsistency between this clause 43 and the WHS Laws, the WHS Laws prevail to the extent of the inconsistency.
- (b) The Service Provider acknowledges that it is responsible for:
 - (i) complying with its obligations under work health and safety laws; and

- (ii) providing the Services in accordance with this Agreement,
and will not be relieved of that responsibility because of:
 - (iii) anything in this clause 43 or in any policy or procedure referred to in this clause 43;
 - (iv) any instruction or direction or failure to give an instruction or direction under this clause 43;
 - (v) any exercise of, or failure to exercise, the Nominal Insurer's or Insurance and Care NSW's rights under this clause 43; or
 - (vi) any notice or other document or communication from the Service Provider under this clause 43.
- (c) To the extent permitted by law, the Nominal Insurer and Insurance and Care NSW are not liable to the Service Provider for any Loss in connection with work health and safety in relation to Covered Workers performing Services.

Failure to perform

44. Measuring performance

The Service Provider must:

- (a) measure, monitor and record its performance against the Service Levels;
- (b) provide the Nominal Insurer with the data and information referred to in clause 44(a);
- (c) if requested by the Nominal Insurer, demonstrate to the Nominal Insurer the accuracy of the data and information referred to in clause 44(a); and
- (d) investigate any failure to provide the Services in accordance with the Service Levels and report its findings to the Nominal Insurer in a manner and to a level that is reasonably understandable to the Nominal Insurer.

45. Delays

45.1 General

The Service Provider must perform its obligations by the applicable Milestone Dates. The Service Provider acknowledges the criticality of each of the Milestone Dates in respect of the design, build and implementation of, and impacting the availability and performance of, the icare Solution provided under the Agreement and will work co-operatively with the Nominal Insurer to minimise the impact of any Delay.

45.2 Anticipating Delays

The Service Provider must actively monitor and manage the delivery of the Services, including:

- (a) anticipating and identifying potential failures to meet a Milestone Date or any other obligation under the Agreement which has a time frame for performance (a **Delay**) (including those Delays that may arise due to the Nominal Insurer or an Other Service Provider); and
- (b) taking reasonable steps to avoid those potential Delays.

45.3 Service Provider to promptly notify of a Delay

- (a) If there is a Delay, the Service Provider must immediately notify the Nominal Insurer in writing of any actual or potential Delay (however caused).
- (b) The written notice referred to in clause 45.3(a) must, at a minimum, include the following information:
 - (i) the nature of the Delay;
 - (ii) the cause of the Delay and contributing factors if known; and
 - (iii) the consequences of the Delay for each party and in particular the Milestones that have or are likely to be affected;
 - (iv) whether:
 - (A) the Service Provider (or Service Provider Personnel) will be able to temporarily work around the problem in order to prevent, limit or rectify the Delay; or
 - (B) any other person can provide the Services in order to prevent, limit or rectify the Delay.

45.4 Rectification of a Delay

If there is a Delay:

- (a) the Nominal Insurer Representative and the Service Provider Representative (or their agreed representatives) must, if requested to do so by the Nominal Insurer, meet within five Business Days after receiving notification of the actual or potential Delay, to discuss how to prevent, limit or rectify the Delay;
- (b) unless the Nominal Insurer otherwise directs, the parties must negotiate in good faith a workaround plan by the time notified by the Nominal Insurer (having regard to the overall time frame and the extent of the Delay) which must set out as a minimum:
 - (i) the cost implications of the Delay;
 - (ii) the interdependencies; and
 - (iii) the required tasks and the expected time impact of those tasks (including any revised Milestone Dates) to rectify or limit the Delay,
 - (iv) and, if agreed, must be signed and dated by the parties;
- (c) the Service Provider must implement and comply with any workaround plan submitted to the Nominal Insurer and agreed in accordance with clause 45.4(b); and
- (d) the Service Provider must:
 - (i) as required by the Nominal Insurer, prepare and submit regular update reports to the Nominal Insurer Representative in relation to the Delay; and
 - (ii) take all steps reasonably required by the Nominal Insurer to prevent, limit or rectify the Delay, including working cooperatively with Other Service Providers.

45.5 Status of workaround plan

If the Nominal Insurer and the Service Provider agree on a workaround plan in accordance with clause 45.4(b), that workaround plan will:

- (a) be used by the parties to assist to document that variation in accordance with the Change Control Procedure;

- (b) only operate as a variation of the Agreement in accordance with the Change Control Procedure and to the extent that it relates to, and for the duration of, the Delay and does not operate as a waiver of the other obligations that the Service Provider may have under the Agreement; and
- (c) not limit any rights or remedies the Nominal Insurer may have against the Service Provider in connection with the Delay (for example, to claim Losses).

45.6 Consequences of a Delay

To the extent a Delay is caused by:

- (a) a Force Majeure Event, then the provisions of clause 62 will apply;
- (b) the Service Provider (or Service Provider Personnel), then any costs and expenses incurred by the Service Provider to implement an agreed workaround plan will be borne by the Service Provider, and the Nominal Insurer may, at its election and in addition to requiring the performance of the agreed workaround plan, do one or more of the following:
 - (i) if payment for a Milestone, or other Service Provider obligation specified in a Statement of Work, is dependent on performance by the Milestone Date or other applicable timeframe, withhold any payment (including any applicable Milestone Payment) in relation to the missed Milestone Date or missed other timeframe, until the Milestone or obligation is met;
 - (ii) specify a revised date for the Milestone or obligation to be met; and
 - (iii) if a Delay cannot be remedied within a timeframe acceptable to the Nominal Insurer (acting reasonably), the Nominal Insurer may terminate the Agreement under clause 69.2; or
- (c) the Nominal Insurer or any third party under the Nominal Insurer's control, then, provided the Service Provider has complied with its obligations under this clause 45 including its obligations to anticipate, notify and manage Delays under clauses 45.2 and 45.3:
 - (i) any costs and expenses incurred by the Service Provider to implement an agreed workaround plan will be borne by the Nominal Insurer;
 - (ii) the workaround plan will be given effect in accordance with clause 28; and
 - (iii) the Service Provider is relieved from its obligations to meet a Milestone affected by the Delay for the duration of the Delay and will be granted an extension of time to perform subsequent obligations impacted by the Delay commensurate with the extent of the Delay. To avoid doubt, the Service Provider must continue to provide the Services that are unaffected by the Delay.

45.7 Extension of time

The parties may, in accordance with clause 28, amend the relevant Statement of Work to address the impact of any Delay.

46. Service Rebates

46.1 Application

Service Rebates apply to the provision of the:

- (a) Operational Services;
- (b) Cloud Services;

- (c) the Support Services, in the circumstances described in the relevant Statement of Work;
and
- (d) any other Services if specified in the relevant Statement of Work.

46.2 Amounts

To the extent that the Service Provider is responsible for any failure to achieve a Critical Service Level, the Service Provider must pay to the Nominal Insurer Service Rebates, the amount of which will be determined in accordance with the relevant Statement of Work.

46.3 Acknowledgment

The Service Provider:

- (a) acknowledges that any Service Rebates:
 - (i) represent a reduction in the Charges to reflect the provision of a lower level of service than is required under the Agreement; or
 - (ii) are a genuine pre-estimate of the loss and damage the Nominal Insurer will suffer as a result of a failure to achieve a Critical Service Level (as applicable),
as the case may be and constitute an agreed amount by which the Charges will be reduced;
- (b) acknowledges that payment of any Service Rebates under the Agreement will be without prejudice to any other rights or remedies that the Nominal Insurer may have against the Service Provider under, or arising from, the Agreement as a result of the Service Provider's failure to achieve a Critical Service Level;
- (c) will not be liable to pay any Service Rebates arising from the Service Provider's failure to achieve a Critical Service Level to the extent that failure arose as a result of:
 - (i) the Nominal Insurer's failure to fulfil its obligations under a Statement of Work or the Agreement; or
 - (ii) the acts or omissions of a third party (other than any third party acting on behalf of, or instructed by, the Service Provider, including an Approved Subcontractor so acting or instructed); or
 - (iii) a Force Majeure Event;
- (d) without limiting any other right or remedy available to the Nominal Insurer, if the Service Provider fails to meet a Critical Service Level except to the extent as a result of the circumstances set out in clause 46.3(c)(i) , 46.3(c)(ii) and 46.3(c)(iii):
 - (i) for three consecutive months; or
 - (ii) three times in any 6 month period,the Nominal Insurer may terminate the Agreement for cause under clause 69.2.

46.4 Maximum Service Rebate

No Service Rebate shall exceed 10% of the monthly fees payable with respect to the Critical Service Level.

46.5 Not sole remedy

To the extent that a Service Rebate is paid under this clause 46, this shall not be the sole remedy of the Nominal Insurer for the Service Provider's failure to achieve the Critical Service Level, and the Nominal Insurer shall be entitled to any other payment or remedy with respect to such breach.

47. Step-in Rights

47.1 Circumstances in which the Nominal Insurer is entitled to exercise Step-in Rights

If a Step-in Event occurs, the Nominal Insurer may elect to exercise Step-in Rights, unless a Statement of Work expressly provides that Step-in Rights are not exercisable under that Statement of Work.

47.2 Exercise of Step-in Rights

- (a) If under this clause 47, the Nominal Insurer exercises Step-in Rights, then the Nominal Insurer may itself or through a person nominated by the Nominal Insurer:
 - (i) step-in and temporarily take or assume total or partial management and control of the provision of the Services; and
 - (ii) take any such steps as in the opinion of the Nominal Insurer are necessary or desirable to continue the provision of the Services as required by the Agreement or to cure the default or other circumstance giving rise to the exercise of Step-in Rights, including the procurement of a third party to provide all or any component of the Services.
- (b) On the Nominal Insurer exercising Step-in Rights:
 - (i) the Service Provider's management of its rights and obligations under the Agreement is suspended to the extent necessary to permit the Nominal Insurer to exercise those Step-in Rights;
 - (ii) the Service Provider must promptly provide the Nominal Insurer with such information concerning the business of the Service Provider as requested by the Nominal Insurer to enable full and effective exercise by the Nominal Insurer of Step-in Rights including details of relevant Subcontracts entered into by the Service Provider in connection with the provision of the Services; and
 - (iii) the Service Provider must:
 - (A) to the extent required by the Nominal Insurer or any person nominated by the Nominal Insurer, make available to the Nominal Insurer or such other person as nominated by the Nominal Insurer all rights and benefits of the supplies and services under existing supply and subcontract agreements; and
 - (B) take all reasonable steps to assist the Nominal Insurer or any person nominated by the Nominal Insurer to fully exercise the Nominal Insurer's rights under this clause.
- (c) The Nominal Insurer may only exercise its Step-in Rights with 5 Business Days' notice to the Service Provider that it intends to exercise its Step-in Rights unless it can rectify the Step-in Event such that it is no longer occurring or in existence within such 5 Business Day period.
- (d) The Nominal Insurer must exercise (and must ensure that any representative exercises) the Step-in-Rights reasonably and in good faith, and in a manner that will not adversely affect the Service Provider's ability to provide any other Services that are not subject to the exercise of the Step-in-Rights and to run its business or service other customers.

47.3 Charges and costs

- (a) If the Nominal Insurer has exercised Step-in Rights, then for as long as and to the extent that those Step-in Rights are being exercised in accordance with this clause 47:
 - (i) Charges for Services in respect of which the Step-In Rights have not been exercised, and which continue to be performed by the Service Provider (**Unaffected Services**) will continue to be payable by the Nominal Insurer;
 - (ii) no Charges will be payable for Services in respect of which the Step-In Rights have been exercised, and which are being performed by the Nominal Insurer or the relevant person nominated by the Nominal Insurer (**Affected Services**); and
 - (iii) if the cost to the Nominal Insurer of performing (or engaging a third party to perform) the Affected Services, including costs associated with the engagement and transition in of the relevant third party (if applicable) (**Incurred Costs**) exceeds the amount of Charges which would, notwithstanding clause 47.3(a)(ii), have been payable by the Nominal Insurer in respect of the Affected Services (**Affected Services Charges**), the Service Provider must promptly pay to the Nominal Insurer an amount equal to the difference between the Incurred Costs and the Affected Services Charges.
- (b) The Nominal Insurer must attempt to mitigate the costs and expenses incurred as a result of the exercise of its Step-In Rights including the Incurred Costs.

47.4 Liability during step-in

- (a) The Nominal Insurer, or any person nominated by the Nominal Insurer under this clause 47, will not be liable to the Service Provider for any Losses suffered by the Service Provider arising out of or in connection with the exercise of its Step-in Rights except where there is a fraudulent, unlawful, illegal or negligent act or omission by the Nominal Insurer or a person nominated by the Nominal Insurer under this clause 47.
- (b) For as long as and to the extent that the Nominal Insurer is exercising its Step-in Rights:
 - (i) the Service Provider will be relieved, in respect of the Affected Services, from liability under the Agreement except in respect of any liability resulting from or arising out of the Step-in Event that gave rise to the Nominal Insurer exercising its Step-in Rights;
 - (ii) the Nominal Insurer will not be entitled to Service Rebates in respect of the Affected Services; and
 - (iii) the Service Provider will be relieved, in respect of the Unaffected Services only, from liability under the Agreement for any:
 - (A) delay;
 - (B) malfunction, non-performance or diminished performance of a Deliverable, the System or the icare Solution or any part thereof; or
 - (C) failure to meet any Service Level;(in each case a **Relevant Failure**) solely to the extent that the Relevant Failure was caused by the performance (or non-performance) by the Nominal Insurer or the relevant person nominated by the Nominal Insurer under this clause 47 of the Affected Services. The Service Provider will not be relieved of any other liability under the Agreement.

47.5 Duration

- (a) If the Nominal Insurer has exercised its Step-in Rights, the Nominal Insurer may for each occurrence continue to exercise such Step-in Rights for a period of up to 60 Business Days after which the Nominal Insurer must either:
 - (i) allow the Service Provider to resume performance of the Services in accordance with the Agreement; or
 - (ii) terminate the Agreement and/or the relevant Statement of Work in accordance with clause 69.2.
- (b) For the purposes of clause 47.5(a), the time period will commence on the date the Nominal Insurer first exercises the Step-in Rights. The Nominal Insurer may cease to exercise its Step-in Rights at any time during the applicable period.

47.6 Step-in Rights additional to other rights

- (a) The Nominal Insurer's Step-in Rights are in addition to, and do not limit in any way, any other rights and remedies available to the Nominal Insurer under the Agreement or under general principles of law or equity.
- (b) The Nominal Insurer is not obliged in any way to remedy or cure any default or Step-in Event or to overcome or mitigate any risk or risk consequences in respect of which the Nominal Insurer exercises Step-in Rights.

47.7 Step-out

- (a) The Nominal Insurer will give the Service Provider reasonable notice of its intention to cease exercising Step-in Rights.
- (b) On the Nominal Insurer ceasing to exercise any Step-in Rights, the Service Provider must as soon as reasonably practicable recommence performance of those of the Service Provider's obligations under the Agreement which were suspended pursuant to clause 47.2(b).
- (c) The Nominal Insurer will, at the cost and expense of the Service Provider, give reasonable assistance to the Service Provider to ensure that the process of the Nominal Insurer ceasing to exercise Step-in Rights and the Service Provider recommencing to perform its obligations is effected as efficiently as possible.

Personnel

48. Personnel issues

48.1 Standards of Service Provider Personnel

The Service Provider must:

- (a) use an adequate number of Service Provider Personnel to supply the Services in accordance with the Milestones;
- (b) ensure that all Service Provider Personnel who are involved in the supply of the Services are experienced, properly educated, trained and fully qualified to supply that part of the Services they perform;
- (c) ensure that all Service Provider Personnel comply with:

- (i) any protocols, codes of conduct or procedures specified by the Nominal Insurer from time to time;
- (ii) all applicable obligations of the Service Provider under the Agreement (including the Service Provider's obligations in respect of Personal Information, Confidential Information, security and any Nominal Insurer Material);
- (iii) all Service Provider Laws; and
- (iv) any relevant policies existing or introduced from time to time.

48.2 Use of Specified Personnel

The Service Provider must:

- (a) ensure that its Specified Personnel:
 - (i) undertake the tasks and development work in respect of the Services; and
 - (ii) are available,
 as specified in the Resource Plan;
- (b) not replace any Specified Person without the prior written approval of the Nominal Insurer;
- (c) except where clause 48.2(d) applies, before replacing any Specified Person, give the Nominal Insurer at least 30 Days prior written notice and provide information about the proposed replacement, proposed training and any delays likely to result from the replacement of the Specified Person;
- (d) where a Specified Person is unable to provide services in connection with the Agreement due to:
 - (i) ill health or incapacity; or
 - (ii) that the person has left the employ of the Service Provider (including where the person's employment with the Service Provider has been terminated for cause by the Service Provider),
 give the Nominal Insurer as much notice as possible and provide information about the proposed replacement, proposed training and any delays likely to result from the replacement of the Specified Person; and
- (e) replace any Specified Person in accordance with clause 48.3 if required to do so by the Nominal Insurer.

48.3 Replacement of Service Provider Personnel

- (a) The Nominal Insurer may at any time notify the Service Provider that it requires the Service Provider to replace any Service Provider Personnel.
- (b) Where the Nominal Insurer requires the Service Provider to replace any Specified Person pursuant to clause 48.2(e), the Nominal Insurer will consult with the Service Provider. If, following such consultation, the Nominal Insurer still requires that Person to be replaced, the Service Provider must within 10 Business Days do so with another appropriately qualified, knowledgeable and experienced person acceptable to the Nominal Insurer.
- (c) To assist the Nominal Insurer in assessing the suitability of a replacement Specified Person, the Service Provider must, if requested by the Nominal Insurer, make the replacement Specified Person available for an interview with Nominal Insurer Personnel.

- (d) For Service Provider Personnel other than Specified Personnel, if the Nominal Insurer notifies the Service Provider in accordance with clause 48.3(a), the following procedure will apply:
 - (i) if the reason for the request is due to:
 - (A) a breach of Service Provider Law or the Nominal Insurer Policies by that Person; or
 - (B) serious misconduct by that Person,the Service Provider must immediately withdraw the Person from being involved in the provision of the Services;
 - (ii) in any other case:
 - (A) within five Business Days after receipt of the notice, the Service Provider must investigate the reasons stated in the notice, consult with the Nominal Insurer to discuss its findings (including any ramifications of replacing the Person) and attempt to resolve any problems with the Person; and
 - (B) if the Nominal Insurer still requires the replacement of the Person after the Service Provider has consulted with the Nominal Insurer, the Service Provider must promptly replace that Person; and
 - (iii) if the Service Provider is required to replace Personnel in accordance with this clause 48.3(d), it must promptly do so with another person of suitable ability, knowledge, experience and qualifications acceptable to the Nominal Insurer.

48.4 No excuse

Despite the transfer, turnover or replacement of the Service Provider Personnel involved in providing any part of the Services or any pressing need to assign the Service Provider Personnel involved in providing any part of the Services to other projects, the Service Provider will remain obliged at all times to provide the Services without degradation and in accordance with the Agreement.

48.5 Responsibility

The Service Provider will be responsible for all actions, statements and omissions of Service Provider Personnel.

48.6 No employment relationship

- (a) The Service Provider acknowledges and agrees that none of the Service Provider Personnel is or will by virtue of the Agreement become an employee of the Nominal Insurer by providing Services under the Agreement.
- (b) The Service Provider must ensure that all Service Provider Personnel involved in the provision of the Services are paid any remuneration and provided with any right or entitlement (including any right or entitlement related to hours of work, superannuation, pension or retirement benefits, leave, notice of termination, severance or redundancy and any other employment-related right or entitlement) due to them in connection with their employment or engagement by the Service Provider or a Subcontractor.

49. Restriction on engaging Personnel of other party

- (a) The Nominal Insurer and the Service Provider agree, that neither party will, without the prior agreement of the other party engage, employ or induce or cause a third party to

induce the other party's Personnel engaged in the performance of this Agreement to enter into a contract for service or a contract for employment with it.

- (b) The restriction referred to in clause 49(a) applies during the Term and for a period of:
 - (i) twelve months after expiry or termination of this Agreement;
 - (ii) six months after expiry or termination of this Agreement; or
 - (iii) three month after expiry or termination of this Agreement,each of which will be regarded as separate, distinct and several so that the enforceability of a restraint in respect of one period will not affect the enforceability of the others.
- (c) A general solicitation for employment such as a newspaper advertisement will not constitute a breach of this clause 49.

Pricing, payment and taxes

50. Charges

50.1 Charges

- (a) The Charges will be payable in accordance with the Agreement and the relevant Statement of Work and Schedule 3 (Pricing).
- (b) The Charges, subject only to clause 53, are inclusive of all Taxes and all incidental, ancillary costs and expenses of whatever nature.

50.2 No other fees or charges

- (a) The Service Provider acknowledges that it has had the opportunity to conduct appropriate investigations to satisfy itself as to the scope of the Agreement and the adequacy of its pricing.
- (b) Except as expressly provided under the Agreement (including in any Statement of Work), the Service Provider is not entitled to charge the Nominal Insurer for any fees, charges, costs or expenses in addition to the Charges.

50.3 Claims for Milestone Payments

- (a) Where the Service Provider submits a claim for a Milestone Payment it must be accompanied by:
 - (i) where the Milestone relates to Acceptance of a Deliverable, the relevant Acceptance Certificate for the particular Deliverable; and
 - (ii) any other relevant documentation necessary to establish, to the satisfaction of the Nominal Insurer Representative, that the claim for the particular Milestone Payment is in accordance with the Agreement, including documentation establishing that the Service Provider has achieved the relevant Milestone.
- (b) The Service Provider must not issue an invoice claiming a Milestone Payment until it has complied with the requirements of clause 50.3(a).

50.4 Receipt of claim

On receipt of a claim for a Milestone Payment, the Nominal Insurer Representative must either:

- (a) approve the claim or part of a claim where it is submitted in accordance with clause 50.3;
- or

- (b) reject the claim or part of a claim where the claim is not submitted in accordance with clause 50.3.

50.5 Payment

- (a) The Nominal Insurer is not obliged to pay a claim for a Milestone Payment or any other Charges if, at the time that the claim for a Milestone Payment or Charges would otherwise be due, the Service Provider has not provided evidence of the nature and currency of insurance as required by clause 65.
- (b) Where a claim or part of a claim is approved under clause 50.4(a), the Nominal Insurer must make payment of the claim or part of the claim in accordance with clause 51.2.

50.6 Rejection

Where the Nominal Insurer Representative rejects a claim or part of a claim under clause 50.4(b), the Nominal Insurer Representative must notify the Service Provider in writing of:

- (a) the need to resubmit the claim or part of the claim;
- (b) the reasons for rejection; and
- (c) any action to be taken by the Service Provider for the claim or part of the claim to be rendered correct for payment.

50.7 Re-submission

On receipt of a notice issued pursuant to clause 50.6, the Service Provider must immediately take all necessary steps to make the claim for payment conform to the requirements of the Agreement and must resubmit the claim to the Nominal Insurer Representative when such action is complete. The resubmitted claim will be subject to the same conditions as if it were the original claim.

51. Invoicing and payment

51.1 Invoicing

The Service Provider must ensure that each invoice submitted to the Nominal Insurer:

- (a) is in accordance with the procedure, and contains the information, set out in the relevant Statement of Work and Schedule 3 (Pricing) (including being addressed to Nominal Insurer Personnel identified in that Schedule (or such other person notified by the Nominal Insurer from time to time));
- (b) is in a form that complies with clause 53 and all other taxation requirements; and
- (c) if required by the Nominal Insurer, is accompanied by written certification that relevant workers compensation premiums, payroll tax and wages have been paid.

51.2 Payment

Unless the Nominal Insurer:

- (a) exercises its rights under clause 45.6(b)(i);
- (b) disputes an invoice in accordance with clause 51.3; or
- (c) exercises its right to set-off in accordance with clause 82,

the Nominal Insurer must pay a valid invoice for the payment within 30 Days after the date the invoice is received.

51.3 Invoice dispute

If the Nominal Insurer in good faith disputes the validity of any invoice or any part of an invoice:

- (a) the Nominal Insurer will promptly notify the Service Provider of the details and the nature of the dispute;
- (b) the Nominal Insurer will pay the amounts not in dispute by the time for payment in clause 51.2. However, the Service Provider agrees to reissue the invoice for the undisputed amount if required by the Nominal Insurer;
- (c) the parties must continue to perform their other obligations under the Agreement; and
- (d) either party may invoke the dispute resolution procedure set out in clause 68 to attempt to resolve the dispute.

51.4 Invoicing requirements

- (a) All invoices must be in the format agreed by the parties (for example, soft copy PDF format and soft copy Excel format or via other on-line mechanism), as varied from time to time by agreement. If no agreement on invoice format is reached, the format will be as directed by the Nominal Insurer.
- (b) In addition to the requirement in clause 51.1(a), the Service Provider must provide relevant supporting and substantiation information with each invoice to allow the substantiation of all Charges.
- (c) The Nominal Insurer may require the Service Provider to provide additional substantiation information with future invoices.
- (d) Invoice and substantiation information should be made available to the Nominal Insurer in soft copy and be in a form that facilitates ease of retrieval and review for inquiry and audit purposes.
- (e) The Service Provider must:
 - (i) respond to invoice enquiries from the Nominal Insurer within two (2) Business Days (or such longer period as may be agreed by the Parties); and
 - (ii) in providing such responses, include any additional data and information requested by the Nominal Insurer to address the relevant enquiry.

52. Taxation

52.1 Government taxes, duties and charges

- (a) Except for GST and subject to the following provisions of this clause 52.1, the Service Provider must pay any taxes, duties and charges imposed or levied in Australia or overseas in connection with the performance of the Agreement.
- (b) If there is a variation in or abolition of an existing government tax, duty or charge, or any new government tax, duty or charge is introduced, that affects the cost to the Service Provider of supplying any part of the icare Solution, Deliverables or the Services:
 - (i) the Charges applicable to that part of the icare Solution, Deliverables or the Services will be changed to reflect the net effect of the variation or the new tax (taking into account any offsetting tax reductions) on the cost of supplying that part of the icare Solution, Deliverables or the Services; and
 - (ii) the Service Provider must provide the Nominal Insurer with evidence, to the Nominal Insurer's satisfaction, of that net effect,

but paragraphs (i) and (ii) above do not apply to GST, income tax, taxes on turnover or revenue or similar taxes imposed on or in respect of income, turnover or revenue.

- (c) The Service Provider must take advantage of any tax exemptions that are available in connection with the provision of the icare Solution, Deliverables or the Services (or any resources used or provided in connection with the Services) and pass the benefit of such exemptions through to the Nominal Insurer.

53. GST

53.1 Definitions

Words or expressions used in this clause 53 which are defined in the GST Law have the same meaning in this clause.

53.2 GST exclusive pricing

Unless stated otherwise in the Agreement, the amount payable for the Supply of any goods, services or other things under or in connection with the Agreement (**Base Price**) is stated as exclusive of GST.

53.3 Recipient to pay

Despite any other provision of the Agreement, if a party (**Supplier**) makes a Supply under or in connection with the Agreement on which GST is payable (not being a Supply the consideration for which is specifically described in the Agreement as 'GST inclusive'):

- (a) the consideration payable or to be provided for that supply under the Agreement but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the Supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST exclusive consideration multiplied by the prevailing rate of GST (**GST Amount**); and
- (b) subject to clause 53.5, the GST Amount must be paid to the Supplier by the Recipient without set-off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or provided.

53.4 Adjustment to the rate of GST

If the Base Price is expressly stated to be inclusive of any GST and if the rate of GST is increased or decreased (**New Rate**), then the Base Price (inclusive of GST) will be increased or decreased, as the case may be, by the amount that after payment of GST at the New Rate the Supplier will retain an amount equal to so much of the Base Price as would have been retained had the rate of GST not been increased or decreased.

53.5 Tax invoices and/or adjustment notes

If GST is imposed on any Supply made under or in connection with the Agreement, the Supplier must ensure that any tax invoice and/or adjustment note (or similar such document) or other request or demand for payment of Supplies provided by it to the Recipient will comply with the relevant GST Law. If GST is imposed on any Supply, no amount will be due and payable by the Recipient in respect of that Supply unless the Recipient has received from the Supplier an invoice or other document which complies with this clause 53.5.

53.6 Compliance with GST Law

The parties agree to use reasonable efforts to do everything required by the GST Law to enable or assist the other party to claim or verify any input tax credit, set off, rebate or refund in respect of any GST paid or payable in connection with the Services.

53.7 Calculations

If any amount payable by a party under the Agreement is calculated by reference to any cost, expense or other liability (**Cost**) incurred by any person including another party, the Cost for the purposes of that calculation will be the amount of the Cost actually incurred by the relevant party less the amount of any input tax credits (as defined in the relevant GST Law) which that party is entitled to claim in respect of that Cost. The other party must provide details of the Cost and any input tax credits to the first party on demand.

53.8 Adjustment events

If the amount of GST recovered or recoverable by one party from the other party differs from the amount of GST payable by the first party to the relevant Government Authority in respect of that Supply, the amount paid or payable by the other party will be adjusted accordingly. The first party must refund any overpayment of GST to the other party and issue an appropriate tax invoice, adjustment note or other document as the case may be.

53.9 Excluding GST from calculations

If a payment to be made under the Agreement is calculated as a percentage of or by reference to another amount or revenue stream, that payment must be calculated as a percentage of or by reference to that amount or revenue stream exclusive of GST.

54. Benchmarking

54.1 Right to conduct a Benchmark

The Nominal Insurer may, once during each calendar year during the Term, benchmark the cost of all of the Services related to the Run Phase, including the Charges and any time and materials rates for Service Provider Personnel, in accordance with the process in this clause 54.

54.2 Selection of company to conduct Benchmark

The benchmarking will be performed by an experienced benchmarker appointed by the Nominal Insurer except that the benchmarker must not be a competitor of the Service Provider. The Nominal Insurer will consult with Service Provider before making any such appointment. If requested by the Nominal Insurer, the Service Provider will actively participate in the benchmarking including;

- (a) attending benchmarking meetings;
- (b) assisting with data collection; and
- (c) providing information and materials to the benchmarker as set out in clause 54.5.

54.3 Costs of Benchmark

The parties agree to:

- (a) the Nominal Insurer bearing the costs payable in respect of the benchmarking (i.e., the benchmarker's fees); and
- (b) each bear their own internal costs in relation to the benchmarking and complying with this clause 54.

54.4 Scope of Benchmark

- (a) The Nominal Insurer:
 - (i) must instruct the company appointed to undertake the benchmarking to benchmark the Services for the Run Phase against comparable organisations receiving the same or similar services; and

- (ii) may have the Services for the Run Phase benchmarked against:
 - (A) price/performance ratio compared with the top comparable organisations;
or
 - (B) any other measure agreed by the parties.
- (b) The benchmarking will take into account relevant characteristics of the Services for the Run Phase being provided to the Nominal Insurer and will assess a pool of contracts, normalising for differences in those characteristics, including:
 - (i) scope;
 - (ii) volumes; and
 - (iii) service levels,and other characteristics that, in the benchmarker's expert opinion, warrant consideration in undertaking the benchmarking.

54.5 Assistance

The Service Provider must provide:

- (a) access to Service Provider Personnel or documents; and
- (b) any assistance,

reasonably required by the benchmarker and relevant to the conduct of the benchmarking, excluding information relating to the Service Provider's costs and margins.

54.6 Copy of report to be provided

- (a) The Nominal Insurer must ask the company appointed to undertake the benchmarking to provide the Service Provider with a copy of its report.
- (b) If a copy of the report is provided to the Service Provider, the report may be modified so that it does not identify specifically the entities used for comparative purposes, their customers or their internal costs and margins.

54.7 Competitive Price Target

The competitive price target for the Services will be that the Charges, time and material rates or other charges falls within the range of the top quartile of contracts assessed by the benchmarker (**Competitive Price Target**).

54.8 Consequences of Benchmark

- (a) If the benchmarking indicates that the Service Provider's price does not meet the Competitive Price Target, then the Nominal Insurer and the Service Provider will discuss and use all reasonable endeavours to agree on the pricing adjustments and corrective actions that must be taken by the Service Provider in order to reduce the price to meet the Competitive Price Target.
- (b) If the Nominal Insurer and the Service Provider cannot agree on the adjustments or corrective actions, then, subject to clause 54.8(d), the Nominal Insurer may direct the Service Provider to reduce the price to meet the Competitive Price Target.
- (c) Any adjustments or corrective actions agreed by the Nominal Insurer and the Service Provider or directed by the Nominal Insurer will be effective 3 months from the date the benchmarking was initiated.
- (d) If the Nominal Insurer directs the Service Provider to reduce the price to meet the Competitive Price Target in accordance with clause 54.8(b), and the Service Provider is

not willing to accept such directed price reduction, then the Service Provider may terminate any then current Statement of Work in relation to the Run Phase on 30 days prior written notice to the Nominal Insurer. Each party must bear its own termination costs (and no termination for convenience fees are payable by the Nominal Insurer) if the Service Provider exercises its right to terminate in accordance with this clause. The Nominal Insurer must pay payments under clause 51.2 for Services rendered in accordance with the terminated Statement(s) of Work in relation to the Run Phase before the effective date of termination.

Intellectual Property Rights, confidentiality and privacy

55. Intellectual Property Rights

55.1 Ownership

This clause 55 does not affect the ownership of the Intellectual Property Rights in any Software, Third Party Material or Pre-existing Service Provider Material.

55.2 Licence rights for the Software

Subject to clause 55.3, the Service Provider grants to the Nominal Insurer during the Term, a perpetual, irrevocable, world-wide, royalty free, non-exclusive licence (including the right to novate, assign or sub-license the licence to any Government entity taking over all or part of the functions of the Nominal Insurer during the Term (**New NI**) and, with the consent of the Service Provider, the right to novate, assign or sub-license the licence to other third parties), at no additional cost to the Nominal Insurer, to use, reproduce and communicate the Software to the extent required to obtain the benefit of the Services, for the benefit of all Licensees.

55.3 Inability to obtain licence rights for Software

- (a) The Service Provider must use its best endeavours to procure for the benefit of the Nominal Insurer and all Licensees the licence rights in respect of the Software as set out in clause 55.2 prior to the parties entering into the relevant Statement of Work under which the Software will be supplied.
- (b) If the Service Provider cannot obtain the licence as described in clause 55.8(b), the Service Provider must notify the Nominal Insurer of the best alternative licence terms for that Software (**Alternative Licence Terms**) and not supply that Software or enter into the licence with the third party licensor before seeking unless the Nominal Insurer's consent to do so.
- (c) If the Nominal Insurer consents under clause 55.3(b), the Nominal Insurer agrees to be bound by the Alternative Licence Terms to the extent that they are inconsistent with clause 55.2 (and otherwise the terms of clause 55.8(b) will apply to the Software).
- (d) If the Nominal Insurer does not consent under clause 55.3(b), the Service Provider must notify the Nominal Insurer of any comparable Software and parties will discuss its potential use in relation to the icare Solution, and the process in clause 55.2 and this clause 55.3 will be repeated in respect of that alternative Software.

55.4 Open source software

- (a) In this Agreement the terms Software, and Service Provider Software do not include any open source code that may be delivered with the Software, Service Provider Software, or Third Party Software. The Service Provider warrants that it does not intend to, and will

not, provide any open source software as part of the Software, Service Provider Software, Third Party Software or Contract Materials.

- (b) The Service Provider must ensure that, to the extent any open source software is used, licensed or supplied by the Service Provider under or in connection with the Agreement (whether as a stand-alone product or as part of, or for use in conjunction with, any Software, Service Provider Software, Third Party Software or Contract Materials):
 - (i) the Service Provider notifies the Nominal Insurer in advance of, and the Nominal Insurer provides its written approval in respect of, that use, licence or supply;
 - (ii) that use, license or supply:
 - (A) does not result in any adverse impact to, or create any obligations in respect of, any Intellectual Property Rights, Software or other Material assigned to, owned by or licensed to the Nominal Insurer under the Agreement; and
 - (B) does not adversely impact any warranty, licence or right granted to the Nominal Insurer, or the delivery or quality of any Services to the Nominal Insurer, under the Agreement; and
 - (iii) at the time of providing a Deliverable to the Nominal Insurer under the relevant Statement of Work, the Service Provider also provides to the Nominal Insurer:
 - (A) details of all open source software which has been incorporated into that Deliverable; and
 - (B) a list of all applicable licence terms in respect of that open source software.
- (c) If and to the extent that any open source code is delivered (or made available to the Nominal Insurer) at the same time as the Software, Service Provider Software or Third Party Software, then subject to clause 55.4(b), this open source code:
 - (i) is not 'supplied' by Service Provider to the Nominal Insurer for the purpose of the Australian Consumer Law, GST law or any other purpose, and may be obtained by the Nominal Insurer from any other source from which it is generally available;
 - (ii) is subject to the terms of the relevant open source licence;
 - (iii) is not warranted under this Agreement.

55.5 Outsource supplier

- (a) Subject to any contrary restrictions in any Alternative Licence Terms consented to by the Nominal Insurer under clause 55.3(c), where the Nominal Insurer outsources from time to time some or all of its information technology or business processes services (other than the Services), the Nominal Insurer may:
 - (i) sublicense to any outsource supplier the right to use the Software in accordance with clause 55.2; or
 - (ii) assign the Licence to any outsource supplier during the term of its appointment, for the sole purpose of the outsource supplier providing such information technology or business processes services to the Nominal Insurer without the Service Provider's consent and without any financial consequence for the Nominal Insurer or the outsource supplier. The Nominal Insurer must advise the Service Provider of any sub-licence granted, or assignment of the Licence under this clause 55.5.

- (b) Where the Nominal Insurer outsources some or all of its information technology or business processes services (other than the Services) or where any outsourcing arrangement ends, the Service Provider must, at, provide such assistance to the Nominal Insurer or any outsource supplier as is reasonably required by the Nominal Insurer (**Outsourcing Assistance**).
- (c) The parties will enter into a new Statement of Work in respect of the provision of the Outsourcing Assistance by the Service Provider, or will execute a Variation Order in respect of a then-existing Statement of Work. To the extent that the Outsourcing Assistance can be provided by the Service Provider using existing Service Provider Personnel involved in the provision of the Services without unduly impacting the normal day to day activities performed by such Personnel or detrimentally affecting Service quality, the parties agree that the Nominal Insurer is not liable to pay any charges for the Outsourcing Assistance.
- (d) This clause 55.5 does not limit or restrict any obligations of the Service Provider in relation to Other Providers as set out in clause 21 and the Governance Framework.

55.6 Restrictions on use of Software

Without limiting any additional restrictions in any Alternative Licence Terms consented to by the Nominal Insurer under clause 55.3(c), the Nominal Insurer agrees, except to the extent permitted by the Licence or applicable Law:

- (a) not to decompile, disassemble, reverse engineer or otherwise attempt to derive the Software source code from object code;
- (b) not to sell, rent, lease, license, sublicense, display, time share or otherwise transfer the Software to, or permit the use of the Software by, any third party;
- (c) not to remove any copyright or proprietary notice from the Software; and
- (d) to use reasonable care and protection to prevent the unauthorised use, copying, publication or dissemination of the Software,

and to require its subcontractors and Personnel to whom the Software is made available by the Nominal Insurer to also comply with the requirements of this clause 55.6.

55.7 Licence rights for Pre-existing Service Provider Material

- (a) This clause 55 does not affect the ownership of the Intellectual Property Rights in any Pre-existing Service Provider Material.
- (b) The Service Provider grants to the Nominal Insurer, a perpetual, irrevocable, world-wide, royalty free, non-exclusive licence (including the right to novate, assign or sub-license the licence to any New NI and, with the consent of the Service Provider, the right to novate, assign or sub-license the licence to other third parties) to use, reproduce, adapt, Modify and communicate the Pre-existing Service Provider Material:
 - (i) to the extent necessary to obtain the full benefit of the icare Solution and the Services during the Term; and
 - (ii) from the expiry or termination of the Agreement, to support and maintain the icare Solution and Deliverables or engage a third party to support and maintain the icare Solution and Deliverables, to the extent that the Pre-existing Service Provider Material is incorporated into the icare Solution or Deliverable.
- (c) The Service Provider grants to the Licensees a perpetual, irrevocable, world-wide, royalty free, non-exclusive licence to use, reproduce and communicate the Pre-existing Service

Provider Material to the extent necessary to obtain the full benefit of the icare Solution and the Services.

55.8 Licence rights for Third Party Material

- (a) The Service Provider must use Third Party Material as necessary or appropriate to supply the Services and provide all Third Party Material to the extent required under a Statement of Work.
- (b) Before using any Third Party Material, the Service Provider must procure licences for the Nominal Insurer and the Licensees (in the name of one or more Licensees, if requested by the Nominal Insurer), to use the Third Party Material. The licences to use the Third Party Material must give the Licensees the same or equivalent rights as those specified in clause 55.2 (in respect of Third Party Material which is Software) and clause 55.7 (in respect of Third Party Material which is not Software) (as relevant).
- (c) If the Service Provider cannot obtain the licence as described in clause 55.8(b) the Service Provider must:
 - (i) notify the Nominal Insurer of the best alternative licence terms for that Third Party Material and not use that Third Party Material unless the Nominal Insurer consents to those terms; and
 - (ii) if the Nominal Insurer does not consent under clause 55.8(c)(i), notify the Nominal Insurer of any comparable Third Party Material and comply with its obligations under this clause 55.8 in respect of comparable Third Party Material.

55.9 Nominal Insurer Material

- (a) To the extent that the Service Provider needs to use any of the Nominal Insurer Material for the purpose of performing its obligations under the Agreement, the Nominal Insurer grants to the Service Provider (or will procure from the relevant Licensee for the benefit of the Service Provider, if relevant) for the Term and any Disengagement Period, subject to any direction by the Nominal Insurer, a royalty-free, non-exclusive, non-transferable licence to use, reproduce, adapt, Modify and communicate such Material solely for the purpose of providing the Services.
- (b) The Nominal Insurer indemnifies the Service Provider against Losses reasonably sustained or incurred by the Service Provider as a result of a Claim made by a third party arising out of or in connection with an allegation that the Nominal Insurer Material (including the use of any Nominal Insurer Material by the Service Provider) infringes the Intellectual Property Rights or Moral Rights of the third party (**NIM IPR Infringement Claim**).
- (c) The indemnity in clause 55.9(b) does not apply to the extent that the NIM IPR Infringement Claim results from:
 - (i) or in connection with any alteration or Modification by the Service Provider or its Personnel or any third party of any Nominal Insurer Material, other than in accordance with the Agreement; or
 - (ii) use of any Nominal Insurer Material:
 - (A) in breach of the Agreement, or outside the scope of the licence of Nominal Insurer Material granted by the Nominal Insurer to the Service Provider under the Agreement, including any use other than for the purpose of providing the Services; or

- (B) in conjunction with any other software not licensed to the Nominal Insurer from the Service Provider, except where the Nominal Insurer has required or advised the Service Provider in writing to use other software not licensed to the Service Provider by the Nominal Insurer with the any Nominal Insurer Material.

55.10 Nominal Insurer Data

- (a) The Service Provider agrees that:
 - (i) all right, title and interest in Nominal Insurer Data remains vested in the Nominal Insurer or the relevant Licensee, as the case may be;
 - (ii) the Service Provider's right to use or possess Nominal Insurer Data during the Term and any Disengagement Period is granted solely for the purpose of fulfilling its obligations to provide the Services; and
 - (iii) to the extent that the Service Provider creates, Modifies or adapts any Nominal Insurer Data in the course of providing the Services (**Created Data**), all Intellectual Property Rights in such Created Data (whether existing in a tangible or intangible form or format) will vest absolutely in the Nominal Insurer or the relevant Licensee (as the case may be) on its creation, and the Service Provider assigns all of its existing and future right, title and interest (including all Intellectual Property Rights) in such Created Data to the Nominal Insurer or the Licensee, as relevant.
- (b) The Service Provider must comply with any directions of, or conditions imposed by the Nominal Insurer in relation to Nominal Insurer Data.

55.11 Nominal Insurer ownership of Intellectual Property Rights in Contract Material

- (a) Subject to clause 55.1, and unless otherwise agreed in the relevant Statement of Work, the Service Provider:
 - (i) assigns to the Nominal Insurer all Intellectual Property Rights throughout the world in any Contract Material;
 - (ii) acknowledges that all future Intellectual Property Rights in the Contract Material vest in the Nominal Insurer from the date of its creation; and
 - (iii) must, at its own cost, do all things and execute all documents necessary to effect the assignment under this clause 55.11.
- (b) The Nominal Insurer grants to, or must obtain for, the Service Provider, a world-wide, royalty-free, non-exclusive licence (including the right to sublicense to Approved Subcontractors) during the Term and any Disengagement Period to use, reproduce, adapt, Modify and communicate the Contract Material for the sole purposes of providing the Services and performing its obligations under the Agreement.

55.12 Delivery of Contract Material

On the expiry or termination of the Agreement or on such earlier date as may be specified by the Nominal Insurer and payment of any undisputed Charges payable by the Nominal Insurer in respect of the Contract Material, the Service Provider must deliver to the Nominal Insurer a copy of all Contract Material to the extent it has not already done so during the Term.

55.13 Warranty

The Service Provider warrants that:

- (a) the Warranted Materials and the Nominal Insurer's use of those Warranted Materials, will not infringe the Intellectual Property Rights of any person; and
- (b) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided in this clause 55.

55.14 Remedy for breach of warranty

If someone claims, or the Nominal Insurer reasonably believes that someone is likely to claim, that all or part of the Warranted Materials infringe their Intellectual Property Rights, the Service Provider must, in addition to the indemnity under clause 67.1(c) and to any other rights that the Nominal Insurer may have against it, promptly, at the Service Provider's expense:

- (a) use its best efforts to secure the rights for the Nominal Insurer to continue to use the affected Warranted Materials free of any claim or liability for infringement; or
- (b) replace or modify the affected Warranted Materials so that the Warranted Materials or the use of them does not infringe the Intellectual Property Rights of any other person without any degradation of the performance or quality of the affected Warranted Materials.

55.15 Further action

The Service Provider will execute such documents or instruments, and do all other things reasonably required by the Nominal Insurer, in order to effect the parties' agreement in this clause 55 and the grant of rights under clauses 55.2, 55.7, 55.8 and 55.10.

56. Escrow

56.1 Source Materials to be held in escrow

- (a) If required by the Nominal Insurer (in the Nominal Insurer's opinion) to enable the Nominal Insurer to maintain and Modify the icare Solution in circumstances where a Trigger Event occurs, the Nominal Insurer may require the Service Provider to use its best endeavours to procure that a copy of the Source Materials in respect of any Software or Service Provider Software is placed in escrow, provided such request is made before the parties enter into the relevant Statement of Work under which the Software or Service Provider Software would be supplied.
- (b) Within 30 Days of receiving a request from the Nominal Insurer under clause 56.1(a), the Service Provider must:
 - (i) in the case of Software, use its best endeavours to arrange for:
 - (A) that third party Software owner, the Nominal Insurer and an escrow agent approved by the Nominal Insurer to enter into an escrow agreement in a form acceptable to the Nominal Insurer under which a copy of the Source Materials in respect of the Software and associated documentation will be held in escrow; or
 - (B) the Nominal Insurer to become a party to an existing escrow arrangement of that third party covering that Software which the Nominal Insurer regards as a satisfactory arrangement; and
 - (ii) in the case of Service Provider Software:
 - (A) arrange for the Service Provider, the Nominal Insurer and an escrow agent approved by the Nominal Insurer to enter into an escrow agreement in a form acceptable to the Nominal Insurer under which a copy of the Source Materials in respect of the Service Provider Software will be held in escrow; or

- (B) arrange for the Nominal Insurer to become a party to an existing escrow arrangement covering that Service Provider Software which the Nominal Insurer regards as a satisfactory arrangement.

56.2 Delivery of Source Materials to escrow agent

The Service Provider must deliver to, and at all times maintain with the escrow agent, one copy of the most up-to-date version of the Source Materials for each item of the Software or Service Provider Software (including Updates and New Releases) supplied by the Service Provider to the Nominal Insurer within:

- (a) in the case of the initial deposit, six months after the date on which the Software or Service Provider Software was supplied; and
- (b) in the case of each subsequent deposit, a reasonable time of supplying that item of Software or Service Provider Software to the Nominal Insurer.

56.3 Triggers for release of Source Materials

The escrow agreement must require the escrow agent to release the Source Materials to the Nominal Insurer if:

- (a) the Nominal Insurer notifies the escrow agent (with a copy to the Service Provider) that any of the following events have occurred and that the Nominal Insurer requires the release of the Source Materials:
 - (i) the third party Software owner suffers an Insolvency Event (in the case of Software) or the Service Provider suffers an Insolvency Event (in the case of Service Provider Software); or
 - (ii) the Service Provider is, or has shown itself to be, in the Nominal Insurer's reasonable opinion, unwilling or unable to provide the Support Services for the Software or Service Provider Software as required for the purposes of the icare Solution in accordance with the requirements of this Agreement,(each a **Trigger Event**); and
- (b) a period of 10 Days from the date of the Nominal Insurer's notice has elapsed and the Service Provider has not obtained an order from a court of competent jurisdiction preventing the escrow agent from releasing the Source Materials.

56.4 Terms of the escrow agreement

The escrow agreement must include terms that:

- (a) impose an obligation on the Service Provider to place the Source Materials in escrow in the timeframes specified in clause 56.2 and release the Source Materials in accordance with clause 56.3 (without any restrictions other than that in clause 56.3(b));
- (b) make the Service Provider primarily liable for the fees under the escrow agreement;
- (c) give the Nominal Insurer or its nominee access to the Source Materials at any time by giving the escrow agent reasonable prior notice to perform verification testing to ensure that the Source Materials are complete, and a corresponding obligation on the escrow agent to provide access to the Source Materials for this purpose; and
- (d) give the Nominal Insurer a right to remedy non-payment of any fees payable under the escrow agreement or any other breach by the Service Provider prior to any right of termination being exercised by the escrow agent as a result of the relevant breach.

56.5 Negotiation of escrow agreement

The Service Provider must consult with, and comply with the reasonable directions of, the Nominal Insurer in any negotiations with the escrow agent arising under this clause 56.

56.6 Costs of escrow agreement

The cost of each escrow arrangement will be shared equally by the Service Provider and the Nominal Insurer.

56.7 Licence to use released Source Materials

- (a) If the Source Materials are released from escrow to the Nominal Insurer, the Service Provider grants to the Nominal Insurer a perpetual, irrevocable, world-wide, royalty free, non-exclusive right and licence (including the right to novate or assign the licence, and to sublicense) to use, reproduce, adapt, Modify and communicate the Source Materials:
 - (i) to the extent necessary to obtain the full benefit of the Services and the icare Solution; and
 - (ii) to use, host, support and maintain the icare Solution and Deliverables or engage a third party to host, support and maintain the icare Solution and Deliverables.
- (b) The restriction in clause 55.6(a) does not apply in respect of the licence granted pursuant to clause 56.7(a).

56.8 No prejudicing the escrow agreement

The Service Provider must not, and must ensure that its Personnel do not, act, or omit to act, in any way which:

- (a) causes the escrow services provided by the escrow agent under the escrow agreement to be suspended or the escrow agreement to be terminated; or
- (b) prejudices in any way any of the Nominal Insurer's rights under the escrow agreement.

56.9 Inability to arrange escrow

If, despite using its best endeavours under clause 56.1(b), the Service Provider is unable to procure that the parties and the third party software owner enter into an escrow agreement for the Source Materials of the Software, then the parties must use their best endeavours to discuss and agree any potential alternative arrangements or safeguards which may address the Nominal Insurer's concerns and mitigate the risks associated with a Trigger Event occurring. If the parties are unable to agree any such arrangements or safeguards, then the Service Provider must not enter into the relevant licence and the parties will not enter into the Statement of Work under which the relevant Software was to be supplied unless and until the Nominal Insurer waives its requirements in respect of escrow insofar as they relate to the relevant Software, or the parties have agreed upon the use of any alternative software for which escrow is available in relation to the icare Solution.

57. Moral Rights

57.1 Obtaining consents

To the extent permitted by applicable Laws and for the benefit of the Nominal Insurer, the Service Provider must use its best endeavours to ensure that each of the Personnel used by the Service Provider in the production or creation of the Contract Material gives their genuine consent in writing to the use of the Contract Material for the Specified Acts, even if such use would otherwise be an infringement of their Moral Rights.

57.2 Specified Acts

In this clause 57, **Specified Acts** means:

- (a) falsely attributing the authorship of any Contract Material, or any content in the Contract Material (including literary, dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968* (Cth));
- (b) materially altering the style, format, colours, content or layout of the Contract Material and dealing in any way with the altered Contract Material;
- (c) reproducing, communicating, adapting, publishing or exhibiting any Contract Material; and
- (d) adding any additional content or information to the Contract Material.

58. Confidentiality

58.1 Confidential Information not to be disclosed

- (a) Subject to clause 58.3, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.
- (b) In giving written consent to the disclosure of Confidential Information, a party may impose such conditions as it thinks fit, and the other party agrees to comply with these conditions.

58.2 Written undertakings

- (a) A party may at any time require the other party to arrange for:
 - (i) its Advisers; or
 - (ii) any other third party, other than a Service Provider employee or its Related Company's employee, Nominal Insurer employee or Licensee employee, to whom information may be disclosed pursuant to clause 58.3(a),
 to give a written undertaking in the form set out in Schedule 6 (Deed of Confidentiality and Privacy).
- (b) If the other party receives a request under clause 58.2(a) it must promptly arrange for all such undertakings to be given.

58.3 Exceptions to obligations

The obligations on the parties under this clause 58 will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed to the Minister responsible for overseeing the functions of the Nominal Insurer, or the Board of Insurance and Care NSW or any member of that Board;
- (b) is disclosed by the Nominal Insurer to any of the other Licensees or their Personnel;
- (c) is disclosed by a party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under the Agreement;
- (d) is disclosed to a party's internal management personnel solely to enable effective management or auditing of Contract related activities;
- (e) is authorised or required by law, including under the Agreement, under a licence or otherwise, to be disclosed; or
- (f) is in the public domain otherwise than due to a breach of this clause 58.

58.4 Obligations on disclosure

Where a party discloses Confidential Information to another person pursuant to clauses 58.3(a) or 58.3(d) the disclosing party must:

- (a) notify the receiving person that the information is Confidential Information; and
- (b) not provide the information unless the receiving person agrees to keep the information confidential.

58.5 Additional Confidential Information

The parties may agree in writing after the date of the Agreement that certain additional information is to constitute Confidential Information for the purposes of the Agreement.

58.6 Period of confidentiality

The obligations under this clause 58 continue, notwithstanding the expiry or termination of the Agreement:

- (a) in relation to an item of information described in Schedule 7 (Designated Confidential Information), for the period set out in that Schedule in respect of that item; and
- (b) in relation to any information which the parties agree in writing after the date of the Agreement is to constitute Confidential Information for the purposes of the Agreement, for the period agreed by the parties in writing in respect of that information.

58.7 No reduction in privacy obligations

Nothing in this clause 58 derogates from any obligation which either party may have either under the *Privacy Act 1988* (Cth), or the privacy legislation of the States and Territories, as amended from time to time, or under the Agreement, in relation to the protection of Personal Information.

58.8 Public statements

The Service Provider must not:

- (a) make any public statement or announcement, or issue any press release or like statement, in relation to the Project, the Agreement, its provision of (or failure to provide) the Services or any statement, notice or communication exchanged between the parties under the Agreement, unless such statement, announcement or press release is approved in writing by the Nominal Insurer prior to it being issued, published or otherwise distributed, as the case may be; and
- (b) without limiting clause 58.8(a), publicly use any advertising, written sales promotions, press releases, or other publicity matters relating to the Agreement or in which the Nominal Insurer's name or a Licensee name is used or may reasonably be inferred without first obtaining the Nominal Insurer's prior written consent.

58.9 Commercial in confidence

The parties acknowledge and agree that, for the purposes of the *Government Information (Public Access) Act 2009* (NSW) and without limiting any other provision of this Agreement, the following provisions of, or documents referenced in, the Agreement are commercial- in-confidence:

- (a) Appendix A;
- (b) icare Solution Requirements;
- (c) Schedules 1 to 8;
- (d) each Statement of Work; and

- (e) clauses 61 and 65.

Notwithstanding the foregoing, if a request is made pursuant to the *Government Information (Public Access) Act 2009* (NSW) for access to any documents or materials produced under or in accordance with the Agreement, or incorporated into or forming part of the Agreement after the Effective Date, the Nominal Insurer agrees to consult with the Service Provider as to whether all or part of the documents access to which has been requested are or may be commercial- in-confidence prior to granting any such access.

59. Protection of Nominal Insurer Data

59.1 Use of Nominal Insurer Data

The Service Provider must not (and must ensure that its Personnel do not):

- (a) use Nominal Insurer Data held by the Service Provider, or which the Service Provider has access to, other than for the purposes of fulfilling its obligations under the Agreement;
- (b) allow any person unless authorised by the Nominal Insurer, to access or use Nominal Insurer Data;
- (c) purport to sell, let for hire, assign rights in or otherwise dispose of Nominal Insurer Data;
- (d) purport to commercially exploit Nominal Insurer Data (or allow any Subcontractor or a Subcontractor's Personnel to do so); or
- (e) alter Nominal Insurer Data in any way, other than in providing the Services as required under the Agreement.

59.2 Safeguarding Nominal Insurer Data

- (a) The Service Provider must establish and maintain safeguards against the destruction, unauthorised disclosure or access, loss or alteration of Nominal Insurer Data in the possession or control of the Service Provider that:
 - (i) are no less rigorous than those notified by the Nominal Insurer from time to time and will be no less rigorous than the safeguards that can be reasonably expected in well run projects; and
 - (ii) comply with all applicable Laws and any procedures or requirements specified by the Nominal Insurer from time to time.
- (b) The Service Provider agrees that the Nominal Insurer may, at any time, with reasonable notice, and subject to the Nominal Insurer's compliance with clause 38.3 which will apply to the conduct of a security audit, conduct a security audit of the Service Provider's compliance with this clause 59.2, including the right to undertake a security risk assessment, threat risk assessment or privacy impact assessment.
- (c) The Nominal Insurer must:
 - (i) except to the extent that the Service Provider is responsible for back-ups as part of the provision of the Cloud Services, maintain daily backups of Nominal Insurer Data in accordance with generally accepted industry practice and in such a manner that allows a retrieval of Nominal Insurer Data to be no older than 24 hours before any issue first affected such Nominal Insurer Data and provide the retrieved Nominal Insurer Data to the Service Provider if and to the extent required to restore the icare Solution; and

- (ii) make reasonable efforts to identify and advise the Service Provider in writing of, as soon as reasonably practicable, any issues affecting Nominal Insurer Data which may give rise to a claim for indemnity under clause 67.

59.3 Removal of Nominal Insurer Data

- (a) The Service Provider must not, and must ensure that the Service Provider Personnel do not:
 - (i) remove Nominal Insurer Data or allow Nominal Insurer Data to be removed from the Nominal Insurer's premises; or
 - (ii) take, transfer, transmit or disclose Nominal Insurer Data or allow Nominal Insurer Data to be taken, transferred, transmitted, accessed or disclosed outside of Australia,without the Nominal Insurer's prior written consent.
- (b) To avoid doubt, the prohibition in clause 59.3(a)(i) applies in respect of taking, transferring, transmitting, accessing or otherwise disclosing Nominal Insurer Data outside of Australia by the Service Provider:
 - (i) within the Service Provider's own organisation; and
 - (ii) to any third party, including to any Subcontractor or to any Related Company.

60. Protection of Personal Information

60.1 Compliance with state and territory privacy obligations

The Service Provider must observe any State Privacy Laws to the extent they are Service Provider Laws.

60.2 Compliance with Australian Privacy Principles and State Privacy Laws

In addition to any statutory requirements which apply to the Service Provider, when performing its obligations under this Agreement, the Service Provider and its Personnel must:

- (a) collect, use and disclose Personal Information obtained during the course of performing this Agreement only for the purposes of fulfilling its obligations under this Agreement;
- (b) take all reasonable measures to ensure that Personal Information in its possession or control in connection with this Agreement is protected against misuse, interference, loss, unauthorised access, modification or disclosure;
- (c) comply with, and at all times act in a manner that is consistent with, the Australian Privacy Principles which apply to organisations and the State Privacy Laws including:
 - (i) developing and implementing practices, procedures and systems:
 - (A) to ensure the Service Provider complies with the Australian Privacy Principles and the State Privacy Laws;
 - (B) that will enable the Nominal Insurer to comply with the State Privacy Laws;
 - (C) that will enable the Service Provider to deal with inquiries or complaints from individuals about the Service Provider's or the Services' compliance with the Australian Privacy Principles, any registered APP code binding on the Service Provider or a State Privacy Law; and

- (ii) maintaining records of the Personal Information held by the Service Provider in relation to this Agreement;
- (d) by itself or any other person (including its Personnel) not undertake any act or engage in any practice that would be in breach of the Australian Privacy Principles or a State Privacy Law;
- (e) not use or disclose Personal Information for the purpose of direct marketing;
- (f) to the extent required by law and in performing this Agreement, comply with the Australian Privacy Principles, in particular Principle 12 relating to access to records, and the State Privacy Laws;
- (g) immediately notify the Nominal Insurer if the Service Provider becomes aware of a breach or possible breach by the Service Provider or a subcontractor of any of the obligations contained in, or referred to in this clause 60;
- (h) not disclose any Personal Information held in relation to this Agreement to a recipient located outside New South Wales, without the written prior consent of the Nominal Insurer; and
- (i) ensure that any person who has an access level which would enable that person to obtain access to any Personal Information is made aware of, and undertakes in writing to observe, the Australian Privacy Principles, the State Privacy Laws and other obligations referred to in this clause 60.

60.3 Handling of privacy complaints

The Service Provider must:

- (a) notify the Nominal Insurer immediately of any complaint or allegation to or in respect of the Service Provider or its Personnel that an act or practice has been engaged in which has breached, breaches, may breach, or is alleged to breach, an Australian Privacy Principle, a State Privacy Law or any other privacy obligation; and
- (b) immediately report to the Nominal Insurer the outcomes of any investigation of a complaint referred to in this clause 60.3.

60.4 Directions relating to privacy

The Service Provider must:

- (a) cooperate with any reasonable demands or inquiries made by the Nominal Insurer in relation to the exercise by the Australian Information Commissioner or the New South Wales Privacy Commissioner of its functions including, a request from Nominal Insurer to comply with all guidelines concerning the handling of Personal Information issued by the Australian Information Commissioner and the New South Wales Privacy Commissioner;
- (b) comply as far as practicable with any policy guidelines issued by the Nominal Insurer from time to time relating to privacy and personal information;
- (c) comply with any directions, guidelines, determinations or recommendations of the Australian Information Commissioner or the New South Wales Privacy Commissioner to the extent that they are consistent with the requirements of this clause 60; and
- (d) comply as far as practicable with any reasonable direction of Nominal Insurer to observe any recommendation or determination of the Australian Information Commissioner or the New South Wales Privacy Commissioner relating to any acts or practices of the Service Provider that the Australian Information Commissioner or the New South Wales Privacy Commissioner considers breaches or may breach the obligations in this clause 60.

60.5 No restrictions on privacy obligations

The Service Provider's obligations under this clause 60 are in addition to, and do not restrict, any obligations it may have under the Privacy Act, any registered APP code binding on the Service Provider, and any State Privacy Law.

60.6 Subcontracts

The Service Provider must ensure that any contract it enters with an Approved Subcontractor under this Agreement contains provisions to ensure that the Subcontractor has the same awareness and obligations as the Service Provider has under subclauses 60.1 to 60.6, including this requirement in relation to subcontracts.

60.7 Privacy deed

Without limiting the provisions relating to disclosure of Personal Information in this clause 60, The Service Provider must:

- (a) as reasonably requested by the Nominal Insurer, and except in respect of the Service Provider's and its Related Companies' employees, prior to disclosing Personal Information, obtain a signed Schedule 6 (Deed of Confidentiality and Privacy) from the intended recipient, and such of the recipient's Personnel or agents; and
- (b) promptly comply with the Nominal Insurer's reasonable Directions, in respect of any action required to enforce such Schedule 6 (Deed of Confidentiality and Privacy), at the Service Provider's own expense.

Liability

61. Liability issues

61.1 General

The liability of a party for breach of the Agreement, or in tort, or for any other common law or statutory cause of action arising out of the operation of the Agreement, will be determined under the relevant law in Australia that is recognised, and would be applied, by the High Court of Australia.

61.2 Liability under Agreement and Statements of Work

The liability of each party arising out of or in connection with the Agreement or a Statement of Work is, subject to clause 61.3, and except where otherwise agreed in the Statement of Work or to do so would contravene any statute, limited as follows:

- (a) in any SOW Year, total aggregate liability in respect of all causes of action (including under an indemnity, subject to clause 61.3) arising out of or in connection with an Other SOW is limited to an amount equal to 150% (one hundred and fifty percent) of the Charges (excluding expenses, GST and pass through costs):
 - (i) in the case of Other SOWs the duration of which is:
 - (A) one SOW Year or less; or
 - (B) more than one SOW Year and the relevant cause of action arises in the first SOW Year,
- paid, unpaid but due and outstanding, and payable for the future performance of the relevant Services in that SOW Year if the Other SOW is performed in accordance with its terms (including as may be projected and set out in the

relevant Other SOW (which may be by reference to any time and materials charges cap or man days cap), in the case of time and materials Other SOWs); and

- (ii) in the case of Other SOWs the duration of which is more than one SOW Year and the relevant cause of action (including under an indemnity, subject to clause 61.3) arises in the second SOW Year or any subsequent SOW Year, paid and unpaid but due and outstanding in the 12 month period immediately preceding the date on which the relevant cause of action arises;

Worked example:

An Other SOW is entered into on March 2016 with a duration of 7 months. Fees payable under it are \$4M. Service Provider's aggregate liability for all causes of action under the Other SOW arising in the first (and only) SOW Year is $1.5 \times \$4M = \$6M$.

A cause of action arises in June 2016 and the Claim value is \$1.5M. Assuming this is successful, Service Provider's remaining liability cap for that SOW Year would be \$4.5M.

Another cause of action arises in October 2016 and the Claim value is \$7M. As Service Provider's remaining liability cap for that SOW Year is \$4.5M, the Nominal Insurer could only recover, in relation to the second Claim, a total of \$4.5M.

- (b) in any SOW Year, total aggregate liability in respect of all causes of action (including under an indemnity, subject to clause 61.3) arising out of or in connection with a Build SOW is limited to an amount equal to 250% (two hundred and fifty percent) of the Charges (excluding expenses, GST and pass through costs):

- (i) in the case of Build SOWs the duration of which is:

- (A) one SOW Year or less; or

- (B) more than one SOW Year and the relevant cause of action arises in the first SOW Year,

paid, unpaid but due and outstanding, and payable for the future performance of the relevant Services in that SOW Year if the Build SOW is performed in accordance with its terms (including as may be projected and set out in the relevant Build SOW (which may be by reference to any time and materials charges cap or man days cap), in the case of time and materials Build SOWs); and

- (ii) in the case of Build SOWs the duration of which is more than one SOW Year and the relevant cause of action (including under an indemnity, subject to clause 61.3) arises in the second SOW Year or any subsequent SOW Year, paid and unpaid but due and outstanding in the 12 month period immediately preceding the date on which the relevant cause of action arises;

Worked example:

A Build SOW is entered into on May 2017 with a duration of 14 months and a total value of \$18M. It is envisaged that \$12M of this will be payable in the first SOW Year, and \$6M will be payable in the second SOW Year.

A cause of action arises in December 2017 and the Claim value is \$9M. Service Provider's aggregate liability for all causes of action under the Build SOW arising in the first SOW Year is $2.5 \times \$12M = \$30M$, Therefore the \$9M Claim is fully recoverable.

A further cause of action arises in June 2018 and the Claim value is \$20M. As this cause of action arises in a different SOW Year, the liability cap has reset, and the earlier \$9M Claim is disregarded. Service Provider's liability cap for the Second SOW Year would be

2.5 x all fees paid/payable in the 12 months immediately preceding June 2018 (which would presumably be the second SOW Year fees of \$6M and most of the first SOW Year Fees (for example, \$8M) – so the total second SOW Year cap is $2.5 \times \$14M = \$35M$. The Nominal Insurer can therefore recover the full value of the second Claim (\$30M).

- (c) in any SOW Year, total aggregate liability in respect of all causes of action (including under an indemnity, subject to clause 61.3) arising out of or in connection with a Run SOW is limited to an amount equal to 200% (two hundred percent) of the Charges (excluding expenses, GST and pass through costs):
 - (iii) in the case of Run SOWs the duration of which is:
 - (A) one SOW Year or less; or
 - (B) more than one SOW Year and the relevant cause of action arises in the first SOW Year,

paid, unpaid but due and outstanding, and payable for the future performance of the relevant Services in that SOW Year if the Run SOW is performed in accordance with its terms; and
 - (iv) in the case of Run SOWs the duration of which is more than one SOW Year and the relevant cause of action (including under an indemnity, subject to clause 61.3) arises in the second SOW Year or any subsequent SOW Year, paid and unpaid but due and outstanding in the 12 month period immediately preceding the date on which the relevant cause of action arises.

The parties agree that if, at any time when there is a current Statement of Work covering the Run Phase in respect of a system or component of the icare Solution (**Existing Run SOW**):

- (v) the Nominal Insurer wishes to engage the Service Provider to perform additional Services in respect of the Run Phase for another system or part of the icare Solution; and
- (vi) the parties decide to enter into a new Statement of Work rather than varying the Existing Run SOW,

then the parties may agree a different means of calculating the applicable limitation of liability in respect of the Existing Run SOW and new Run Phase Statement of Work.

Worked example:

A Run SOW is entered into in July 2018 with a duration of 3 years. Fees payable under it are \$6M per year. Service Provider's aggregate liability for all causes of action under the Run SOW arising in each SOW Year is $2 \times \$6M = \$12M$.

A cause of action arises in November 2018 and the Claim value is \$5M. Assuming this is successful, Service Provider's remaining liability cap for that SOW Year would be \$7M.

Another cause of action arises in August 2019 to the value of \$10M. As Service Provider's liability cap under the Run SOW has reset at the start of the second SOW Year, the Nominal Insurer could recover the full amount of the second Claim.

61.3 No limitations of liability and Mandatory/Expedited Changes

- (a) Notwithstanding any other provision of this Agreement, any limit on the liability of each party under clause 61.2 does not apply in relation to liability for:

- (i) personal injury (including sickness and death);
 - (ii) loss of, or damage to, tangible property (excluding software or data held in such lost or damaged tangible property) caused by negligence or breach;
 - (iii) an infringement of third party Intellectual Property Rights for which a party is liable under the Agreement, including where such liability is covered by the indemnity at clause 67.1(c);
 - (iv) a breach of any obligation of:
 - (A) confidentiality or privacy including under clause 61, including where such liability is covered by the indemnity at clause 67.1(b); or
 - (B) security under clauses 59 and 64; or
 - (v) any unlawful or illegal acts or conduct including fraud, including where such liability is covered by the indemnity at clause 67.1(a).
- (b) Subject to the Service Provider's compliance with the process in clause 28.10 for agreeing Mandatory/Expedited Changes, the Service Provider will not be liable for any inability to perform its obligations under this Agreement where to perform such obligations would cause Service Provider to breach any Law, as a result of a change in that Law.

61.4 Review of limitation

A party may require a review of the limitations of liability specified in clause 61.2 as a condition of its acceptance to a Variation Order under clause 28, but only for the purpose of achieving a proportionate adjustment to reflect any alteration to that party's risk exposure arising out of that variation.

61.5 Contribution

The liability of a party, including under an indemnity, (**Party A**) for any damage incurred or loss suffered by another party (**Party B**) will be reduced proportionately to the extent that:

- (a) any negligent act or omission of Party B (or of its subcontractors or Personnel); or
- (b) any failure by Party B to comply with its obligations and responsibilities under the Agreement,

contributed to the loss or damage, regardless of whether legal proceedings are brought by Party A for negligence or breach of contract or under an indemnity.

61.6 Application to Service Rebates

- (a) If Service Rebates become payable under clause 46, the Nominal Insurer may, at its discretion:
 - (i) elect to set-off the amount the Service Provider must pay against any subsequent liability for Charges; or
 - (ii) issue a Notice requiring payment of Service Rebates within no less than 30 Days of receipt of the Notice.
- (b) The set-off or payment of Service Rebates by the Service Provider will be taken into account for the purposes of quantifying any Losses which are subject to any limitation of liability under clause 61.2.

61.7 Consequential Loss

Neither party be liable to the other under any legal principle including in contract (including repudiation) or tort (including negligence), misrepresentation, liability under an indemnity or for

any other common law, equitable or statutory cause of action or otherwise) for any Consequential Loss.

61.8 Fund Loss

- (a) For the purposes of this clause 61.8:
 - (i) **Fund** means the Workers Compensation Insurance Fund established under *Workers Compensation Act 1987*.
 - (ii) **Fund Loss** means any Loss of the Fund.
 - (iii) **Wrongful Conduct** means any default, negligence, fraud, dishonesty or bad faith of the Service Provider or its Personnel under, or in connection with the performance of their obligations under, this Agreement, including any breach of:
 - (A) this Agreement;
 - (B) any obligation owed by the Service Provider or its Personnel; or
 - (C) any law in connection with this Agreement.
- (b) The Service Provider agrees:
 - (i) Wrongful Conduct of the Service Provider or its Personnel may result in a Fund Loss;
 - (ii) subject to the Dispute Resolution provisions of this Agreement, the Nominal Insurer can and is entitled to bring legal proceedings, against the Service Provider in connection with (including to recover) a Fund Loss as if it was a loss suffered by Nominal Insurer; and
 - (iii) Service Provider must not in any legal proceedings referred to in clause 61.8(b)(ii) raise as a defence, or in any cross or counter claim that:
 - (A) any Fund Loss was not a loss suffered by the Nominal Insurer;
 - (B) the Nominal Insurer is not entitled to bring the legal proceedings because the Fund Loss was not a loss suffered by the Nominal Insurer or recover the Fund Loss claimed in the legal proceedings.
- (c) This clause 61.8 may be pleaded in bar to any defence raised by the Service Provider in breach of this clause 61.8.
- (d) The parties acknowledge and agree that:
 - (i) this clause does not operate so as to enable the Nominal Insurer to recover an amount twice or more for the same Loss;
 - (ii) the cap and exclusions of liability under this Agreement apply to any claim made in respect of Fund Losses;
 - (iii) Claims in respect of Fund Losses may only be made by the Nominal Insurer and the Fund may not itself commence proceedings in respect of those losses;
 - (iv) a claim in respect of a Fund Loss may only be made in circumstances where, if the Nominal Insurer was a trustee of a trust the assets of which comprised the Fund, it would have suffered that Loss as the trustee of the fund;
 - (v) the Service Provider is entitled to the benefit of any claim, defence, counter-claim or right of set-off which at law, in equity or under statute would be available to the Service Provider if the Loss was suffered by the Nominal Insurer; and
 - (vi) no consent from the Fund or trustee of the Fund is required for the parties to vary or terminate this Agreement or a Statement of Work.

62. Force Majeure Event

62.1 Suspension of obligations due to Force Majeure Event

If a Force Majeure Event occurs which prevents a party from performing any of its obligations under the Agreement (**Affected Party**):

- (a) as soon as reasonably practicable, the Affected Party must notify the other party of the Force Majeure Event, its nature and the obligations the Affected Party is prevented from performing;
- (b) those obligations will be suspended for so long as the Force Majeure Event continues;
- (c) each party must continue to comply with its obligations that relate to the management or mitigation of the impact of the Force Majeure Event; and
- (d) neither party will be liable to the other party for any Losses the other party suffers or incurs as a direct result of the Force Majeure Event.

62.2 Payment of Charges during Force Majeure Event

Except in the circumstances contemplated by clause 62.3(b), the Nominal Insurer will not be liable to pay the Charges for any component of the Services which have not been provided due to a Force Majeure Event.

62.3 Mitigation and termination

- (a) Without limiting any of the Nominal Insurer's other rights, if the Service Provider is prevented from performing any of its obligations under the Agreement to a material degree by a Force Majeure Event for more than 14 Days, then the Nominal Insurer may:
 - (i) terminate the Statement of Work under which the Services affected by the Force Majeure Event (or a discrete element of the Services that is materially affected by the Force Majeure Event) (**FM-affected Services**) are provided by giving written notice to the Service Provider; or
 - (ii) procure the FM-affected Services from an alternative service provider.
- (b) If the Nominal Insurer elects to procure FM-affected Services from an alternative service provider then for so long as the alternative service provider is performing the FM-affected Services:
 - (i) the Nominal Insurer will be under no obligation to pay the Charges for the FM-affected Services;
 - (ii) the Service Provider will be relieved, in respect of the FM-affected Services, from its obligations under the Agreement to perform the FM-affected Services, and from any liability under the Agreement for such non-performance;
 - (iii) to the extent reasonably practicable, the Nominal Insurer will re-transition the FM-affected Services back to the Service Provider when the Service Provider can demonstrate to the Nominal Insurer's reasonable satisfaction that the Service Provider can recommence the provision of the FM-affected Services in accordance with the Agreement; and
 - (iv) if the Service Provider has not:
 - (A) recommenced the provision of FM-affected Services; or
 - (B) demonstrated to the Nominal Insurer's reasonable satisfaction that the Service Provider can recommence the provision of FM-affected Services in accordance with the Agreement,

within:

- (C) 20 Business Days after the Day that the Nominal Insurer exercises its rights under clause 62.3(a)(ii), the Nominal Insurer may, but is not obliged to, exercise its right to terminate the Statement of Work in accordance with clause 62.3(a)(i); and
 - (D) 6 months after the Day that the Nominal Insurer exercises its rights under clause 62.3(a)(ii), the Nominal Insurer must exercise its right to terminate the Statement of Work in accordance with clause 62.3(a)(i).
- (c) Each party must bear its own termination costs (and no termination for convenience fees are payable by the Nominal Insurer) if the Nominal Insurer exercises its right to terminate the Statement of Work in accordance with clause 62.3(a)(i) pursuant to this clause.

Risk management

63. Disclosure

63.1 Disclosure

The Service Provider must promptly notify and fully disclose to the Nominal Insurer, in writing of:

- (a) a Change in Control of the Service Provider or an Approved Subcontractor; or
- (b) any event or occurrence actual or threatened during the performance of the Agreement which:
 - (i) may materially affect the Service Provider's or an Approved Subcontractor's ability to perform any of its obligations under the Agreement; or
 - (ii) may materially affect the Project.

63.2 Conflict of interest

- (a) Without limiting clause 63.1, the Service Provider:
 - (i) undertakes that, to the best of its knowledge, as at the Effective Date, no conflict of interest exists or is likely to arise in the performance of its obligations under the Agreement by itself or by any of its Subcontractors or Service Provider Personnel; and
 - (ii) must notify the Nominal Insurer in writing immediately if such a conflict or risk of such a conflict of interest arises.
- (b) The provision of services and products to competitors of the Nominal Insurer by the Service Provider that are similar to the Services will not ordinarily constitute a conflict of interest for the purpose of this clause 63.2, provided such provision of services and products is not in breach of the Service Provider's obligations under this Agreement in respect of Intellectual Property Rights, Confidential Information and Nominal Insurer Data.

63.3 Resolution

- (a) Within five Business Days after giving notice under clause 63.1(b) or 63.2, the Service Provider must inform the Nominal Insurer of the steps it will take to resolve the issue. If the Nominal Insurer considers those steps are inadequate, it may direct the Service Provider to resolve the issue in a manner proposed by the Nominal Insurer.

- (b) If there is a conflict of interest that materially affects the Service Provider's ability to perform its obligations under the Agreement or materially adversely impacts the Service Provider's ability to perform its obligations under the Agreement fairly and independently, and the Service Provider is unable or unwilling to resolve the issue in the required manner, the Nominal Insurer may give the Service Provider a notice of termination for cause under clause 69.2, except in the case of clause 63.1(b) where the event or occurrence actual or threatened which materially affects the Service Provider's ability to perform any of its obligations under the Agreement or materially adversely impacts the Service Provider's ability to perform its obligations under the Agreement fairly and independently, is beyond the reasonable control of the Service Provider notwithstanding the exercise of all due diligence (in which case no termination right arises but the Service Provider must use all reasonable endeavours to resolve the relevant circumstances or issue to the Nominal Insurer's reasonable satisfaction).

64. Security

64.1 Compliance with Nominal Insurer requirements

The Service Provider must, and must ensure that its Subcontractors and Personnel comply with:

- (a) any security requirements specified in the relevant Statement of Work; and
- (b) any other security procedures or requirements notified, in writing, by the Nominal Insurer to the Service Provider. The Service Provider must comply with such a security procedure or requirement, from the date specified in the notice, or if none is specified, within five Business Days of receipt of the notice.

The Nominal Insurer agrees to provide to the Service Provider reasonable assistance and guidance in matters relating to interpretation of the above security requirements or procedures to the extent that the Service Provider is unsure as to how to achieve compliance with them.

64.2 Indemnity

The Service Provider indemnifies the Nominal Insurer and its Personnel against Losses reasonably sustained or incurred by the Nominal Insurer as a result of any breach by the Service Provider of:

- (a) clause 64.1(a); or
- (b) clause 64.1(b) to the extent that the relevant security procedure or requirement is set out in a Nominal Insurer Policy as at the Effective Date.

65. Insurance

65.1 Insurance coverage

The Service Provider must ensure that by the Effective Date and for the Term (except for professional indemnity or errors and omissions insurance, which the Service Provider must maintain for at least seven years after the expiration or termination of the Agreement (**Post-Term Insurance**)):

- (a) it has in place satisfactory insurance including, at a minimum, the insurance policies or coverage as specified in item 8 of Appendix A (Agreement details); and
- (b) it has in place any other insurance required by Law in the jurisdiction in which the Service Provider is carrying out activities for the purposes of the Agreement.

Nothing in this Agreement shall oblige the Service Provider to take out or maintain Post-Term Insurance which is either, at the relevant time the Service Provider seeks to obtain or renew Post-Term Insurance:

- (c) unavailable in the insurance market with reputable insurers; or
- (d) offered by insurers on terms such that the relevant insurance is not generally purchased by service providers similar in size and nature,

provided that in such circumstances the Service Provider will notify the Nominal Insurer and provide the Nominal Insurer with full details of the steps it has taken to obtain such Post-Term Insurance.

65.2 Evidence

The Service Provider must, on or before the Effective Date, and thereafter on the Nominal Insurer's reasonable request, provide the Nominal Insurer with certificates of currency from its brokers or insurers, certifying that it has the insurance required by this clause 65.

65.3 Subcontractor insurance

Any Subcontractors engaged by the Service Provider must carry insurance similar to that required of the Service Provider, taking into consideration the nature, scope and volume of services being provided by the Subcontractor and the Service Provider must ensure that each Subcontractor has and maintains that insurance at all times.

66. Business Continuity and Disaster Recovery

66.1 Service Provider obligations

If a trigger event specified in the Disaster Recovery Plan occurs, the Service Provider must provide the Nominal Insurer with Business Continuity and Disaster Recovery assistance in accordance with the relevant Statement of Work and the Disaster Recovery Plan.

66.2 Disaster Recovery Plan

The Service Provider must, within 3 months of each System Operational Services Start Date prepare and submit to the Nominal Insurer for Approval a Disaster Recovery Plan which covers:

- (a) the protocols for establishing whether a disaster has occurred;
- (b) how the Service Provider will recover any data (including the Nominal Insurer Data);
- (c) how the Service Provider will switch the Services to a Disaster Recovery site;
- (d) the communication contacts;
- (e) how Services will be transferred back to being provided on a day to day basis; and
- (f) how data loss will be assessed, minimised and communicated.

66.3 Tests

- (a) The Service Provider must perform regular tests of back-up, redundancy and Disaster Recovery measures including the Disaster Recovery Plan at least annually from the date of Approval of the Disaster Recovery Plan under clause 66.2.
- (b) The Service Provider must provide the Nominal Insurer with the results of the tests conducted in accordance with clause 66.3(a) within 10 Business Days of conducting the tests.

67. Indemnities

67.1 Indemnity by Service Provider

The Service Provider indemnifies the Nominal Insurer and its Personnel against Losses reasonably sustained or incurred by the Nominal Insurer as a result of a Claim made by a third party arising out of or in connection with:

- (a) any unlawful or wilfully wrong act or omission of the Service Provider or its subcontractors or Personnel;
- (b) a breach of the Service Provider's or any Subcontractor's obligations relating to Confidential Information, Personal Information or Nominal Insurer Data under clauses 59.1, 59.2 and 59.3; or
- (c) an allegation that any Services or Warranted Materials (including the use of any Services or Warranted Materials by the Nominal Insurer or its subcontractors or Personnel) infringes the Intellectual Property Rights or Moral Rights of the third party (**IPR Infringement Claim**).

67.2 IPR Infringement Claim remedies

If any part of the Services (**Infringing Item**) becomes, or in the Nominal Insurer's reasonable opinion is likely to become, the subject of an IPR Infringement Claim, the Service Provider must, in addition to indemnifying the Nominal Insurer as provided in this clause 67 and other rights that the Nominal Insurer may have under the Agreement promptly, at the Service Provider's expense:

- (a) use its best efforts to secure the right to continue using the Infringing Item;
- (b) replace or modify the Infringing Item to make it non-infringing, provided that any such replacement or modification will not degrade the performance or quality of the affected component of the Services; or
- (c) if, and only if, the Service Provider cannot do either (a) or (b), the Service Provider must remove the Infringing Item from the Services and the Charges will be reduced to reflect that removal.

67.3 Nominal Insurer's obligations

- (a) Where the Nominal Insurer wishes to enforce an indemnity under clause 67.1 it must:
 - (i) give written notice to the Service Provider as soon as practical; and
 - (ii) make reasonable efforts to mitigate the relevant Losses.
- (b) Subject to the Service Provider agreeing to comply at all times with clause 67.4:
 - (i) the Nominal Insurer may, in its absolute discretion, permit the Service Provider, at the Service Provider's expense, to handle all negotiations for settlement and, as permitted by Law, to control and direct any settlement negotiation or litigation that may follow; and
 - (ii) in the event that the Service Provider is permitted to handle negotiations or conduct litigation on behalf of the Nominal Insurer, under clause 67.3(b)(i), the Nominal Insurer will provide all reasonable assistance to the Service Provider in the handling of any negotiations and litigation.

67.4 Service Provider's obligations

In the event that the Service Provider is permitted to handle negotiations or conduct litigation on behalf of the Nominal Insurer under clause 67.3, the Service Provider must:

- (a) comply with the Nominal Insurer policy and obligations as notified by the Nominal Insurer, as if the Service Provider were the Nominal Insurer, relevant to the conduct of the litigation and any settlement negotiation;
- (b) consult with and keep the Nominal Insurer informed of any significant developments relating to the conduct of the defence or settlement of any claim; and
- (c) provide the Nominal Insurer such information and documentation as are reasonably requested by the Nominal Insurer, to enable the Nominal Insurer to ascertain whether the defence or settlement by the Service Provider of any claim is being conducted in accordance with the requirements of the Nominal Insurer's policies and procedures, including any requirements relating to legal professional privilege and confidentiality.

67.5 Exceptions to indemnity for IPR Infringement Claims

The indemnity in clause 67.1(c) does not apply to the extent that the IPR Infringement Claim results from:

- (a) or in connection with any alteration or Modification by the Nominal Insurer or any third party of any Warranted Material or Intellectual Property Rights created or supplied under this Agreement by the Service Provider, other than in accordance with this Agreement; or
- (b) use of a Warranted Material or Software in conjunction with any other software not licensed to the Nominal Insurer from the Service Provider, except where:
 - (i) the Service Provider has required or advised the Nominal Insurer in writing to use other software not licensed to the Nominal Insurer by the Service Provider with the Deliverable or Software, as relevant; or
 - (ii) the Service Provider has been engaged under a Statement of Work to advise on the use or interoperability of the Deliverable or Software (as relevant) with other software not licensed to the Nominal Insurer by the Service Provider.

Dispute resolution and termination

68. Dispute resolution

68.1 No arbitration or court proceedings

If a dispute arises in relation to the conduct of the Agreement (**Dispute**), a party must comply with this clause 68 before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief). After a party has sought or obtained any urgent interlocutory relief that party must follow this clause 68.

68.2 Notification

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

68.3 Parties to resolve Dispute

- (a) If a notice is given under clause 68.2, each party to the Dispute must use its reasonable efforts to resolve the Dispute through:

- (i) an initial meeting of Chief Finance Officers (or their nominees) during the 10 Days (or such longer period if the parties to the Dispute agree in writing), after the notice is given under clause 68.2; and
 - (ii) if the parties cannot resolve the Dispute in accordance with clause 68.3(a)(i), a meeting of Chief Executive Officers (or their nominees) during the 10 Days (or such longer period if the parties to the Dispute agree in writing), after expiry of the period referred to in clause 68.3(a)(i).
- (b) If the parties cannot resolve the Dispute within the timeframe set out under clause 68.3(a) (or such longer period if the parties to the Dispute agree in writing), they must refer the Dispute to a mediator if one of them requests.

68.4 Appointment of mediator

If the parties to the Dispute cannot agree on a mediator within seven Days after a request under clause 68.3, the chairperson of LEADR or the chairperson's nominee will appoint a mediator.

68.5 Role of mediator and obligations of parties

The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing. Unless agreed by the mediator and the parties, the mediation must be held within 21 Days of the request for mediation in clause 68.3. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.

68.6 Confidentiality

Any information or documents disclosed by a party under this clause 68:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

68.7 Costs

Each party to a Dispute must pay its own costs of complying with this clause 68.

68.8 Termination of process

A party to a Dispute may terminate the dispute resolution process by giving notice to each other party after it has complied with clauses 68.1 to 68.5. Clauses 68.6, 68.7, 68.11 and 68.12 survive termination of the dispute resolution process.

68.9 Breach of this clause

If a party to a Dispute breaches clauses 68.1 to 68.8, the other party does not have to comply with those clauses in relation to the Dispute.

68.10 Exception

For the purpose of this clause 68, a Dispute does not include a dispute arising in relation to the Nominal Insurer's termination of the Agreement or reduction of the scope of the Services under clause 69.1.

68.11 No limitation

Nothing in this clause 68 limits, prevents or otherwise affects:

- (a) the Nominal Insurer's rights to exercise Step-in Rights under clause 47;
- (b) the Nominal Insurer's rights to terminate the Statement of Work under clause 62.3; or
- (c) the Nominal Insurer's rights to terminate the Agreement under clause 69.

68.12 Obligations continue

The Nominal Insurer and the Service Provider must continue to perform their respective obligations under the Agreement pending the resolution of a Dispute.

69. Termination

69.1 Termination for convenience

- (a) In addition to any other rights it has under the Agreement, the Nominal Insurer may terminate the Agreement or any Statement of Work without cause (i.e. for convenience) at any time, by giving the Service Provider 30 Days prior written notice.
- (b) If the Nominal Insurer terminates the Agreement for convenience under clause 69.1(a), the following will apply:
 - (i) any current, executed Statements of Work remain in force in accordance with their terms (unless they are also terminated under clause 69.1(c)); and
 - (ii) the Nominal Insurer has no liability to the Service Provider to pay any termination costs or other amounts as a result of such termination, (unless any current, executed Statements of Work are also terminated under clause 69.1(c)).
- (c) If the Nominal Insurer terminates a Statement of Work for convenience under clause 69.1(a), the following will apply:
 - (i) the Service Provider must immediately comply with any reasonable directions given by the Nominal Insurer and do everything possible to mitigate its losses arising in consequence of termination of the Statement of Work;
 - (ii) the Nominal Insurer is only liable for:
 - (A) any amounts set out in Schedule 3– Pricing and/or the terminated Statement of Work as being payable on termination of the relevant Statement of Work;
 - (B) payments under clause 51.2 for Services rendered in accordance with the terminated Statement of Work before the effective date of termination; and
 - (C) to the extent not recovered by the Service Provider through the payment by the Nominal Insurer of amounts under clause 69.1(c)(ii)(A), reasonable costs (excluding without limitation, loss of prospective income or profits and redundancy costs) actually incurred by the Service Provider and directly attributable to the termination of the relevant Statement of Work.

69.2 Termination by the Nominal Insurer for cause

The Nominal Insurer may immediately terminate the Agreement or a Statement of Work by sending the Service Provider written notice (**Termination Notice**), if:

- (a) the Nominal Insurer rejects a Deliverable, System or the icare Solution under clause 26.6, 26.7 or 27.7;
- (b) an Insolvency Event occurs in relation to the Service Provider, or the Service Provider ceases, or threatens to cease, to conduct business;
- (c) without limiting the Nominal Insurer's rights under this clause 69.2, the Service Provider fails to remedy to the satisfaction of the Nominal Insurer (acting reasonably) any material breach of the Agreement (which in the reasonable opinion of the Nominal Insurer can be remedied) within ten (10) Business Days (or such longer period specified by the Nominal Insurer acting reasonably, having regard to the nature and impact of the breach) after the

date on which the Nominal Insurer issues the Service Provider a written notice requiring the Service Provider to remedy the breach;

- (d) the Service Provider has regularly or persistently failed to meet any, some, or all requirements of this Agreement, which failures have the cumulative effect of constituting a material breach of this Agreement, whether or not the Nominal Insurer has required the Service Provider to remedy a material breach under clause 69.2(c);
- (e) the Service Provider repudiates all or any part of the Agreement;
- (f) there is a Change in Control of the Service Provider and the Nominal Insurer considers in its absolute discretion that the Change in Control will result in a conflict of interest arising or will have or (based on reasonable grounds) is likely to have a materially adverse impact on:
 - (i) the security interests or reputation of the Nominal Insurer; or
 - (ii) the ability of the Service Provider to fulfil its obligations under the Agreement;
- (g) the Service Provider fails to meet a Critical Service Level for three consecutive months or three times in any six (6) month period as described in clause 46.3(d), except to the extent as a result of the circumstances set out in clause 46.3(c)(i) , 46.3(c)(ii) and 46.3(c)(iii);
- (h) a material Delay that adversely impacts the Nominal Insurer's business and cannot be remedied in accordance with clause 45.6(b)(iii);
- (i) the Nominal Insurer has the right to terminate under clause 43.5(c);
- (j) the Service Provider fails to comply with its obligations specified in:
 - (i) sub-clauses 58.1(a), 58.2(b), 58.4 and 58.8 of clause 58 (Confidentiality);
 - (ii) sub-clause 59.1, 59.2 and 59.3 of clause 59 (Protection of Nominal Insurer Data);
 - (iii) sub-clauses 60.1, 60.2, 60.3 and 60.7 of clause 60 (Protection of Personal Information); and
 - (iv) sub-clauses 64.1(a) and (to the extent the relevant security procedure or requirement is set out in a Nominal Insurer Policy as at the Effective Date) 64.1(b) of clause 64 (Security); or
- (k) the Service Provider fails to comply with clause 76 (Assignment and novation).

69.3 Service Provider termination

- (a) If:
 - (i) Nominal Insurer has not paid an amount properly due and payable in accordance with clause 51.2 that is in excess of \$500,000; and
 - (ii) Service Provider has complied with the following procedure:
 - (A) Service Provider has given the Nominal Insurer a first notice specifying the failure to pay and giving Service Provider at least 90 days to pay the outstanding invoices;
 - (B) Service Provider has given the Nominal Insurer a second notice giving the Nominal Insurer at least a further 90 days to pay the invoice and specifying that Service Provider intends to terminate the Agreement if the Nominal Insurer fails to pay that invoice; and

- (C) the Nominal Insurer does not pay the amount by the expiry of the periods in the notices under paragraphs (A) and (B),

then Service Provider may (as applicable) issue a Termination Notice for this Agreement (but only in relation to the whole of the Agreement) and/or the relevant Statement of Work under which the outstanding Charges were incurred.

- (b) Other than the rights of termination set out under clause 69.3(a) and the rights to termination for repudiation (including renunciation) of contract and frustration, the Service Provider waives any right or power it may have (whether in contract, in tort or under common law or statute) to terminate the Agreement for any reason whatever (including due to the Nominal Insurer's breach of the Agreement).

70. Disengagement

70.1 Disengagement Services

- (a) The Service Provider must develop a Disengagement Plan in accordance with any relevant Statement of Work, for the orderly and efficient transition of Systems, if applicable, and Services to the Nominal Insurer.
- (b) The Disengagement Plan will:
 - (i) be based on the disengagement principles, and will at a minimum address any requirements, set out in Schedule 8 – Disengagement;
 - (ii) specify the Disengagement Services to be provided by Service Provider and the fees payable by the Nominal Insurer for provision of those Disengagement Services;
 - (iii) will be updated and tested from time to time in accordance with that Schedule 8 – Disengagement,

and any amendments thereto from time to time will be subject to the Approval of the Nominal Insurer in accordance with Schedule 8 – Disengagement.

- (c) The Service Provider must:
 - (i) if the Nominal Insurer during the Term terminates:
 - (A) the Agreement and all then-current Statements of Work; or
 - (B) a Statement of Work under clause 69; or
 - (ii) on expiry of the Term, provide Disengagement Service, in respect of all components of the terminated Services.
- (d) The Service Provider must provide the Disengagement Services for the duration of the Disengagement Period.
- (e) The Disengagement Services must be provided in accordance with the relevant Statement of Work and the Disengagement Plan.
- (f) Disengagement Services must, at a minimum, include the following:
 - (i) best endeavours to facilitate the novation of all contracts or licences relating to the provision of the Services (including, to avoid doubt, the contract for the hosting of the icare Solution and licences for the Software entered into by the Service Provider and sub-licensed to the Nominal Insurer under clause 55.2) to the Nominal Insurer or its nominee at no additional charge to the Nominal Insurer; and

- (ii) to the extent required by the Nominal Insurer, the Service Provider using its best endeavours to procure licences for any IPR and Software (other than the Base Software) used in the Services (including, to avoid doubt, the icare Solution);
- (iii) the provision to the Nominal Insurer or its nominee of all information including data, manuals and other Documentation and training necessary for the Nominal Insurer or its nominee to assume the provision of the Services or the goods or services similar to the Services;
- (iv) using its best endeavours to make Specified Personnel and Service Provider Personnel available for discussions with the Nominal Insurer as may be required to ensure orderly transition and continuity of the provision of the Services;
- (v) the delivery to the Nominal Insurer of all documents which are necessary to enable the Services or goods or services similar to the Services to be provided by the Nominal Insurer or its nominees in a manner which ensures orderly transition and continuity of the provision of the Services; and
- (vi) allowing new service providers, if any, to access the Service Provider's premises to assist in the orderly transition of the provision of the Services or goods or services similar to the Services.

70.2 Continuation of Services

The Service Provider must continue to provide the Services in accordance with the terms of the Agreement during the Disengagement Period (except to the extent that the Disengagement Plan contemplates (or the Nominal Insurer requires) certain Services to stop being provided by the Service Provider and provided by a third party or the Nominal Insurer itself).

70.3 Acknowledgement

The Service Provider acknowledges all Service Levels and associated Service Rebates apply during the Disengagement Period.

70.4 Extension of the Disengagement Period

The parties may extend the Disengagement Period (during which the Service Provider will continue to provide the Services in accordance with clause 70.2) for a period and for the Charges agreed by the parties, in which case the terms of the Agreement continue to apply for the duration of the extended Disengagement Period.

71. Consequences of termination

71.1 Consequences of termination of the Agreement

- (a) On termination of the Agreement and all Statements of Work entered into under the Agreement:
 - (i) the Service Provider must immediately:
 - (A) subject to clause 71.1(b), cease using the Nominal Insurer's Intellectual Property Rights and Confidential Information;
 - (B) subject to clause 71.1(b), return to the Nominal Insurer all Materials (whether in written or electronic form) that contain or encapsulate any of the Nominal Insurer's Intellectual Property Rights or Confidential Information; and
 - (C) return to the Nominal Insurer all Nominal Insurer Data or deal with the Nominal Insurer Data as otherwise directed by the Nominal Insurer; and

- (ii) the Nominal Insurer will return to the Service Provider all property belonging to the Service Provider (subject to any ongoing licence rights).
- (b) The Service Provider will not be required to comply with clause 71.1(a)(i)(A) or 71.1(a)(i)(B), if, and to the extent that:
 - (i) it is required to use or retain the Nominal Insurer's Intellectual Property Rights or Confidential Information in order to provide Disengagement Services until the completion of those Disengagement Services; or
 - (ii) it is required by Law to retain those Materials.
- (c) To avoid doubt, the Service Provider is not permitted to use or disclose the retained Material for any other purpose.

71.2 Consequences of termination of a Statement of Work

- (a) On termination of a Statement of Work:
 - (i) subject to clause 71.2(b), the Service Provider must immediately:
 - (A) cease using all of the Nominal Insurer's Intellectual Property Rights and Confidential Information that relates to the Services that are the subject of the terminated Statement of Work; and
 - (B) return to the Nominal Insurer, all Materials (whether in written or electronic form) that contain or encapsulate any of the Nominal Insurer's Intellectual Property Rights or Confidential Information, to the extent such materials relate to the Services that are the subject of the terminated Statement of Work; and
 - (ii) the Nominal Insurer will return to the Service Provider all property belonging to the Service Provider that relates to the Services that are the subject of the terminated Statement of Work (subject to any ongoing licence rights).
- (b) The Service Provider will not be required to comply with clauses 71.2(a)(i)(A) or 74.2(a)(i)(B) to the extent that it is required to use or retain the Nominal Insurer's Intellectual Property Rights or Confidential Information in order to provide Disengagement Services or as required by Law.

71.3 Knowledge transfer

In circumstances where the Service Provider is not required to provide Disengagement Services under clause 70, the Service Provider must (subject to agreement between the parties as to reasonable Charges) provide the following assistance to the Nominal Insurer on termination or expiration of the Agreement for a specified period, as reasonably required by the Nominal Insurer:

- (a) transferring or providing access to the Nominal Insurer to all information stored by whatever means held by the Service Provider or under the control of the Service Provider in connection with the Agreement; and
- (b) use best endeavours in making Service Provider Personnel available for discussions with the Nominal Insurer as reasonably required.

71.4 Accrued remedies

Any termination or expiry of the Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination.

General provisions

72. Notices

72.1 Service of notices

A notice, demand, consent, approval or communication under the Agreement (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by courier or electronic mail to the recipient's address for Notices specified in items 9 and 10 of Appendix A (Agreement details), as varied by any Notice given by the recipient to the sender.

72.2 Effective on receipt

- (a) A Notice given in accordance with clause 72.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
 - (i) if hand delivered or delivered by courier, on delivery; or
 - (ii) if transmitted by electronic mail, only in the event that the other party acknowledges receipt by any means in person, by phone or by a message which has been generated by the intended recipient and not purely by a machine,but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.
- (b) A notice to terminate the Agreement or a Statement of Work under clause 69 must only be delivered by hand or courier. A notice to terminate the Agreement or a Statement of Work under clause 69 by electronic transmission will not be a valid notice.

73. Survival

The following clauses survive the termination and expiry of the Agreement or a Statement of Work:

- (a) clause 4.3 (Further assurances);
- (b) clause 14.2 (Problem in Deliverable, System or the icare Solution during Warranty Period);
- (c) clause 14.3 (Remedial action);
- (d) clause 37 (Books and records);
- (e) clause 38 (Audit and access);
- (f) clause 52 (Taxation);
- (g) clause 53 (GST);
- (h) clause 55 (Intellectual Property Rights);
- (i) clause 56 (Escrow);
- (j) clause 57 (Moral Rights);
- (k) clause 58 (Confidentiality);
- (l) clause 59 (Protection of Nominal Insurer Data);

- (m) clause 60 (Protection of Personal Information);
- (n) clause 61 (Liability issues);
- (o) clause 65 (Insurance, to the extent it relates to professional indemnity or errors and omissions insurance);
- (p) clause 67 (Indemnities);
- (q) clause 70 (Disengagement);
- (r) clause 71 (Consequences of termination);
- (s) clause 81 (Costs and duties);
- (t) clause 82 (Set-off); and
- (u) any other clauses which, expressly or by their nature, survive the expiry or termination of the Agreement or a Statement of Work.

74. Variation

No agreement or understanding varying or extending the terms and conditions of this Agreement is legally binding on either party unless the agreement or understanding is in writing, in the form of a formal deed of variation, and signed by an authorised representative of both parties.

75. Severability

75.1 Construction

The parties agree that a construction of the Agreement that results in all provisions being enforceable is to be preferred to a construction that does not.

75.2 Severance

If, despite the application of clause 75.1, a provision of the Agreement is illegal or unenforceable:

- (a) if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are severed; and
 - (b) in any other case, the whole provision is severed,
- and the remainder of the Agreement continues in force.

76. Assignment and novation

76.1 Where consent is required

Except where the Nominal Insurer is permitted to do so under clause 76.2, a party must not assign the Agreement (or any right under it) or purport to novate its obligations under the Agreement to another party unless the assigning party obtains the prior written consent of the other party to the Agreement, which will not be unreasonably withheld.

76.2 Where consent is not required

The Nominal Insurer may assign its rights and novate its obligations under the Agreement to any other Government agency (including a New NI) without the prior written consent of the Service Provider provided that it has notified the Service Provider in writing of such assignment or novation.

77. Relationship between the parties

The Agreement does not create a relationship of employment, joint venture, partnership or agency between the parties.

78. Consents and approvals

Except to the extent specified otherwise in the Agreement, the Nominal Insurer may withhold or delay any approval or consent to be given under the Agreement and is not obliged to give its reasons for doing so.

79. Further assurances

The Service Provider must do all things and execute all deeds, instruments, transfers or other documents, and will procure Service Provider Personnel to do all things and execute all deeds, instruments, transfers or other documents, as may be necessary or desirable to give full effect to the provisions of the Agreement, and any transactions contemplated by it.

80. Waiver

80.1 Failure to perform

The failure of a party at any time to require performance of any obligation under the Agreement is not a waiver of that party's right:

- (a) to claim Losses for breach of that obligation; and
- (b) at any other time to require performance of that or any other obligation under the Agreement,

unless written notice to that effect is given in accordance with clause 80.2.

80.2 Waiver

Any waiver of any provision of or right under the Agreement:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

81. Costs and duties

81.1 Costs

Except as expressly stated otherwise in the Agreement, each party must bear its own legal costs of and other costs and expenses of preparing, negotiating and executing the Agreement.

81.2 Duty

The Service Provider must:

- (a) pay all stamp duty, duties or other taxes of a similar nature (**Duty**) on and in relation to:
 - (i) the Agreement;
 - (ii) any instrument, document or transaction contemplated by the Agreement; and
 - (iii) any instrument or document required under any relevant Law in connection with any transaction contemplated by the Agreement,
- (b) produce to the Nominal Insurer evidence of payment within five Business Days after payment; and

- (c) if necessary, ensure that the Agreement is duly executed and all Duty is paid.

82. Set-off

The Nominal Insurer is entitled to set off against any amount which the Nominal Insurer owes the Service Provider under a relevant Statement of Work any amount which the Service Provider owes to the Nominal Insurer from time to time under that relevant Statement of Work.

83. Counterparts

The Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one Agreement.

84. Governing law and jurisdiction

- (a) The Agreement is governed by and is to be construed in accordance with the Laws applicable in New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

85. No merger

The rights and obligations of the parties under the Agreement do not merge on completion of any transaction contemplated by the Agreement.

86. Ownership of Agreement

All copyright and other Intellectual Property Rights in the Agreement remain the property of the Nominal Insurer.

87. Entire agreement

The Agreement (including its schedules and annexures) constitutes the entire agreement between the parties as to its subject matter and in relation to that subject matter, supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party.

88. Cumulative remedies

Except as expressly provided otherwise in the Agreement, a right, power, remedy, entitlement or privilege given or granted to a party under the Agreement is cumulative with, without prejudice to and not exclusive of any other right, power, remedy, entitlement or privilege granted or given under the Agreement or by Law.

Appendix A – Agreement details

Item number	Description	Clause reference	Details	
1.	Nominal Insurer Representative	Appendix B (Glossary)	John Nagle	
2.	Service Provider Representative	Appendix B (Glossary)	Mohit Jain	
3.	Effective Date	Appendix B (Glossary)	1 February 2016	
4.	Approved Subcontractors	30.1	Approved Subcontractors are as set out in each Statement of Work.	
5.	Key Positions and Specified Personnel	48	Key Positions and Specified Personnel are as set out in each Statement of Work.	
6.	icare Solution Implementation Team	14.3(b)	Position	Name
			Project Manager	As set out in the relevant Statement of Work
			Functional Lead	As set out in the relevant Statement of Work
			Technical Lead	As set out in the relevant Statement of Work
7.	NOT USED			
8.	Insurance policies	65	a) Public liability insurance: per claim \$20 million and in aggregate \$20 million. b) Professional indemnity or errors and omissions insurance: per claim \$20 million and in aggregate \$20 million, with a combined annual aggregate limit for (a) and (b) above of \$20 million under an international combined General Liability-Professional Indemnity insurance	

Item number	Description	Clause reference	Details
			policy. c) Workers compensation: As required by Law.
9.	Address for service for Service Provider	72	<i>Mohit Jain</i> Physical and postal address: Level 7 / 77 King Street SYDNEY NSW 2000 Email address: <i>Mohit.Jain@capgemini.com</i>
10.	Address for service for the Nominal Insurer	72	Executive General Manager, Worker Insurance Physical address: Level 9, 321 Kent Street, Sydney NSW 2000 Postal address: Level 9, 321 Kent Street, Sydney NSW 2000 Email address:john.nagle@icare.nsw.gov.au

Appendix B – Glossary

Term	Definition
Accept	to accept a Deliverable, System or the icare Solution, or a Modification to a Deliverable, System or the icare Solution in accordance with clause 26 of the Agreement, signified by the issue of an Acceptance Certificate. Accepted, Accepting and Acceptance have corresponding meanings.
Acceptance Certificate	a certificate in the form (or substantially in the form) of the certificate set out in Schedule 5 (Acceptance Certificate) to the Agreement signed by both parties.
Acceptance Criteria	the requirements and criteria for Acceptance of a Deliverable, System or the icare Solution, or a Modification to a Deliverable, System or the icare Solution, as specified in the relevant SOW and/or relevant Test Plan.
Accounting Standards	the standards of that name maintained by the Australian Accounting Standards Board (established under subsection 226(1) of the <i>Australian Securities and Investments Commission Act 1989 (Cth)</i> and continued in existence by section 261 of the <i>Australian Securities and Investments Commission Act 2001 (Cth)</i>) or other accounting standards which are generally accepted and consistently applied in Australia.
Advisers	the financial, technical or legal advisers of a party and the respective Personnel of those financial, technical or legal advisers.
Affected Services	has the meaning given in clause 47.3 of the Agreement.
Agreement	the document executed by the parties titled the "ICT Services Agreement for the Provision, Implementation and Support of the icare Solution" and includes: <ul style="list-style-type: none"> (a) Statement of Work No. 1; (b) each subsequent Statement of Work (once executed); (c) any Attachments and Schedules; and (d) any other documents expressly identified in this document as forming part of the Agreement, as amended from time to time in accordance with the Agreement.
Ancillary Systems	each System as described in the target architecture in the relevant Statement(s) of Work.
Appendix	a document identified as an appendix to the Agreement. Appendices has the corresponding meaning.
Approve	to approve a Document Deliverable in accordance with clause 24.3 of the Agreement. Approved and Approval have corresponding meanings.
Approved Subcontractor	a Subcontractor that is approved by the Nominal Insurer in accordance with clause 30.1 of the Agreement, including the Cloud Services Approved Subcontractor.
Attachment	a document identified as an attachment to a Schedule or Statement of Work.

Term	Definition
Australian Privacy Principles	has the meaning given in the <i>Privacy Act 1988</i> (Cth).
Base Software	the software and related Technical Documentation licensed to Service Provider by a third party and procured for, and sublicensed to, Nominal Insurer by the Service Provider under this Agreement as the base software for any component of the icare Solution, and includes any Updates and New Releases adopted by the Nominal Insurer, any enhancements or Modifications to the Base Software and any Extensions or Custom Modules but excludes the Service Provider Software.
Build	has the meaning set out in the relevant Statement of Work.
Build and Implement Phase	the Phase described as such in clause 7(a) and covering the Services described in clause 12.
Build SOW	a Statement of Work covering the Build and Implement Phase in respect of any part of the icare Solution.
Business Continuity	the activity performed by an organisation to ensure that critical business functions are available to customers, suppliers, regulators, and other entities that must have access to those functions.
Business Day	a day that is not a Saturday, Sunday or public holiday in New South Wales.
Change Control Procedure	the procedure set out in clause 28 of the Agreement, which is to be followed by the parties in relation to any variations to the nature or extent of the Services.
Change in Control	<p>in relation to a body corporate, where the power (whether formal or informal, whether or not having legal or equitable force, whether or not based on legal or equitable rights and whether direct or indirect, including through one or more entities):</p> <ul style="list-style-type: none"> (a) to control more than half of the voting power of the body; (b) to control the composition of the board of directors of the body; or (c) to control more than half of the issued share capital of the body, excluding any part of it which carries no right to participate beyond a specified mount in the distribution of either profit or capital, <p>resides with persons other than those holding that power on the Effective Date, but excludes a solvent reorganisation or restructure of Service Provider and its holding or Related Companies, or an Approved Subcontractor.</p>
Change Request	has the meaning given in clause 28.2 of the Agreement.
Charges	all fees and charges payable by the Nominal Insurer for the provision of the Services under the Agreement as specified in Schedule 3 (Pricing) and the relevant Statement of Work.

Term	Definition
Claim	any claim, demand, debt, allegation, liability or proceeding of any nature whatsoever however arising and whether present or future, fixed or unascertained, actual or contingent.
Cloud Services	the provision of each System and the icare Solution as a service and includes the hosting and the ongoing support and maintenance of the icare Solution, as set out in a Statement of Work.
Confidential Information	<p>information that is by its nature confidential; and</p> <ul style="list-style-type: none"> (a) is designated by a party as confidential and is described in Schedule 7 (Designated Confidential Information) to the Agreement; or (b) a party knows or ought to know is confidential; or (c) relates to: <ul style="list-style-type: none"> (i) the Services; (ii) the financial, the corporate and the commercial information of a party to this Agreement; (iii) the affairs of a third party (provided the information is non-public); and (iv) the strategies, practices and procedures of the state of New South Wales and any information in the Service Provider's possession relating to the New South Wales public service, <p>but does not include:</p> <ul style="list-style-type: none"> (d) information which is or becomes public knowledge other than by breach of the Agreement or any other confidentiality obligation; (e) is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt; or (f) has been independently developed or acquired by the receiving party.

Term	Definition
Consequential Loss	<p>any losses suffered by a party to this Agreement as a result of a breach of the Agreement or a Statement of Work that cannot reasonably be considered to arise naturally from that breach, including:</p> <ul style="list-style-type: none"> (a) any special, punitive or exemplary loss or damages; and (b) any loss of profit, loss of revenue, loss of interest, loss of goodwill or business opportunities, or loss of reputation which arise directly or indirectly <p>but excluding:</p> <ul style="list-style-type: none"> (b) losses (which are mitigated and substantiated) suffered by a third party for which a party to the Agreement becomes liable as a direct result of a breach by the other party; (c) any substantiated loss of anticipated savings suffered by a party the Agreement as a direct result of a breach by the other party; (d) costs of reconstructing or reloading data from existing back-up; (e) reasonable costs (which are mitigated and substantiated) of implementing and performing work-arounds directly relating to a Service failure; and (f) payments or penalties imposed by a governmental or regulatory authority against a party as a result of a failure by the other party to comply with the Agreement or Law.
Contract Material	<p>any Material created, prepared or delivered by the Service Provider in accordance with the Agreement, including:</p> <ul style="list-style-type: none"> (a) the Document Deliverables; (b) any Statement of Work; (c) all test plans, data, results or reports, testing materials and all other records relating to any testing conducted or carried out by the Service Provider or the Nominal Insurer under or in connection with this Agreement; and (d) any training and skills transfer materials supplied by the Service Provider in accordance with the Agreement. <p>To avoid doubt, Contract Material does not include the Software, the Pre-existing Service Provider Material or Third Party Material.</p>
Corporations Act	the <i>Corporations Act 2001</i> (Cth), as amended from time to time.
Covered Workers	<p>Service Provider Personnel who are:</p> <ul style="list-style-type: none"> (a) engaged, or caused to be engaged by the Nominal Insurer; or (b) whose activities in carrying out work are influenced or directed by the Nominal Insurer, <p>while at work (wherever occurring) in the Nominal Insurer's business or undertaking.</p>

Term	Definition
Critical Milestone	a critical performance obligation Milestone for the Service Provider under the Agreement specified as such in the relevant Statement of Work.
Critical Milestone Date	the date for achievement of a Critical Milestone as set out in the relevant Statement of Work.
Critical Service Level	a critical performance standard which the Service Provider must achieve in providing the Services to the Nominal Insurer, as set out in a Statement of Work.
Data Migration Plan	the Plan developed by the Service Provider as a Document Deliverable in accordance with the relevant Statement of Work and Approved by the Nominal Insurer.
Day	a calendar day.
DDA	the Workers' Compensation Dust Diseases Authority as established under the <i>Workers' Compensation Dust Diseases Act 1942</i> (NSW).
Defect Service Level	the performance standards which the Service Provider must achieve in investigating and remedying a Problem (other than any Problem in respect of a Document Deliverable), as set out in a Statement of Work.
Delay	has the meaning given in clause 45.2 of the Agreement.
Deliverable	each item (including any Document Deliverables) or component of the icare Solution or a Service: <ul style="list-style-type: none"> (a) identified as a Deliverable in the Project Documentation; and (b) that is otherwise agreed in writing between the parties to be a Deliverable for the purposes of the Agreement.
Disaster	an event that causes severe disruption on the business to function and deliver normal services, as declared by the Nominal Insurer.
Disaster Recovery (DR)	the ability to respond to Disasters and to subsequently restore business functions to normal.
Disaster Recovery Plan (DR Plan)	the plan to be developed by the Service Provider and Approved by the Nominal Insurer.
Discovery Phase	the Phase described as such in clause 7(a).
Disengagement	the transfer of all or part of the Services from the Service Provider to the Nominal Insurer or a new service provider or new service providers, in accordance with clause 70, Schedule 8(Disengagement) and the Disengagement Plan.
Disengagement Assistance	has the meaning given in section 1.2.1 of Schedule 8 (Disengagement).
Disengagement Period	the period during which Disengagement Assistance must be provided by the Service Provider in accordance with section 2.2 of Schedule 8 (Disengagement).

Term	Definition
Disengagement Plan	the Plan developed by the Service Provider as a Document Deliverable in accordance with the relevant Statement of Work and Approved by the Nominal Insurer.
Disengagement Services	the services required by the Nominal Insurer to effect an orderly transfer of the Services, functions and operations provided or required to be provided by the Service Provider under the Agreement to another service provider or to the Nominal Insurer itself, as set out in clause 70, the relevant Statement of Work and the Disengagement Plan.
Dispute	has the meaning set out in clause 68.1 of the Agreement.
Document Deliverable	the Plans and documents required to be developed by the Service Provider as described in the Project Documentation or a Statement of Work and Approved by the Nominal Insurer in accordance with clause 24 of the Agreement.
Documentation	the documents, know-how and information reduced to material or electronic form produced or acquired by the Service Provider or its Subcontractors in relation to the Services and includes all data, designs, specifications, manuals, handbooks, user guides, training materials, standards, procedures, plans, drawings and other items describing or providing information in relation to the icare Solution and Services, or their operation.
Effective Date	the date specified in item 3 of Appendix A (Agreement details).
End-to-End Acceptance Criteria	the requirements and criteria specified in the Test Plan and the relevant Statement of Work for End-to-End Testing of the icare Solution, that the icare Solution must meet to be finally Accepted by the Nominal Insurer.
End-to-End Tests	the tests, including User Acceptance Testing, carried out to determine whether the icare Solution meet the icare Solution Requirements and the End-to-End Acceptance Criteria.
Extensions or Custom Modules	additional functionality or modules for Software that must be developed by the Service Provider in order to meet the Functional Requirements and Non-Functional Requirements or as subsequently provided under a Statement of Work.
Final Acceptance	final Acceptance of the icare Solution in accordance with clause 27.7 of the Agreement.
Final Acceptance Certificate	a certificate in the form (or substantially in the form) of the certificate set out in Schedule 5 (Acceptance Certificate) to the Agreement for the final Acceptance of the icare Solution.
Final Acceptance Date	the date the icare Solution is finally Accepted by the Nominal Insurer, as signified by the issue of an Acceptance Certificate, as meeting all End-to-End Acceptance Criteria in accordance with clause 27 of the Agreement.
Final Critical Milestone	the promotion of the icare Solution into production, following Final Acceptance.
Final Critical Milestone Date	the date described as such in the relevant Statement of Work.

Term	Definition
Final Design Documentation	the final design for the icare Solution developed by the Service Provider as a Document Deliverable and Approved by the Nominal Insurer.
Force Majeure Event	<p>in relation to a party:</p> <ul style="list-style-type: none"> (a) any act or omission of a third party (other than that party's subcontractors or suppliers) that is beyond the reasonable control of that party; (b) fire, flood, earthquake, elements of nature or act of God; or (c) riot, civil disorder, rebellion or revolution, <p>but in each case only if and to the extent that the non-performing party is without fault in causing the event and the event or its effects could not have been prevented by:</p> <ul style="list-style-type: none"> (d) invoking any relevant Disaster Recovery Plan; (e) appropriate workload management practices; and (f) any other prudent back-up or recovery procedures.
Functional Requirements	the functional capabilities for the icare Solution, as amended by the Nominal Insurer from time to time, provided that any impact on an existing Statement of Work will be addressed through the Change Control Procedure.
Glossary	this Appendix B to this Agreement.
Governance Framework	the governance framework described in Schedule 2, as updated by the parties from time to time.
GST	has the same meaning as set out in the GST Law.
GST Law	<i>A New Tax System (Goods and Services Tax) Act 1999 (Cth).</i>
Harmful Code	any computer program viruses or other code that is harmful, destructive, disabling or which assists in or enables theft, alteration, denial of service, unauthorised access to, or disclosure, or destruction or corruption of data.
icare Solution	<p>the entire end-to-end solution which comprises:</p> <ul style="list-style-type: none"> (a) the Nominal Insurer Underwriting and Claims Platform; (b) each Ancillary System; and (c) each component of the IT Uplift, <p>to be designed, built, delivered, configured, tested, implemented, integrated, hosted and provided (as a service) by the Service Provider pursuant to each Statement of Work, and includes all Service Provider Software, Software and Services required to deliver the Functional Requirements and Non-Functional Requirements.</p> <p>A reference to icare Solution in this Agreement is a reference to each of the Systems that comprise the icare Solution or the end to end icare Solution, as the context requires.</p>

Term	Definition
icare Solution Architecture	the architecture for each System and the icare Solution (as the context requires) prepared by the Service Provider as a Document Deliverable and Approved by the Nominal Insurer.
icare Solution Design	the design document for each System and the icare Solution (as the context requires), prepared by the Service Provider as a Document Deliverable and Approved by the Nominal Insurer.
icare Solution Implementation Team	the Service Provider Personnel identified as the icare Solution implementation team in item 6 of Appendix A.
icare Solution Requirements	a detailed description of the business, Functional Requirements, Non-Functional Requirements and service requirements for the icare Solution, as amended by the Nominal Insurer from time to time, provided that any impact on an existing Statement of Work will be addressed through the Change Control Procedure.
icare Solution Specification	the operational and management policies, procedures, work instructions, plans and guides required for handover of the icare Solution prepared by the Service Provider as a Document Deliverable and Approved by the Nominal Insurer.
ICT	information, communication and technology.
Implementation Services	all activities designed to deliver a functioning System to the Nominal Insurer to meet the requirements, as further detailed in the relevant Statement of Work.
Infringing Item	has the meaning set out in clause 67.2 of the Agreement.
Insolvency Event	<p>(a) the Service Provider, or any party having or exercising control over the Service Provider becomes an externally-administered body corporate for the purposes of the Corporations Act or an external insolvency administrator is appointed to any such party under the provisions of any companies or securities legislation of another jurisdiction;</p> <p>(b) a controller (as that term is defined in the Corporations Act or mortgagee in possession) is appointed to the assets of the Service Provider or any party having or exercising control over the Service Provider, or such appointment is reasonably likely;</p> <p>(c) the Service Provider or any party having or exercising control over the Service, fails to comply with a statutory demand in the manner specified in section 459F of the Corporations Act, and has not made an application to set aside such demand under section 459G of the Corporations Act;</p> <p>(d) if the Service Provider is an unincorporated entity or trust:</p> <p>(i) an event of the kind referred to in paragraphs (a), (b) or (c) occurs in respect of any of the partners, joint</p>

Term	Definition
	<p>venturers or proprietors of such entity; or</p> <p>(ii) a trustee in bankruptcy (or comparable person) is appointed to the assets and affairs of any of the partners, joint venturers or proprietors of such entity, or any of those partners, joint venturers or proprietors enter into an arrangement or composition with its or their creditors for the payment of their debts; or</p> <p>(e) the Service Provider is unable to pay its debts as and when they fall due.</p>
Insurance and Care NSW	the statutory body of that name constituted under section 4 of the <i>State Insurance and Care Governance Act 2015</i> (NSW) and has the statutory authority to act for the Nominal Insurer in accordance with section 154C of the <i>Workers Compensation Act 1987</i> (NSW).
Intellectual Property Rights or IP Rights or (IPR)	<p>all intellectual property rights, including the following rights:</p> <p>(a) rights in relation to patents, copyright (including Moral Rights), circuit layout rights, trade marks (including goodwill in those marks), business names and any right to have Confidential Information (including trade secrets and know-how) kept confidential and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world;</p> <p>(b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and</p> <p>(c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,</p> <p>whether or not such rights are registered or capable of being registered.</p>
IT Uplift	each foundation capability System as described in the target architecture in the Project Documentation.
Key Position	each of the positions specified as such in item 5 of Appendix A (Agreement details), the Resource Plan or a Statement of Work, as applicable.
Labour Rates	in respect of any Charges payable on a time and materials basis, the daily rates payable for Service Provider Personnel, as specified in Schedule 3(Pricing).
Law	any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the relevant jurisdiction and includes the common law and equity as applicable from time to time, and any applicable industry codes of conduct.

Term	Definition
LEADR	an Australasian, not-for-profit membership organisation formed to serve the community by promoting and facilitating the use of dispute resolution processes including mediation (refer to www.leadr.com.au), with the Australian Business Number 69 008 651 232.
Licence	a licence granted by the Service Provider to the Licensees under clause 55 of the Agreement.
Licensees	comprises (from time to time): <ul style="list-style-type: none"> (a) Workers' Compensation Nominal Insurer; (b) DDA; (c) LTCSA; (d) SICorp; (e) an entity that is a 'scheme agent' as described in the <i>Workers Compensation Act 1987</i> (NSW); and (f) any other NSW government entity as notified by the Nominal Insurer from time to time.
LOI	means the letter of intent between the parties of this Agreement dated the LOI Date.
LOI Date	On or about 23 November 2015
Loss or Losses	all liabilities, losses, damages, costs and expenses (including legal costs on a full indemnity basis) whether incurred or awarded against a party and disbursements and costs of investigation, litigation, settlement, judgment, interest, fines and penalties, regardless of the Claim under which they arise.
LTCSA	the Lifetime Care and Support Authority as established by the <i>Motor Accidents (Lifetime Care and Support) Act 2006</i> (NSW).
Mandatory/ Expedited Change	change to be provided on an urgent, expedited and/or mandatory basis, so as to enable the icare Solution to comply with a change to Relevant Laws
Material	any software, firmware, documented methodology or process, property, information, data, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.
Milestone	a key performance obligation for the Service Provider under the Agreement (such as a key date for a Deliverable) as so described and as set out in the relevant Statement of Work.
Milestone Date	the date for achievement of a Milestone as set out in the relevant Statement of Work.
Milestone Payment	a payment of an amount set out in the relevant Statement of Work in respect of a Milestone.

Term	Definition
Modify	to add to, enhance, reduce, change, replace, vary or improve. Modification and Modified have corresponding meanings.
Moral Right	the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, as defined in the <i>Copyright Act 1968</i> (Cth).
New NI	has the meaning given in clause 55.2
New Release	software produced by the third party Software vendor primarily to extend, alter or improve the Software by providing additional functionality or performance enhancement (whether or not defects in the Software are also corrected) while still retaining its original designated purpose.
Nominal Insurer or Workers Compensation Nominal Insurer	the Nominal Insurer established by Division 1A of Part A of the <i>Workers Compensation Act 1987</i> (NSW), as inserted by the <i>Workers Compensation Amendment (Insurance Reform) Act 2003</i> (NSW).
Nominal Insurer Data (or Data)	all data and information (including any Modifications) relating to the Nominal Insurer or an Licensee, and their operations, facilities, customers, Personnel, assets and programs (including Personal Information) in whatever form that information may exist and whether entered into, stored in, generated by or processed through software or equipment by or on behalf of the Nominal Insurer or any of the Licensees. Nominal Insurer Data includes Nominal Insurer Material.
Nominal Insurer Furnished Facilities	those Nominal Insurer Locations that the Nominal Insurer has specified as facilities to be used by the Service Provider for the purpose of providing the Services.
Nominal Insurer Furnished Items	items provided by the Nominal Insurer and Licensees to the Service Provider for the purpose of providing the Services.
Nominal Insurer Locations	locations from which the Nominal Insurer or the Licensees operate.
Nominal Insurer Material	any Material relating to a Licensee (and any Modifications to that Material) provided to the Service Provider by the Nominal Insurer for the purpose of the Agreement.
Nominal Insurer Policies	the policies and procedures of the Nominal Insurer and the Licensees, as notified by the Nominal Insurer to the Service Provider from time to time.
Nominal Insurer Representative	the person nominated by the Nominal Insurer in accordance with clause 32.3 of the Agreement and any replacement person nominated by the Nominal Insurer from time to time in accordance with the Agreement. The initial Nominal Insurer Representative is set out in item 1 of Appendix A (Agreement details).
Nominal Insurer Underwriting and Claims Platform	the insurance System for core underwriting, policy, claims and billing as described in the relevant Statement(s) of Work.
Nominal Insurer's Existing System	the Nominal Insurer's existing hardware and software configurations, as set out in the relevant Statement(s) of Work.

Term	Definition
Non-functional Requirements	the non-functional capabilities for the icare Solution, as amended by the Nominal Insurer from time to time, provided that any impact on an existing Statement of Work will be addressed through the Change Control Procedure.
Objectives	the objectives set out in clause 4.1 of the Agreement and any additional objectives categorised as such in a Statement of Work (which to avoid doubt are subject to the provisions of clauses 4.2 and 4.3 of the Agreement).
Operational Services	the services, functions and responsibilities of Service Provider for the running and operation of any of the Systems as described in a relevant Statement of Work.
Other Service Providers	all third parties with whom the Service Provider may be required to interact and co-operate, as part of providing the Services, as advised by the Nominal Insurer from time to time.
Other SOW	a Statement of Work other than a Build SOW or Run SOW.
Permitted Auditor	PwC, Deloitte, KPMG and any other third party agreed by the parties (acting reasonably) from time to time.
Personal Information	has the meaning given in the Privacy Act.
Personnel	officers, employees, contractors, agents and representatives of a party (except that the Nominal Insurer's Personnel excludes the Service Provider and the Service Provider Personnel). To avoid doubt, Personnel includes the Personnel of a Subcontractor or a Related Company. Person has the corresponding meaning.
Phase	a phase of the Project as described in clause 7(a).
Plan	each of the plans to be developed by the Service Provider under a Statement of Work and delivered to the Nominal Insurer as a Document Deliverable.
Pre-Agreement Services	any work performed by the Service Provider in the period running from the LOI Date to the Effective Date, which would, if it were performed under the Agreement, constitute Services, including all work performed under the LOI
Pre-existing Service Provider Material	<p>any Material that:</p> <ul style="list-style-type: none"> (a) is in existence at the Effective Date or is subsequently brought into existence other than as a result of the performance of the Agreement; and (b) is embodied in, or attaches to, the Services, the Deliverables or the icare Solution or is otherwise necessarily related to the functioning or operation of the Services, the Deliverables or the icare Solution. <p>To avoid doubt, Pre-existing Service Provider Material does not include the Software or the Service Provider Software.</p>
Privacy Act	the <i>Privacy Act 1988</i> (Cth), as amended from time to time.

Term	Definition
Privacy Laws	the Privacy Act and any other privacy legislation that the Nominal Insurer must comply with from time to time.
Problem	a defect, fault, failure or difficulty with respect to a Deliverable (including a Document Deliverable), System or the icare Solution such that the Deliverable, System or the icare Solution does not materially comply with the icare Solution Requirements or any other relevant Project Documentation.
Procedures Manual	a procedures manual comprising a suite of procedures and standards for management and delivery of the Services, as further defined in the Governance Framework.
Project	the Services and icare Solution to be provided under this Agreement.
Project Documentation	<p>all Documentation relating to Services or as requested under a Statement of Work, including:</p> <ul style="list-style-type: none"> (a) each Statement of Work; (b) the icare Solution Requirements; (c) the icare Solution Architecture; (d) the Project Schedule; (e) the Resource Plan; (f) the Test Plan(s); (g) the Quality Management Plan; (h) the Project Risk and Issues Register; and (i) the Training Plan, <p>as amended or updated under the Agreement from time to time.</p>
Project Risk and Issues Register	the register developed by the Service Provider as a Document Deliverable in accordance with the requirements set out in the relevant Statement of Work and Approved by the Nominal Insurer.
Project Schedule	the schedule developed by the Service Provider as a Document Deliverable in accordance with the requirements set out in the relevant Statement of Work and Approved by the Nominal Insurer.
Quality Management Plan	the plan developed by the Service Provider and Approved by the Nominal Insurer.
Related Company	in relation to the Service Provider, a 'related body corporate' within the meaning given to that term in section 50 of the Corporations Act. Related Companies has the corresponding meaning.
Relevant Laws	has the meaning given in clause 40(b) of the Agreement.
Request for Quotation	a written request made by the Nominal Insurer to the Service Provider pursuant to clause 9.1 of the Agreement.
Required Consents	has the meaning given in clause 39.2 of the Agreement.

Term	Definition
Resource Plan	the Plan prepared by the Service Provider as a Document Deliverable in accordance with the requirements set out in the relevant Statement of Work and Approved by the Nominal Insurer.
Run Phase	the Phase described as such in clause 7(a) and covering the Services described in clause 13.
Run SOW	a Statement of Work covering the Run Phase (and/or the performance of Operational Services) in respect of any part of the icare Solution.
Schedule	a document identified as a Schedule to the Agreement, including all Attachments to that Schedule.
Service Levels	the performance standards which the Service Provider must achieve in providing the Services to the Nominal Insurer, as set out in a Statement of Work.
Service Provider	Capgemini Australia Pty Limited and includes, as the context requires, its Approved Subcontractors and Service Provider Personnel.
Service Provider Laws	<p>all Laws:</p> <ul style="list-style-type: none"> (a) that are from time to time relevant or applicable to Service Provider's business in its provision of the Services (including all Laws applicable to the Service Provider's business in relation to bribery and corruption); (b) which regulate the Service Provider in its capacity as a provider of ICT services; and (c) which are specific to the industries in which the Service Provider belongs.
Service Provider Personnel	the Personnel of the Service Provider and of the Approved Subcontractors, including the Specified Personnel.
Service Provider Representative	the person nominated by the Service Provider in accordance with clause 32.3 of the Agreement and any replacement person nominated by the Service Provider from time to time in accordance with the Agreement. The initial representative is set out in item 2 of Appendix A (Agreement details).
Service Provider Software	any software, interfaces, Application Programming Interfaces or other code written by or on behalf of the Service Provider for use in respect of the icare Solution.
Service Rebates	an amount calculated in accordance with the relevant Statement of Work and which is payable by the Service Provider to the Nominal Insurer under clause 46.
Services	all of the services provided or to be provided by the Service Provider for the Nominal Insurer under each Statement of Work.
SICorp	the NSW Self Insurance Corporation as established by the <i>NSW Self Insurance Corporation Act 2004</i> (NSW).

Term	Definition
Software	any software licensed to Service Provider by a third party and procured for, and sublicensed to, the Nominal Insurer by the Service Provider to provide the icare Solution or the Services other than the Service Provider Software and includes the Base Software.
Source Materials	in relation to any Software or Service Provider Software, the source code of, that software in a human readable format in a recognised computer programming language, and including all associated documentation, code, data, libraries, tools and other items and materials necessary or desirable to enable the Nominal Insurer or its contractors to fully understand, use, Modify and maintain that Software or Service Provider Software.
SOW Effective Date	the commencement date of a Statement of Work as set out in the Statement of Work.
SOW Termination Date	the date a Statement of Work terminates or expires, being the end of any Disengagement Period in which responsibility for provision of all (or all remaining) Services is transferred from the Service Provider to the Nominal Insurer or a third party.
SOW Year	each full year period commencing on the SOW Effective Date (or an anniversary of the SOW Effective Date) and ending on the day before the next anniversary of the SOW Effective Date (or, if earlier, the SOW Termination Date).
Specified Personnel	the Service Provider's Personnel appointed to a Key Position as specified as 'Specified Personnel' in item 5 of Appendix A (Agreement details), the Resource Plan, or a Statement of Work, as applicable, or any replacement for those Personnel approved by the Nominal Insurer in accordance with the Agreement. Specified Person has the corresponding meaning.
State Privacy Laws	state or territory legislation, cabinet administrative instructions or state government standards relating to Personal Information and health records, in performing the Services, including the <i>Privacy and Personal Information Protection Act 1998</i> (NSW) and the <i>Health Records and Information Privacy Act 2002</i> (NSW).
Statement of Work	<p>(a) Statement of Work No. 1; and</p> <p>(b) any subsequent statement of the Services to be performed by the Service Provider under this Agreement, substantially in the form of Schedule 1,</p> <p>and in each case includes any Attachments, as updated from time to time.</p>
Statement of Work No. 1	the initial Statement of Work for Phase 1 (Discovery).
Step-in Event	<p>each of the following:</p> <p>(a) a failure by the Service Provider to observe or perform a provision of the Agreement which failure, in the reasonable opinion of the Nominal Insurer:</p> <p>(i) has, or is likely to have, a materially adverse effect on the quality, continuity of performance or delivery</p>

Term	Definition
	<p>of the Services; or</p> <p>(ii) has, or is likely to have, a materially adverse effect on the Nominal Insurer's reputation;</p> <p>(b) a repudiation of all or any part of the Agreement by the Services Provider;</p> <p>(c) a failure by the Service Provider to observe or perform a provision of the Agreement which failure gives the Nominal Insurer a right to terminate the Agreement; or</p> <p>(d) an Insolvency Event occurs in relation to the Service Provider.</p>
Step-in Rights	the Nominal Insurer's rights, in accordance with clause 47 of the Agreement, to step-in and take control of the provision of all or any part of the Services.
Subcontractor	a subcontractor to the Service Provider who provides products or services to the Service Provider in relation to the Agreement (including the Approved Subcontractors). Subcontract has the corresponding meaning.
Support Services	subject the parties entering into a Statement of Work for the Operational Services, the support services (including Problem rectification services) to be provided by the Service Provider during the Run Phase, as described in the relevant Statement of Work.
System	<p>each of the:</p> <p>(a) Nominal Insurer Underwriting and Claims Platform;</p> <p>(b) Ancillary Systems; and</p> <p>(c) IT Uplift Systems,</p> <p>to be designed, built, delivered, configured, tested, implemented, hosted and provided (as a service) by the Service Provider in accordance with the relevant Statement of Work, including all Software and Services required to deliver the applicable Functional Requirements and Non-Functional Requirements.</p>
System Operational Services Start Date	the date from which the Service Provider will provide Operational Services in respect of a System as set out in the relevant Statement of Work, which shall in any event be no earlier than the date of Acceptance of that System in accordance with this Agreement.
Taxes	any tax, impost, charge, rate or duty, imposed by a Government authority, including any withholding, income, stamp, transaction tax, duty, or charge, or goods and services tax, together with any interest, penalty, charge, fee or other amount imposed or made in respect of the performance of the Agreement.
Technical Documentation	the technical and operator documentation to be provided by the Service Provider under clause 25 of the Agreement.
Term	the term set out in clause 3 of the Agreement.

Term	Definition
Termination Date	the date this Agreement terminates, being the end of the any Disengagement Period in which responsibility for provision of all (or all remaining) Services is transferred from the Service Provider to the Nominal Insurer or a third party.
Test	a test carried out to determine whether a Deliverable, System or the icare Solution, or a Modification to a Deliverable, System or the icare Solution meets the Acceptance Criteria. Testing has the corresponding meaning.
Test Plan	the Plan(s) developed and maintained by the Service Provider as a Document Deliverable in accordance with the relevant Statement of Work and Approved by the Nominal Insurer in relation to testing activities, and may include unit testing, link testing, integration testing, security testing, regression testing, user scenario testing and acceptance testing.
Third Party Material	any Material made available by the Service Provider for the purpose of the Agreement in which a third party holds Intellectual Property Rights, including any Software.
Training Plan	the Plan developed by the Service Provider as a Document Deliverable in accordance with the relevant Statement of Work and Approved by the Nominal Insurer.
Training Services	all activities designed to train nominated Licensee Personnel to use the icare Solution, as further detailed in the relevant Statement of Work.
Unaffected Services	has the meaning given in clause 47.3 of the Agreement.
Update	software which has been produced by the third party Software vendor primarily to overcome defects in, or to improve the operation of the Software without significantly altering the specifications whether or not the Software has also been extended, altered or improved by providing additional functionality or performance enhancement.
User Acceptance Criteria	as defined in the relevant Statement of Work and Test Plan for each Milestone.
Variation Order	a written order for varying the nature or extent of the Services and substantially in the form of Schedule 4 (Variation Order) of the Agreement.
Warranted Materials	the Pre-existing Service Provider Material, Service Provider Software, Software, and Third Party Material provided by the Service Provider to the Nominal Insurer under a Statement of Work, Deliverables and the Contract Material.
Warranty Period	except to the extent otherwise specified in a Statement of Work: <ul style="list-style-type: none"> (a) in the case of a the icare Solution, 120 Days from the Final Acceptance Date; and (b) in the case of a Deliverable, 120 Days commencing from the date of the Acceptance Certificate for that Deliverable.
Warranty Services	the Problem rectification services to be provided by the Service Provider during the Warranty Period as described in clause 14.2, 14.3 and 14.4 and

Term	Definition
	each relevant Statement of Work.
WHS Act	the <i>Work Health and Safety Act 2011</i> (Cth) and any corresponding WHS law as defined in that Act.
WHS Laws	the WHS Act and regulations made under the WHS Act.

Schedule 1 – Template Statement of Work

This Statement of Work is issued under the terms and conditions of the ICT Services Agreement for the Provision, Implementation and Support of the icare Solution between Insurance and Care NSW on behalf of the Workers Compensation Nominal Insurer (**Nominal Insurer**) and Capgemini Australia Pty Limited (**Service Provider**), executed on or about 1 February 2016 (the **Agreement**). Once executed, this Statement of Work will be incorporated into and will form part of the Agreement. To the extent of any inconsistency between the terms of an executed Statement of Work and the Agreed Terms, the Agreed Terms will prevail (refer to clause 2.3 of the Agreement).

Note: The format of this Schedule is provided as an example only and may be amended to address particular Nominal Insurer requirements. Please use attachments if required.

	Item	Details
1.	Statement of Work No.	[Insert]
2.	Statement of Work commencement date	[This Statement of Work commences on the date that the last party signs the Statement of Work] or [insert specific date].
3.	Initial period of Statement of Work	[Insert the initial period of time for which the Statement of Work will continue, eg 6 months]
4.	Statement of Work option periods	[Insert option period eg, 2 periods each being 3 months in duration. Otherwise insert 'not applicable']
5.	Description of the Services (including for example: <ul style="list-style-type: none">- Design, Build and/or Implementation Services- integration Services;- Warranty Services;- data migration;- business change and stakeholder management;- applicable Milestone Dates; and- the Deliverables, Document Deliverables and Technical Documentation to be supplied under this Statement of Work.	[Insert here or attach additional pages]
6.	Key Positions and Specified Personnel (clause 48)	[Insert Key Positions and names of Specified Personnel that are additional to those specified in item 5 of Appendix A to the Agreement. Otherwise insert 'not applicable']

	Item	Details
7.	Cloud Services (clause 17.1)	<i>[Insert details of the Cloud Services to be provided by the Service Provider (and in particular, the data control and audit information required in clause Schedule 12). Otherwise insert 'Not Applicable'.]</i>
8.	Training Services (clause 19)	<i>[Insert details of any training requirements. Otherwise insert 'Not Applicable'.]</i>
9.	Linked SOW? (clause 26.6)	<i>[Note – state "Yes" or "No". If "Yes", list all the other Statements of Work which are linked to this SOW (SOW names and numbers).]</i>
10.	Performance requirements and any applicable Service Levels	<i>[Insert details of the performance requirements and any applicable Service Levels to be achieved by the Service Provider. Otherwise insert 'Not Applicable'.]</i>
11.	Reports (clause 33)	<i>[Insert details of required reports, including content, frequency (eg. weekly, monthly) and dates due. Otherwise insert 'Not Applicable'.]</i>
12.	Meetings (clause 34)	<i>[Insert details of attendees, frequency (eg. weekly, monthly) and place of meetings. Otherwise insert 'Not Applicable'.]</i>
13.	Testing (clauses 26 and 27)	<i>[Insert details of Testing and/or End-to-End Testing requirements, including Acceptance Criteria and/or End-to-End Testing Acceptance Criteria and any other relevant information that is not already specified in the Test Plan. Otherwise insert 'Not Applicable'.]</i>
14.	Disengagement Services (clause 70)	<i>[Insert details of the Disengagement Services to be performed by the Service Provider, to the extent that the requirements are not already reflected in clause 70 and the Disengagement Plan. Otherwise insert 'Not Applicable'.]</i>
15.	Termination charges (clauses 10.1 and 69.1).	<i>[insert details of any amounts that may be payable on termination of the Statement of Work for convenience]</i>
16.	Step in (clause 47.1)	Are Step-in Rights excluded from this SOW? [Y/N]
17.	Escrow (clause 56.1)	Is escrow of source materials for Software or Service Provider Software provided under this SOW required? [Y/N]

Attachment A to the Statement of Work – Pricing

Note: Insert details of all relevant charges, costs or fees for the performance of the Services and provision of Deliverables and when each item is payable.

The format of this Attachment is provided as an example only and may be amended to address particular Nominal Insurer requirements.

1. Summary of Charges

Note: Insert summary of the total Charges payable under the Statement of Work.

The Service Provider must specify all assumptions affecting the Charges, Services and Deliverables. The Service Provider must provide a reference identifier including, where appropriate, applicable Charge for each assumption, and clearly explain the impact of the assumption on the Charges.

Where there are no assumptions, mark as 'Not Applicable'.

2. Milestone Payments

Note: Insert Milestone Payment amounts against the Milestone Dates. If Milestone Payments are not applicable, mark as 'Not Applicable'.

Milestone Date	Milestone/Deliverable	Milestone Payment	GST component	Milestone Payment (inc GST)
Sub total				
Add GST				
TOTAL				

3. Hourly rates

Personnel	Hourly rate (exclusive of GST)	GST component	Charges (inc GST)
Sub total			
Add GST			
TOTAL			

4. Daily rates

Personnel	Daily rate (ex GST)	GST component	Charges (inc GST)
Sub total			
Add GST			
TOTAL			

5. Pass through charges

Note: Specify any applicable pass through charges here.

6. Service Rebates (clause 46)

Note: If Service Rebates are not applicable, mark as 'Not Applicable'.

Service Rebates will apply to the following Critical Service Levels:

Critical Service Level	Service Rebate amount

7. Invoicing requirements

Note: Specify invoicing requirements here.

Attachment B to the Statement of Work – Cloud Services

[Drafting Note: Cloud Services provisions have been included in this Attachment as a starting point for the applicable terms that would apply to Cloud Services provided under a Statement of Work. These clauses are likely to be subject to some variation depending on what the cloud service provider is able to offer or agree to.]

1. Rights to use Cloud Services

The Service Provider grants to the Licensees for the Term (including any Disengagement Period) an irrevocable right to:

- (a) access, receive and use the Cloud Services;
- (b) adapt and configure the Cloud Services to the extent necessary to meet the requirements of the Project Documentation;
- (c) Test, evaluate and confirm the suitability and operation of the Cloud Services;
- (d) remedy, or engage a third party to remedy, Problems under clause 14.3;
- (e) enable the Nominal Insurer, or a third party engaged on behalf of the Nominal Insurer, to exercise the Step-in Rights under clause 47; and
- (f) assign the rights in this clause 17.4 to other Licensees where those Licensees require the Services.

2. Data control and audit

The Service Provider must:

- (a) not vary the data centre location specified in the relevant Statement of Work without the prior written consent of the Nominal Insurer;
- (b) apply to the Nominal Insurer Data the level of security and encryption that is specified in the relevant Statement of Work;
- (c) implement and comply with any business continuity plan specified in the relevant Statement of Work;
- (d) implement and comply with the retention and disposal requirements specified in the relevant Statement of Work; and
- (e) ensure the accessibility, usability and preservation of Nominal Insurer Data does not change detrimentally in any material respect as a result of any changes made by the Service Provider to the Cloud Services and subject to any agreed down time.

3. Emergency maintenance

- (a) In this clause 3, **Emergency** means an actual or likely widespread security risk or imminent failure of the Cloud Services.
- (b) If an Emergency occurs, the Service Provider must take all reasonable steps to avoid a down time as a result of that Emergency.

- (c) If the only way to resolve the Emergency is to cause a down time, the Service Provider must:
 - (i) notify the Nominal Insurer immediately;
 - (ii) conduct all work required to rectify the Emergency as soon as possible within the standard maintenance windows or at another time agreed by the Nominal Insurer; and
 - (iii) take all reasonable steps to minimise the impact and length of any down time.
- (d) Nothing in this clause 3 limits the obligations of the Service Provider to comply with the Service Levels or its other obligations under the Agreement.

4. Routine back-ups

The Service Provider must, subject to clauses 5 and 6:

- (a) conduct a back-up of the Nominal Insurer Data hosted by it nightly and keep and store each back-up offsite for at least 30 days after the date on which it was created; and
- (b) conduct a full back-up of the Nominal Insurer Data hosted by it at the end of each:
 - (i) week; and
 - (ii) month,

and keep and store each back-up offsite for at least six months after the date on which it was created.

5. Storage

The Service Provider must keep and store offsite the first full back-up set created in each calendar month for the Cloud Services Term.

6. Backups on request

If requested by the Nominal Insurer, the Service Provider must perform a backup for all Nominal Insurer Data and supply that backup to the Nominal Insurer within the timeframe specified by the Nominal Insurer (acting reasonably).

7. Ability to conduct a restoration

The Service Provider must ensure that it has the capability to conduct a complete restoration (roll-back) of the Cloud Services and associated data (a **Restoration**) at any time between the end of the previous Business Day immediately prior to the failure and as close as possible to the point of failure.

8. Restorations required because of Problems

If a Restoration is required because of a Problem, the rectification Service Levels that apply to the relevant Problem classification will apply to the Restoration.

9. Documentation

- (a) Cloud Services include the provision of all necessary amendments, revisions and updates of the Documentation, including Technical Documentation.

- (b) If the Service Provider rectifies a Problem in a Deliverable or the icare Solution or otherwise substitutes or Modifies a Deliverable or the icare Solution, it must within 14 Days of such correction, substitution or Modification ensure that any consequential amendments to the Documentation are implemented and supplied to the Nominal Insurer.

Schedule 2 – Governance Framework

Schedule 3 – Pricing

Schedule 4 – Variation Order

This Variation Order (including its attachments, if any) serves to vary the Agreement in accordance with the terms set out below. Unless specifically stated in this Variation Order, all terms and conditions of the Agreement continue unaffected.

1.	Variation Order number	
2.	Raised by	
3.	Details of change (use attachments if required)	
4.	Implementation date of Variation Order	
5.	Effect on icare Solution, Deliverables and / or Services	
6.	Plan for implementing the change	
7.	Effect on Charges	
8.	Effect on Service Levels	
9.	Effect on Project Documentation	
10.	Impact on end users	
11.	Other relevant matters (eg transitional impacts)	

Insurance and Care NSW on behalf of the Workers Compensation Nominal Insurer

Name (print)

Position

Signature

Date

Service Provider

Name (print)

Position

Signature

Date

Schedule 5 – Acceptance Certificate

Certificate of Acceptance issued by the Nominal Insurer to the Service Provider pursuant to the ICT Services Agreement for the Provision, Implementation and Support of the icare Solution between Insurance and Care NSW on behalf of the Workers Compensation Nominal Insurer and Capgemini Australia Pty Limited

The Nominal Insurer acknowledges that the following Deliverables, System or icare Solution have been provided by the Service Provider and are Accepted for the purposes of the Agreement subject to the conditions or qualifications stated:

Deliverables / System / icare Solution	Conditions/qualifications attached to Acceptance

Nominal Insurer representatives
Name (print)
Position
Signature
Date

Name (print)
Position
Signature
Date

Subject matter expert
Name (print)
Position
Signature
Date

Schedule 6 – Deed of Confidentiality and Privacy

Parties

Name **Insurance and Care NSW on behalf of the Workers Compensation Nominal Insurer (ABN 16 759 382 489)**

Short form name **Nominal Insurer**

Name **[Insert name]**

Short form name **Confidant, I, me and my**

Background

- E The Nominal Insurer requires the provision of certain services.
- F Capgemini Australia Pty Limited (**Contractor**) has agreed to provide services to the Nominal Insurer under an agreement dated 1 February 2016 (**Agreement**).
- G The Confidant provides the undertakings set out below in respect of work to be performed, and information to be acquired, directly or indirectly in connection with the Agreement.

Agreed terms

1. Definitions

Confidential Information means information that is by its nature confidential and:

- (a) is designated by the Nominal Insurer as confidential and is described in Schedule 7 (Designated Confidential Information) of the Agreement; or
- (b) the Confidant knows or ought to know is confidential; or
- (c) relates to:
 - (i) the Services;
 - (ii) the financial, the corporate and the commercial information of a party to this Agreement;
 - (iii) the affairs of a third party (provided the information is non-public); and
 - (iv) the strategies, practices and procedures of the state of New South Wales and any information in the Service Provider's possession relating to the New South Wales public service,

but does not include information that:

- (d) is or becomes public knowledge otherwise than by breach of the Agreement or any other confidentiality obligation;

- (e) is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt; or
- (f) has been independently developed or acquired by the receiving party.

Personal Information has the meaning it has in the *Privacy Act 1988* (Cth).

2. Access

I understand that in the course of performing duties under the Agreement, I may have access to Personal Information and Confidential Information.

3. Non-disclosure

- (a) I will treat as secret and confidential all Personal Information and Confidential Information to which I have access or which is disclosed to me.
- (b) If the Nominal Insurer grants its consent for me to disclose Personal Information or Confidential Information, it may impose conditions on that consent. In particular, the Nominal Insurer may require that I obtain the execution of a deed in these terms by the person to whom I propose to disclose the Personal Information or Confidential Information.
- (c) My obligations under this deed will not be taken to have been breached where I am required by law to disclose the Personal Information or Confidential Information.

4. Restriction on use

- (a) I will use the Personal Information or Confidential Information only for the purpose of my dealings with the Nominal Insurer (whether directly or indirectly).
- (b) I will not copy or reproduce the Personal Information or Confidential Information without the approval of the Nominal Insurer, will not allow any other person outside the Nominal Insurer access to the Personal Information or Confidential Information and will take all necessary precautions to prevent unauthorised access to or copying of the Personal Information or Confidential Information in my control.

5. Powers of the Nominal Insurer

Immediately on request by the Nominal Insurer, I must deliver to the Nominal Insurer all documents in my possession or control containing Personal Information or Confidential Information.

6. Privacy Act obligations

I agree to abide by the provisions of the *Privacy Act 1988* (Cth), including the privacy principles set out in that Act, in respect of both Personal Information and Confidential Information, whether or not I am legally bound to comply with that Act and as if the definition of personal information in that Act includes Confidential Information.

7. Survival

This deed will survive the expiry or termination of any contract between the Contractor and me providing for the performance of services or the provision of goods by me (whether directly or indirectly).

8. Applicable law

This deed will be governed by, and construed in all respects in accordance with, the law of the New South Wales and I agree to submit to the applicable jurisdiction of the Courts of that state in respect of all matters arising under, or in relation to, this deed.

EXECUTED as a deed.

**Signed, sealed and delivered by
Insurance and Care NSW on behalf of the
Workers Compensation Nominal Insurer**
by its duly authorised representative in the
presence of

_____ Signature of witness	←	_____ Signature of representative	←
_____ Name of witness (print)		_____ Name of representative (print)	
_____ Date		_____ Position of representative (print)	

**Signed, sealed and delivered by [Name of
confidant]** in the presence of

_____ Signature of witness	←	_____ Signature of confidant	←
_____ Name of witness (print)			
_____ Date			

Schedule 7 – Designated Confidential Information

1. Confidential Information of the Nominal Insurer

1.1 Agreement provisions / Schedules

Item	Period of confidentiality
Sensitive information of a business, commercial or financial nature	Perpetual

1.2 Agreement-related Material

Item	Period of confidentiality
Sensitive information of a business, commercial or financial nature	Perpetual
Nominal Insurer Data	Perpetual
NISP Program Business Case	Perpetual

2. Confidential Information of the Service Provider

2.1 Agreement provisions / Schedules

Item	Period of confidentiality
Sensitive information of a business, commercial or financial nature (includes termination charges, liability and insurance related information)	Perpetual
Schedule 3 (Pricing)	5 years

2.2 Agreement-related Material

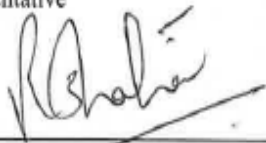
Item	Period of confidentiality
Sensitive information of a business, commercial or financial nature	Perpetual
Pre-existing Service Provider Material	Perpetual
Any information relating to the Service Provider's other customers (including pre-contract references).	Perpetual

Schedule 8– Disengagement

Signing page

EXECUTED as an agreement.

Signed for and on behalf of the **Insurance and Care NSW on behalf of the Workers Compensation Nominal Insurer (ABN 16 759 382 489)** by its duly authorised representative



Signature of authorised representative

VIVEK BHATIA

Name of authorised representative (print)

01/02/2016

Date



Witness

Robert D Cooney

Name of witness (print)

Executed by Capgemini Australia Pty Limited (ABN 11 092 284 314) by its duly authorised representative



Signature of authorised representative

DEEPAK NANGIA

Name of authorised representative (print)

01/02/2016

Date

+



Witness

ASHNA ISLAM

Name of witness (print)