

General Lines and HBCF Claim Service Provider Formal Instrument

Parties	
1.	NSW Self Insurance Corporation ABN 97 369 689 650 ("SI Corp") and
2.	Insurance and Care NSW ABN 16 759 382 489 ("icare") of 321 Kent Street, Sydney NSW 2000 ("SI Corp" and "icare" collectively referred to as the "Principal")
3.	Gallagher Bassett Services Pty Limited ABN 68 009 778 018 of Level 15, 144 Edward Street, Brisbane QLD 4000 (" Claims Service Provider ")
Recitals	
A	NSW Self Insurance Corporation is constituted under the <i>NSW Self Insurance Corporation Act 2004</i> (NSW) and is a statutory body which holds and is responsible for all New South Wales Government insurance assets and liabilities.

- B NSW Self Insurance Corporation has the following functions set out in section 8 of the *NSW Self Insurance Corporation Act 2004* (NSW) with respect to the Government managed fund schemes:
- (a) to operate one or more Government managed fund schemes (including the function of establishing, reorganising, amalgamating, dividing or winding up such schemes);
 - (b) to enter into agreements or arrangements with other persons to provide services (as agents or otherwise) in relation to the operation of any Government managed fund scheme;
 - (c) to enter into insurance or other agreements or arrangements to cover the liabilities to which a Government managed fund scheme applies; and
 - (d) to act for the State or an authority of the State in dealing with claims under a Government managed fund scheme (including the recovery of amounts payable to the State or an authority of the State in connection with such claims).
- C Insurance and Care NSW (icare) was created on 1 September 2015 by the *State Insurance and Care Governance Act 2015 (SICG Act)*. icare provides services to the SI Corp and the Building Insurers' Guarantee Corporation and others pursuant to section 10 of the SICG Act.
- General Lines**
- D The Treasury Managed Fund ("**TMF**") is a NSW Government managed fund scheme. The TMF covers the asset and liability risk of participating Government agencies ("**Agencies**"). The Pre-Managed Fund ("**PMF**") and the Generator Scheme are schemes also operated by SICorp.
- E The Statement of Coverage, as amended from time to time, sets out the arrangements that dictate the New South Wales Government's response to Agencies when loss or damage to the assets and liability risk of Agencies is suffered.
- F SICorp also carries on the business of providing principal arranged construction insurance with respect to major capital works projects in New South Wales through the Construction Risks Insurance Fund ("**CRIF**"). The CRIF underwrites State construction risks (including the risks of nominated construction contractors and sub-contractors) such as public liability, product liability, environmental liability, professional indemnity and material damage.

Home Building Compensation Fund

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Part 6 of the *Home Building Act 1989* regulates insurance under the Home Building Compensation Fund (previously known as "home warranty insurance" and otherwise known as "insurance under Part 6 of the *Home Building Act*").

SICorp has the following functions with respect to the Home Building Compensation Fund ("**HBCF**"):

- (a) to carry on the business of providing insurance under Part 6 of the *Home Building Act 1989*,
- (b) to manage the HBCF; and
- (c) to enter into contracts, agreements or other arrangements with building management service providers and other persons (including reinsurers) for services relating to the exercise of the SICorp's functions in connection with the provision of insurance under the HBCF and the management of the HBCF.

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icare engaged in a direct negotiation, on behalf of the NSW Self Insurance Corporation, for the provision of the Services.

The Claim Service Provider has represented and represents that it has the skills, qualifications and experience necessary to perform and manage the Services in an efficient and cost effective manner, with a high degree of quality and responsiveness. The Principal has agreed to enter into the Agreement in reliance on the Claims Service Provider's representations during the direct negotiation.

The Claim Service Provider agrees to provide, and the Principal agrees to procure, the Services in accordance with the terms of this Agreement.

1. Operation of Formal Instrument

- (a) This Formal Instrument incorporates the General Terms and all other documents set out in clause 1.3 (“Documents forming part of the Agreement”) of the General Terms.
- (b) The Claims Service Provider must provide the Services to the Principal, on the terms and conditions of the Agreement formed by the execution of this Formal Instrument.
- (c) Capitalised terms are defined in clause 2 (“Definitions”) of this Formal Instrument or the Glossary.

2. Definitions

“**Agency**” means budget sector entities and agencies of the Government of New South Wales, and participating non-budget sector entities, instrumentalities and agencies of the Government of New South Wales, that are currently included in TMF's Statement of Cover under the Portfolio.

“**Portfolio**” means the claims portfolio set out in the Agreement Details below, as may be amended from time to time in accordance with this Agreement.

“**Value Added Services**” means the services provided directly by the Claims Service Provider to an Agency as permitted under the Agreement and do not include the Services.

3. Appointment of Claims Service Provider



- (a) The Principal appoints the Claims Service Provider to provide the Services and to act as an agent of the Principal in accordance with this Agreement for the Period of Services.
- (b) The Claims Service Provider is to represent itself as an agent of the Principal in all dealings with Agencies, Claimants (and their agents), Builders, Homeowners and Third Party Service Providers and suppliers in relation to the Schemes.

4. Agreement Details

1	Commencement Date (Glossary)	1 July 2022
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2	Term (clause 5 of General Terms)	Initial Agreement Period is for 2 years from 1 July 2022 until 30 June 2024 with an option to extend for 2 Extended Periods of 1 year each. The first Extended Period is to be from 1 July 2024 until 30 June 2025 and the second Extended Period to be from 1 July 2025 until 30 June 2026.	
3	Portfolio (clause 2 of this Formal Instrument)	As set out in Schedule 1 (Portfolio Definitions)	
4	Additional Scheme Principles (clause 2 of General Terms)		
5	Relevant Fund	Home Building Compensation Fund Treasury Managed Fund and other Schemes	
6	Key Personnel (Glossary)	Name	Title

7	Approved Locations (Glossary)	The parties agree that the following facilities are Approved Locations on and from the Commencement Date:			
		Approved Location	Services to be performed from the Approved Location	Personal information as defined in the Privacy and Personal Information Protection Act 1998	Health information as defined in the Health Records and Information Privacy Act 2002
		Level 10, 20 Bond St Sydney NSW	All Services under the agreement	Yes	Yes
		333 Collins St Melbourne Vic	HBCF claims management and Support Services Administration	Yes	No
		144 Edward St Brisbane QLD	All Services under agreement excluding Health Claims Management.	Yes	No
		115 Greenfell St, Adelaide SA	Claims management services excluding Health.	Yes	No
		128 Wrights Road Christchurch NZ	HBCF support services	Yes	No
8	SI Corp Core IT Systems (Glossary)	HBCF Core IT Systems: As at the Commencement Date these are: Claims and Issuance Management System (CIMS) HBCF Portal Claims Quoting System icare hbcf Data Warehouse Qlik icare Customer Experience platform Salesforce Access:			

		Completion of the HBCF User Access form, as amended from time to time and approved by the Principal General Lines: IfNSW Portal IfNSW EDW and Informatica JIRA OKTA Qlik Salesforce SAS MS O365 & MS Teams											
9	Service Company (Glossary)	Not applicable											
10	Key Subcontractor Register (clause 26.4 of General Terms)	No Subcontractors utilised.											
11	Principal Logos (Glossary)	<div> HBCF</div> <div> Insurance for NSW</div>											
12	Principal Authorised Representative (Glossary)	<table><tr><td>Name</td><td>Grant McDonald</td></tr><tr><td>Title</td><td>General Manager, GL Claims Insurance for NSW and HBCF</td></tr><tr><td>Address</td><td>Level 15, 321 Kent Street, Sydney 2000</td></tr><tr><td>Telephone</td><td>+61 4 [REDACTED]</td></tr><tr><td>Email</td><td>Grant.Mcdonald@icare.nsw.gov.au</td></tr></table>	Name	Grant McDonald	Title	General Manager, GL Claims Insurance for NSW and HBCF	Address	Level 15, 321 Kent Street, Sydney 2000	Telephone	+61 4 [REDACTED]	Email	Grant.Mcdonald@icare.nsw.gov.au	
Name	Grant McDonald												
Title	General Manager, GL Claims Insurance for NSW and HBCF												
Address	Level 15, 321 Kent Street, Sydney 2000												
Telephone	+61 4 [REDACTED]												
Email	Grant.Mcdonald@icare.nsw.gov.au												
13	Claims Service Provider Authorised Representative (Glossary)	<table><tr><td>Name</td><td>Scott Newland</td></tr><tr><td>Title</td><td>General Manager – Government and Longtail Claims</td></tr></table>	Name	Scott Newland	Title	General Manager – Government and Longtail Claims							
Name	Scott Newland												
Title	General Manager – Government and Longtail Claims												

		Address	Level 15, 144 Edward st, Brisbane QLD 4000	
		Telephone	+61 4 [REDACTED]	
		Email	Scott_Newland@gbtpa.com.au	
14	Addresses for notices (clause 62.2 of General Terms)	Principal Property Address: Level 15, 321 Kent Street, Sydney NSW 2000 Email: Grant.Mcdonald@icare.nsw.gov.au Attention: Grant McDonald General Manager, GL Claims Insurance for NSW and HBCF		
		Claims Service Provider Property Address: Level 15, 144 Edward St Brisbane QLD 4000 Email Address: Scott_Newland@gbtpa.com.au Attention: Scott Newland General Manager Government and Longtail Claims		
15	Financial Security (clause 47.2 of General Terms)	The Parties will use reasonable endeavours to agree on the amount of the Financial Security by 31 December 2022. If the Parties have not reached an agreement on the amount of the Financial Security by 31 December 2022, then the Financial Security amount will be \$2.1m.		
16	Claims Service Provider Information Systems (Glossary)	[REDACTED]		

5. Special Conditions

5.1 Data Quality

The Claims Service Provider will continually monitor the level of Data quality and will maintain the highest level of Data quality and integrity and for use in analysis and reporting. The Claims Service Provider will contribute to efforts to maintain and improve Data quality and integrity by accurately and consistently recording Claim details and coding of Claims by populating claim Data fields.

5.2 Removal from panel by the Principal

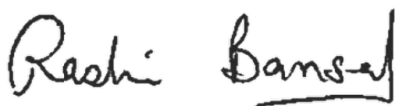
Without limiting clause 15.12 of the General Terms, the Principal may instruct the Claims Service Provider:

- (a) to use or not use a particular Third Party Service Provider in a specific case; or
- (b) to remove a Third Party Service Provider from its panel for the purposes of providing Services under the Agreement.

SIGNING PAGE

EXECUTED as an Agreement.

Executed for and on behalf of **Insurance and Care NSW ABN 16 759 382 489 and NSW Self Insurance Corporation ABN 97 369 689 650** by its duly authorised representative:



Signature of authorised representative

Rashi Bansal

Name of authorised representative (print)

In the presence of:



Signature of witness

Vanessa Dale

Name of witness (print)

4/10/2022

Date

Executed by **Gallagher Bassett Services Pty Limited ABN 68 009 778 018** in accordance with section 127 of the Corporations Act 2001:



Signature of director

John McNamara

Name of director (print)

29/09/2022

Date



Signature of company secretary

James Lewis

Name of director / company secretary (print)

General Terms

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General Terms

SECTION A - DEFINITIONS AND INTERPRETATION

1. Interpretation within the Agreement

1.1 Definitions

The terms used in this Agreement have the meanings set out in the Glossary, unless the context, or this Agreement, requires otherwise.

1.2 Interpretation

In this Agreement except where the context otherwise requires:

- (a) a reference to this Agreement includes any Direction issued under this Agreement, and includes where the Agreement has been assigned, novated, or otherwise transferred, in accordance with this Agreement;
- (b) a reference to any Law will be deemed to extend to include a reference to all Laws amending, consolidating, replacing or overruling that Law from time to time;
- (c) a reference to any Applicable Standard will be deemed to extend to a reference to any amended or replacement Applicable Standard from time to time;
- (d) a reference to a clause, schedule or appendix is a reference to a clause, schedule or appendix to this Agreement.
- (e) the singular includes the plural and vice versa;
- (f) a reference to anything (including any amounts) is a reference to the whole or each part of it.
- (g) a reference to a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
- (h) a reference to one gender includes every other gender;
- (i) persons will be taken to include any natural or legal person;
- (j) 'include', 'includes' and 'including' means 'including without limitation';
- (k) "absolute" means absolute and unfettered;
- (l) the headings and index in this Agreement are for convenience only and do not affect the interpretation of this Agreement;
- (m) in the construction and interpretation of this Agreement, no rule of construction applies to the disadvantage of the Principal on the basis that the Principal initiated or drafted the Agreement or any part of it;
- (n) any Approval given by the Principal does not release the Claims Service Provider from

performing its obligations in accordance with this Agreement;

- (o) a reference to a person which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable any other person or body in its place, must be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable;
- (p) if any time limit under this Agreement falls on a non-Business Day then that time limit will be deemed to have expired on the next Business Day;
- (q) if a period of time dates from a given day of an act or event, it is to be calculated exclusive of that day;
- (r) a day is to be interpreted as the period commencing at midnight and ending 24 hours later;
- (s) where a word or phrase is given a defined meaning in this Agreement, any other part of speech or other grammatical form in respect of such word or phrase will have a corresponding meaning;
- (t) unless the context requires otherwise, a term used in this Agreement that is defined in a Schedule to this Agreement has the meaning given to it in that Schedule.
- (u) where there is a reference to Insurance and Care NSW, that reference is to Insurance and Care NSW acting in its own capacity, unless expressly stated otherwise;
- (v) where a reference applies to the doing of anything by the Principal including giving any notice, Approval, Direction or waiver, this may be done by a duly authorised officer of the Principal;
- (w) a reference to dollars or \$ means Australian dollars.
- (x) where the Claims Service Provider is comprised of more than one person, each obligation of the Claims Service Provider will bind those persons jointly and severally and will be enforceable against them jointly and severally; and
- (y) a reference to a group of persons is a reference to all of them collectively and to any two or more of them collectively and to each of them individually.

1.3 Documents forming part of the Agreement

The following documents form the Agreement:

- (a) Special Conditions in the Formal Instrument;
- (b) the remaining provisions of the Formal Instrument;
- (c) clauses 1 to 63 in these General Terms;
- (d) the Glossary;

- (e) the Schedules;
- (f) any Project Services Order entered into under the Agreement;
- (g) Attachments and Appendices to a Schedule (including Manuals);
- (h) Manuals which are not Attachments or appendices to a Schedule;
- (i) any Direction;
- (j) any document annexed to, or incorporated by reference into, the Agreement; and
- (k) any response received in the Negotiation Process.

1.4 Order of Priority

If there is a conflict between any documents forming part of this Agreement, then those documents will be given the order of priority in subclause 1.3, such that the conflicting provision in the document lower in the order of priority will be read down or severed to the extent necessary to resolve the conflict.

2. Scheme Principles

2.1 Achievement of Scheme Principles

- (a) The Claims Service Provider agrees that it must perform its obligations under this Agreement and act in all respects under this Agreement and in connection with the Schemes, in a way which is consistent with, and facilitates the achievement of, the Scheme Principles.
- (b) The Claims Service Provider acknowledges and agrees that the Principal and the Scheme are dependent on the Claims Service Provider fulfilling, to the best of its ability, the Scheme Principles, and the achievement of the Scheme Principles is only one requirement of this Agreement.
- (c) The nature and extent of the Claims Service Provider's obligations under this Agreement are not to be construed or interpreted solely by reference to the Scheme Principles or their achievement.

2.2 Definition of Scheme Principles

- (a) The Scheme Principles are:
 - (i) enhanced performance: high productivity and efficiency including the adoption of significant automation and standard solutions and processes;
 - (ii) flexibility and agility: scalability and the ability to flex along with changes to the Principal's business;
 - (iii) high capability: leverages expert capability;

- (iv) adaptability: supports the Principal in the future including the ability to optimally integrate or interface with a future IT solution of the Principal and other third party systems;
 - (v) value for money: commercially competitive pricing with the best balance of price and quality;
 - (vi) enhanced customer experience: reliable, easy to use and generates customer confidence;
 - (vii) stable environment: stable and effective infrastructure and processing environment;
 - (viii) enhanced useability: enhanced useability that is intuitive and easy to use;
 - (ix) regulatory and corporate compliance: compliant with relevant legislation, regulatory policies, Principal's policies;
 - (x) effective interfaces to other systems of the Principal: seamlessly interface with the Principal's systems in the most effective way;
 - (xi) incorporates current best practices;
 - (xii) innovation: designed to continuously innovate and incorporate emerging and new best practices;
 - (xiii) effective partnership: establishes a sustainable partnership between the Principal and the Claims Service Provider to deliver quality Services;
 - (xiv) any other principles set out in the Agreement Details; and
 - (xv) manages and mitigates risk: effective management of risks.
- (b) The Scheme Principles include "General Lines Objectives", "Insurance for NSW Objectives", and "HBCF Objectives".
 - (c) The Claims Service Provider will manage the Claims within its Portfolio to achieve the General Lines Objectives, icare Insurance for NSW Objectives, and the HBCF Objectives and without limitation will, together with its Personnel, demonstrate the highest possible ethical standards in its, or their, dealings and conduct in the provision of the Services under this Agreement and work and communicate effectively with and maintain the confidence of all stakeholders affected by this Agreement, including Agencies, at all times during the Term of this Agreement.
 - (d) Without limiting clause (b), the Claims Service Provider will at all times during the Term ensure it and its Personnel and any Service Company (and its Personnel), involved in the delivery of the Services comply with the Schedules.
 - (e) The Parties agree that achievement of the General Lines Objectives, icare Insurance for NSW Objectives, and the HBCF Objectives is only one requirement of this

Agreement, and the nature and extent of the Claims Service Provider's obligations are not to be construed or interpreted solely by reference to the General Lines Objectives, icare Insurance for NSW Objectives, or the HBCF Objectives or their achievement.

- (f) Notwithstanding clause 2.2(e), the Parties agree that the Claims Service Provider's obligations under this Agreement will be interpreted, to the greatest extent possible, consistently with the General Lines Objectives, icare Insurance for NSW Objectives, and the HBCF Objectives. Where there is any ambiguity in the interpretation of any of the Claims Service Provider's obligations, the interpretation that furthers the objectives will be preferred to any other interpretation.

3. Governance

3.1 Governance and Board Structure

- (a) Subject to clause 3.1(b) below, the board of the Claims Service Provider will at all times have two independent directors who are not executives of the Claims Service Provider or any of the Claims Service Provider's Related Bodies Corporate.
- (b) Paragraph 3.1(a) above does not apply where;
 - (i) the Claims Service Provider's immediate parent Company is authorised by APRA and complies with any prudential standard relating to governance determined by APRA; or
 - (ii) The Board of the Claims Service Provider's parent Company has two independent directors who are not executives of the Claims Service Provider's parent Company.
- (c) A director is not independent if the director is not independent for the purposes of the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations* (4th Edition).

3.2 Directions from the Principal

The Claims Service Provider acknowledges and agrees that the Principal may issue Directions to the Claims Service Provider. Without limiting the Claim Service Provider's obligations, the Claims Service Provider must follow any Directions issued by the Principal to the Claims Service Provider.

3.3 Meetings

The Principal will establish the Meetings specified in Schedule 2 (*Service Specification*) in accordance with that Schedule. The Claims Service Provider will ensure that its Personnel attends and participates in the Meetings as specified in that Schedule.

3.4 Non-exclusive Relationship with the Principal

The Claims Service Provider agrees that its relationship with the Principal is not exclusive and as such, at any time during the Term:

- (a) the Principal may perform any part of the Services itself; or
- (b) the Principal may enter into any arrangements, including agency arrangements, with any third party or Other Claims Service Providers to perform all or any part of the Services or similar services.

3.5 No Guarantee of Volume

- (a) The Principal does not guarantee any volume of Services or allocation of any particular Claims.
- (b) Any information relating to the volume of Services or Claims provided to the Claims Service Provider (whether prior to this Agreement or during the Term) is indicative only and not binding on the Principal or its Personnel.

4. Agency – Duties and Responsibilities

4.1 Scope of Agency

The Principal appoints the Claims Service Provider to provide the Services and to act as an agent of the Principal in accordance with this Agreement for the Period of the Services.

4.2 Acknowledgement

The Claims Service Provider acknowledges and agrees that:

- (a) it owes certain duties to the Principal, including fiduciary duties, to provide the Services in good faith with due care and skill and within the scope of its authority to act and, subject to clause 4.4 below, that these duties are paramount;
- (b) it will perform its obligations under this Agreement, and act in all respects in connection with the Scheme:
 - (i) in a manner which would not place the Claims Service Provider in a position where there is conflict between the Claims Service Provider's duties as a fiduciary and its own interest or a duty to any third party, or between the duty as a fiduciary to two or more persons in the same transaction or matter, without the prior Approval of the Principal;
 - (ii) in a manner that does not detract in any way from the financial sustainability of the Schemes;
 - (iii) in a manner that keeps the Principal fully and promptly informed of all the matters that materially affect the Scheme Principles and the performance of the Agreement.
- (c) the Claims Service Provider's rights as an agent under the law of agency are varied by

this Agreement, including:

- (i) the right to any payment for the performance of the obligations in this Agreement is limited to those set out in subclauses 31.1 and 31.2;
- (ii) the right for indemnity for expenses and other liabilities is limited to those rights described in clause 32 and subclauses 54.12, 56.2 and 56.5;
- (iii) any arrangements, written or otherwise, entered into by the Claims Service Provider with any Agency, Policyholder, Service Provider or any other person, for which this Agreement does not provide authority for the Claims Service Provider to enter into as agent for the Principal, are not arrangements made as agent for the Principal; and
- (iv) to avoid doubt, any arrangements, written or otherwise, entered into by the Claims Service Provider with any Personnel, Subcontractor or Service Company for the purpose of delivering the Services are not arrangements made as agent for the Principal unless such arrangements are authorised by this Agreement or authorised in writing by the Principal;

4.3 The Principal's Obligations

The Principal's obligations or liabilities as a principal under the Law of agency are varied as set out in this Agreement.

4.4 Restrictions on Claims Service Provider's Authority

The Claims Service Provider does not have any authority to:

- (a) perform any act, or make any omission, which is not necessary or not incidental to the performance of its obligations under this Agreement;
- (b) make any false, misleading or deceptive statement or representation;
- (c) not follow any Direction;
- (d) breach any Law;
- (e) make any representation or statement in a manner which a third party could reasonably believe was made:
 - (i) for or on behalf of the Principal in any role other than as acting for or on behalf of the Principal;
 - (ii) in relation to any of the Principal's functions that are described under Law, for which the Claims Service Provider has not been given express authority under this Agreement, including:
 - (A) statements of current or future policy of the Principal or any other person; or

- (B) that the Claims Service Provider is providing any services other than the Services or that the Claims Service Provider is providing insurance;
- (f) appoint any Subcontractor, sub-agent or any person to perform a key or substantial part of any Services in relation to the Scheme, other than as a Key Subcontractor;
- (g) enter into contracts with Service Providers for services in relation to the Scheme other than as agent for the Principal, except to the extent permitted by clause 15;
- (h) create any obligation of employment with any person on behalf of the Principal;
- (i) conduct any Services in relation to Claims arising under the Claims Service Provider's own Policies or those of its Related Bodies Corporate; or
- (j) conduct any litigation or arbitration proceedings as agent for the Principal (including filing a statement of claim or filing a defence), except as expressly set out in this Agreement, including the Manuals, or with the prior Approval of the Principal.

4.5 Claims Service Provider to Represent Itself as Agent of the Principal

Subject to clauses 15 and 25, in performing its obligations under this Agreement, the Claims Service Provider must represent itself as agent of the Principal in all dealings with Agencies, Builders, Claimants, Claimant's agents, Service Providers and any other persons, but only to the extent of the scope of its agency as set out in this Agreement.

4.6 No Misconduct

- (a) The Claims Service Provider must:
 - (i) not use any:
 - (A) information obtained by it in respect of Agencies, Builders or Claims in performing its obligations under this Agreement; or
 - (B) other knowledge gained as a result of its relationship with the Principal, for any purpose that does not relate to the provision of the Services or the performance of its obligations under this Agreement, except as Approved or otherwise Directed by the Principal; and
 - (ii) not, unless permitted elsewhere in the Agreement, make any profit from any of the Principal's property, including the Principal's Confidential Information and the Principal Material without the prior Approval of the Principal.
- (b) The Claims Service Provider acknowledges that:
 - (i) a breach of this subclause 4.6 by the Claims Service Provider; or
 - (ii) a failure by any Related Body Corporate or a Key Subcontractor to conduct itself consistently with the obligations imposed on the Claims Service Provider under this subclause 4.6

entitles the Principal to treat that action as a breach of the obligations of the Claims Service Provider under this Agreement and, without limiting the Principal's rights under this Agreement, to terminate this Agreement under subclause 58.2 (Termination for Cause).

- (c) The Claims Service Provider undertakes not to use the existence of this Agreement or Records to promote the distribution of any general insurance product to an Agency or Builder who is a client of the Principal without the Approval of the Principal during the term of this Agreement.
- (d) The Claims Service Provider must not:
 - (i) enter into any contract, understanding or arrangement in respect of insurance, or insurance brokerage, policy or Claims Management or similar services with any Agency or Builder for which it, or a Related Body Corporate, provides any Services; or
 - (ii) use any service providers in which it has either a direct or indirect control, interest, equity or share as a Service Provider; or
 - (iii) provide, directly or through a Related Body Corporate, any service which is to be paid for by the Principal as a Provider Payment,without prior Approval of the Principal.

4.7 Claims Service Provider Warranties

- (a) The Claims Service Provider represents and warrants on a continuing basis that:
 - (i) it will not enter into any arrangement that impedes or is likely to impede its performance of the Services in a manner, and to a standard, that is satisfactory to the Principal without first obtaining the Principal's consent;
 - (ii) it has the power to enter into and observe its obligations under this Agreement;
 - (iii) it has in full force and effect the licences, consents and authorisations necessary to enter into and perform its obligations under this Agreement. The Claims Service Provider will provide the Principal with copies of Documents relating to the relevant licences, consents and authorisations on request;
 - (iv) it is registered under the GST Act;
 - (v) the signing of, or performance of its obligations under, this Agreement will not violate any Law, judgement, order or decree, nor be a material default under any material contract by which its assets are bound;
 - (vi) it will not sell, dispose of or transfer ownership in:
 - (A) any of the Intellectual Property Rights that are being used in the provision of the Services without the prior approval of the Principal.

Such approval is not to be unreasonably withheld where the Claims Service Provider can provide alternative Intellectual Property Rights that enable the Claims Service Provider to meet its obligations under this Agreement; or

- (B) a substantial portion of its assets without the Principal's prior approval;
- (vii) it has entered into this Agreement solely on the basis of its own investigations and determination as to the liability assumed or to be assumed by the Claims Service Provider and the risk involved in entering into this Agreement;
- (viii) it is not relying on any statement or representation as to any level of profitability, or estimated or expected mark-up costs, that will be provided by the Remuneration;
- (ix) it has examined and acquired actual knowledge of this Agreement, all information provided to the Claims Service Provider prior to signing this Agreement (in connection with the Agreement), the Services and any other information made available to the Claims Service Provider whether by the Principal or from any other source;
- (x) it has examined and taken into consideration all information which is relevant to the risks, contingencies and other circumstances which could in any way affect the Claims Service Provider's decision to offer, enter into or accept this Agreement;
- (xi) it has informed itself of the nature of the Services;
- (xii) it did not rely on any express or implied statement, warranty or representation, whether oral or written, made by or on behalf of the Principal that is not expressly contained in this Agreement;
- (xiii) in making any payments to Service Providers, the Claims Service Provider will comply with all obligations in the Agreement, including in the Claims Management Service Specification, and in the Manuals, relating to internal controls in respect of the payment, collection or handling of money;
- (xiv) any Documentation given by the Claims Service Provider to the Principal (and/or an auditor appointed by the Principal) under clause 54.2 ("Access to Premises, Personnel, Systems and Information") is true, correct and not misleading;
- (xv) the Claims Service Provider's Existing Contract Material, Third Party Contract Material and New Contract Material and the Principal use of such materials will not infringe the Intellectual Property Rights of any person;

- (xvi) the Services and the Contract Material, and their use and enjoyment by the Principal, will not infringe the rights, including Intellectual Property Rights, of any third party; and
 - (xvii) the Foreground Material and Claims Service Provider Material and their use will not infringe the Intellectual Property Rights or Moral Rights of any person;
 - (xviii) the Claims Service Provider is not subject to any Insolvency Event;
 - (xix) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided in clause 29.4; and
 - (xx) anything done by the Claims Service Provider in the course of the provision of the Services and the Deliverables will not infringe the Intellectual Property Rights or Moral Rights of any person.
- (b) Throughout the Term, the Claims Service Provider represents and warrants that:
- (i) the Claims Service Provider and its Personnel (and the Personnel of any Service Company involved in providing the Services) have the relevant time, resources, capacity, expertise, capability, licences, qualifications, and ability to provide the Services to meet their obligations under the Agreement;
 - (ii) it and any Service Company will promptly pay all:
 - (A) payroll tax;
 - (B) applicable workers compensation insurance; and
 - (C) remuneration,
 that is due in accordance with Law to its employees and contractors.
 - (iii) its Equipment and processes that are used to calculate the payment or collection (as appropriate) of amounts of Benefits, or payment to Third Party Service Providers will, in the absence of ad hoc error in data input, correctly calculate the amounts due or payable;
 - (iv) in making any payment or collection (as applicable) of Benefits or payments to Third Party Service Providers the Claims Service Provider will comply with all obligations in the Agreement, including in Schedule 2 (*Service Specifications*), and in the Manuals, relating to Internal Controls in respect of the payment, collection or handling of money; and
 - (v) any Documentation given by the Claims Service Provider to the Principal (and/or an auditor appointed by the Principal), including under subclauses 51.2 and 54.2(b) is true, correct and not misleading.

4.8 Ratification of Acts Beyond Actual Authority

The Principal will not be taken to have ratified any act or omission of the Claims Service Provider which was outside the actual authority of the Claims Service Provider, but which a third party claims was within the ostensible authority of the Claims Service Provider, unless the ratification:

- (a) is Approved by the Principal Authorised Representative;
- (b) sets out the full facts and consequences on which the ratification is based; and
- (c) is provided to the Claims Service Provider;
 - (i) within 20 Business Days of the date of the act or omission, or
 - (ii) such longer period as is reasonable for the Principal to ratify in the circumstances.

4.9 The Principal's Rights

The Principal's rights under this Agreement do not reduce, limit or restrict in any way any function, power, right or entitlement of the Principal under Law, including any rights the Principal has as principal under the Law relating to agency.

5. Term

5.1 Commencement of Agreement and Term

This Agreement commences on the Commencement Date and continues for the duration of the Initial Agreement Period unless terminated earlier.

5.2 Extension of the Agreement

- (a) The Principal may extend the Initial Agreement Period for an Extended Period by giving notice to the Claims Service Provider no later than three (3) months prior to the expiry of the Initial Agreement Period, in which case the Claims Service Provider will continue to perform the Services on the same terms and conditions as set out in this Agreement for the Extended Period.
- (b) The Principal has no obligation to extend this Agreement under this subclause 5.2 (or otherwise), and makes no representation that it will extend this Agreement.

SECTION B - PROVISION OF SERVICES

6. General Provisions Relating to Services

6.1 Performance of Services

The Claims Service Provider must perform the Services during the Term:

- (a) to the Highest Standard;
- (b) diligently and conscientiously, with a high degree of skill and care and to the best of its knowledge and expertise;
- (c) in accordance with the icare Insurance for NSW Operational Plan, the HBCF Business Model and the Service Standards for the Portfolio;
- (d) in accordance with the requirements under this Agreement including any timeframe specified in any Direction given by the Principal from time to time.

6.2 Services to be Provided in Accordance with Law and Policies

The Claims Service Provider must, at all times, in carrying out the Services, comply with:

- (a) all applicable Laws, including the WH&S and Workers Compensation Legislation;
- (b) any policies of the Principal and the New South Wales Government (including those concerning privacy) that are relevant to the provision of the Services and notified by the Principal to the Claims Service Provider in writing, including but not limited to:
 - (i) NSW Cyber Security Policy;
 - (ii) Information Security - Supplier Information Security Standard;
 - (iii) Supplier Information Security Standard Guidelines;
 - (iv) Information Systems;
 - (v) Security Standard;
 - (vi) Information Classification Standard; and
 - (vii) any policy developed in accordance with a scheme for the notification of data breaches legislated by the NSW Government.

Any policies which are notified to the Claims Service Provider after the Commencement Date, will be complied with by the Claims Service Provider within a reasonably agreed timeframe subject to any overriding legal obligations.

6.3 Compliance with Modern Slavery Laws

- (a) In this subclause 6.3, terms not defined elsewhere in this Agreement are given the meaning ascribed to them under the *Modern Slavery Act 2018* (NSW) and its subsequent amendments (the “**Act**”).
- (b) The Claims Service Provider must comply with all applicable modern slavery laws, including that of the Act, and ensure that the Services are not the product of modern slavery within the meaning of the Act. This includes, but is not limited to the Claims Service Provider:

- (i) conducting due diligence in relation to modern slavery in its business and supply chains, and any entities that the Claims Service Provider owns and controls; and
 - (ii) identifying parts of the Claims Service Provider's business and those of its supply chains where there is a risk of modern slavery taking place, and having appropriate processes in place to assess, manage and remediate that risk.
- (c) Where requested by the Principal, the Claims Service Provider must show evidence of its compliance with the Act and clause 6.3(b) above.
- (d) The Claims Service Provider must:
 - (i) comply with any Directions by the Principal that allow it to undertake reasonable steps to ensure that the Services are not the product of modern slavery, including any directions of the NSW Procurement Board under section 175 of the *Public Works and Procurement Act 1912* (NSW),
 - (ii) provide information and assistance to the Principal, icare or its nominee to conduct due diligence or an audit in relation to modern slavery.
- (e) The Claims Service Provider must also observe the following in relation to the *Modern Slavery Act 2018* (Cth) and its subsequent amendments (the "**Federal Act**"):
 - (i) where the Claims Service Provider is deemed a "reporting entity" under the Federal Act, it must comply with its obligations under the Federal Act, including, but not limited to, preparing modern slavery statements annually. The Principal may request to see a copy of such modern slavery statement.
 - (ii) where the Claims Service Provider is not a reporting entity under the Federal Act but has volunteered to submit a voluntary modern slavery statement under Part 1, section 6 of the Federal Act, the Principal may request to see a copy of such voluntary modern slavery statement.

6.4 Service Standards

- (a) The Claims Service Provider must ensure that the Services are conducted in a manner that meets or exceeds the Service Standards in each Reporting Period, during the Term.
- (b) The Service Standards and the method of calculating and interpreting them are set out in Schedule 3 (*Service Standards*).

6.5 Documentation

The Claims Service Provider must ensure that all of the Claims Service Provider's systems and processes used to provide the Services are accurately and completely documented and this Documentation is kept up to date.

6.6 No Restrictions on Rights and Functions of the Principal

Nothing in this Agreement restricts, hinders or prevents the Principal or their Personnel from performing their respective rights or functions under Law.

6.7 Adherence to Manuals

- (a) The Claims Service Provider must ensure that in performing the Services:
 - (i) it complies with any requirement, obligation or specification specified in the Manuals; and
 - (ii) its systems reflect the instructions, file structure and data definitions specified in the Manuals.
- (b) Subject to the process set out in clause 21, the Principal may, from time to time issue:
 - (i) new Manuals relating to the performance of the Services;
 - (ii) updates to the Manuals,and the Claims Service Provider must implement the new Manuals, or updates to the Manuals at no additional cost to the Principal, within the timeframes specified by the Principal.

6.8 Co-operation and Continuous Improvement

- (a) The Claims Service Provider must use every effort to work cooperatively and collectively with Agencies and the Principal to achieve:
 - (i) the Scheme Principles;
 - (ii) continuous improvement in the Schemes.
- (b) It is the aim and intention of the Parties that the Claim Service Provider continually improve its Claims Management performance under this Agreement. As part of achieving this aim the Claim Service Provider's Authorised Representative, as the case may be, will continually:
 - (i) consider and analyse all complaints, incidents and issues;
 - (ii) identify systemic problems with the Claim Service Provider's Claims Management performance and suggest improved procedures or other solutions;
 - (iii) monitor, analyse and suggest possible improvements to the delivery or provision of the Services;
 - (iv) identify and recommend improved or more efficient methods for the Claim Service Provider to perform its obligations under this Agreement; and
 - (v) suggest improvements to the Claim Service Provider which could result in cost savings or improved efficiencies.

- (c) The Claim Service Provider will implement all reasonable recommendations of the Claim Service Provider's Authorised Representative, as the case may be, within a reasonable period of time.
- (d) The Claim Service Provider's Authorised Representative will work co-operatively with the Principal to ensure the delivery of the Services to Agencies, Claimants, Builders and Homeowners in accordance with this Agreement and to resolve any dispute that cannot be resolved between the Claim Service Provider and the Agency directly.
- (e) The Claim Service Provider will provide technical and professional advice and support to Agencies on matters relating to its Portfolio and ongoing training and development to Personnel of the Agencies in accordance with this Agreement including the Claims Management Service Specification.
- (f) The Claim Service Provider will co-operate with the Principal, other claims service providers, the Principal's Actuary, SIRA and the Reinsurance Services Provider in the day-to-day administration of this Agreement, and the Claims Service Provider must positively respond to all reasonable invitations by Principal to attend meetings, and all reasonable requests by Principal for information.
- (g) The Claims Service Provider authorises the Principal and the Principal's Personnel to make available all and any information in relation to the Claims Service Provider's performance of this Agreement to all persons interested in the operation of the Home Building Compensation Fund and HBCF Insurance including: NSW Treasury, NSW Department of Premier and Cabinet, NSW Self Insurance Corporation, NSW Fair Trading, NSW Department of Customer Service, SIRA and any other relevant Government Agencies, other claims service providers, the Principal's Actuary and the Reinsurance Services Provider, if any.
- (h) The Claims Service Provider releases and indemnifies the Principal and the Crown in respect of any matter arising out of the provision of information by the Claims Service Provider in connection with this Agreement, including releasing the Principal and the Crown from any claim the Claims Service Provider may have for any loss to the Claims Service Provider arising out of the provision of information relating to the use of such information by the recipient of the information under this clause. This clause does not apply to the extent that the loss arises from the Claims Service Provider's reliance on information provided by the Principal and such information provided by the Principal was inaccurate or incomplete.

6.9 Compliance with Direction to Provide Information to the Principal

The Claims Service Provider must comply with any Direction of the Principal to provide information to enable the Principal to comply with its obligations at Law and will provide such information within any reasonable timeframes set by the Principal.

6.10 Directions

- (a) The Principal may issue Directions at any time as to the manner in which the Claims Service Provider is to perform the Services or any other obligation under this

Agreement.

- (b) Subject to clause 6.10(c) below, the Claims Service Provider must perform the Services (or any other obligations under this Agreement) in accordance with and within any timeframe specified in any Direction given from time to time.
- (c) The Claims Service Provider must immediately comply with any Direction which is specified to be an Urgent Direction.
- (d) Other than Directions given in accordance with this subclause 6.10, the Claims Service Provider will not act on Directions or requirements given by the Principal other than where such Directions or requirements are provided by a person authorised by the Principal under the Meetings to issue Directions or requirements.

6.11 Measurement Systems and Reporting

The Claims Service Provider must ensure that its measurement and monitoring systems will permit accurate and consistent reporting at a level of detail that is reasonably necessary to monitor and report on the Claims Service Provider's requirements under this Agreement and as otherwise determined by the Principal.

6.12 Required Reports

The Claims Service Provider must provide:

- (a) reports in accordance with this Agreement, the Schedules, the Manuals and any Project Services Order, and such other reports (including any reports requested by the Principal to be provided to Parliament, any Parliamentary Committee, any Minister, or any Government Agency that has the right or need to request information from the Principal) as may be specified by the Principal from time to time, in accordance with the timeframe for reporting set out in this Agreement, the Schedules, Manuals, a Project Services Order or as otherwise reasonably requested by the Principal;
- (b) any reports in such a form that they are readily understandable by the Principal and can be readily communicated to the Principal and its Personnel; and
- (c) detailed supporting information for each report as reasonably specified or requested by the Principal from time to time.

The Claims Service Provider will:

- (a) provide, in relation to all reports that the Principal provides to Agencies, from time to time, from the icare Insurance for NSW Data Warehouse:
 - (i) such assistance, information and/or support as may be reasonably required by Agencies in relation to the use, manipulation, interpretation, modification and/or development of these reports, including the assistance, information and support specified in the Claims Management Service Specification; and

- (ii) such assistance, information and/or support, as may be reasonably required by the Principal in the provision, modification and/or development of these reports, including the assistance, information and support specified in the Claims Management Service Specification; and
- (b) provide to an Agency:
 - (i) such reports as are required under the Agreement, including the Claims Management Service Specification, in accordance with the requirements and within the timeframes set out therein; and/or
 - (ii) such other reports, information, support and/or assistance as the Claims Service Provider may otherwise be requested by an Agency, with the Principal's approval, or directed by the Principal or its Delegate, to provide to an Agency, within the timeframes notified.

6.13 Performance Reporting and Monitoring

- (a) The Claims Service Provider must provide a Monthly Performance Report to the Principal in accordance with the requirements specified in the Claims Management Service Specification. The Monthly Performance Report must include all the matters specified in the Claims Management Service Specification.
- (b) The Principal may determine, in its absolute discretion, that reporting in respect of the Claims Service Provider's performance against a specific performance indicator and/or target or Service Standard will be done by the Principal or the Principal's Actuary and not the Claims Service Provider, or by all or any of the Claims Service Provider, the Principal and/or the Principal's Actuary.
- (c) The Principal may from time to time, and in its absolute discretion, vary the performance indicators and/or targets to be reported on in the Monthly Performance Report.

6.14 Claims Service Provider Responsibilities

- (a) The Claims Service Provider will, and will ensure its Personnel, manage the Claims in accordance with this Agreement including the Guidelines, Procedures and Manuals, the HBCF Business Model, icare Insurance for NSW Operational Plan and the requirements of Schedule 2 (Service Specification) and Schedule 3 (Service Standards).
- (b) Without limiting clause 6.14(a), the Claims Service Provider must develop and implement a Claims Management model that includes any specified timeframes, and is consistent with the relevant Guidelines, Procedures and Manuals.
- (c) The Claims Service Provider is responsible, at its own cost, for providing any accommodation, facilities, Equipment, furnishings, fixtures, Personnel and support it needs to supply the Services, as agreed with the Principal in accordance with the requirements of this Agreement.

Without limiting clause 6.14(a), the Claims Service Provider will, and will ensure its Personnel, pay all reasonable Claims Related Expenses within its delegated authority limits (as set out in the applicable Guidelines, Procedures and Manuals) in a timely manner in accordance with the terms of this Agreement.

- (d) In the event that the Principal amends or varies its Guidelines, Procedures and Manuals required under clause 6.14(a), the Principal will send a copy of the amended Guidelines, Procedures and Manuals and the Claims Service Provider must review and if necessary amend its Claims Management model as soon as reasonably practicable to ensure the model remains consistent with Guidelines, Procedures and Manuals as amended from time to time.

6.15 icare Insurance for NSW Operational Plan – General Lines

- (a) The Principal will establish a contract and performance management framework for working with the Claims Service Provider to ensure the delivery of the Core Services for General Lines to the required levels and standards specified under this Agreement. As part of this framework, the Claims Service Provider must develop an icare Insurance for NSW Operational Plan for each Contract Year in accordance with the requirements set out in the Claims Management Service Specification and relating to activities planned and budgeted under this Agreement (the "**icare Insurance for NSW Operational Plan**").
- (b) The icare Insurance for NSW Operational Plan must include the matters specified in the Claims Management Service Specification and such other matters as may be required by icare Insurance for NSW to be included from time to time.
- (c) If the Principal and the Claims Service Provider are unable to agree on a icare Insurance for NSW Operational Plan by the commencement of any Calendar Year, then the Principal may determine an interim icare Insurance for NSW Operational Plan in accordance with the requirements set out in the Claims Management Service Specification, which will be the icare Insurance for NSW Operational Plan for that Calendar Year. If a icare Insurance for NSW Operational Plan is subsequently agreed between the Principal and the Claims Service Provider, it will supersede the interim icare Insurance for NSW Operational Plan from the date of its approval by icare Insurance for NSW.

6.16 HBCF Business Model

- (a) The Principal and the Claims Service Provider will work closely and co-operatively together, wherever necessary, to improve the quality of the Services delivered and to achieve improved financial outcomes for the Scheme.
- (b) The Principal will establish a contract and performance management framework for working with the Claims Service Provider to ensure the delivery of the Core Services to the required levels and standards specified under this Agreement and that the Scheme Principles are met.
- (c) The Claims Service Provider must develop a HBCF Business Model in accordance with

the requirements set out in the Statement of Requirements and relating to activities planned and budgeted under this Agreement, which must include details in respect of the matters included in the first HBCF Business Model and such other matters as the Principal may Direct be included from time to time.

- (d) If the Principal and the Claims Service Provider are unable to agree on a HBCF Business Model by the commencement of any Contract Year, then the previous Contract Year's HBCF Business Model will be the HBCF Business Model subject to any amendments advised by the Principal (acting reasonably). If a HBCF Business Model is subsequently agreed between the Principal and the Claims Service Provider, it will supersede the interim HBCF Business Model from the date of its approval by the Principal.
- (e) The Claims Service Provider must perform the Services in accordance with the HBCF Business Model.

6.17 Guidelines, Procedures and Manual

- (a) The Claims Service Provider must perform the Services in accordance with the Guidelines, Procedures and Manuals. The Guidelines, Procedures and Manuals may be changed, added to or have deletions made to them. If the changes or amendments to the Guidelines, Procedures or Manuals will vary the costs of delivering the Services (whether by an increase or decrease) by more than \$30,000, the changes or amendments will be deemed to be a Material Variation to Scope of Services and clause 19 (Variations) will apply.
- (b) If the Principal wishes to receive comments on any proposed changes to the Guidelines, Procedures and Manuals (in addition to the process for discussing a proposed variation to the Guidelines, Procedures and Manuals set out in clause 19.1 (Variation to Core Services)), then the Principal may issue the draft amendments for the Guidelines, Procedures and Manuals and invite the Claims Service Provider to comment on the draft amendments. The Claims Service Provider must, within the timeframes required by the Principal, provide written comments to the Principal. The Claims Service Provider may at any time submit written comments to the Principal on any aspect of the Guidelines, Procedures and Manuals but the Principal is not obliged to change any aspect of the Guidelines, Procedures and Manuals as a result of the Claims Service Provider's written comments.

6.18 Documentation and Logos

- (a) The Claims Service Provider will ensure, unless otherwise agreed with the Principal in writing, that all documentation which relates to the Principal or the Schemes for the purposes of this Agreement, including correspondence, cheques, forms, reports, and electronic and hard copy versions of such documentation, will meet the following requirements:
 - (i) prominently incorporate any Principal Logos as specified by the Principal;

- (ii) include the Australian Business Number (ABN) as advised by the Principal from time to time;
 - (iii) not display any of the Claims Service Provider 's logo or branding; and
 - (iv) any reference to the Claims Service Provider must be less prominent and will clearly state that the Claims Service Provider is the agent of the Principal.
- (b) If during the Term, the Principal provides the Claims Service Provider with standard forms or formats for documents in relation to HBCF Insurance, icare Insurance for NSW or other material under this Agreement, the Claims Service Provider must use these documents, as provided by the Principal, and must not vary or modify these documents except to the extent permitted by the document or authorised by the Principal.
- (c) The Principal may, from time to time, vary these standard forms or formats for documents referred to in clause 6.18(b) and the Claims Service Provider must use any new or varied forms or formats for documents within a reasonable period of time from the Principal's notification to the Claims Service Provider of the new or varied forms or formats for documents, or if the new or varied form or format relates to a change in law, immediately from the Principal's notification to the Claims Service Provider.
- (d) If no standard forms or format for a document in relation to Schemes or the Principal or other material under this Agreement has been provided by the Principal under clause 6.18(b), the Claims Service Provider may use or develop its own standard form or format for a document subject to the requirements of clause 6.18(a) and provide it to the Principal for approval. The Claims Service Provider must not use or publish such a document unless and until the Principal has given its written approval. The Principal may Direct the Claims Service Provider to vary any of these forms or formats for these documents and the Claims Service Provider will vary its forms or formats as Directed as soon as reasonable.

7. Financial Transactions

- (a) The Claims Service Provider will be required to transact all financial transactions arising out of or in connection with its provision of the Services for the Schemes through the Principal's IT Systems as set out in Schedule 2 (Service Specification) in accordance with the terms of this Agreement including the Statement of Requirements and any reasonable Directions as may, from time to time, be issued to the Claims Service Provider in writing by the Principal.
- (b) The Claims Service Provider undertakes to deposit into the Bank Account:
 - (i) all money received from reinsurers in connection with the Schemes including HBCF Insurance provided by the Principal;

- (ii) all money recovered by the exercise of any right of subrogation or other right of recovery in connection with the Schemes, including HBCF Insurance that the Principal provides;
- (iii) all money received under any security, guarantee or recourse held by the Principal in respect of any Policies that the Principal has issued; and
- (iv) all money which the Principal may Direct the Claims Service Provider to pay into the Bank Account.

8. Asset Management

- (a) Where a Portfolio is made up of more than one Scheme, there will be a Bank Account for each separate Scheme within the Portfolio and the Claims Service Provider will be required to operate these separate Bank Account in accordance with the terms of this Agreement including this clause 8 ("Asset Management") and clause 9 ("Working Capital Administration").
- (b) The assets of icare Insurance for NSW, other than assets in the Bank Account of the Claims Service Provider, will be managed by TCorp. Asset management is not the function of the Claims Service Provider. Any fees imposed by TCorp in the performance of its functions in managing and investing icare Insurance for NSW's assets shall be paid by the Claims Service Provider from the relevant Bank Account.
- (c) The Claims Service Provider undertakes to place into the Bank Account for a Scheme within the Portfolio, all monies to which icare Insurance for NSW is entitled to for that Scheme, including any refunds and any recoveries from any third parties.

9. Working Capital Administration

- (a) The Claims Service Provider will operate a Bank Account in accordance with both the terms of this Agreement and with any reasonable Directions as may, from time to time, be issued to it in writing by the Principal.
- (b) The Principal will appoint the bank for all services. This may be changed from time to time at the Principal's discretion. The Principal is responsible for all transactional banking facilities such as the opening of all bank accounts and for arranging additional banking product modules.
- (c) The Claims Service Provider will be required to:
 - (i) use the bank and bank accounts established by for the Principal interact electronically with the bank regarding receipts, payments and reconciliation files;
 - (ii) be responsible for the bank reconciliation process on all payments/ receipts accounts, as required in accordance with this Agreement.

- (iii) ensure that all receipts are banked to the receipts account in a timely manner as specified in the Agreement and offer electronic services for payments of amounts owing to third parties or Agencies, such as BPAY or electronic funds transfers (EFT), as well as more conventional means, such as cheque;
 - (iv) ensure there are effective Internal Controls over receipts and payments to ensure potential errors and Fraud are eliminated;
 - (v) provide advice to the Principal when staff with access to the banking facilities are no longer required to have access and assist with the annual review of user access.
- (d) The Claims Service Provider must notify icare Insurance for NSW of any anticipated payments in excess of \$2 million with 3 Business Days' notice of the required payment.
- (e) The Claims Service Provider may only pay out of the Bank Account for a Scheme:
 - (i) Claims Related Expenses; and
 - (ii) such other amounts as icare Insurance for NSW may authorise the Claims Service Provider in writing from time to time to draw down, in relation to that Scheme.

10. Finance and Accounting

10.1 Financial Statements and Accounts

- (a) The Claims Service Provider will in respect of the Portfolio:
 - (i) prepare and provide to the Principal in respect of each Financial Year:
 - (A) annual unaudited financial statements or returns;
 - (B) annual audited financial statements or returns; and
 - (C) annual tax report;
 - (ii) assist the Principal in compiling quarterly and annual financial statements for the TMF and icare Insurance for NSW's operations including responding to all requests and queries by the Principal in a timely manner;
 - (iii) assist the Principal in the preparation of budget forecasts as requested by the Principal from time to time;
 - (iv) prepare and provide to the Principal the following unaudited Monthly accounting and budget reports:
 - (A) a trial balance;
 - (B) a profit and loss statement;

- (C) a balance sheet;
 - (D) a bank reconciliation;
 - (E) a GST schedule; and
 - (F) Business Activity Statement;
 - (v) prepare and provide to the Principal a narrative that provides an explanation for any material variation or discrepancy;
 - (vi) obtain, issue and retain proper and correct Tax Invoices in respect of all relevant transactions;
 - (vii) provide any reasonable assistance to the Principal in the event of an audit by the Australian Taxation Office in relation to this Agreement;
 - (viii) allow the Auditor General or the Auditor General's delegate, or authorised agent, access to all financial reports, documents, accounts and records as are necessary to enable the Auditor General to perform his or her functions as required by the *Government Sector Finance Act 2018* (NSW); and
 - (ix) provide in a timely fashion such information as is reasonably requested by the Auditor General or the Auditor General's delegates or authorised agents from time to time.
- (b) The financial reports referred to in clause 10.1(a) will be prepared:
- (i) in the form of any template provided by the Principal to the Claims Service Provider from time to time, or if no template is provided, in a format approved by the Principal and suitable for consolidation by the Principal into whole of Government accounting returns and financial statements;
 - (ii) consistent with the relevant accounting standards adopted by the Principal from time to time; and
 - (iii) subject to any Directions of the Principal from time to time.
- (c) The annual audited financial statements or returns referred to in clause 10.1(a)(i) are to be audited by the Claims Service Provider's external auditor and are to be forwarded to the Principal in accordance with Schedule 2 (*Service Specification*).
- (d) The annual unaudited financial statements or returns referred to in clause 10.1(a)(i) and the reports referred to in clause 10.1(a)(iv) are to be provided to the Principal in accordance with Schedule 2 (*Service Specification*).
- (e) Where the Portfolio includes more than one Scheme, then the Claims Service

Provider will be required, in addition to preparing the financial and accounting reports referred to in clause 10.1 ("Financial Statements and Accounts") in relation to the TMF, to separately report as required under this clause 10 ("Finance and Accounting") in relation to each other Scheme.

10.2 Financial Delegations

- (a) At all times, the Claims Service Provider must follow the Principal's Instrument of Delegation.

11. Policies and Contributions

- (a) The Claims Service Provider will maintain Policy Information in respect of each Agency within its Portfolio and, where requested by the Principal, for any region or business unit within that Agency in accordance with the requirements set out in the Claims Management Service Specification.
- (b) The Principal will determine the contributions to be paid by an Agency based on advice from the Principal's Actuary.
- (c) The Claims Service Provider may be required to issue Contribution Notices in respect of each policy to each Agency within its Portfolio in accordance with any Direction and/or Guidelines, Procedures and Manuals issued by the Principal.
- (d) The Claims Service Provider may be required to take all reasonable steps to ensure that Agencies pay the contributions in accordance with the requirements set out in the Claims Management Service Specification.
- (e) The Claims Service Provider may, as requested by Agencies from time to time, need to provide Agencies with Certificates of Insurance.

12. Complaints management system

- (a) The Claims Service Provider must:
 - (i) establish and maintain a complaints management system in accordance with the requirements of the Claims Management Service Specification;
 - (ii) maintain and review its complaints management system from time to time to ensure the system's compliance with the requirements described in clause 12(a)(i);
 - (iii) use the Principal complaints management system as required and directed by Principal; and
 - (iv) report on the number, nature and outcome of any complaints in accordance with the requirements also set out in that document.
- (b) At the Principal's request, the Claims Service Provider must cease to use the

complaints management system referred to in clause 12(a) and use the Principal's complaints management system instead. The Principal may also request the Claims Service Provider to migrate any data from the complaints management system referred to in clause 12(a) to the Principal's complaints management system.

13. Delays

13.1 Monitoring and Managing Delays

The Claims Service Provider must actively monitor and manage:

- (a) the performance of the Services;
- (b) the performance of Project Services;
- (c) the performance of the Disengagement Services;
- (d) the transfer of Claims and Service Components; and
- (e) the implementation of Directions,

including:

- (f) anticipating and identifying potential failures to meet any Milestone Date ("**Delay**"), whether those Delays are caused by the Claims Service Provider (or Claims Service Provider's Personnel), or a Key Subcontractor (or its Key Personnel), or a Service Company (or its Personnel), the Principal or a third party, or any other cause except a cause by a Force Majeure Event; and
- (g) taking reasonable steps to avoid those potential Delays.

13.2 Responding to Actual or Potential Delays

If there is any actual or potential Delay, then:

- (a) the Claims Service Provider must immediately notify the Principal, in the form required under cl 62;
- (b) the Claims Service Provider must within 2 Business Days, prepare and submit to the Principal a report identifying the nature and consequences of the Delay;
- (c) the Claims Service Provider must inform the Principal whether:
 - (i) the Claims Service Provider (or Claims Service Provider's Personnel) will be able to temporarily work around the problem in order to prevent or rectify the Delay; or
 - (ii) any other person can provide the Services, or part of the Services, in order to prevent, limit or rectify the Delay;
- (d) the Principal Authorised Representative and Claims Service Provider Authorised Representative (or their nominated representatives) must, if requested to do so by

the Principal, meet within 5 Business Days after receiving notification of the actual or potential Delay, to discuss how to prevent, limit or rectify the Delay;

- (e) the Claims Service Provider must:
 - (i) prepare and submit regular update reports (as required by the Principal) in relation to the Delay; and
 - (ii) take all steps required by the Principal, including compliance with a Direction, to prevent, limit or rectify the Delay, including working cooperatively with Other Claims Service Providers;
- (f) if required by the Principal, the parties must negotiate in good faith to attempt to agree on a temporary workaround plan by the time notified by the Principal (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 expected time impact of the tasks required to rectify the Delay,and, if agreed, must be signed and dated by the parties; and
- (g) the Claims Service Provider must implement and comply with any temporary workaround plans agreed in accordance with clause 13.2(f) above.

13.3 Status of Workaround Plan

If the parties agree on a temporary workaround plan in accordance with clause 13.2(f), then that workaround plan will:

- (a) be used by the parties to assist to document that workaround;
- (b) only operate as a variation of the Agreement 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 Claims Service Provider may have under this Agreement; and
- (c) not limit the Principal's rights or remedies against the Claims Service Provider in connection with the Delay (for example, to claim Damages).

13.4 Consequences of Delay

To the extent a Delay is caused by:

- (a) a Force Majeure Event, then the provisions of clause 61 will apply;
- (b) the Claims Service Provider (or Claims Service Provider's Personnel, or Service Company or its Personnel), then:
 - (i) any costs and expenses incurred by the Claims Service Provider to implement an agreed workaround plan will be borne by the Claims Service Provider; and

- (ii) the Principal may, at its election and in addition to requiring the performance of the workaround plan or any other rights it has under this Agreement, do one or more of the following:
 - (A) withhold payment of the Fee until the Milestone is met;
 - (B) claim Liquidated Damages in accordance with subclause 13.5;
 - (C) specify a revised date for the Milestone to be met; or
 - (D) if a Delay cannot be remedied within a timeframe acceptable to the Principal (acting reasonably), terminate this Agreement under subclause 58.2; or
- (c) the Principal or any third party (excluding the Claims Service Provider and the Claims Service Provider's Personnel or Service Company and its Personnel), then:
 - (i) any reasonable costs and expenses incurred by the Claims Service Provider to implement an agreed workaround plan will be borne by the Principal;
 - (ii) the Claims Service Provider:
 - (A) is relieved from its obligations to meet a Milestone affected by the Delay for the duration of the Delay; and
 - (B) will be granted an extension of time to perform subsequent obligations impacted by the relevant Delay to the extent of the Delay; and
 - (iii) the Claims Service Provider will not be relieved of its obligations to, and must continue to, perform the Services that are unaffected by the Delay.

13.5 Liquidated Damages

- (a) The parties acknowledge and agree that, if the Claims Service Provider is not able to fully provide the Services by the relevant Milestone Date:
 - (i) the Principal will suffer damage; and
 - (ii) all such damage may not, having regard to the nature of the Services, be able to be precisely calculated or proved; and
 - (iii) the amount of the liquidated damages if applicable will be negotiated in good faith between the parties.

The parties:

- (iv) agree that the amount of liquidated damages that may be specified in the Disengagement Plan or any Project Services Order ("**Liquidated Damages**") will constitute a sum commensurate with the Principal's interests that will be adversely affected as a result of the provision of the Services not occurring on or before the relevant Milestone Date;

- (v) desire to avoid the difficulties of proving damages in connection with such failure and agree that the Liquidated Damages payable by the Claims Service Provider as negotiated between the Claims Service Provider and the Principal in accordance with this subclause 13.5 are not exorbitant, extravagant or unconscionable and do not constitute nor are they intended to be a penalty; and
 - (vi) agree that the Liquidated Damages payable by the Claims Service Provider under subclause 13.5 will be recoverable from the Claims Service Provider as a debt immediately due and payable to the Principal.
- (b) Without limiting any of the Principal's other rights under the Agreement or otherwise but subject to clauses 13.5(d) and (e) below , if the Claims Service Provider fails to achieve any Critical Milestone by the relevant Critical Milestone Date, the Principal will be entitled to recover Liquidated Damages from the Claims Service Provider for each day of the Delay or unavailability.
- (c) In recognition of the time-critical nature of the Services and to emphasise the importance to the Principal of meeting the Final Critical Milestone Date, the Principal's approach to the application of Liquidated Damages for failure to meet a relevant Milestone will be as set out below:
 - (i) if the Claims Service Provider fails to meet any Critical Milestone Date, other than the Final Critical Milestone Date, Liquidated Damages will be applied and will accrue as a debt owed to the Principal;
 - (ii) if the Claims Service Provider meets the Final Critical Milestone Date, the Principal will not claim the Liquidated Damages that have accrued under subclause 13.5(c)(i) above; and
 - (iii) if the Claims Service Provider fails to meet the Final Critical Milestone Date, Liquidated Damages will be applied to that failure and the Principal will be entitled to recover the Liquidated Damages that apply under subclause 13.5(c)(i) above and this subclause 13.5(c)(iii).
- (d) The Claims Service Provider will not be liable to pay any Liquidated Damages arising from the Claims Service Provider's failure to achieve the relevant Milestone Date to the extent that failure arose as a result of:
 - (i) the Principal's Failure to fulfil its obligations under this Agreement;
 - (ii) an act or omission of any third party (excluding the Claims Service Provider, the Claims Service Provider's Personnel and any Service Company or their Personnel), that is beyond the reasonable control of the Claims Service Provider; or
 - (iii) an event arising under subclause 61.1.
- (e) The payment of Liquidated Damages does not relieve the Claims Service Provider

from its obligation to provide the Services or from any other obligations or liability under this Agreement.

(f) If the Principal is required to:

- (i) pay a fine, penalty or similar amount under the Law; or
- (ii) incur expenses to engage a third party to provide services;

due to breach by the Claims Service Provider of its obligations under this Agreement, the Principal may recover the amount from the Claims Service Provider as a debt immediately due and payable.

14. Transfer of Claims and Service Components

14.1 Acknowledgement in Relation to Transfer of Claims and Service Components

The Claims Service Provider acknowledges that: the Principal wishes to advance the Scheme Principles and that in exercising its opinion as to how that is achieved, it may involve the movement of certain Claims, Core Services and/or Service Components arising during the Term to the Principal, or to other persons, including movements under subclause 14.2.

14.2 The Principal May Transfer Claims and/or Service Components

The Principal may in its absolute discretion, on one or more occasions during the Term, issue a Direction for the Claims Service Provider to transfer some or all Claims, Core Services and/or Service Components to or from the Principal or any other person, including in the following circumstances:

- (a) where clause 58.2(b)(i) applies;
- (b) in respect of a class of Claims and/or Service Components that the Principal wishes to be handled by the Principal, Other Claims Service Providers, Agencies or other persons;
- (c) where the Claims Service Provider or a Key Subcontractor, or either of their businesses, is acquired by, merged with or controlled by any Other Claims Service Provider and without limiting the foregoing, including where the Claims Service Provider or any Key Subcontractor of the Claims Service Provider becomes a related entity of any Other Claims Service Provider. For this purpose, related entity includes any Related Body Corporate or any entity which is an associated entity of the Other Claims Service Provider or Key Subcontractor for the purposes of section 50AAA of the Corporations Act or which becomes a partner or joint venturer of an Other Claims Service Provider;
- (d) where the Principal considers that, as a result of any legislative change or change in the Scheme Principles or government policy, a transfer under this subclause 14.2 is appropriate;
- (e) pursuant to a Remediation Plan at any time; and

- (f) where the Claims Service Provider is required to provide Disengagement Services pursuant to subclause 60.1.

14.3 Obligation to Accept Claims and Service Components Transferred Under subclause 14.2

Where the Principal requires the Claims Service Provider to provide Services in respect of Claims that are proposed to be transferred from the Principal or an Other Claims Service Provider pursuant to subclause 14.2, the Claims Service Provider must accept and give effect to the transfer of the Claims and Service Components and will carry out such transfer in accordance with Directions given by the Principal to the Claims Service Provider, such transfer to be given effect upon agreement between the parties as to the fees payable by the Principal applicable to the Services, the negotiation of which will be in good faith.

14.4 Co-operation in Relation to Transferred Claims and/or Service Components

- (a) The Claims Service Provider must cooperate with the Principal, any Other Claims Service Provider and Agencies where a Claim or Service Component has been transferred to or from Other Claims Service Providers (or to or from the Principal), including allowing the Principal, the Receiving Claims Service Provider and the Agency access to any Records or other information concerning decision making relating to any of the Agencies' Claims that remain with the Principal or an Exiting Claims Service Provider.
- (b) An Exiting Claims Service Provider or Receiving Claims Service Provider may request the Principal to issue Directions where disputes arise in relation to this subclause 14.4 and on such a request the Principal may issue Directions specifying how a dispute under this subclause 14.4 is to be resolved. Nothing in this subclause 14.4 requires the Claims Service Provider to provide an Agency or Homeowner with any information which the Agency or Homeowner is not lawfully entitled to receive.

14.5 Procedures to be Followed for Transfers

If the Claims Service Provider is either transferring or receiving Claims and/or Service Components then it must follow the procedures for those transfers set out in any Guidelines, Procedures and Manuals issued by the Principal and any Direction given by the Principal.

14.6 Participation in Outsourcing

If the Principal enters into a general arrangement for the payment or processing of any Provider Payment then the Claims Service Provider will participate in that arrangement as Directed by the Principal.

14.7 Approved Locations

- (a) The Claims Service Provider must, unless the Principal otherwise agrees, perform each Service only from the Approved Locations that have been approved for that Service.
- (b) If the Claims Service Provider wishes to:
 - (i) designate a location as an Approved Location in respect of certain specified Services;

- (ii) change the type of Services to be provided at an Approved Location; or
- (iii) relocate the provision of certain Services from one Approved Location to another Approved Location,

then the Claims Service Provider must provide to the Principal a written proposal that identifies:

- (iv) the specific location, including if it is located within or outside New South Wales;
- (v) the Services to be performed at the proposed location; and
- (vi) any other details requested by the Principal, including details confirming the the proposed location's compliance with the Principal's IT security standards.

("Location Proposal").

- (c) On receipt of the Location Proposal, the Principal may:
 - (i) Approve the location as an Approved Location and for the Services to be provided from that location;
 - (ii) require the Claims Service Provider to meet with the Principal to discuss the Location Proposal; or
 - (iii) reject the location as an Approved Location.
- (d) The Principal may, in its sole and absolute discretion, in giving its Approval under clauses 14.7(a) and (c) above, impose such conditions as it thinks fit.
- (e) The Principal may, at any time by notice to the Claims Service Provider, withdraw its approval for an Approved Location and require the Claims Service Provider to relocate the relevant Services to another Approved Location reasonably nominated by the Principal. The Principal will pay the Claims Service Provider's reasonable costs of relocation except where its approval is withdrawn under the following circumstances:
 - (i) in order for the Claims Service Provider to comply with any Laws applicable to the Claims Service Provider;
 - (ii) if, in the Principal's reasonable opinion, information provided to the Principal upon which the Principal relied in approving the relevant Approved Location was or has become inaccurate or incomplete;
 - (iii) the Claims Service Provider has breached any condition on which the Principal approved the relevant Approved Location; or
 - (iv) there is a security concern in relation to the Approved Location which, in the Principal's reasonable opinion, has a reasonable likelihood of adversely

affecting the performance of those Services provided from that Approved Location.

- (f) The Claims Service Provider:
 - (i) must as soon as reasonably practicable, but in any event within [2 Business Days], comply with; and
 - (ii) will be responsible for any costs and expenses incurred by the Claims Manage in complying with,
- the Principal's notice under clause 14.7(e) above.

15. Third Party Service Providers

15.1 Appointment

- (a) Third Party Service Providers may be appointed by the Principal on an individual basis or to a Panel.
- (b) Third Party Service Providers may be appointed by the Claims Service Provider if Approved by the Principal and subject to compliance with provisions of this clause 15. Any Third Party Service Provider that is, or becomes during the term of the Agreement, on a Panel of the Principal shall be taken to be Approved for the purposes of this Agreement.
- (c) Where a Claimant's right to appoint a Third Party Service Provider exists at law nothing in this Agreement will hinder, vary or reduce this right.
- (d) A Subcontractor or Service Company or their Related Bodies Corporate cannot be a Third Party Service Provider without the prior Approval of the Principal.

15.2 Prescribed Fee

The Claims Service Provider must not pay more than the fee prescribed by Law or otherwise specified by the Principal for the particular service acquired from a Third Party Service Provider.

15.3 Fee Must be Reasonable if Not Prescribed

Where there is no fee prescribed for a service acquired from a Third Party Service Provider, the Claims Service Provider may determine the fee that is payable by the Principal for that service. This fee must be reasonable in all the circumstances and the Claims Service Provider must comply with other provisions of this Agreement and as instructed by the Principal relating to the procurement of those services.

15.4 Management of Third Party Service Providers by Claims Service Provider

Unless Directed otherwise, the Claims Service Provider is responsible for managing the performance of a Third Party Service Provider. For the avoidance of doubt, this includes a Third Party Service Provider appointed by a Claimant. At a minimum, the Claims Service Provider must:

- (a) monitor, evaluate and manage the performance of a Third Party Service Provider in relation to quality, cost, effectiveness, alignment with Scheme Principles and any other requirements established by the Principal,
- (b) implement and maintain, to the reasonable satisfaction of the Principal, an assurance program to review that agreement from time to time,
- (c) conduct, every Half Year, contract performance assessments for all agreements; and
- (d) provide written reports on the findings under clauses 15.4(b) and 15.4(c), to the Principal, in the form required by the Principal.

15.5 Arrangements with Third Party Service Providers by Claims Service Provider

Unless Directed otherwise, the Claims Service Provider must ensure that any arrangement that is entered into by the Claims Service Provider with a Third Party Service Provider:

- (a) is entered into by the Claims Service Provider acting on behalf of the Principal, so that an agreement is formed between the Claims Service Provider as agent of the Principal and the Third Party Service Provider;
- (b) is for a period which does not exceed the Term; and
- (c) includes any required terms as set out in this clause 15.

15.6 Required Terms in Written Third Party Service Provider Agreements

Where the Claims Service Provider enters into a written agreement with a Third Party Service Provider, it must ensure that it includes terms and conditions that:

- (a) the Claims Service Provider acts on behalf of the Principal, so that an agreement is formed between the Principal and the Third Party Service Provider;
- (b) require the Third Party Service Provider to assign, transfer or novate the agreement to the Principal in its own right or its nominee on the same terms and conditions promptly upon notice being given to the Third Party Service Provider;
- (c) require the Third Party Service Provider to execute such documents as are reasonably required by the Principal for the purposes of clause 15.6(b) above;
- (d) require the Third Party Service Provider to hold all necessary licences, insurances, permits, provider numbers, approvals and qualifications;
- (e) any payment arrangements are consistent with the Scheme Principles and the Law;
- (f) require the Third Party Service Provider to comply with the operational conditions and management and decision processes set out under the Manuals and Schedules and establish a performance management agreement with the Third Party Service Provider. At a minimum, this must specify reasonable levels of performance for the delivery of specified service functions, an effective performance assessment method which must be commercially reasonable in terms of reporting requirements and a process to address and rectify under-performance;

- (g) require the Third Party Service Providers to provide reports as requested by the Principal;
- (h) ownership of all Records vests in and remains with the Principal, including for any use or production under the Principals or Claim Service Providers obligations under any clause of this agreement, including clauses 51 and 54;
- (i) the Principal or its nominee has a right of prompt and unhindered access to the Records at reasonable times;
- (j) a representative from the Principal may intervene in any disputes between the Claims Service Provider and the Third Party Service Provider;
- (k) Third Party Service Providers which provide legal services owe contractual and professional obligations to the Principal and not the Claims Service Provider;
- (l) permit either or both of the Claims Service Provider and the Principal to enforce any contractual rights, including the right to sue for damages for breach of contract, against the Third Party Service Provider;
- (m) allow Directions to be given effect without any breach of contract or the entitlement to compensation or damages arising by reason of the giving of, or the implementation of, the Direction;
- (n) require the Third Party Service Provider to comply with the requirements of the Customer Service Conduct Principles;
- (o) require the Third Party Service Provider to provide a written confirmation at least once every Year (and at such other time as Directed by the Principal) stating that the Third Party Service Provider:
 - (i) has paid or will pay all payroll tax;
 - (ii) has paid all applicable workers compensation and any other applicable insurance; and
 - (iii) has paid all other remuneration,
 due and payable in accordance with the Law to its employees and contractors that have provided the Services;
- (p) require the Third Party Service Provider not to provide, and require the Claims Service Provider not to accept, gifts, benefits or favours, including any gifts, benefits or favours that may relate or may reasonably be perceived as relating to the Third Party Service Provider's delivery of Services or the Claims Service Provider's engagement of the Third Party Service Provider, unless expressly Approved by the Principal;
- (q) require the Third Party Service Provider to conduct at regular intervals (not less than annually), at the Principal's reasonable request, cyber risk assessments, and provide

the results to the Principal on the Principal's request; and

- (r) require the Third Party Service Provider to create and maintain a business continuity plan, in a similar form to the BCP of the Claims Service Provider.

15.7 Prohibited Terms in Agreements with Third Party Service Providers

The Claims Service Provider must not provide or agree to provide any commitment to any Third Party Service Provider in relation to any of the following matters:

- (a) volume of service;
- (b) exclusivity;
- (c) payment terms of less than 15 Business Days from receipt of Tax Invoice; or
- (d) provisions which could create an entitlement of a Third Party Service Provider to compensation or damages as a result of any Direction.

15.8 Procurement Process

- (a) The Claims Service Provider must comply with Laws, NSW Government procurement policies as if the Claims Service Provider is a NSW Government Agency, regardless of whether such Law or policies would apply to the Claims Service Provider in the absence of this obligation under this Agreement.
- (b) Without limiting clause 15.8(a) above, the Claims Service Provider must:
 - (i) use fair, transparent and commercially sound decision making, and obtain best value for money, where goods and services are valued up to \$250,000 per annum in Provider Payments intended to be procured; and
 - (ii) subject to clause 15.9(c), conduct an open competitive tender process where:
 - (A) the procured goods and services are valued over \$250,000 per annum in Provider Payments; or
 - (B) the Claims Service Provider intends to engage a Related Body Corporate of the Claims Service Provider or a Key Subcontractor.

15.9 Open Tender Process

- (a) The open tender process required by clause 15.8(b) must:
 - (i) be competitive;
 - (ii) be fair and transparent;
 - (iii) obtain best value for money;
 - (iv) ensure probity is maintained in all procurement activities; and
 - (v) comply with any requirements as determined by the Principal.
- (b) The Claims Service Provider must promptly on appointment of a Third Party Service

Provider provide to the Principal evidence of the qualifications, competencies, permits and training completed by Third Party Service Providers who are appointed by the Claims Service Provider acting as agent of the Principal following any open tender process.

- (c) The Claims Service Provider does not need to undertake a procurement process or competitive tender process if it is Directed to acquire the relevant Third Party Service Provider's services whether through a Panel established by the Principal or otherwise.

15.10 Notification following Tender Process

The Claims Service Provider must provide the Principal with details of the Third Party Service Providers that have been engaged as a result of any procurement process.

15.11 Enforcement of Agreements

The Claims Service Provider must promptly and fully:

- (a) enforce its rights (unless a breach is minor and has no significant impact on the delivery of the Services to the Principal) consistent with this Agreement; and
- (b) meet all its obligations,

under any agreements with Third Party Service Providers.

15.12 Appointment of Third Party Service Providers by the Principal

- (a) The Principal may appoint a Third Party Service Provider or a Panel of one or more types of Third Party Service Providers and the Principal may Direct the Claims Service Provider to use those Third Party Service Providers.
- (b) Where the Principal has Directed the Claims Service Provider that a particular type of Third Party Service Provider, or Third Party Service Provider panel, has been appointed:
 - (i) the Claims Service Provider must only appoint a Third Party Service Provider of that type or from that panel; and
 - (ii) the Principal may Direct the Claims Service Provider as to how services are to be acquired from the Third Party Service Provider.
- (c) A Direction may Direct the Claims Service Provider to use Third Party Service Providers which are not appointed to the Panel. Such a Direction may direct the manner and the times in which Third Party Service Providers are to cease providing services to the Claims Service Provider.

15.13 Legal Services

The Claims Service Provider must not obtain legal services in relation to the Scheme, except as permitted in accordance with any requirements set out in the Manuals and Schedules.

15.14 Use of Third Party Service Providers for Debt Collection

Unless otherwise Approved by the Principal, the Claims Service Provider may only appoint a Third Party Service Provider to collect debts or amounts outstanding where the debt or amount outstanding has remained uncollected for a period of at least thirty (30) Calendar Days.

16. Arrangements with Service Companies

16.1 Arrangements with Service Companies

The Claims Service Provider must:

- (a) obtain prior Approval (which Approval will not be unreasonably withheld) for:
 - (i) the appointment of a Service Company whose Personnel are used by the Claims Service Provider in the performance of the Services or other obligations under this Agreement; and
 - (ii) any contract entered into with the Service Company for the purposes of the arrangement; and
- (b) promptly and fully:
 - (i) enforce its rights (unless a breach is minor and has no significant impact on the delivery of the Services to the Principal) consistent with this Agreement; and
 - (ii) meet all its obligations,

under the contract with the Service Company.

17. System and Process

17.1 System Requirements

The Claims Service Provider must take all reasonable steps to ensure that any Equipment, interfaces, and processes used to perform the Services interface and integrate with the Principal's equipment, systems, interfaces and processes as set out in the Schedules. The Claims Service Provider must ensure that in providing the Services it does not knowingly (whether by act or omission) adversely affect or alter the operation, functionality or technical environment of the Principal's Equipment, interfaces or processes without the Principal's prior Approval.

17.2 Virus Control by Claims Service Provider

- (a) The Claims Service Provider must use its best endeavours to detect and prevent any Virus from being introduced directly or indirectly by the Claims Service Provider, Service Company or their respective Personnel or any other Key Subcontractor, into (or sent from) any Deliverables or the Principal's systems, including by:

- (i) use of the most appropriate and up-to-date virus detection software for preventing and detecting Viruses;
 - (ii) implementing practices and procedures that are consistent with industry best practice, including developing a formal post-event review protocol and process to develop and implement remediation plans for incidents;
 - (iii) pro-actively monitoring known threats of Viruses; and
 - (iv) informing the Principal of any Viruses and the steps necessary to avoid the introduction of Viruses.
- (b) If the Claims Service Provider becomes aware that any Virus is found to have been introduced into any Deliverables or the Principal's systems, then the Claims Service Provider must:
- (i) notify the Principal immediately;
 - (ii) provide all information reasonably requested by the Principal in relation to the Virus, its manner of introduction and the effect the Virus has had or is likely to have;
 - (iii) take all necessary remedial action within the power or control of the Claims Service Provider to eliminate the Virus and prevent re-occurrence and rectify any consequences (to the extent that they are capable of rectification);
 - (iv) if the Virus causes a loss of data or loss of operational efficiency, assist the Principal 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;
 - (vi) ensure that sufficient Claims Service Provider resources and technology are available to meet its obligations under this subclause 17.2;
 - (vii) at the request of the Principal, provide all information reasonably requested by the Principal in relation to any insurance held by the Claims Service Provider which is relevant to the incident;
 - (viii) consult with, and seek approval from the Principal, not to be reasonably withheld, in the resolution of the incident; and
 - (ix) conduct a formal post-event review and remediation, in a form acceptable to the Principal.
 - (x) The Claims Service Provider acknowledges that the above obligations in this subclause are separate and in addition to its obligations in this Agreement in relation to Data or Records.
- (c) If the Virus was introduced:

- (i) by the Claims Service Provider; or
- (ii) as a result of the Claims Service Provider's negligence or the Claims Service Provider failing to meet its obligations under this subclause 17.2,

then without limiting the Principal's other rights and remedies under this Agreement, the Claims Service Provider must pay the costs and expenses incurred by the Principal in connection with the restoration activities contemplated by this subclause 17.2.

17.3 Equipment Must be of Highest Quality

- (a) Unless the Principal Directs otherwise, the Claims Service Provider must use every effort to ensure that the Equipment is at all times:
 - (i) the highest in quality and functionality in comparison to that used for comparable services which the Claims Service Provider or any member of the Claims Service Provider Group offers to any of its customers anywhere else in Australia, taking into account the requirements of this Agreement in relation to security, privacy and protection of data; and
 - (ii) comparable in quality, functionality and performance to that used by other providers (including Other Claims Service Providers) that provide services similar in nature to the Services.

17.4 System Access

- (a) If requested by the Principal, the Claims Service Provider must provide any interface resource (including software, hardware or equipment) necessary to enable the Claims Service Provider's Equipment to interface with the Principal's equipment or systems. If the Claims Service Provider is required to commit material resources in order to comply with this request, which would result in additional costs in excess of the de minimus amount at the Claims Service Provider's request, this must be dealt with under a Project Services Order.
- (b) The Claims Service Provider must comply with all of the Principal's data security requirements in respect of access to the Principal's Data as notified to it in writing from time to time, including requirements regarding the dedicated or direct interconnection between the Claims Service Provider systems, platform or devices and the Principal's operating environment and any amendments to such requirements agreed by the parties (acting reasonably) from time to time.
- (c) The Claims Service Provider must securely protect and separate the Principal's Data from any other Data of either the Claims Service Provider or any third-party Data.
- (d) The Claims Service Provider must prohibit and prevent any person who does not have the appropriate level of security clearance from gaining access to the Principal's Data.
- (e) The Claims Service Provider must comply with the following requirements when accessing any Principal hosted systems using devices that are not issued by the Principal:

- (i) access must be via the Principal's approved platform with multi-factor authentication;
 - (ii) the Principal's Data must not be copied or transferred away from the Principal hosted system without the Principal's Approval; and
 - (iii) the devices used by the Claims Service Provider must have up-to-date operating system patches applied, and appropriate and up-to-date malware detection software.
- (f) The Claims Service Provider must implement secure and strong encryption to protect the Principal's Data whilst in transit and at rest in all forms and locations under the Claims Service Provider's control.

17.5 Changes to Equipment

- (a) The Claims Service Provider must provide no less than twenty (20) Business Days' notice to the Principal of any proposed material change to the Claims Service Provider's Equipment that is used to perform the Services, including a change of location or provider.
- (b) The notice given under clause 17.5(a) above must identify how the Claims Service Provider intends to manage the proposed change having regard to its obligations under this Agreement.
- (c) In proposing any material change to the Claims Service Provider's Equipment the Claims Service Provider must give consideration to the protection of the Principal's interests under this Agreement.

17.6 Warranties as to Systems and Equipment

Throughout the Term the Claims Service Provider represents and warrants that:

- (a) the information that it provides to the Principal in relation to the Equipment is consistent, complete, accurate and not misleading;
- (b) it will use every effort to ensure that the Claims Service Provider or Service Company involved in providing the Services and their respective Personnel or the Equipment and its interface or integration with the Principal's systems, will not introduce any Virus to the Principal's, or any other person's, software or systems;
- (c) it will build and maintain interfaces between the Equipment and the Principal's systems
- (d) it will maintain and comply with all licensing arrangements, as necessary, to ensure that Equipment can be used in connection with the Services;
- (e) Equipment held by, and all reporting and invoicing carried out by, the Claims Service Provider will be compatible and integrate with the Principal's systems and data exchanging requirements that are set out in the Manuals;

- (f) subject to errors in information which could not be detected using reasonable diligence, the information it provides to the Principal is consistent, complete and accurate;
- (g) it will actively monitor the use of its Equipment, processes and systems (including any interface or integration with the Principal's Systems) to prevent their use for any illegal activity or unauthorised transactions.

17.7 [Not used]

17.8 Initiatives in Relation to a Centralised IT System

- (a) The Claims Service Provider acknowledges that the Principal may introduce a centralised IT system ("**Centralised IT System**") during the Term.
- (b) The Claims Service Provider agrees to:
 - (i) upon request by the Principal, move its functions and operations onto the Centralised IT System at a date and time to be agreed between the parties;
 - (ii) co-operate with the Principal to implement or assist in the implementation of any initiatives proposed by the Principal in relation to or in connection with the implementation of the Centralised IT System ; and
 - (iii) ensure that its systems and any interfaces between its systems and the Principal's IT systems meet the requirements of the Principal
- (c) Following implementation of the Centralised IT System, the Claims Service Provider must:
 - (i) ensure that all information held by the Claims Service Provider relating to Claims Management is transferred to, and continues to be maintained on, the Centralised IT System; and
 - (ii) use only the Centralised IT System (and not any other IT system of the Claims Service Provider or any other person) for Claims Management in accordance with this Agreement.
- (d) The Claims Service Provider will assign Personnel as reasonably required to prepare for the implementation of the Centralised IT System and will have responsibility for reconciling Data and information which are transferred from the Claims Service Provider system to the Centralised IT System.
- (e) Other than as agreed by the parties in a Project Services Order and subject to a maximum cap, in no circumstances will the Principal be required to pay any fee or compensation to the Claims Service Provider in relation to the implementation of the

Centralised IT System or the Claims Service Provider's transfer of its functions and operations onto the Centralised IT System in compliance with this subclause 17.8.

18. Project Services

18.1 General

- (a) The parties acknowledge and agree that:
 - (i) the Principal may, from time to time, require that the Claims Service Provider undertake Project Services; and
 - (ii) the Claims Service Provider may, from time to time, propose Project Services.
- (b) In undertaking a Project Service, the Claims Service Provider must use a project management methodology which:
 - (i) complies with the principles of best practice project management;
 - (ii) ensures the Principal has visibility of the Claims Service Provider's planning, strategy and management; and
 - (iii) monitors the progress and the financial management of implementing Project Services.
- (c) The Claims Service Provider will undertake Project Services in accordance with the applicable Project Services Order and the Project Plan for the relevant Project Service and the applicable provisions set out in Schedule 2 (*Service Specification*).

19. Variations

19.1 Variations to Core Services

- (a) The Principal may from time to time during the Term require a change or variation to the Core Services, including (without limitation):
 - (i) increases or reductions to, or discontinuance of, any Core Service or part thereof;
 - (ii) adding or removing business lines from any Core Service; and/or
 - (iii) the delivery of additional Core Services.
- (b) The Parties agree that this clause 19 ("Variations") will apply to determine any change or variation to the scope of the Core Services, including the provision of additional Core Services or the reduction of the Core Services that may be required by the principal under clause 19.1(a) .

19.2 Variation by agreement

- (a) If the Principal requires a change or variation to the Core Services, the Principal must

give written notice of the proposed change or variation to the scope of the Core Services to the Claims Service Provider ("Change Notice").

- (b) The Parties must, within 5 Business Days of receipt of a Change Notice referred to in clause 19.2(a), meet to discuss, in good faith, the proposed variation or change to the scope of the Core Services.
- (c) Without limiting clause 19.2(b), the Parties agree that in negotiating and determining any proposed change or variation to the scope of the Core Services they will discuss and, at a minimum, seek agreement on the following matters:
 - (i) the scope of the proposed change or variation to the scope of the Core Services, including whether or not the proposed change or variation is a material variation to the scope of the Core Services;
 - (ii) the cost or financial impact (if any) on the Principal and/or the Claims Service Provider of the proposed change or variation to the Core Services including, in the case of a material variation to scope of the Core Services, any consequential Fee Adjustment;
 - (iii) the duration of the proposed change or variation to the scope of the Core Services including, where applicable, the commencement and termination dates;
 - (iv) details of proposed scheduling, Personnel, service levels and other issues relating to the proposed change or variation to the scope of the Core Services;
 - (v) any consequential changes required to be made to this Agreement (including any schedules and/or annexures); and
 - (vi) any consequential changes required to be made to the icare Self Insurance Operational Plan, HBCF Business Model and the Service Standards.
- (d) In the event that the Parties agree to the proposed change or variation to the scope of the Core Services referred to in the Change Notice, any such agreement must be in writing and detail the Parties' agreement on all matters specified in clause 19.2(c)(i) to 19.2(c)(vi) and any other matters that have been agreed to. The Parties must take all steps and do everything necessary and reasonably required to give effect to the agreed changes or variations to the scope of the Core Services in accordance with their agreement.

19.3 Determination by Expert

- (a) Subject to clause 19.3(b), in the event that the Parties are unable to, within 20 Business Days of the date of the Change Notice, or such other period as may be agreed by the Parties in writing:

- (i) reach and document their agreement as to the proposed change or variation to the scope of the Core Services (including all of the matters specified in clause (c) in accordance with clause (d); or
- (ii) where agreement is reached on some, but not all of the matters specified in clause (c), reach agreement on a process for the determination of the matters on which agreement has not been reached;

then no change or variation is to be made to the scope of the Core Services and the Claims Service Provider must continue to provide the Core Services in accordance with the terms of this Agreement.

- (b) Notwithstanding clause 19.3(a), if the Principal, in its absolute discretion, is of the opinion that the proposed change or variation to the scope of the Core Services referred to in the Change Notice is required then:

- (i) the Claims Service Provider must work with the Principal in good faith to determine:
 - (A) the scope of the proposed change or variation to the scope of the Core Services, including whether or not the proposed change or variation is a material variation to the scope of the Core Services;
 - (B) the duration of the proposed change or variation to the scope of the Core Services including, where applicable, the commencement and termination dates;
 - (C) details of proposed scheduling, Personnel, service levels and other issues relating to the proposed change or variation to the scope of the Core Services;
 - (D) any consequential changes required to be made to this Agreement (including any schedules and/or annexures); and
 - (E) any consequential changes required to be made to the !care Self Insurance Operational Plan, HBCF Business Model and the Service Standards for the Portfolio.

Where the Parties are unable to agree on any of the above matters, or a process for determining the above matters, the Principal may, subject to clause (ii), determine the matter in its absolute discretion.

- (ii) If:
 - (A) the Parties agree that the proposed change or variation to the Core Services agreed or determined under clause (i) is a material variation to scope of the Core Services, the Principal will refer the matter to the Principal's Actuary to determine any Fee Adjustment in accordance

with the requirements of the Claims Management Fee Arrangements;
or

- (B) the Parties are unable to agree that the proposed change or variation as agreed or determined under clause (i) is a material variation to scope of the Core Services, the Principal will refer the matter to the Principal's Actuary to determine whether the proposed change or variation agreed or determined under clause (i) is a material variation to scope of the Core Services and, if it is, any Fee Adjustment in accordance with the requirements of the Claims Management Fee Arrangements.
- (c) The Parties agree that the Principal's Actuary's determination under clause (ii) will, subject to clause 31 ("Financial Arrangements"), be binding on the Parties in relation to the issue of whether or not a Fee Adjustment is required and the nature and extent of that Fee Adjustment.
- (d) The Parties must execute all documents and take all steps and do everything necessary and reasonably required to give effect to the changes or variations to the scope of the Core Services as agreed or determined in accordance with clause (b).
- (e) No Fee Adjustment will be made where the Parties agree, or the Principal's Actuary determines, as the case may be, that the proposed change or variation to the Core Services does not represent a material variation to scope of the Core Services.
- (f) The Claims Service Provider will not be entitled to any Fee Adjustment in the absence of an agreement between the Parties in accordance with clause 19.4 ("Additional Core Services") or a determination by the Principal's Actuary in accordance with clause (b).

19.4 Additional Core Services

Where the Change Notice relates to a request for additional Core Services, the Claims Service provider will not make any changes or variations to the Core Services unless and until:

- (a) an agreement is reached between the Parties in accordance with clause 19.2 ("Variation by agreement"); or
- (b) an agreement and/or determination is made in accordance with clause 19.3 ("Determination by Expert").

19.5 Reduction of Services

- (a) Where the Change Notice relates to the proposed removal of Core Services:
 - (i) the removal will be effective from the date of the Change Notice unless otherwise specified,

- (ii) the Claims Service Provider will make all reasonable efforts to ensure the effective transition out of the removed Core Services, including any Disengagement Services as required by the Principal.
- (b) The Claims Service Provider acknowledges and agrees that the Principal retains the right to perform the removed Core Services or part thereof in-house or to have another New South Wales Government Agency or statutory body and/or any other person perform the removed Core Services.

20. Changes to Agreed Terms, Schedule 4 (Fee Arrangements) and Schedule 3 (Service Standards)

Notwithstanding any other provision of this Agreement, the parties acknowledge and agree that any variation or amendment to:

- (a) the Agreed Terms, excluding Items 6, 7, 8, 9, 11, 12 and 13 of the Agreement Details which may be agreed by the parties in writing or under an existing mechanism in the Agreement; or
- (b) Schedule 3 (Service Standards); or
- (c) Schedule 4 (Fee Arrangements),

can only be effected by way of a variation agreement duly executed by both parties.

21. Changes to Guidelines, Procedures, Manuals and Schedules

- (a) The Principal may from time to time and at its absolute discretion:
 - (i) issue a written notice to the Claims Service Provider advising of an immaterial change to a Guideline, Procedure, Manual or Schedule ("**Update Notice**"); or
 - (ii) issue a written notice ("**Notice of Change**") to the Claims Service Provider advising of:
 - (A) a material change to a Guideline, Procedure, Manual or Schedule; or
 - (B) a new Guideline, Procedure, Manual or Schedule,

which the Claims Service Provider acknowledges and agrees will be binding on the Claims Service Provider from the time of receipt.

- (b) Other than as agreed by the parties in writing, in no circumstances will the Principal be required to pay any fee or compensation to the Claims Service Provider in relation to the implementation of any Notice of Change.
- (c) If the Claims Service Provider disputes either:
 - (i) a Notice of Change; or
 - (ii) that an Update Notice should be a Notice of Change;

the Claims Service Provider Authorised Representative must notify the Principal in writing of a Contract Dispute within five (5) Business Days of receipt of the relevant Update Notice.

- (d) The Claims Service Provider must comply with the requirements of the relevant Update Notice or Notice of Change pending resolution of the Contract Dispute.
- (e) The Principal may, at its sole discretion, invite the Claims Service Provider to provide written comments to the Principal on any proposed changes to a Guideline, Procedure, Manual or Schedule. The Principal is not bound to accept or act on any of the Claims Service Provider's comments.

22. Changes to Service Standards

- (a) The Principal may in each Quarter during the Period of the Services, by notice to the Claims Service Provider ("**Notice of Change**"), update the Service Standards by:
 - (i) changing an existing Service Standard;
 - (ii) introducing a new Service Standard; or
 - (iii) withdrawing a Service Standard,

where, in the Principal's opinion, an update to the Service Standards is desirable in order to achieve or further any of the Scheme Principles.

- (b) The Notice of Change will be given to the Claims Service Provider in writing at least 30 days before the proposed implementation date, unless a shorter period is agreed between the parties.
- (c) The Claims Service Provider acknowledges and agrees that it will be bound by the provisions or changes to any Service Standards from the implementation date specified in the Notice of Change. Other than as agreed by the parties in writing, in no circumstances will the Principal be required to pay any fee or compensation to the Claims Service Provider in relation to the implementation of any Notice of Change.
- (d) Subject to clause 22(f) below, if the Claims Service Provider disputes a Notice of Change, the Claims Service Provider Authorised Representative must notify the Principal in writing of a Contract Dispute within five (5) Business Days of receipt of the Notice of Change.
- (e) The Claims Service Provider must comply with the requirements of the updated Service Standards specified in the Notice of Change pending resolution of the Contract Dispute.
- (f) The Claims Service Provider acknowledges and agrees that it is not permitted to initiate a Contract Dispute in respect of Notice of Change which relates to:
 - (i) a withdrawal of a Service Standard;

- (ii) the creation of a Service Standard which measures, or makes the Claims Service Provider more accountable for, obligations which the Claims Service Provider owes pursuant to this Agreement; or
- (iii) the method of measuring the performance of the Claims Service Provider in providing the Services or performing its obligations under this Agreement.

SECTION C - PERSONNEL

23. Personnel

23.1 Claims Service Provider Responsible for its Personnel

The Claims Service Provider is responsible for all the planning, scheduling, supervision, training, and safety of its Personnel that are engaged in providing the Services.

23.2 Compliance with Code of Conduct

The Claims Service Provider will:

- (a) ensure that all of the Personnel involved in the provision of the Services, or having specified roles in relation to this Agreement, are of good character and repute and are fit and proper with reference to applicable prudential standards and codes of conduct.
- (b) promptly disclose any matters which come to its attention with respect to a breach or potential breach of this subclause 23.2.
- (c) implement and maintain systems and procedures to minimise the risk of any form of fraud or malpractice on the part of any of its Personnel, or the Personnel of any Service Company, in relation to the performance of this Agreement.
- (d) give the Principal immediate notice, to be confirmed in writing, of any of its Personnel, or the Personnel of any Service Company, who become the subject of investigation, by any person, in connection with alleged fraud or other malpractice; and
- (e) report any instance of actual or suspected fraud arising out of or in connection with the Services to the appropriate authorities and the Principal and provide all reasonable assistance to those authorities with any investigation or prosecution.
- (f) will at all times during the Term ensure it and its Personnel, and any Key Subcontractor or Service Company (and its Personnel), involved in the delivery of the Services comply with the Customer Service Conduct Principles.
- (g) comply with all applicable Laws including, but not limited to;
 - (i) the principles specified in the General Insurance Code Governance Committee's "General Insurance Code of Practice" as amended from time to time;

- (ii) the principles underlying the Law relating to the provision of a “claims handling and settling service” under the *Corporations Act 2001* (Cth); and
- (iii) the State Insurance Regulatory Authority’s “Customer Service Conduct Principles” as amended from time to time.

23.3 Removal of Personnel

If the Principal reasonably requires the removal of Personnel of:

- (a) the Claims Service Provider; or
- (b) any Service Company; or
- (c) any Key Subcontractor,

from the provision of Services, the Claims Service Provider must immediately (unless otherwise Directed), remove or procure the removal of that individual from the provision of the Services.

23.4 Re-instatement Only with the Principal Approval

If any Personnel has been removed at the request of the Principal under subclause 23.3, such Personnel may only return to the provision of Services with Approval of the Principal Authorised Representative, which it may withhold in its absolute discretion.

23.5 No Obligation to Give Reasons or Compensation

The Principal is not required to give any reasons, nor is it required to pay any compensation for any act or omission under subclauses 23.3 or 23.4.

24. Key Personnel

24.1 Requirements for Key Personnel

The Claims Service Provider’s Key Personnel must:

- (a) be Approved by the Principal, with such Approval not to be unreasonably withheld;
- (b) have completed a police/criminal history check prior to commencing work in respect of the Services, evidence of which will be provided to the Principal within 3 Business Days' notice of a request being made; and
- (c) be available to attend, or participate in, meetings at a location, or by such technological means, as reasonably required by the Principal from time to time.

24.2 No Unreasonable Diversion of Key Personnel

The Claims Service Provider must ensure that its Key Personnel are dedicated exclusively or for such other proportion of their time as set out in the Agreement Details to providing the Services.

24.3 Absence of Key Personnel

The Claims Service Provider must obtain the prior Approval of the Principal (not to be unreasonably withheld) if any of its Key Personnel will be absent from providing the Services for longer than ten (10) consecutive Business Days.

24.4 Replacement of Absent Key Personnel

Where any of the Claims Service Provider's Key Personnel are absent from providing the Services for more than five (5) consecutive Business Days then the Claims Service Provider must, at its own cost, provide a replacement (who is substantively of equivalent or more senior status than the absent Key Personnel) that is acceptable to the Principal.

24.5 Replacement of Claims Service Provider's Key Personnel

The Claims Service Provider must not remove or replace any of its Key Personnel without the Principal's prior Approval unless:

- (a) required by Law;
- (b) the relevant Key Personnel has resigned, is injured, is permanently disabled or subject to maternity or paternity leave;
- (c) there is evidence which the Claims Service Provider certifies that it believes is sufficient at Law to demonstrate gross misbehaviour of the Key Personnel;
- (d) the Claims Service Provider certifies that it has proper grounds to terminate the contract of employment of the Key Personnel; or
- (e) the Claims Service Provider has notified the Principal of a suitable replacement for the Key Personnel (such notice to be given at least ten (10) Business Days prior to the proposed replacement) and the Principal has Approved the replacement. The Principal will not refuse Approval unreasonably, except during the Disengagement Period, when subclause 60.4 will prevail.

24.6 Information Regarding Proposed Replacement of Key Personnel

If the Principal requests, the Claims Service Provider must provide the Principal with such information as the Principal reasonably requires concerning any proposed replacement of any Key Personnel.

24.7 Designation of Key Personnel

Where the Principal reasonably requires a particular individual to perform particular tasks or roles, the Principal may issue a Direction to designate any of the Claims Service Provider's other Personnel engaged in performing the Services as Key Personnel.

24.8 Evidence of Qualifications

Within one (1) Business Day of receipt of a request from the Principal, the Claims Service Provider must provide to the Principal Authorised Representative evidence of the qualifications, competencies and permits held, and training completed, by any of the Key Personnel providing the Services.

24.9 Continuity of Services

- (a) For the purposes of ensuring continuity in the provision of the Services, the Claims Service Provider must, at all times during the Term, use its best endeavours to ensure that the Claims Service Provider has other Personnel available who are either familiar with, or otherwise have been trained to take on the roles and responsibilities of and the tasks undertaken by, the Key Personnel, to act as back-up should any Key Personnel be unable (whether by illness, accident, leave, termination of employment or otherwise) to do so. This includes the establishment and maintenance of ongoing recruitment, training and development programs for its Personnel in accordance with the requirements of the Claims Management Service Specification.
- (b) The Claims Service Provider must use its best endeavours to minimise the level of turnover in the Key Personnel and Claims Officers.
- (c) The Claims Service Provider must develop and maintain strategies to minimise the turnover in Key Personnel and Claims Officers during the Term in accordance with the Claims Management Service Specification and must report to Principal on these strategies and on turnover of the Key Personnel and Claims Officers as part of its Monthly Performance Report.

25. Subcontracting

25.1 Prohibition on Use of Related and Associated Entities

- (a) Subject to clause 16, the Claims Service Provider must not use any related entity or the Personnel of a related entity to provide any of the Services without the prior Approval of the Principal.
- (b) For the purpose of this subclause 25.1, a related entity includes any Related Body Corporate or any entity which is an associated entity of the Claims Service Provider for the purposes of section 50AAA of the Corporations Act or any partner or joint venturer of the Claims Service Provider.

25.2 Qualifications and Competence of Subcontractors

The Claims Service Provider must ensure that any Subcontractors are qualified and competent to perform their responsibilities.

25.3 Confidentiality Deed and IP Deed

The Claims Service Provider must:

- (a) prior to entering into any contract with a Subcontractor, obtain a signed Confidentiality Deed, and, if requested by the Principal under subclause 29.7 a signed IP Deed, from the relevant Subcontractor, and such of its Personnel or agents as requested by the Principal; and
- (b) promptly comply with the Principal's Directions, in respect of any action required to enforce such Confidentiality Deed and IP Deed, at the Claims Service Provider's own

expense.

25.4 Claims Service Provider Point of Contact for all Subcontractors

The Claims Service Provider, and not the Principal, will be the sole point of contact for all Subcontractors, including in regard to payment.

25.5 Claims Service Provider Not Relieved of Obligations by Subcontract

The Claims Service Provider is fully responsible for the performance of the Services even if the Claims Service Provider subcontracts any aspect of the provision of the Services and the Claims Service Provider will be liable to the Principal for the acts, defaults, and omissions of any Subcontractors as if they were the acts, defaults, or omissions of the Claims Service Provider. For the avoidance of doubt, the Principal's Approval to allow the Claims Service Provider to subcontract any part of the Services will not relieve the Claims Service Provider from any of its liabilities or obligations under this Agreement.

25.6 Requirements of Subcontracts

The Claims Service Provider must ensure that each subcontract entered into with a Subcontractor:

- (a) contains clauses requiring the Subcontractor, on receipt of a Direction from the Principal, to immediately:
 - (i) assign, transfer or novate the subcontract to the Principal or its nominee on the same terms and conditions;
 - (ii) execute such Documents and do such things as are required by the Principal for the purposes of this clause 25;
 - (iii) return any Documents, assets and property owned by the Principal to the Claims Service Provider or the Principal or its nominee;
- (b) includes an obligation to :
- (c) comply with Laws;
 - (i) maintain appropriate insurances as required by the Claims Service Provider or the Principal;
 - (ii) maintain appropriate conflict of interest registers; and
 - (iii) maintain appropriate issue and risk registers.

26. Key Subcontractors

26.1 Approval of Subcontracts with Key Subcontractors

- (a) The Claims Service Provider must not enter into any subcontract with a Key Subcontractor for any part of the Services except with the prior Approval of the Principal, which will not be unreasonably withheld.

- (b) Without limiting clause 26.1(a), the Principal may, in its absolute discretion impose terms and conditions on the Approval of any Key Subcontractor, including requiring that the Key Subcontractor execute an agreement in terms satisfactory to the Principal which, among other things, will include an acknowledgement and agreement by the Key Subcontractor that:
- (i) to the extent that it performs any duty or obligation of the Claims Service Provider (including any Services), it owes the same duties and obligations to the Principal as owed by the Claims Service Provider and it will comply with the terms and conditions of this Agreement as if it was the Claims Service Provider; and
 - (ii) it has no entitlement to any Remuneration under this Agreement or otherwise from the Principal and its sole entitlement for any consideration for the provision of Services or any obligations under this Agreement on behalf of the Claims Service Provider by it is as against the Claims Service Provider and that consideration is not recoverable from the Principal.
- (c) If the Key Subcontractor is Approved by the Principal, the Claims Service Provider acknowledges and agrees that:
- (i) any act, default or omission of the Key Subcontractor will be taken to be an act, default or omission of the Claims Service Provider whether or not that act, default or omission is authorised by the Claims Service Provider and if such an act, default or omission is a breach of or a Failure to perform any provision of this Agreement, then the Claims Service Provider will be taken to have breached that provision or failed to perform;
 - (ii) the Claims Service Provider and the Key Subcontractor will be jointly and severally liable to the Principal in respect of the performance of any obligation under this Agreement, any moneys that may become owing to the Principal by reason of this Agreement or a Failure to perform this Agreement and in respect of any loss or damage occasioned to the Principal by reason of any act, default or omission by either the Claims Service Provider or the Key Subcontractor;
 - (iii) any Direction given to the Key Subcontractor by the Principal will be taken to be a Direction given to the Claims Service Provider; and
 - (iv) the Claims Service Provider and the Key Subcontractor will not vary the terms and conditions of any Approved agreement between the Claims Service Provider and the Key Subcontractor without the prior Approval of the Principal.

26.2 Information as to Key Subcontractors

The Claims Service Provider must provide to the Principal information and details pertaining to any proposed Key Subcontractor, including:

- (a) the Key Subcontractor's:
 - (i) name, address, and ABN;
 - (ii) scope of work to be performed;
 - (iii) identity of its directors and key personnel;
 - (iv) insurance coverage details in accordance with clause 45;
 - (v) fee and remuneration arrangements; and
 - (vi) qualifications to perform the work;
- (b) the proposed contract between the Claims Service Provider and the Key Subcontractor;
- (c) details of all insurance policies held and maintained by the Key Subcontractor that are required by, or referred to in the proposed contract or as required by the Principal; and
- (d) any other information reasonably requested by the Principal.

26.3 Confirmations on Key Subcontractor Invoicing

If any Key Subcontractor is used to perform part of the Services, then the Claims Service Provider must procure that, at the time of submission of each invoice to the Claims Service Provider, the Key Subcontractor must confirm in writing that the Key Subcontractor has met all its obligations to the Key Subcontractor's employees and contractors, including to pay all:

- (a) payroll tax;
- (b) applicable workers compensation insurance; and
- (c) remuneration,

and otherwise complied with the Law in respect of those employees and contractors.

26.4 Key Subcontractor Register to be Maintained by Claims Service Provider

- (a) The Claims Service Provider must record details of each Key Subcontractor on the Key Subcontractor Register.
- (b) The Key Subcontractor Register that applies from the Commencement Date is the Key Subcontractor Register set out in the Agreement Details.
- (c) The Claims Service Provider must ensure that:

- (i) the Key Subcontractor Register is kept up-to-date and includes all relevant details for each Key Subcontractor whether current or expired, in connection with the delivery of Services; and
- (ii) an updated Key Subcontractor Register is provided to the Principal within five (5) Business Days after each anniversary of the Commencement Date.

27. Authorised Representatives

27.1 Identity, Roles and Responsibilities

The identity, roles and responsibilities of the Claims Service Provider Authorised Representative and the Principal Authorised Representative are primarily set out in this clause 27 and Schedule 2 (*Service Specification*).

27.2 Requirements for Claims Service Provider Authorised Representative

- (a) The Claims Service Provider Authorised Representative must:
 - (i) be Approved by the Principal, with such Approval not to be unreasonably withheld; and
 - (ii) be available to attend or participate in meetings at a location, or by such technological means, as reasonably required by the Principal from time to time.
- (b) In determining whether to Approve the appointment of the Claims Service Provider Authorised Representative, the Principal may have regard to the disqualification register maintained by APRA and the banned and disqualified persons register maintained by ASIC, or any similar register maintained by these or any successor regulators, among other matters.

27.3 Authority of Claims Service Provider Authorised Representative

The Claims Service Provider Authorised Representative is authorised and empowered to act on behalf of and bind the Claims Service Provider in all matters arising between the parties and for the purposes of any act, matter or thing to be done by the Claims Service Provider arising out of or in connection with this Agreement.

27.4 Availability of Claims Service Provider Authorised Representative

The Claims Service Provider Authorised Representative must be available at all reasonable times for consultation with the Principal in connection with any matter arising out of or in connection with this Agreement.

27.5 Claims Service Provider Deemed to be within Knowledge of Claims Service Provider Authorised Representative

Matters within the knowledge of the Claims Service Provider Authorised Representative will be deemed to be within the knowledge of the Claims Service Provider.

27.6 The Principal Authorised Representative

The Principal must ensure there is a Principal Authorised Representative appointed at all times. The Principal must notify the Claims Service Provider within ten (10) Business Days of a change to its Principal Authorised Representative, in accordance with clause 62.

27.7 Agent of the Principal

The Principal Authorised Representative is the agent of the Principal, for the purposes of any act, matter or thing to be done by the Principal arising out of or in connection with this Agreement.

27.8 Delegation by the Principal Authorised Representative

The Principal Authorised Representative may delegate any powers, duties and functions under this Agreement to other employees or agents of the Principal. The Principal must keep the Claims Service Provider advised of the identities and delegated authorities of such persons. The Claims Service Provider acknowledges that there may be more than one delegation by the Principal Authorised Representative.

27.9 Compliance with Requirements or Instructions of Delegates

The Claims Service Provider must comply with any requirements, instructions or the like, given to it by any of the Principal Authorised Representative's delegates, in accordance with their delegated authorities, as if there were requirements or instructions given to it by the Principal Authorised Representative.

28. Claims Service Provider Authorised Representative, the Principal Authorised Representative and Meetings

28.1 The Principal Authorised Representative

The Principal will nominate an Authorised Representative to manage the operation of this Agreement for the Principal and to represent the Principal (either in person or through his or her delegate) in all day to day dealings with the Claims Service Provider, in accordance with Schedule 2 (*Service Specification*).

28.2 Role of Claims Service Provider Authorised Representative

The Claims Service Provider Authorised Representative will:

- (a) be the primary point of contact for the Principal for the purposes of this Agreement;
- (b) have the authority and be given the responsibility to perform each of the tasks referred to as a Claims Service Provider Authorised Representative task in Schedule 2 (*Service Specification*)
- (c) be a full time employee of the Claims Service Provider or Service Company of the Claims Service Provider; and
- (d) have a strong working knowledge of the Claims Service Provider's business operations and the Scheme Principles and how they interrelate.

28.3 Meetings of Claims Service Provider Authorised Representative and the Principal Authorised Representative

The Claims Service Provider Authorised Representative and the Principal Authorised Representative will meet at the times and locations agreed by the parties, unless otherwise Directed by the Principal.

28.4 Meetings

The Meetings will:

- (a) consist of Personnel from the Principal's organisation and the Claims Service Provider's organisation and will carry out the responsibilities set out in Schedule 2 (*Service Specification*); and
- (b) meet at the times and locations agreed by the parties in accordance with Schedule 2 (*Service Specification*).

SECTION D - INTELLECTUAL PROPERTY AND DATA PROTECTION

29. Intellectual Property Rights

29.1 Ownership of Records and Foreground Material

- (a) The parties acknowledge and agree that:
 - (i) the Records;
 - (ii) the Foreground Material; and
 - (iii) all Intellectual Property Rights in the Records and the Foreground Material,are the property of the Principal, and will, on creation, vest in the Principal.
- (b) The Claims Service Provider assigns, and must ensure that its Personnel and Service Companies assign, to the Principal, on the later of the Commencement Date and creation, all rights, title and interest (including all Intellectual Property Rights) which any of them have in Foreground Material and Records and must do all things necessary to give effect to clause 29.1(a) above, including executing and delivering documents as required.

29.2 Ownership of the Principal Material

Except as stated otherwise in this Agreement, nothing in this Agreement affects the ownership of the Principal Material (and Intellectual Property Rights in the Principal Material).

29.3 Intellectual Property Licences to Claims Service Provider

Unless otherwise agreed in a Project Services Order, to the extent that the Claims Service Provider needs to use any of the Principal Material:

- (a) for the purpose of performing its obligations under this Agreement and subject to

clause 29.3(b) below, the Principal grants to the Claims Service Provider, subject to any Direction by the Principal and the terms of this Agreement, a world-wide, royalty-free and licence fee-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, copy, modify and, subject to the Claims Service Provider complying with clauses 50 and 52, communicate the Principal Material solely for the purpose of providing the Services for the Term;

- (b) where Project Material is created by the Claims Service Provider under a Project Service in circumstances where it is a condition of the Project Service that the Claims Service Provider does not receive payment for that Project Service, the Principal grants to the Claims Service Provider a perpetual, royalty-free and licence fee-free, non-exclusive, non-transferable licence to use, copy, reproduce, adapt and develop the Project Material for Internal Business Purposes.

29.4 Intellectual Property Licences to the Principal

- (a) The Claims Service Provider grants to, or must obtain for the Principal and any nominee of the Principal (including any other person who exercises of any of the functions of the Principal), an irrevocable, perpetual, world-wide, royalty-free and licence fee-free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate the Claims Service Provider Material in order to receive the full benefit of its rights under this Agreement (including the receipt and use of the Services and Deliverables).
- (b) The Claims Service Provider must give the Principal written notice of all Claims Service Provider Material that is to be used in connection with the performance of the Claims Service Provider's obligations under this Agreement, prior to using it to perform the Services.
- (c) Except as specifically provided in this Agreement, nothing in this Agreement transfers to the Principal any ownership rights in the Claims Service Provider Material.

29.5 Moral Rights

- (a) To the extent permitted by Law, and for the benefit of the Principal, the Claims Service Provider will procure from:
 - (i) all authors (including each of the Claims Service Provider's Personnel and Personnel of any Service Companies) of any Principal Material, their written consent in a form acceptable to the Principal for the Specified Acts, which is given directly or indirectly for the benefit of the Principal and any nominee of the Principal (including any other person who exercises of any of the functions of the Principal); and
 - (ii) the authors of any Claims Service Provider Material, their written consent for the Specified Acts (whether occurring before or after the consent is given), which is given directly or indirectly for the benefit of the Principal and any nominee of the Principal (including any other person who exercises of any of the functions of the Principal),

even if its use would otherwise be an infringement of their Moral Rights.

29.6 Trademarks

- (a) From the Commencement Date, the Claims Service Provider may use the Principal Logos for the Term and for such further period as the Principal may Approve, solely for the purposes of communications on the Principal's behalf in performing the Services.
- (b) In its use of the Principal Logos, the Claims Service Provider must comply with the Principal's brand guidelines and any other Directions of the Principal from time to time.

29.7 IP Deed

The Claims Service Provider must:

- (a) if requested by the Principal, obtain a signed IP Deed, in the form provided by the Principal from time to time, from:
 - (i) a Subcontractor; or
 - (ii) a Service Company; and
- (b) promptly comply with the Principal's Directions in respect of any action required to enforce such IP Deed, at the Claims Service Provider's own expense.

29.8 Approval of Format of Documents

The Claims Service Provider must seek individual Approval of the Principal for the format of any letterhead, cheques, forms and standard Documentation used in relation to the Services, unless the format is described in the Manuals.

29.9 Report to be Issued to Third Parties

The Claims Service Provider acknowledges and agrees that the Principal will, from time to time, issue to third parties (including Other Claims Service Providers and the public), reports consisting of Records, and any other information, including comparative performance data relating to (and identifying) the Claims Service Provider, Scheme Outcomes and/or the Scheme Principles. The Principal may designate the Claims Service Provider as being the source of such items, where the Principal, acting reasonably, considers it appropriate.

29.10 Delivery of Material

- (a) On the expiration or earlier termination of this Agreement or on such earlier date as may be specified by the Principal, the Claims Service Provider must deliver to the Principal a complete copy of:
 - (i) all the Principal Material; and
 - (ii) all Claims Service Provider Material licensed to the Principal under this Agreement,

or deal with it as otherwise Directed by the Principal.

29.11 Claims Data

- (a) The Claims Service Provider acknowledges that the icare Insurance for NSW Data Warehouse is a tool for providing consolidated management information on icare Insurance for NSW's operations. The icare Insurance for NSW Data Warehouse will be used by the Principal, the Claims Service Provider, Agencies and the Principal's Actuary to undertake reporting, analysis and monitoring functions using consolidated data from the whole of TMF and other Schemes' data.
- (b) The Claims Service Provider must collect the Claims Data as part of its Claims Management system in accordance with the requirements of this Agreement including the Claims Management Service Specification and where the Claims Data requirements of the Principal and/or an Agency change the Claims Service Provider must modify its claims management system to collect this further Claims Data.
- (c) Without limiting clause 29.11(a), the Claims Service Provider's claims management system must capture the data items specified in the icare Insurance for NSW Claims Interface Specifications.
- (d) The Claims Service Provider is required to provide to the Principal the Claims Data that is required for inclusion in the icare Insurance for NSW Data Warehouse in accordance with the requirements of the relevant icare Insurance for NSW Claims Interface Specifications and icare Insurance for NSW Data Governance Requirements.

29.12 HBCF Data collection and maintenance

- (a) The Claims Service Provider must, and must ensure its Personnel, at all times collect, maintain, and (where required) enter into SiCorp Core IT Systems accurate and current HBCF Data. The HBCF Data must be collected, maintained and entered into SiCorp Core IT Systems in accordance with the requirements specified in the HBCF Guidelines, Procedures and Manuals. The Claims Service Provider must ensure that any incorrect or incomplete data is amended.
- (b) The Principal may from time to time review its data collection requirements and the Claims Service Provider and its Personnel must collect, maintain, and (where required) enter into SiCorp Core IT Systems the HBCF Data in accordance with any changed requirements advised by the Principal to the Claims Service Provider in writing.

29.13 Claims Service Provider Information Systems IPR

- (a) Subject to this clause 29.13, clause 29 will not apply to Claims Service Provider Information Systems;
- (b) The Claims Service Provider will not be required to grant, assign or procure, or ensure that relevant third parties grant or assign, to the Principal, licenses or Intellectual Property Rights, as applicable, in relation to the Commercially Available IT or the Licensed Software;
- (c) Intellectual Property Rights, including copyright, in relation to the Developed Software vests in the Claims Service Provider. The Claims Service Provider grants to,

or must obtain for the Principal and any nominee of the Principal (including any other person who exercises any of the functions of the Principal), an irrevocable, perpetual, world-wide, royalty-free and licence fee-free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate the Developed Software in order for the Principal to receive the full benefit of its rights under this Agreement;

- (d) Intellectual Property Rights, including copyright, in relation to the Jointly Developed Software vests equally in the Principal and the Claims Service Provider and each party will be able to enjoy such Intellectual Property Rights without encumbrance from the other party.
- (e) The Claims Service Provider must, whenever requested by the Principal and on expiry or termination of this Agreement, provide to the Principal all necessary codes, data files, scripts, macros, subprograms, details of software packages and specifications, methodologies, formulae and processes to enable the Principal to recreate, use, review, analyse, modify, adapt, alter and enhance the Developed Software and the Jointly Developed Software.

30. Data Protection Obligations

30.1 Use of Records

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

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

30.2 Safeguarding Data

The Claims Service Provider must:

- (a) establish and maintain safeguards against the destruction, unauthorised disclosure, loss or alteration of any information, Data or Records in the possession or control of the Claims Service Provider that:
 - (i) are no less rigorous than those referred to in the Manuals, or as otherwise Directed by the Principal from time to time;

- (ii) are no less rigorous than the safeguards that can be reasonably expected in well run projects; and
 - (iii) comply with all Laws applicable to the Claims Service Provider's use and custody of such items; and
- (b) implement and operate appropriate backup procedures, to ensure that the Principal has unhindered, immediate and independent access to the items set out in clause 30.2(a) above at all times during the Term.

30.3 Removal of Records

The Claims Service Provider must not, and must ensure that the Claims Service Provider's Personnel do not take, transfer or transmit Data and Records or allow Data and Records to be taken, transferred, transmitted or accessed outside of New South Wales, without the Principal's prior written consent, which may be provided with conditions.

30.4 Audit

Without prejudice to clause 54, the Claims Service Provider agrees that the Principal or the Principal's nominee may, at any time, with reasonable notice, conduct a security audit of the Claims Service Provider's compliance with this clause 30.

30.5 Subcontracts

The Claims Service Provider must ensure that any contract it enters with a Subcontractor or Service Company under this Agreement contains provisions to ensure that the Subcontractor or Service Company has the same awareness and obligations as the Claims Service Provider has under subclauses 30.1 to 30.5, including this requirement in relation to subcontracts.

SECTION E - FINANCIAL ARRANGEMENTS

31. Financial Arrangements

31.1 Payment of Services

Subject to subclause 31.2 and clause 58, for each Year (or part of a Year) in the Term, the Principal must pay to the Claims Service Provider the following Remuneration in accordance with the provisions in this Agreement:

- (a) the Fees;
- (b) any amounts payable for a Project Service in accordance with clause 18; and
- (c) any other amount payable as set out in the Manuals.

31.2 Withholding Payment for Services

If the Principal disputes, acting reasonably, that the Services have been fully performed so as to meet the requirements of this Agreement, it will pay for the part of the Services that have been fully performed and withhold the payments that relate to the disputed performance. Either party may refer the matter to be resolved under the dispute resolution procedure in clause 56.

31.3 Only Amounts Payable as Remuneration

The amounts payable under subclause 31.1 are the only amounts payable to the Claims Service Provider as Remuneration for the Claims Service Provider performing all of the obligations under this Agreement in respect of the Services during the Term.

31.4 Manage Cash Forecasting

The Claims Service Provider must assist the Principal as requested to determine the impact of the cash inflows and payments for the Scheme(s).

31.5 Undertake Financial Management Reporting

The Claims Service Provider must, at a minimum, ensure that it has a financial management system that completely, accurately and in a timely manner records transactions, assets and liabilities managed on behalf of the Principal, and where required, interfaces with the Claims Service Provider's Claims systemInterest

No interest is payable by either the Principal or the Claims Service Provider in respect of any delay in the assessment or payment of fees, or the revision of any fee calculations, under this Agreement.

31.6 Remuneration May be Recalculated

The Principal reserves the right to have any payment of Remuneration recalculated at any time prior to the sixth anniversary of the termination or expiry of this Agreement if there are errors in the data on which the calculation is based, if those errors were caused or contributed to by the Claims Service Provider.

31.7 Payments by EFT

All payments made by the Principal under this Agreement will be made by electronic funds transfer into an Australian bank account nominated by the Claims Service Provider.

31.8 Interim Payments and Final Adjustment

- (a) For the purposes of subclause 31.1, the Principal will make Interim Payments of the Claims Service Provider's share of the Fees in accordance with Schedule 4 (*Fee Arrangements*).
- (b) The Principal will pay to the Claims Service Provider any positive Final Adjustment of the Claims Service Provider's aggregate share of the Fees or set off that amount against any amount owing to the Principal in accordance with clause 39. The payment will be made within twenty (20) Business Days of the date on which the Principal determines the Final Adjustment.
- (c) The Claims Service Provider must pay to the Principal any negative Final Adjustment to the Principal in accordance with Schedule 4 (*Fee Arrangements*), within twenty (20) Business Days of the date on which the Principal advises the Claims Service Provider of the Final Adjustment.

31.9 Principal Payments

- (a) The Claims Service Provider acknowledges that any payment obligations of the Principal under this Agreement may be satisfied by the Principal procuring payment

by another party.

- (b) The Principal may require any payments required to be made by the Claims Service Provider to the Principal (including any payment obligations arising under clause 31.8(c)) to be made to its nominee.

32. Provider Payments

32.1 Provider Payments to be Paid by Claims Service Provider

The Claims Service Provider will pay, on behalf of the Principal, all Provider Payments for which there is a Qualifying Invoice in accordance with this Agreement.

32.2 Qualifying invoice

- (a) A Qualifying Invoice means a Tax Invoice for any of the following services provided by a Third Party Service Provider, where that invoice meets the requirements set out in clause 32.2(b) below:
 - (i) services that were acquired by the Claims Service Provider acting as agent for the Principal;
 - (ii) services that were acquired by the Claims Service Provider within the scope of its authority under this Agreement; or
 - (iii) services that were acquired by a Claimant exercising his or her rights at Law.
- (b) In all cases, a Qualifying Invoice must meet all of the following requirements:
 - (i) it is for services that have been completed in accordance with the obligations placed on the Third Party Service Provider;
 - (ii) if it is for a Benefit or entitlement, then that amount must be properly claimable;
 - (iii) it is for an amount that is due;
 - (iv) it is not a payment for services completed by a Third Party Claims Service Provider that has already been paid for;
 - (v) it is properly calculated in accordance with any Law;
 - (vi) it is supported by a Tax Invoice (unless Law does not require a Tax Invoice in order to be reimbursed) addressed to the Claims Service Provider in its capacity as agent for the Principal, which includes:
 - (A) the ABN advised by the Principal; and
 - (B) the 3 digit extension to indicate the GST branch of the Principal managed by the Claims Service Provider;

- (vii) it is supported by any Documentation required by and otherwise meets all requirements set out in the Manuals; and
- (viii) it does not include any amount that is in excess of an amount originally quoted by the Third Party Service Provider for the service or is for default interest or other cost associated with late or non-payment of the invoice.

32.3 Payment of Qualifying Invoices

The Claims Service Provider will pay Qualifying Invoices by drawing on the Payment Account within the timeframes set out in the Schedules and the Manuals.

32.4 Reimbursement of Payments for Non Qualifying Invoices

Following a Demand from the Principal, the Claims Service Provider must reimburse the Principal for any payment made by the Principal for which there was not a Qualifying Invoice.

33. Payments of Benefits and Entitlements

33.1 Payment to Claimants, Agencies, Builders, Homeowners and Third Party Service Providers

The Claims Service Provider will pay to the relevant Claimant, Agency, Builder, Homeowner or Third Party Service Provider their Benefits and entitlements on behalf of the Principal, in accordance with this Agreement and the Law.

33.2 Reimbursements of Benefits Not Properly Paid

Following a Demand from the Principal, the Claims Service Provider must immediately reimburse the Principal for any payment of any Benefit which was not paid in accordance with the requirements of the Agreement or the relevant Law, even if the Claims Service Provider is unable to immediately obtain repayment of the Benefit from the relevant Claimant, Agency, Builder, Homeowner or Third Party Service Provider.

33.3 Adjustment of Reimbursements

If the Claims Service Provider has reimbursed the Principal under subclause 33.2, and subsequently obtains the correct payment as agent for the Principal, then, by providing written notice to the Principal, it may reconcile the amounts paid and remitted and require the Principal to pay any overpayment back to the Claims Service Provider.

34. Collection of Moneys Due to the Principal

The Claims Service Provider will promptly collect any moneys from Agencies and any other person and/or entity from whom moneys are due to the Principal as a result of the provision of the Services, including:

- (i) any applicable GST; and
- (ii) in relation to the provision of Services to the Principal:

- (A) all money received from reinsurers in connection with HBCF Insurance provided the Principal;
- (B) all money recovered by the exercise of any right of subrogation or other right of recovery in connection with HBCF Insurance that the Principal provides;
- (C) all money received under any security, guarantee or recourse held by the Principal in respect of any Policies that the Principal has issued; and
- (D) all money which the Principal may Direct the Claims Service Provider to pay into the relevant Bank Account.

35. Basis for Holding Moneys

35.1 Moneys Held as Bailee

The Claims Service Provider holds any moneys, including cheque, negotiable instruments or other form of payment, received from Claimants, Agencies, Third Party Service Providers, any Government Agency or any other person as bailee only and any such moneys paid into or received into an account are held on trust by the Claims Service Provider for the benefit of the Principal.

35.2 No Security Interests or Encumbrances

The Claims Service Provider does not have, and must not permit the creation of, any general or particular security interest or other form of encumbrance or any trust or other interest over any moneys, including cheques or other form of payment, that the Claims Service Provider received as agent for the Principal.

35.3 Remission of Moneys

The Claims Service Provider must remit any moneys received, including cheques or other forms of payment to the Principal's account within 1 Business Day after receipt unless otherwise stated in the Agreement.

35.4 Procedures in Respect of handling Moneys

The Claims Service Provider must follow the procedures in the Agreement in respect of all payments, the handling of moneys, including cheques and other forms of payment, and Internal Controls in respect of moneys and its systems that account for or process payments.

36. Banking Arrangements

36.1 Use of Approved Banking Facilities

The Claims Service Provider must only use the banking facilities Approved by the Principal or as set out in the Manuals.

36.2 Bank Fees

The Claims Service Provider will only be liable for bank fees to the extent set out in the Manuals.

37. GST and other Taxes

37.1 Amounts in this Agreement are GST Exclusive

The amounts set out in this Agreement are exclusive of GST, unless specifically stated to be inclusive of GST.

37.2 GST and other Taxes Referenced in this Agreement

For the purposes of this Agreement:

- (a) **"GST"** and any other terms used in GST Law that are capitalised in this Agreement have the meaning given to those terms by the GST Law, unless the context provides otherwise;
- (b) Any consideration or amount payable under this Agreement, including any non-monetary consideration (as reduced in accordance with clause 37.2(d) (if required) (**"Consideration"**) is inclusive of GST.
- (c) any reference to this clause 37 to GST payable by a party includes any GST payable by the representative member of any GST group of which that party is a member.
- (d) if the GST Law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the period to which that part of the supply will be attributable, such part of the supply will be treated as a separate supply for the purpose of this subclause 37.2, and this Agreement;
- (e) subject to subclause 37.5, if GST is or becomes payable by the supplier on a supply made under or in connection with this Agreement, an additional amount is payable by the party providing consideration for the supply (**"Recipient"**) equal to the amount of GST payable on that supply (**"Additional Amount"**); and
- (f) the Additional Amount payable under clause 37.2(e) above is payable at the same time, to the same extent and in the same manner as the consideration for the supply, and the supplier must provide the Recipient with a Tax Invoice, or the Recipient must have generated and issued a Recipient Created Tax Invoice, as a precondition of payment of the Additional Amount.
- (g) "Payment Summary" has the same meaning as given to this term in section 16-170(1) of Schedule 1 of the *Taxation Administration Act 1953* (Cth).

37.3 GST Refunds, Credits or further amounts

Unless specifically provided for in this Agreement, if for any reason (including the occurrence of an Adjustment Event) the amount of GST payable on a supply (taking into account any

decreasing or increasing Adjustments in relation to the supply) varies from the Additional Amount payable by the Recipient under clause 37.2(e):

- (a) the supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the supplier, as appropriate;
- (b) the refund, credit or further amount (as the case may be) will be calculated by the supplier in accordance with the GST Law; and
- (c) the supplier must notify the Recipient of the refund, credit or further amount within ten (10) Business Days after becoming aware of the variation to the amount of GST payable. If there is an Adjustment Event in relation to the supply, the requirement for the supplier to notify the Recipient will be satisfied by the supplier issuing to the Recipient an Adjustment Note within ten (10) Business Days after becoming aware of the occurrence of the Adjustment Event.

37.4 Allowance for Input Tax Credits

Notwithstanding any other provision in this Agreement, if an amount payable under or in connection with this Agreement (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise ("**Amount Incurred**"), the amount payable must be reduced by the amount of any Input Tax Credit to which that party (or the representative member of that party's GST group) is entitled in respect of that Amount Incurred.

37.5 Claims Service Provider to Comply with Tax Obligations of the Principal

The Claims Service Provider will comply with any and all tax obligations of the Principal, and where applicable on behalf of the Principal, in respect of the Claims Service Provider's files, as set out in this Agreement and in the Manuals.

37.6 Particular Tax Obligations of the Principal

Without limiting subclause 37.5, the tax obligations referred to in that subclause include:

- (a) obtaining, issuing and retaining proper and correct Tax Invoices in respect of all relevant transactions;
- (b) deducting Pay As You Go ("**PAYG**") tax from payments to Claimants and others (where appropriate);
- (c) reporting these PAYG tax deductions to the Australian Taxation Office, as required by taxation laws;
- (d) drawing on the Payment Account of the amount of PAYG tax due or any net amount of GST due and remitting those amounts to the Australian Tax Office;
- (e) providing Payment Summaries to Claimants and others, as required by taxation laws, and providing the PAYG Withholding Payment Summary Annual Report ("**PSAR**") to the Principal;

- (f) preparing and providing monthly Business Activity Statement equivalent information to the Principal;
- (g) preparing and providing information to the Principal for completion of the Taxable Payments Annual Report (**TPAR**);
- (h) such other obligations as the Principal may Direct the Claims Service Provider to carry out on its behalf during the Term; and
- (i) providing other information relating to taxation matters as the Principal may reasonably require.

The Claims Service Provider will provide to Principal within 10 Business Days of the end of the Month all necessary information to enable the Principal to correctly complete its Business Activity Statement and claim all Input Tax Credits in relation to the Schemes. The information submitted must include the following fields:

- (a) Invoice Date;
- (b) Payment Type (when there are different payment codes);
- (c) Payment Code (used to identify payment type);
- (d) Gross Payment Amount;
- (e) GST amount claimed from ATO (Input Tax Credit amount); and
- (f) Decreased adjustment amount claimed.

38. Invoices

38.1 Tax Invoices to be Issued by Claims Service Provider

- (a) The Principal will calculate any amount due to the Claims Service Provider under subclause 31.1.
- (b) The Principal will use every effort to provide such calculations within 45 Business Days of the end of the Month in which the payment became due.
- (c) The Claims Service Provider will then promptly provide a Tax Invoice for those amounts.
- (d) The Claims Service Provider will provide a Tax Invoice for any other amount payable to the Claims Service Provider within ten (10) Business Days of the end of the Month in which the payment became due.
- (e) All Tax Invoices must be itemised to the level of detail set out in the Manuals.

38.2 Payment of Tax Invoice

- (a) The Principal will pay the Tax Invoice within ten (10) Business Days of receipt of a correctly rendered Tax Invoice that sets out:

- (i) the amount to be paid by the Principal, together with any substantiating material required; and
 - (ii) such other information as the Principal reasonably requires.
- (b) Invoices should be submitted to the email address for the Principal set out in subclause 62.2.

38.3 Revision of Fee Calculations

- (a) If either the Principal or the Claims Service Provider becomes aware of an error in the calculation of any fees or Remuneration paid or payable under this Agreement then that party must immediately notify the other party of the error.
- (b) The Principal may require the Claims Service Provider to issue a further Tax Invoice, an amended Tax Invoice or an Adjustment Note, as the case may be, and/or to refund any overpayment within ten (10) Business Days of notice given in accordance with clause 38.3(a).

38.4 Recipient created tax invoices

- (a) This subclause applies in respect of Specified Supplies made by the Claims Service Provider.
- (b) The Principal can issue recipient created tax invoices in respect of the Specified Supplies.
- (c) The Claims Service Provider must not issue tax invoices in respect of the Specified Supplies.
- (d) The Claims Service Provider acknowledges that it is registered for GST and that it will notify the Principal if it ceases to be registered.
- (e) The Principal acknowledges that it is registered for GST and that it will notify the Claims Service Provider if it ceases to be registered for GST or if it ceases to satisfy any of the requirements of Goods and Services Tax: Recipient Created Tax Invoice Determination 2017 for Agricultural Products, Government Related Entities and Large Business Entities under the GST Act.

38.5 Tax Invoices for Penalty Repayments

A penalty referred to in subclause 43.1(a), if imposed, must be invoiced by the Principal on a separate Tax Invoice and is payable by the Claims Service Provider within ten (10) Business Days of receipt of the Tax Invoice.

39. Set-Off

39.1 Amounts which May Be Deducted as a Set off

The Principal may deduct from the Financial Security, the Remuneration and/or any amount payable by the Principal to the Claims Service Provider any amount which:

- (a) the Claims Service Provider must reimburse the Principal or against which it indemnifies the Principal (including any indemnity arising under subclause 43);
- (b) the Claims Service Provider owes to the Principal;
- (c) the Principal has paid (or has procured to be paid) on the Claims Service Provider's behalf;
- (d) is a liability that the Principal believes is payable by the Claims Service Provider to the Principal;
- (e) any amount of Liquidated Damages payable by the Claims Service Provider under clause 13; or
- (f) any damages, costs and expenses recoverable by the Principal from the Claims Service Provider in consequence of the Claims Service Provider's breach of this Agreement,

whether under this Agreement or otherwise.

If the amount which may be payable or which may become payable to the Claims Service Provider under this Agreement or otherwise is less than the amount to be deducted under clause 39 ("Set-Off"), the balance remaining unpaid will be a debt due by the Claims Service Provider to the Principal and may be:

- (a) set-off against any other money due to the Claims Service Provider by the Principal under this Agreement or any other agreement between the Principal and the Claims Service Provider; or
- (b) recovered from the Claims Service Provider by the Principal in an appropriate court.

39.2 Recovery after Set off

Nothing in this clause 39 will affect the right of the Principal to recover from the Claims Service Provider the whole of the debt of any balance that remains owing after any deduction or offset including the right to recover such debt from any Financial Security.

39.3 Expenditure of Moneys Due to Claims Service Provider to Rectify Breach of Agreement

The Principal will be entitled to expend any moneys due to the Claims Service Provider to make good any breach by the Claims Service Provider of any provision of this Agreement and deduct such amounts from either any amount that may be payable to the Claims Service Provider under this Agreement, or any Financial Security, provided that:

- (a) the Principal will not be entitled to expend any moneys unless the Principal has first given the Claims Service Provider not less than 20 Business Days (unless otherwise provided in this Agreement) notice of the breach and of its intention to make the expenditure; and
- (b) the Claims Service Provider has not remedied the breach within that period.

SECTION F - RISK MANAGEMENT

40. Operational Risk Management

40.1 Risk Management

The Claims Service Provider will provide proactive operational risk management services arising from claims to Agencies or as otherwise directed by the Principal from time to time.

40.2 IT Security Requirements

- (a) The Claims Service Provider must establish and maintain the following for the term of this Agreement:
 - (i) a formalised Information Security Policy which is reviewed by the Principal at planned intervals or whenever material changes are made to the policy;
 - (ii) a formalised Information Security Plan and designated individual responsible for managing Information Security;
 - (iii) a formalised Incident Management Plan for monitoring, reporting and resolving security incidents;
- (b) In the event of a Data breach or a security incident impacting the Services, the Claims Service Provider must ensure that the Principal is notified immediately. Notification must be made within twenty four (24) hours following the breach.
- (c) The Claims Service Provider must obtain and maintain ISO 27001 certification throughout the term of the Agreement. The scope and locations of the ISO 27001 certification must include all Services provided to the Principal and cannot be cancelled or modified without the Principal's prior Approval.
- (d) The Claims Service Provider must ensure that any Key Subcontractor, or any Subcontractor who has access to the Principal's Data must be ISO 27001 certified and adhere to the Principal's Information Security Policies and standards.
- (e) The Claims Service Provider will provide evidence of ISO 27001 certification, audits and any applicable remedial reports on an annual basis or as reasonably required by the Principal.
- (f) The Claims Service Provider must establish and maintain safeguards against the destruction, loss or alteration of the Principal's Data in the possession or control of the Claims Service Provider that:
 - (i) are set out in the Agreement;
 - (ii) are consistent with and no less rigorous than those maintained by the Principal to secure that Data; and

- (iii) comply with all applicable Laws and any procedures specified by the Principal concerning Data security.
- (g) The Claims Service Provider must notify the Principal immediately and comply with all Directions of the Principal should it becomes aware of the contravention of any Data security requirement.
- (h) The Claims Service Provider must return any of the Principal's Data in its possession or control to the Principal immediately on Termination or expiration of this Agreement or on request by the Principal at any time. If and when directed to do so, such return of the Principal's Data may require the Claims Service Provider to take steps as directed by the Principal to ensure accurate deletion of any the Principal's Data from the Claims Service Provider's systems, except to the extent the Claims Service Provider must retain the Principal's Data (or part thereof) to comply with applicable Laws.
- (i) The Claims Service Provider will ensure that all Data is maintained in a form such that it is retrievable, readable and understandable for the period defined by the Principal and will comply with Laws and regulations.
- (j) All security information provided by the Claims Service Provider will be evaluated by the Principal's IT Security team. The Claims Service Provider must provide supporting evidence and further clarifications for the Principal's IT Security team to evaluate the information provided if requested by the Principal.
- (k) The Claims Service Provider must perform security testing prior to any major information technology release as well as annual security testing of all systems that store, process or transmit the Principal's Data. The security testing report must be provided to the Principal upon request. The Principal may consider acceptance of an executive summary or attestation report in situations where the original security testing report cannot be provided. If the security testing report shows any issues with the security of any Claims Service Provider system (including interface or integration with the Principal's systems), the Claims Service Provider must provide a remediation plan for the Principal's consideration and follow any Directions provided by the Principal in regard to remediating the issues within the specified timeframes.

40.3 Business Continuity and Disaster Recovery Planning

- (a) The Claims Service Provider must implement, comply with, maintain, test and execute the BCP throughout the Term.
- (b) The Claims Service Provider must conduct annual business continuity and disaster recovery testing and report to the Principal on the results of those tests.
- (c) The Claims Service Provider must support any of the Principal's business continuity and disaster recovery plans that the Principal provides to the Claims Service Provider and execute those plans.
- (d) The Claims Service Provider BCP must be tested and updated by the Claims Service

Provider at least annually.

- (e) The Claims Service Provider must, within ten (10) Business Days of a request by the Principal, provide to the Principal those parts of the BCP that are relevant to the Services.
- (f) The Claims Service Provider will be responsible for the following matters:
 - (i) any fees charged by third party business continuity or disaster recovery suppliers in relation to the Business Continuity Plan; and
 - (ii) any other costs, charges, fees or expenses relating to business continuity and disaster recovery including due to the requirements for any upgrade, supplement, modification or replacement in relation to any Equipment, systems, data or processes used by the Claims Service Provider to provide the Services.

40.4 Risk Management, Fraud Identification and Information Security

- (a) The Claims Service Provider must prepare, implement, test and execute risk management policies, the Fraud Prevention, Identification and Management Model and information security management in a form and manner which is effective and must comply with the requirements of this Agreement.
- (b) The Claims Service Provider must conduct annual testing of risk management policies, the Fraud Prevention, Identification and Management Model and information security management and report to the Principal on the results of those tests.
- (c) Without limiting the Claims Service Provider's obligations to prevent Fraud against the Scheme, the Claims Service Provider must support and implement any plans that the Principal provides to the Claims Service Provider that relate to risk management, Fraud identification or information security from time to time.
- (d) The Claims Service Provider will be responsible for the following matters:
 - (i) any fees charged by third party suppliers in relation to the preparation, implementation, maintenance or testing of risk management policies, the Fraud Prevention, Identification and Management Model and information security management; and
 - (ii) any other costs, charges, fees or expenses relating to risk management and Fraud identification and information security including, due to the requirement for any upgrade, supplement, modification or replacement in relation to any Equipment, systems, data or processes used by the Claims Service Provider to provide the Services.

40.5 Requirement to Comply

The Claims Service Provider must at all times comply with and be responsible for:

- (a) the Business Continuity Plan;
- (b) risk management policies;
- (c) the Fraud Prevention, Identification and Management Model; and
- (d) information security policies,

and ensure such policies and models are current and effective at all times throughout the Term.

40.6 Rectification

- (a) As soon as the Claims Service Provider becomes aware, or is notified by the Principal, of an error, defect, problem or failure with the Services ("**Fault**"), the Claims Service Provider must:
 - (i) if the Principal is not already aware of the details of the Fault, notify the Principal of the nature and likely impact of the Fault;
 - (ii) commence rectification and resolve the Fault in accordance with the BCP; and
 - (iii) regularly report to the Principal on the status of the diagnosis and rectification of the Fault in accordance with the BCP.
- (b) Notwithstanding any other provision of this Agreement, the Claims Service Provider must ensure that:
 - (i) payments to Claimants/Homeowners recommence within four (4) Business Days of a Fault; and
 - (ii) the Services are resumed in full within 15 Business Days of a Fault.
- (c) If the Claims Service Provider does not meet the requirements of either clauses 40.6(b)(i) or (b)(ii) above, the failure to meet any such requirements is a material breach and the Principal may immediately terminate this Agreement for cause under subclause 58.2 and pursue all remedies available to it under this Agreement or at Law for the Claims Service Provider's material breach of this Agreement.

40.7 Board Declarations

- (a) On or before 31 July and 14 February in each Year, or at other times as determined by the Principal, the Claims Service Provider must provide to the Principal a declaration executed by two directors of the Claims Service Provider, in the form of Schedule 8 (*Director's Declaration*), being evidence of a resolution of the board of the Claims Service Provider as to its terms.
- (b) If the Principal Approves a declaration provided pursuant to section 40.7(a), this does not constitute a waiver or forgiveness for breach, nor does it affect any right of action or remedy that has accrued or may accrue to the Principal in respect of a declaration that has been Approved.

41. Claims Service Provider Disclosures

41.1 Requirements and Condition of Disclosure

The Claims Service Provider must disclose in writing to the Principal prior to the Commencement Date:

- (a) any litigation or proceeding whatsoever, actual or threatened, against the Claims Service Provider or Service Company involved in providing the Services and/or their respective Personnel (including its Key Personnel);
- (b) the existence of any breach or default or alleged breach or default of any agreement, order or award binding on the Claims Service Provider or any Service Company involved in providing the Services and their respective Personnel (including its Key Personnel);
- (c) any notice, report or other correspondence that the Claims Service Provider, the Guarantor or Service Company involved in providing the Services provides to, or receives from, any securities exchange, ASIC, APRA or any other regulatory body in Australia, where that notice, report or correspondence relates to any of the following:
 - (i) a material breach or likely material breach of any applicable legislation or prudential standard, but only insofar as such material breach or likely breach would adversely impact the Claims Service Provider's ability to:
 - (A) deliver the Services;
 - (B) conduct its business operations; or
 - (C) manage its risks effectively; or
 - (ii) subject to subclause 41.1(c)(i) above, the authority of the Claims Service Provider to conduct its business; or
- (d) matters relating to the commercial, technical or financial capacity of the Claims Service Provider or any Service Company involved in providing the Services and their respective Personnel (including its Key Personnel) that are proposed to be engaged in respect of this Agreement,

which could materially adversely affect the Claims Service Provider's, or the Service Company's, ability to perform any of its obligations under this Agreement.

41.2 Duty to Notify

Throughout the Term the Claims Service Provider must notify and fully disclose to the Principal in writing within two (2) Business Days of the occurrence of the following matters:

- (a) any matter or event that a reasonable person in the position of the Claims Service Provider would believe:

- (i) has resulted in or may result in the occurrence of one or more of the matters described in:
 - (A) clause 4.7;
 - (B) clause 41.1(a), (b) or (c); or
 - (C) clause 58.2; or
 - (ii) has had or could have a material adverse effect on:
 - (A) the ability of the Claims Service Provider (or any Service Company involved in providing the Services) to perform its obligations under the Agreement, including the provisions of the Services; or
 - (B) the reputation of the Claims Service Provider or any Service Company involved in providing the Services, the Guarantor or any of their respective Related Bodies Corporate.
- (b) any notice, report or other correspondence that the Claims Service Provider, the Guarantor or Service Company or any of their respective Related Bodies Corporate involved in providing the Services provides to, or receives from, any securities exchange, ASIC, APRA or any other regulatory body in Australia, where that notice, report or correspondence relates to any of the following:
- (i) a material breach or likely material breach of any applicable legislation or prudential standard, but only insofar as such material breach or likely breach would adversely impact the Claims Service Provider's ability to:
 - (A) deliver the Services;
 - (B) conduct its business operations; or
 - (C) manage its risks effectively; or
 - (ii) subject to subclause 41.2(b)(i), the authority of the Claims Service Provider to conduct its business.

41.3 Notification of Insolvency

Without limiting anything in this clause 41, throughout the Term the Claims Service Provider must immediately notify and fully disclose to the Principal in writing the occurrence of any Claims Service Provider's Insolvency event.

42. The Principal's Warranties / Disclaimer

42.1 Representations and Warranties

The Principal represents and warrants to the Claims Service Provider that:

- (a) the Principal has the requisite power and authority to enter into this Agreement; and

- (b) the Principal is registered under the GST Act and will remain registered throughout the Term.

42.2 Information, Facilities and Resources on 'as is' Basis

To the extent that the Principal licences, provides or otherwise makes available any information, facilities or resources to the Claims Service Provider under this Agreement (collectively the "**Principal Resources**") they are provided to the Claims Service Provider on an 'as is' basis, and the Claims Service Provider acknowledges and accepts that, to the extent permitted by Law, no representation has been made and no warranty is or has been expressly or impliedly given by or on behalf of the Principal or its Personnel in respect of:

- (a) the condition, state of repair, quality, fitness for purpose or merchantability of any Principal Resources; and
- (b) the accuracy, completeness, currency, suitability or efficacy of any Principal Resources.

42.3 Disclaimer

The Principal disclaims all responsibility for any information given to the Claims Service Provider before or after the Commencement Date for which a disclaimer is acknowledged by the Claims Service Provider. Any information given by the Principal to the Claims Service Provider is not guaranteed as to accuracy, sufficiency or otherwise.

43. Indemnity

43.1 Indemnity

To the maximum extent permitted by Law, the Claims Service Provider indemnifies and will keep indemnified the Principal, its Personnel, its successors and assigns ("**those indemnified**") against any Demand incurred or suffered by any of those indemnified where such Demand arises out of or in connection with:

- (a) any penalties imposed on the Principal as a result of the Claims Service Provider providing incorrect or incomplete information under clause 37.6 to enable the Principal to complete its Business Activity Statements or any penalties imposed on the Principal by any Government Agency where such penalty is imposed as a result of the Claims Service Provider failing to perform its obligations under this Agreement;
- (b) the Claims Service Provider exceeding its authority as agent of the Principal;
- (c) any breach of any Laws by:
 - (i) the Principal or its Personnel that is caused or contributed to by the Claims Service Provider or any Service Company involved in providing the Services or their Personnel; or
 - (ii) the Claims Service Provider or its Related Bodies Corporate or any Service Company and/or their respective Personnel applicable to the Services and the performance of the obligations under this Agreement;

- (d) any act or omission of the Claims Service Provider, or any Service Company involved in providing the Services or their Related Bodies Corporate or their respective Personnel that:
 - (i) causes or contributes to personal injury (including sickness) to, or the death of, any person; or
 - (ii) results in loss of, or damage to, property; or
- (e) any unlawful, wilful or negligent act or omission of the Claims Service Provider, or any Service Company involved in providing the Services or their Related Bodies Corporate or their respective Personnel;
- (f) subject to clause 56.4, any Demand from any third party, including:
 - (i) from any Subcontractor; and
 - (ii) any Demand arising out of the Claims Service Provider's (or its permitted sub-licensees, if any) unauthorised use of any Intellectual Property Rights that are licensed by Principal to the Claims Service Provider, or assigned by the Claims Service Provider to the Principal, under this Agreement;
- (g) Fraud by:
 - (i) the Claims Service Provider or any Service Company involved in providing the Services or their Related Bodies Corporate, their respective Personnel or their respective Directors, officers and employees;
 - (ii) Third Party Service Providers or their respective Personnel, Employers or Claimants to the extent that the Claims Service Provider failed to provide Fraud prevention and detection procedures in accordance with this Agreement, and had such procedures been in place the amounts lost would not have been likely to have been lost; or
- (h) a breach of any obligation of confidence or privacy by the Claims Service Provider or any Service Company involved in providing the Services, their Related Bodies Corporate or their respective Personnel;
- (i) Claims Service Provider's breach of clause 63.14(a) or 63.14(b) ("Stamp Duties and Taxes")
- (j) The Claims Service Provider's liability to indemnify those indemnified under this Agreement, including under section 43.2 below, will be reduced proportionally to the extent that any unlawful, wilful or negligent act or omission of the Principal caused or contributed to the liability or loss.

43.2 Indemnity Relating to Intellectual Property Rights

- (a) The Claims Service Provider must indemnify the Principal and its Personnel, successors and assigns ("**those indemnified**") against loss, damage or expense that

has been incurred by those indemnified as the result of a Demand made by a third party where that loss, damage or expense arises from a Demand made against those indemnified in which it is alleged that the Services or any Deliverable, including the use of the Services or Deliverable, in accordance with this Agreement infringes the Intellectual Property Rights or Moral Rights of any person.

- (b) For the purposes of this subclause 43.2 an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of:
 - (i) section 163 of the *Patents Act 1990* (Cth);
 - (ii) section 96 and/or 100 of the *Designs Act 2003* (Cth);
 - (iii) section 183 of the *Copyright Act 1968* (Cth); and/or
 - (iv) section 25 of the *Circuits Layout Act 1989* (Cth),constitute an infringement.
- (c) The indemnity referred to in this subclause 43.2 will be granted whether or not legal proceedings are instituted, and if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- (d) Although the Principal may elect to defend a Demand alleging an infringement under this subclause 43.2, the Claims Service Provider must, if requested by the Principal but at the Claims Service Provider's expense, conduct the defence of a Demand alleging such infringement. The Claims Service Provider must follow the Principal's Directions and the procedures in the Manuals relating in any way to that defence or to negotiations for settlement of the Demand.
- (e) The Principal must if requested, but at the Claims Service Provider's expense, provide the Claims Service Provider with reasonable assistance in conducting the defence of such a Demand.
- (f) If someone claims, or the Principal reasonably believes that someone is likely to claim, that all or part of the Foreground Material or Claims Service Provider Material infringe their Intellectual Property Rights the Claims Service Provider must, in addition to the indemnities under this subclause 43.2 and to any other rights that the Principal may have under or in accordance with this Agreement or under general principles of law or equity, promptly, at the Claims Service Provider's expense:
 - (i) use its best efforts to secure the rights for the Principal to continue to use the affected Foreground Material or Claims Service Provider Material free of any claim or liability for infringement; or
 - (ii) replace or modify the affected Foreground Material or Claims Service Provider Material, provided that 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,

and if the solutions in subclauses 43.2(f)(i) or 43.2(f)(ii) above cannot be achieved, the Principal may immediately terminate this Agreement for cause under this subclause 58.2 and pursue all remedies available to it under this Agreement and at Law for the Claims Service Provider's material breach of this Agreement.

- (g) The indemnity provided under this subclause 43.2 does not apply to the extent that the loss, damage or expense arises directly from:
 - (i) the Claims Service Provider complying with a Direction given to the Claims Service Provider by the Principal; or
 - (ii) the continued use of Foreground Material or Claims Service Provider Material which was replaced by the Claims Service Provider in accordance with subclause 43.2(f)(ii) above.

44. Limit of Liability

44.1 Limit of Liability

To the maximum extent permitted by Law, and except for the circumstances set out in clause 44.2, the total aggregate liability of the Principal and its agents (other than the Claims Service Provider or any Other Claims Service Providers) under this Agreement in contract, tort (including negligence), breach of statutory duty, at equity, or otherwise for any loss or damage which arises from any Demand arising out of or in connection with this Agreement or the relationship between the parties, is limited to \$1,000,000.

44.2 Situations in Which Limit Does Not Apply

The limit of liability in subclause 44.1 does not apply to liability arising in relation to:

- (a) death or personal injury; or
- (b) damage to tangible property,

that was caused by the wilful, or negligent act or omission of the Principal or its agents (other than the Claims Service Provider or any Other Claims Service Providers); or

- (a) a failure to pay any fee or amount set out in subclauses 31.1 to 31.2; or
- (b) the indemnity under subclause 56.5.

44.3 Liability of the Principal Not Affected

The parties agree that:

- (a) the Principal's liability to the Claims Service Provider will not be increased in any way as a result of the Claims Service Provider using any Service Company to provide any part of the Services; and
- (b) if there is any Demand against the Principal which includes any Demand from any Service Company, the Claims Service Provider must combine that Demand with any related Demand that the Claims Service Provider may have against the Principal, and

the Claims Service Provider must be the sole representative of any Service Company and/or the Claims Service Provider in a single action.

45. Insurance to be Maintained by the Claims Service Provider

45.1 Types of Insurance

On or prior to the Commencement Date, the Claims Service Provider must effect and must procure that any Key Subcontractor effect or be an insured under the following insurances:

- (a) public and product liability insurance;
- (b) professional indemnity insurance;
- (c) fidelity insurance;
- (d) cyber insurance; and
- (e) workers compensation insurance.

45.2 General Requirements on Term of Insurance

The Claims Service Provider must ensure that each of the insurances that are required are maintained throughout the Term, or for such longer period as is either:

- (a) specified below; or
- (b) required by Law.

For clarity, the Claims Service Provider's obligations and liability, including any liability to indemnify, under this Agreement or otherwise, will not be affected in any way by any terms of insurance or any refusal by the insurer to indemnify the Claims Service Provider under the policies of insurance.

45.3 Specific Requirements on Term of Insurance

The Claims Service Provider must maintain and must procure that any Key Subcontractor maintain professional indemnity insurance for a period ending 6 years after the date of provision of the last of the Services, such policy to continue to cover those matters covered by the policy that arise in respect of events or conduct occurring on or prior to the date of the provision of the last of the Services, subject to the insurance market offering such cover.

45.4 Cover Required – General

Unless otherwise Approved by the Principal, all insurances required to be effected and maintained, or required to be procured and maintained by any Key Subcontractor by this clause 45, must, to the extent possible or permitted by Law:

- (a) cover each insured party individually for their respective rights, interests or liabilities to other parties (as the case may be), including liabilities to any other insured party;
- (b) be maintained with an insurer or insurers Approved by the Principal. Such Approval will be given provided that:

- (i) the insurer is independent of any member of the Claims Service Provider Group;
- (ii) the insurer is not a captive insurer company of any member of the Claims Service Provider Group; and
- (iii) the insurer has the credit rating specified in clause 45.4(c) below; and
- (c) be underwritten by an insurer with “A minus” (or higher), or equivalent, credit rating awarded by a recognised industry rating organisation such as: Standard and Poors or Moody’s Investor Services.

45.5 Cover Required – Public and Product Liability

Unless otherwise Approved by the Principal, the public and product liability insurance required to be effected and maintained under this clause 45 must:

- (a) cover each insured party for that party’s liability to any other person for:
 - (i) loss or damage to property; and
 - (ii) death or injury to any person;

arising out of or in any way connected with the performance of this Agreement or of the functions the subject of this Agreement; and
- (b) provide insurance cover for an amount in respect of any one occurrence of not less than \$20,000,000 with a deductible/excess of no more than \$1,500,000.

45.6 Cover Required – Professional Indemnity

- (a) Unless otherwise Approved by the Principal, the professional indemnity insurance effected and maintained under this clause 45 must:
 - (i) cover each insured party:
 - (A) for any claim against that party for breach or alleged breach of professional duty, including any such duty arising or alleged to arise in the law of contract;
 - (B) for any claim against that party for breach or alleged breach of any statutory prohibition against misleading or deceptive conduct; and
 - (C) for its costs of investigating, settling or defending any claim made against that insured party of a kind referred to in this subclause 45.6; and
 - (ii) provide an annual limit of indemnity of not less than \$50,000,000 with a deductible/excess of not more than \$1,500,000.
- (b) Unless otherwise Approved by the Principal, the Claims Service Provider must immediately advise the Principal if the insurer’s estimate of the aggregate cost of

claims exceeds \$10,000,000.

45.7 Cover Required – Fidelity Insurance

- (a) Unless otherwise Approved by the Principal, the fidelity insurance effected and maintained pursuant to this clause 45 must:
 - (i) cover each insured party for loss occasioned by the fraudulent, dishonest or criminal misappropriation of funds by or on behalf of any employee, agent or contractor of the insured party; and
 - (ii) provide insurance cover for an amount in respect of any one claim of not less than \$20,000,000 per claim with a deductible/excess of no more than \$1,500,000.
- (b) Unless otherwise Approved by the Principal, the Claims Service Provider must immediately advise the Principal if the insurer's estimate of the aggregate cost of claims exceeds \$10,000,000.

45.8 Cover Required – Cyber Insurance

- (a) Unless otherwise Approved by the Principal, the cyber insurance effected and maintained pursuant to this clause 45 must:
 - (i) cover:
 - (A) each insured party for all losses that the Principal is liable to pay as a result of any cyber security incident (such as data security breaches, cyber-attacks) or breach of the data security and data protection provisions of this Agreement, including Claimant's costs and expenses;
 - (B) defence costs incurred by the Principal arising from a claim made against the Principal for any act or omission by a Claim Services Provider that resulted in a breach of the privacy and confidentiality provisions of this Agreement, including any State Privacy Laws; and
 - (C) civil penalties and fines that the Principal is liable to pay, and any defence costs incurred arising from any regulatory action against the Principal,
 - (ii) provide insurance cover for an amount in respect of any one claim of not less than \$20,000,000 per claim with a deductible/excess of no more than \$1,500,000.
- (b) Unless otherwise Approved by the Principal, the Claims Service Provider must immediately advise the Principal if the insurer's estimate of the aggregate cost of claims exceeds \$10,000,000.

45.9 Cover Required – Workers Compensation

The workers compensation insurance effected and maintained by the Claims Service Provider under this clause 45 must insure each insured party, to the extent required by Law,

against statutory and common law liability for death of or injury to persons employed by each such insured party.

45.10 Cover Required – General Requirements

On or before the Commencement Date, and within 20 Business Days of a request in writing by the Principal, the Claims Service Provider must provide to the Principal satisfactory evidence of the currency of the insurance policies specified in this clause 45, including:

- (a) the amount of the cover;
- (b) the identity of the insurer issuing the insurance;
- (c) the currency or expiry date of the insurance; and
- (d) evidence that the Premiums have been paid.

45.11 Claims Service Provider Must Not Jeopardise Cover

The Claims Service Provider must not do or omit to do, and must ensure that any Personnel of the Claims Service Provider or any Key Subcontractor do not do or omit to do, anything that results in any insurance referred to in this clause 45 being void or voidable, or results in any liability for payment under that policy being reduced.

45.12 Claims Service Provider Responsible for Any Deductible of Excess

All deductibles/excess payable under the policies of insurance maintained under this Agreement must be paid by the Claims Service Provider.

45.13 Claims Service Provider to Give Notice

The Claims Service Provider must immediately notify the Principal Authorised Representative if:

- (a) any of the insurance policies required under this clause 45 are cancelled; or
- (b) any matter or event occurs that adversely affects the amount or availability of the Claims Service Provider's cover under the policy.

45.14 Evidence of Insurances

The Claims Service Provider will provide to the Principal satisfactory evidence of the insurance policies referred to in clause 45.1 ("Types of Insurance") at the time of execution of this Agreement, upon renewal of the insurance policies and arrangements and at any time during the Term upon request from the Principal.

46. Performance Guarantee

If requested by the Principal, the Claims Service Provider must provide a Performance Guarantee duly executed by the Guarantor within 20 Business Days of the request. the Principal will only release the Guarantor in accordance with the terms of the Performance Guarantee.

47. Financial Security

47.1 Claims Service Provider must provide and maintain a Financial Security

The Claims Service Provider must provide and maintain the Financial Security, as defined in clause 47.2, in accordance with this clause 47.

47.2 Amount of Financial Security to be Provided by the Claims Service Provider

On or prior to the Commencement Date (or such later date as the Principal may Approve), the Claims Service Provider must provide a financial security deed in accordance with Schedule 5 – Financial Security, or in a form satisfactory to the Principal which, among other things, contains an irrevocable and unconditional promise to pay for an amount of at least the amount set out in the Agreement Details (“**Financial Security**”).

47.3 Basis on Which Financial Security Held

The Principal will hold the Financial Security as security for:

- (a) the due and proper performance and completion of the obligations of the Claims Service Provider under the Agreement; and
- (b) if Arthur J. Gallagher & Co, traded as NYSE: AJG, Standard and Poor’s rating falls below BBB- (S&P/Fitch) or Baa3 (Moody’s).

47.4 Inadequacy of Financial Security

If the Financial Security is not sufficient to meet payment of part or all of any cost, expense, liability, loss or damage incurred or suffered directly or indirectly by the Principal in connection with any breach by the Claims Service Provider of its obligations under this Agreement (whether by action or omission), the Claims Service Provider shall, within three (3) Business Days of demand, indemnify the Principal for such amounts.

47.5 Type of Financial Security Required

Unless otherwise Approved, the Financial Security must be issued by a bank, independent insurance company or other financial institution, located in Australia, acceptable to the Principal in its absolute discretion.

47.6 No Liability for Exercise of Financial Security in Good Faith

The Principal will have no liability to the Claims Service Provider (whether in negligence or otherwise) for any loss or damage suffered or incurred by the Claims Service Provider where the Principal exercises its rights under this clause 47 in good faith.

47.7 No Action Against Exercise of Financial Security

The Claims Service Provider must not take any action to injunct or otherwise prevent the Principal from making a claim or receiving a payment under the Financial Security. This subclause 47.7 does not prevent the Claims Service Provider from subsequently taking action to recover from the Principal, any amount invalidly received by the Principal under the Financial Security.

47.8 Reinstatement of Financial Security

If the Principal deducts moneys from the Financial Security and the Agreement has not been terminated by the Principal, then the Claims Service Provider must reinstate the Financial Security to the full amount required, pursuant to subclause 47.2, within 20 Business Days.

47.9 Withholding of Payment if No Reinstatement

The Principal may withhold payment of any of the fee or amount determined in accordance with subclauses 31.1 and 31.2, if the Claims Service Provider has not complied with subclause 47.8.

47.10 Release of Financial Security

The Principal must release the Financial Security if:

- (a) the Principal is satisfied that the Claims Service Provider has fully performed and discharged all of its obligations under this Agreement; and
- (b) twelve (12) Months after the expiration or Termination of this Agreement has passed, the Principal has given Approval that in its reasonable opinion:
 - (i) there is no prospect that money or damages will become owing (whether actually or contingently) by the Claims Service Provider to the Principal; and
 - (ii) no payment by the Claims Service Provider or the provider of the Financial Security is likely to be void, voidable or refundable under Law, including any law relating to insolvency.

47.11 Costs of Financial Security to be Provided by the Claims Service Provider

The Claims Service Provider will meet all costs associated with obtaining, maintaining and renewing the Financial Security.

47.12 Contract Dispute

If the Principal makes a deduction from the Financial Security, then either party may, within ten (10) Business Days of the deduction, raise a Contract Dispute, and the parties will follow the process for Contract Disputes, set out in clause 55.

48. Ability of the Principal to Step-In

48.1 Right to Step-In

At its absolute discretion acting in good faith, and at any time, the Principal may itself appoint another person or persons as its nominee, to either:

- (a) assist the Claims Service Provider in the discharge of its obligations in respect of so much of the Services as is required by the Principal; or
- (b) suspend, take over and manage a particular Claim or the performance of any of the Services.

48.2 The Principal's Right to Obtain Services

The Principal may obtain services similar to the Services elsewhere or may make any other arrangements considered necessary by the Principal to maintain the Services.

48.3 The Principal to Act Reasonably

The Principal must act reasonably, insofar as the circumstances permit, in appointing any nominee to provide the Services under subclause 48.1 and in agreeing a fee for those Services.

48.4 Notice of Exercise of Rights

The Principal will give notice to the Claims Service Provider as soon as practicable of its intention to exercise its rights under this clause 48. This notice must include:

- (a) the reason for exercising these rights including whether the step-in is under clauses 48.1(a) or 48.1(b) and whether the step-in is a result of a breach of this Agreement by the Claims Service Provider; and
- (b) details of the intended nominee.

48.5 Claims Service Provider to Assist in Exercise of Step-In Rights

The Claims Service Provider must assist the Principal and its nominee, in the exercise of its step-in rights including:

- (a) facilitating access to the file and systems of the Claims Service Provider and any Service Company involved in providing the Services;
- (b) providing access to or use of its Confidential Information, Claims Service Provider Operational Data, Records, any Intellectual Property Rights which the Principal owns or licenses or is entitled to access or use under clause 29;
- (c) making the Personnel of the Claims Service Provider and any Service Company available to provide information and assistance; and
- (d) informing and securing the co-operation of Subcontractors and Third Party Service Provider,

as required by the Principal or its nominee.

48.6 No liability to Claims Service Provider

Neither the Principal nor any third party supplier, is liable to the Claims Service Provider for any act or omission caused during the period of an appointment in accordance with subclause 48.1 unless the act or omission is caused by the wilful or negligent act, omission or misconduct of the Principal, its nominee or a third party supplier.

48.7 Recovery of Costs of Step-In

The Principal will be entitled to recover from the Claims Service Provider any amounts paid to a nominee in the performance of its Services where the step-in is as a result of a breach of this Agreement by the Claims Service Provider.

48.8 Cessation of Nominee's Appointment

- (a) The appointment of the Principal's nominee under subclause 48.1 will cease when:
- (i) the Principal determines, in its absolute discretion, and in any event, no later than nine (9) months after the appointment of the nominee;
 - (ii) this Agreement is terminated by the Principal, which must be no later than nine (9) months after the appointment of the nominee; or
 - (iii) this Agreement expires by the passing of time,
- whichever occurs earliest.
- (b) On the cessation of the nominee's appointment, the Claims Service Provider must as soon as reasonably practicable recommence performance of those of the Claims Service Provider's obligations under the Agreement which were suspended pursuant to subclause 48.1.
- (c) For the avoidance of doubt, the Claims Service Provider is not liable for any action taken by the Principal's nominee during the period of an appointment in accordance with subclause 48.1 and, subject to the Claims Service Provider complying with its obligations under this clause 48, if the Principal has exercised its step-in rights under subclause 48.1, to the extent the Principal has taken actions or failed to take actions that impede the performance of the Claims Service Provider under the Agreement, the Claims Service Provider will not be held responsible for that failure to perform.

48.9 Rights of Termination Not Affected

Nothing in this clause 48 prevents the Principal from being entitled to give notice for termination for cause, nor for terminating without cause under clause 58.

SECTION G - COMPLIANCE

49. Claims Service Provider's General Obligations

49.1 Claims Service Provider to be a Body Corporate

The Claims Service Provider must be and remain throughout the Term, a body corporate incorporated under, or registered as a foreign company under, the Corporations Act.

49.2 Must Notify Corporate Changes

The Claims Service Provider must notify the Principal within ten (10) Business Days of any of the following occurring to the Claims Service Provider, any of its holding companies or the Guarantor:

- (a) any change to the composition of the board of directors;
- (b) any single or series of connected transactions resulting in a change exceeding 20% of the voting shares; or

- (c) any change of control (as defined by section 50AA of the Corporations Act).

49.3 Conflict of Interest

- (a) The Claims Service Provider warrants that, to the best of its knowledge after making diligent inquiries, at the date of signing this Agreement, no Conflict exists or is likely to arise in the performance of its obligations under this Agreement by itself or any of its Personnel or a Service Company.
- (b) The Claims Service Provider must not enter into any contract, understanding or arrangement in respect of insurance, or insurance brokerage, policy or Claims Management or similar services with any Agency for which it, or a Related Body Corporate, provides any Services without prior Approval, which will not be unreasonably withheld.
- (c) The Claims Service Provider represents and warrants that throughout the Term it will use every effort to ensure that:
 - (i) none of its Related Bodies Corporate will have; and
 - (ii) neither the Guarantor nor any of the Guarantor's Related Bodies Corporate will have,

any direct or indirect control over, or any arrangement which directly or indirectly provides any of them control over more than 5% of the voting shares in, any other body corporate which is an Other Claims Service Provider or Third Party Service Provider, without prior confidential notification to the Principal.
- (d) If, during the Term, a Conflict arises, or appears likely to arise, the Claims Service Provider must:
 - (i) notify the Principal immediately in writing;
 - (ii) make full disclosure of all relevant information relating to the Conflict and setting out the steps the Claims Service Provider proposes to take to resolve or otherwise deal with the Conflict; and
 - (iii) take such steps as have been proposed by the Claims Service Provider, or at the discretion of the Principal, the Principal requires to resolve or otherwise deal with the Conflict.
- (e) If the Claims Service Provider fails to notify the Principal under this subclause 49.3, or is unable or unwilling to resolve or deal with the Conflict as required by the Principal, the Principal may immediately terminate this Agreement for cause under subclause 58.2 and pursue all remedies available to it under this Agreement and at Law for the Claims Service Provider's material breach of this Agreement.

49.4 Compliance with Laws

- (a) The Claims Service Provider must obtain and maintain any licences, authorisations, consents, Approvals and permits required by applicable Laws, to provide the Services

and to perform its obligations under this Agreement.

- (b) The Claims Service Provider must, and ensure that its Personnel:
 - (i) comply with all Laws and government policy and guidelines (including, but not limited to, the *Aboriginal Procurement Policy* and the *Small and Medium Enterprise and Regional Procurement Policy* – in accordance with the requirements detailed in Schedule 9 - NSW Government and Procurement Policies) relevant to this Agreement and applicable to the delivery of the Services by the Claims Service Provider under this Agreement including the Claims Service Provider's use and custody of any Contract Materials;
 - (ii) continue to comply with the requirements set out in this clause 49.4 (Compliance with Laws) throughout the Term, notwithstanding any changes to applicable Laws;
 - (iii) not do anything, or omit to do something, that would cause the Principal breach its obligations under any Laws; and
 - (iv) immediately advise the Principal of any significant breaches by the Claims Service Provider or its Personnel of any Laws which relate to this Agreement.

49.5 WH & S and Workers Compensation

Without limiting clause 50.1 ("Compliance with Privacy Laws"), the Claims Service Provider agrees to:

- (a) comply with its own obligations under WH&S and Workers Compensation Legislation;
- (b) comply with all licensing, industry codes of practice, notices, directions restrictions and notification requirements under the WH&S and Workers Compensation Legislation;
- (c) obtain and maintain any licences, authorisations, consents, approvals and permits required by the WH&S and Workers Compensation Legislation;
- (d) develop an occupational health and safety policy, a risk control strategy and maintain all other strategies as required by the WH&S and Workers Compensation Legislation; and
- (e) assist the Principal to comply with its obligations under the WH&S and Workers Compensation Legislation by complying with any Direction of the Principal or providing any information required by the Principal.

49.6 Health Care Liability Act 2001 (NSW)

Without limiting clause 50.1 ("Compliance with Privacy Laws") the Claims Service Provider for Health Liability Claims agrees, in relation to its Portfolio, to:

- (a) comply with the data collection and reporting requirements specified in any

insurance regulation order which is or may be made under the *Health Care Liability Act 2001* (NSW) in respect of the Principal and/or the Claims Service Provider;

- (b) comply with any other insurance regulation order which imposes any other requirements under the *Health Care Liability Act 2001* (NSW) which is or may be made in respect of the Principal and/or the Claims Service Provider;
- (c) have in place a risk management program as required under and in accordance with the provisions of the *Health Care Liability Act 2001* (NSW); and
- (d) comply with all other requirements under the *Health Care Liability Act 2001* (NSW) as if the Claims Service Provider were an insurer.

50. Protection of Personal Information

50.1 Compliance with Privacy Laws

- (a) The Claims Service Provider must comply with:
 - (i) all relevant privacy and data protection legislation applicable in NSW, in particular the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records and Information Privacy Act 2002* (NSW), including any legislation (to the extent that such legislation applies to Principal, the Claims Service Provider or an Agency, or any other recipient of the Protected Information) from time to time in force or applying in New South Wales affecting privacy, Protected Information or the collection, handling, storage, processing, use or disclosure of personal data ("**State Privacy Laws**");
 - (ii) the Privacy Management Plan; and
 - (iii) cabinet administrative instructions or NSW government standards relating to personal or health information,

in connection with the performance of this Agreement as if the Claims Service Provider is a NSW Government Agency, regardless of whether such legislation, instructions and standards would apply to the Claims Service Provider in the absence of this Agreement.

- (b) In addition to any obligations it has under clause 50.1(a) above, the Claims Service Provider must in respect of this Agreement, and with respect to all of the Principal's Confidential Information and any other Confidential Information that it obtains in relation to or in connection with the performance of this Agreement that comprises Personal Information:
 - (i) co-operate with any reasonable demands or inquiries made by any Authority responsible for administering the State Privacy Laws;

- (ii) ensure that any person who has an access level which would enable that person to obtain access to any information in respect of which the Principal has obligations under the State Privacy Laws is:
 - (A) made aware of, and undertakes in writing, to observe the relevant provisions of this subclause 50.1;
 - (B) required to complete the privacy training module which is developed by the Claims Service Provider and Approved by the Principal as part of their induction and on an annual basis. The Claims Service Provider is to provide quarterly attestations and reports confirming completion;

If the Principal itselfs develop the privacy training module referred to in clause 50.1(b)(ii)(B), the Principal may require completion of the privacy training module developed by the Principal instead of the privacy training module developed by the Claims Service Provider;

- (iii) take all reasonable measures to ensure that such information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse and that only authorised representatives, employees and officers of the Claims Service Provider have access to it;
 - (iv) not transfer such information outside New South Wales, or allow parties outside New South Wales to have access to it, without the prior approval of the Principal;
 - (v) immediately notify the Principal within 24 hours of the Claims Service Provider becoming aware of, and co-operate with the Principal in the resolution and containment of, a breach or possible breach of any obligation concerning collection, security, use and disclosure of Personal Information and health information, including unauthorised access to, unauthorised disclosure of or a loss of Personal Information ("**Personal Data Breach**");
 - (vi) not disclose to any third party, including a Privacy Commissioner, the existence or circumstances surrounding any Personal Data Breach without obtaining the Principal's prior written consent, to the extent permitted by law; and
 - (vii) immediately notify the Principal of, and co-operate with the Principal in the resolution of, any complaint alleging an Interference with Privacy, breach of the Principal's privacy policies and all other applicable Laws, codes and privacy policies.
- (c) The Claims Service Provider's obligations under this subclause 50.1; are in addition to, and do not restrict, any obligations it may have under the *Privacy Act 1988* (Cth), any registered APP code binding on the Claims Service Provider and any State or Territory law, to the extent that such obligations:

- (i) are consistent with the provisions of this Agreement; or
 - (ii) have no corresponding provision in this Agreement.
- (d) The Claims Service Provider also undertakes to ensure that its Service Company and the Personnel of the Claims Service Provider and Service Company, will comply with the obligations specified in subclause 50.1.

50.2 Notification of Data Breach Scheme

- (a) The Claims Service Provider must, subject to clause 50.1, immediately make all reasonable efforts to contain any Personal Data Breach in respect of Data within the possession of the Claims Service Provider or any of its Subcontractors or Service Providers.
- (b) The Claims Service Provider must promptly provide all relevant information to the Principal to enable the Principal to undertake an assessment of the Personal Data Breach in accordance with any voluntary or mandatory notification of data breach scheme including but not limited to:
- (i) the types of Personal Information involved in the breach;
 - (ii) the sensitivity of the Personal Information involved in the breach;
 - (iii) whether the Personal Information is protected by security measures;
 - (iv) the persons who have obtained, or who could obtain, the Personal Information;
 - (v) the likelihood that persons who have obtained, or could obtain, the Personal Information:
 - (A) have the intention of causing harm; or
 - (B) could circumvent the security measures;
 - (vi) the nature of the harm that has or may occur; or

51. any other matters specified in guidelines issued by the Privacy Commissioner about whether the disclosure is likely to result in serious harm to an individual to whom the information relates. Public Access to Government Information

51.1 Access to Information

- (a) The Claims Service Provider acknowledges and agrees that the Principal may be obliged under the *Government Information (Public Access) Act 2009* (NSW) ("**GIPA Act**"), at any time during or after the Term, to publish this Agreement and/or disclose information relating to this Agreement and services provided pursuant to this Agreement and hereby irrevocably consents to such publication and disclosure.

- (b) The Claims Service Provider will provide the information requested by the Principal in the format and within five (5) Business Days or otherwise as Directed by the Principal.
- (c) The Claims Service Provider is required to provide reasonable assistance and guidance in complying with the GIPA Act relating to the Services provided under this Agreement.
- (d) The Claims Service Provider must notify the Principal immediately of any request received from any person which relates to or arises out of the GIPA Act, and forward to the Principal gipa@icare.nsw.gov.au.

51.2 Right of access (GIPA Act section 121)

- (a) Upon written request from the Principal, the Claims Service Provider must provide the Principal with an immediate, unhindered and independent right of access to the information as set out in section 121 of the GIPA Act. The Claims Service Provider will endeavour to ensure that the requested information is provided to the Principal within five (5) Business Days.
- (b) The Claims Service Provider will provide copies of any of the information in clause 51.2(a) above, as requested by the Principal, at the Claims Service Provider's own expense.

51.3 Consultation Clause (GIPA Act section 54)

Where required by section 54 of the GIPA Act, the Principal will take reasonably practicable steps to consult with the Claims Service Provider in accordance with that section before providing any person with access to information pursuant to the GIPA Act.

51.4 Public access to government information

- (a) The Claims Service Provider acknowledges the requirements of Part 3, Division 5 of the GIPA Act and that the Principal may, at any time during or after the Term, in compliance with the GIPA Act publish or otherwise make available parts of this Agreement, except for the parts that comprise Confidential Information.
- (b) Without limiting clause 51.4(a), the relevant parts of this Agreement may be published on the website <https://tenders.nsw.gov.au> or such other websites as may be authorised for the purposes of the GIPA Act.

51.5 State Records

Without limiting clause 50.1 ("Compliance with Privacy Laws"), the Claims Service Provider agrees to:

- (a) comply, to the extent it is required to, with the *State Records Act 1998* (NSW);
- (b) assist the Principal to comply with its obligations under the *State Records Act 1998* (NSW) to ensure safe custody and proper preservation of State Records;
- (c) comply with any reasonable Direction of the Principal or provide any information to the Principal in a timely manner to enable the Principal to comply with its obligations under the *State Records Act 1998* (NSW); and

- (d) deliver all State Records to the Principal or to the State Records Authority, as and when Directed by the Principal, at the termination or expiry of this Agreement.

51.6 Subcontracts

The Claims Service Provider must ensure that any contract it enters with a Subcontractor or Service Company under this Agreement contains provisions to ensure that the Subcontractor or Service Company has the same awareness and obligations that the Claims Service Provider has under subclauses 50.1 and 51 including this requirement in relation to subcontracts.

51.7 Privacy Deed

The Claims Service Provider must:

- (a) prior to disclosing Personal Information obtain a signed Privacy Deed from the intended recipient, and such of the recipient's Personnel or agents, as requested by the Principal; and
- (b) promptly comply with the Principal's Directions, in respect of any action required to enforce such Confidentiality Deed, at the Claims Service Provider's own expense.

52. Confidentiality

52.1 Duty of Confidentiality

Each party must:

- (a) hold the other party's Confidential Information in strict confidence;
- (b) not allow any persons to have unauthorised access to the other party's Confidential Information; and
- (c) not disclose any of the other party's Confidential Information to any person, except:
 - (i) in accordance with this clause 52; or
 - (ii) after receiving the written consent or Approval of the other party.

52.2 Use of the Principal's Confidential Information

- (a) The Claims Service Provider must not make any use of the Principal's Confidential Information or any part of it, except for performing its obligations or exercising its rights under this Agreement.
- (b) Subject to subclause 52.5, prior to disclosing any of the Principal's Confidential Information to any third party, including a Subcontractor or its Personnel or a Service Company or their Personnel, the Claims Service Provider must provide written notice to the Principal and obtain its Approval for the disclosure and use of the Confidential Information, which may be denied or granted, in the Principal's absolute discretion.

52.3 Obligations on Disclosure

- (a) Prior to disclosure of the Principal's Confidential Information (except where the

disclosure is made in accordance with clause 52.4(a), the Claims Service Provider must require the party to which the Confidential Information is to be disclosed, to sign and execute the Confidentiality Deed.

- (b) The Claims Service Provider must ensure that any person to whom it is authorised to disclose the Principal's Confidential Information:
 - (i) is aware of, and ensure that, its employees and professional advisers, are aware of the confidential nature of the Principal's Confidential Information; and
 - (ii) holds the Principal's Confidential Information in confidence, on no less onerous terms than those set out in this Agreement.

52.4 Permitted Disclosure

A party is permitted to disclose the other's Confidential Information in the following circumstances:

- (a) a party may disclose Confidential Information to its legal, financial or other professional advisers, and only to the extent reasonably necessary, for the sole purpose of seeking advice from such advisors;
- (b) the Principal may disclose any information provided by the Claims Service Provider to:
 - (i) the Principal;
 - (ii) SIRA (in its role as regulator), and its Personnel; or
 - (iii) any other Government Agency, and its Personnel,provided that if the information is Confidential Information, the Principal must take all reasonable steps to ensure that such information is treated as confidential by SIRA and other such Government Agencies;
- (c) the Principal may disclose the Claims Service Provider's Confidential Information:
 - (i) to any Minister, Parliamentary Committee or, Parliament; and
 - (ii) to any Government Agency, to carry out any of its functions, powers or discretions;
- (d) where Confidential Information also comprises Intellectual Property Rights of a party, then the receiving party may disclose that Confidential Information only to the extent permitted by the licences granted under clause 29;
- (e) a party may disclose any Confidential Information to an auditor for the purposes or conducting an audit, inspection or test, in accordance with clause 54.15; and
- (f) where required by Law.

52.5 Disclosures Relating to Claims

The Claims Service Provider may disclose the Principal's Confidential Information relating to Claims to Claimants, Builders, Homeowners, Agencies or Third Party Service Providers, only to the extent necessary to ensure the efficient provision of the Services. Such disclosure does not require the Claims Service Provider to obtain an executed Confidentiality Deed, from the Claimant, Builder, Homeowner, Agency or Third Party Service Provider (as applicable).

52.6 Disclosures required by law

Prior to any disclosure necessary to comply with any Laws, the Claims Service Provider must give notice to the Principal with full details of the circumstances of the proposed disclosure and of the relevant Confidential Information to be disclosed. The Claims Service Provider must give the Principal a reasonable opportunity, and must provide such reasonable assistance as the Principal may require to:

- (a) challenge the proposed disclosure in a court of law or other appropriate body;
- (b) minimise the amount of Confidential Information which is disclosed; and/or
- (c) request that the Confidential Information only be disclosed on confidential terms.

53. Media and Public Relations

53.1 No Media Statements Without Approval

The Claims Service Provider must not, and must ensure that its Personnel do not, make any statement to media or the public on behalf of the Principal or with respect to the Services, or the Scheme (including Scheme Principles or the Principal's policies) without first obtaining Approval, unless the Media Code of Conduct in the Manuals is followed. Nothing in this clause 53.1 prevents the Claims Service Provider from disclosing information to the Australian Stock Exchange but only to the extent necessary to meet its obligations of continuous disclosure under ASX Listing Rule 3.1.

53.2 Media Enquiries to be Referred

All enquiries from the media arising out of or in connection with this Agreement, including Remuneration, payments of Benefits, payments to Third Party Service Providers, the Services, the Principal, SIRA, any relationships involving the Principal, the Claims Service Provider or any Other Claims Service Providers, WH&S and Workers Compensation Legislation and proposed amendments to such Laws, must be immediately referred to the Principal Authorised Representative without comment to the media.

53.3 Requirement to Notify

The Claims Service Provider must immediately notify the Principal Authorised Representative of all events that arise in the course of providing the Services that have or are likely to receive media attention or public attention.

53.4 Directions Regarding Marketing Material

The Principal may Direct the Claims Service Provider to immediately withdraw any marketing material that relates to the Scheme that has been made public by the Claims Service Provider without any liability to the Principal. The Claims Service Provider must comply with that Direction.

53.5 Comparative Material

The Claims Service Provider must not publish or disclose any information to any third party which compares the Claims Service Provider's performance to any Other Claims Service Provider's performance or to the Scheme Outcomes or Scheme Principles without prior Approval unless such comparative information has already been published into the public domain by the Principal. For the avoidance of doubt, the identity of any Other Claims Service Providers must not be used in comparative performance publications or disclosures unless that identity has been published into the public domain by the Principal in the context of that comparative performance information.

53.6 Documents Required to be Sent by the Principal

The Claims Service Provider must include any Document that the Principal requires to be sent to any person:

- (a) at no cost to the Principal if it can be included with any of the Claims Service Provider's planned communications; or
- (b) at the Principal's cost, if the Claims Service Provider has to send it separately.

53.7 Permitted Disclosures

Nothing in this clause 53 prevents the Claims Service Provider disclosing information to any person to the extent that either:

- (a) the disclosure is required by Law; or
- (b) the information is not Confidential Information.

54. Records, Inspections and Audits

54.1 Record Keeping

The Claims Service Provider must maintain proper Documentation, books, accounts and Records relating to the Services during the Term and for a further period of not less than seven (7) years from the end of the Term, including those items set out in subclause 54.2 and any items referred to in the Schedule 2 (*Service Specifications*) and/or Schedule 7 (*Data Governance Requirements*) in accordance with the Law and the Records management standards set out in the Manuals.

54.2 Access to Premises, Personnel, Systems and Information

- (a) The Claims Service Provider must, at all reasonable times, provide the Principal and the Principal's nominee with access to any Approved Location, Personnel, Equipment, systems and information relating to this Agreement or the Services, for inspection

and audit, including:

- (i) Policy, Policyholder and/or Contribution files if any;
 - (ii) Claims files;
 - (iii) books, accounts, and Records;
 - (iv) receipts into or payments out of any the Principal (or Relevant Fund) bank account;
 - (v) correspondence in relation to Claims received or sent by the Claims Service Provider;
 - (vi) Claims Service Provider Material or Project Material, Records;
 - (vii) Claims Service Provider Operational Data;
 - (viii) Equipment used to provide the Services;
 - (ix) contracts with:
 - (A) Subcontractors;
 - (B) Service Companies;
 - (C) Key Subcontractors; and
 - (D) any Third Party Service Providers that are appointed by the Claims Service Provider in its capacity as agent for the Principal;
 - (x) reports and other Documentation prepared in connection with any audit or inspection undertaken by the Claims Service Provider or the Claims Service Provider's auditors under subclause 54.4 and Schedule 2 (*Service Specifications*) and/or Schedule 7 (*Data Governance Requirements*);
 - (xi) reports and other Documentation prepared in connection with the Claims Service Provider's Quality Management Framework under Schedule 2 (*Service Specifications*) and/or Schedule 7 (*Data Governance Requirements*);
 - (xii) within ten (10) Business Days (or such longer period as the Principal may allow) of receiving a Direction from the Principal – all Documentation that is reasonably necessary to enable the direct cost of a Project Service to be verified by the Principal and/or an auditor appointed by the Principal, and
 - (xiii) all other Documents or Records as the Principal may Direct from time to time.
- (b) The Documentation or information described in this subclause 54.2 must be made available on the Principal's request or Direction (as the case may require). the Principal and/or its appointed representative may make copies, in any form, of any of the Documentation or information referred to in this subclause 54.2.

54.3 Claims Service Provider External Audit Requirements

The Principal will appoint an independent qualified auditor, or the Claims Service Provider may appoint an independent qualified auditor Approved by the Principal, (which for the avoidance of doubt must not be the Claims Service Provider's internal auditor) ("**Approved Auditor**") to oversee the books, Records, and systems of the Claims Service Provider to determine whether:

- (a) the Claims Service Provider is accurately recording and accounting for the Principal's monies and other assets;
- (b) the Principal's obligations to report to the relevant tax, authority or other Government Agency are properly met; and
- (c) the Claims Service Provider has adequate Internal Controls.

54.4 Claims Service Provider Internal Audit Requirements

- (a) The Claims Service Provider's qualified internal auditor must undertake audits and inspections required by and in accordance with Schedule 2 (*Service Specifications*) and/or Schedule 7 (*Data Governance Requirements*) including those relating to the Claims Service Provider's performance against the Service Standards.
- (b) Where the Claims Service Provider does not have access to a qualified internal auditor to meet the requirements of clause 54.4(a), the Claims Service Provider must procure an independent qualified auditor to undertake the audits and inspections detailed in Schedule 2 (*Service Specifications*) and/or Schedule 7 (*Data Governance Requirements*) on its own behalf.

54.5 Audit and Inspection by the Principal

In addition to the audit and inspection requirements referred to in subclause 54.4 and in Schedule 2 (*Service Specifications*) and/or Schedule 7 (*Data Governance Requirements*) the Principal may at any time, acting reasonably:

- (a) conduct random inspections and tests of the:
 - (i) performance of the Services;
 - (ii) training and competency of the Claims Service Provider's Personnel;
 - (iii) the Business Continuity Plan;
 - (iv) the utilisation of the Claims Service Provider's risk management policies;
 - (v) Claims Service Provider's compliance with clause 23.2 ("Compliance with Code of Conduct");
 - (vi) internal financial controls;
 - (vii) books, accounts and Records for any purposes, including to determine how the Remuneration, Provider Payments, Benefits or any other payments have

been made or accounted for, how conflicts of interest are managed and the financial standing of the Claims Service Provider; and

- (viii) other Internal Controls.
- (b) conduct random audits to determine the Claims Service Provider's compliance with the requirements of this Agreement relating to:
 - (i) Data protection;
 - (ii) Data maintenance; and
 - (iii) Data transfer;
- (c) conduct random audits to determine compliance with this Agreement, Applicable Standards and the adequacy of processes and methods put in place by the Claims Service Provider in performing the Services; and
- (d) conduct any other tests or inspection that the Principal considers necessary to ascertain whether or not the Claims Service Provider is complying with its obligations under this Agreement.

54.6 Scope of Audit

The scope of any test, inspection or audit undertaken under subclauses 54.3 or 54.5 will be determined by the Principal.

54.7 Overriding Obligation

None of the tests, inspections or audits referred to in subclause 54.3 or 54.4 or 54.5 or otherwise in this Agreement detract from the Claims Service Provider's responsibility to ensure that its Personnel adopt safe working practices and to carry out appropriate training, supervision, inspection and audit to ensure that this is done.

54.8 No Advance Notice of Inspections, Test or Audits

The Claims Service Provider must not give the Personnel advance notice of inspections, tests or audits referred to in subclause 54.5 without the Approval of the Principal Authorised Representative.

54.9 Co-operation

The Claims Service Provider must, and must procure that any Personnel and Service Company must, at its own cost, fully co-operate with representatives of the Principal conducting, reviewing, or making any inspection, test or audit under this Agreement, including providing such access to its Equipment, Approved Location and Personnel as is required by the Principal.

54.10 Who May Carry out Inspection, Test of Audit

The Principal may conduct any inspection, test or audit referred to in subclause 54.5 itself, or appoint any other suitably qualified person to conduct the inspection, test or audit.

54.11 Cost of Inspections, Test and Audits – Claims Service Provider

The costs of the inspections, tests and audits referred to in subclause 54.4 and Schedule 2 (*Service Specifications*) and/or Schedule 7 (*Data Governance Requirements*) that must be undertaken by the Claims Service Provider or the Claims Service Provider's auditor will be borne by the Claims Service Provider.

54.12 Cost of Inspections, Test and Audits – the Principal

The costs of each inspection, test and audit carried out by the Principal, the Principal's auditor or the Approved Auditor in accordance with subclauses 54.3 or 54.5 and Schedule 2 (*Service Specifications*) and/or Schedule 7 (*Data Governance Requirements*) (excluding any costs incurred by the Claims Service Provider in complying with this clause 54 will be borne by the Principal unless the inspection, test or audit reveals either:

- (a) a material breach of the Agreement;
- (b) incorrect payment by more than 5% of:
 - (i) any one of the fees listed in subclause 31.1; or
 - (ii) any other amount payable to the Principal by the Claims Service Provider where the cause of incorrect payment is, or has been contributed to, by the Claims Service Provider; or
- (c) incorrect amounts:
 - (i) payable to Claimants, by more than 1% of the total of all of the payments made by the Claims Service Provider to Claimants for the period that was subject to the inspection, test or audit; or
 - (ii) collectable from Agencies, by more than 1% of the total of all of the amounts collectable by the Claims Service Provider from Agencies for the period that was subject to the inspection, test or audit,

in which case the Claims Service Provider indemnifies the Principal for all costs of the inspection, test or audit. For the avoidance of doubt, this subclause 54.12 does not in any way limit the Claims Service Provider's obligation to reimburse or make any payments to the Principal under subclause 32.4 and clause 34.

54.13 Implementation of Recommendations

The Claims Service Provider must not unreasonably refuse to implement any recommendations made by the Principal's auditor in relation to the Claims Service Services or this Agreement within the timeframe Directed by the Principal.

54.14 NSW Auditor General

The Claims Service Provider must permit the NSW Auditor General to conduct audits of the Claims Service Provider and the Services of a nature to those described under subclauses 54.3, 54.4 and 54.5 and Schedule 2 (*Service Specifications*) and/or Schedule 7 (*Data Governance Requirements*). The Principal will use its best endeavours to provide the Claims

Service Provider with at least two (2) Business Days' notice of any audit by the NSW Auditor General.

54.15 Confidential Information

Each party must take all reasonable steps to ensure that any Confidential Information of any other party that is disclosed to any representative or auditor under this clause 54 (other than the NSW Auditor General who will be bound by obligations at Law) is treated as confidential.

54.16 Rights of the Principal where Key Subcontractor or Service Company provides part or all of the Services

The Claims Service Provider must ensure that:

- (a) the Principal has the same rights as set out in this clause 54 in respect of any Key Subcontractor and Service Company;
- (b) any Key Subcontractor or Service Company is subject to the same obligations as set out in this clause 54 as if the Key Subcontractor or Service Company was the Claims Service Provider,

so that the Principal is not disadvantaged in any way by the use of any Key Subcontractor or Service Company providing part or all of the Services.

54.17 SIRA

The Claims Service Provider acknowledges that SIRA may conduct a review, audit or request information pursuant to its legislative powers. The Claims Service Provider will cooperate with any review, audit or request by SIRA in relation to the Services and will provide access to books, accounts, data and Records to the Principal for this purpose. The Claims Service Provider will notify the Principal if it receives a direct request from SIRA and acknowledges that any recommendations or findings from SIRA may be incorporated into a KPI or Service Standard.

54.18 Assistance to Principal

Without limiting clause 49.4 ("Compliance with Laws"), the Claims Service Provider will comply with any reasonable Direction of Principal to provide information, including documentation, to enable Principal or any NSW Government Agency to comply with its obligations at Law or under any government policies and guidelines and will provide such information, including documentation, within the timeframes stipulated by Principal.

SECTION H - DISPUTE RESOLUTION, TERMINATION

55. Contract Disputes

55.1 Resolution of Contract Disputes

The parties must attempt to settle any Contract Dispute in relation to this Agreement, in accordance with the procedure set out in this clause 55 before resorting to court proceedings or other dispute resolution process.

55.2 Dispute Resolution Process

This clause outlines the process the parties must follow in the event of a Contract Dispute.

- (a) If the Principal or the Claims Service Provider determines (acting reasonably) that there is a Contract Dispute then:
 - (i) The party raising the Contract Dispute must provide a notice ("**Dispute Notice**") to:
 - (A) in the case of the Principal, the Claims Service Provider Authorised Representative; and
 - (B) in the case of the Claims Service Provider, the Principal Authorised Representative; and
 - (ii) The Principal Authorised Representative and Claims Service Provider Authorised Representative must meet within five (5) Business Days from provision of the Dispute Notice (or such other date as agreed) to attempt to resolve the Contract Dispute.
- (b) If the Principal Authorised Representative and Claims Service Provider Authorised Representative do not resolve the Contract Dispute within ten (10) Business Days of provision of a Dispute Notice (or such other date as agreed) then Authorised Representatives of the parties must meet within ten (10) Business Days (or such other date as agreed) to attempt to resolve the Contract Dispute.
- (c) No less than two (2) Business Days prior to the Authorised Representatives meeting (or such other date as agreed), each party must provide the other's Authorised Representative with a written submission of its view of the Contract Dispute of no more than 5 pages, setting out the nature of the Contract Dispute, the alleged cause and preferred solutions.
- (d) If the Authorised Representatives have not resolved the Contract Dispute within ten (10) Business Days of their first meeting (or such other date as agreed), it will be referred for attempted resolution to:
 - (i) The Group Executive of the Principal or their nominee with authority to settle the Contract Dispute; and

- (ii) The Chief Executive Officer of the Claims Service Provider, or their nominee with authority to settle the Contract Dispute.
- (e) If there has been no resolution of the Contract Dispute by the Group Executive and Chief Executive Officer within ten (10) Business Days (or such other date as agreed) of the Contract Dispute being referred to them under this clause, the parties must submit the Contract Dispute to mediation administered by the Australian Disputes Centre (**ADC**). The mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation. The mediator will be an independent person agreed between the parties or, failing agreement, a mediator will be appointed by the ADC. The costs of the mediation will be born equally between the parties.
- (f) If there has been no resolution of the Contract Dispute through mediation within 30 Business Days (or such other date as agreed) of the matter being submitted to mediation under this clause, either party may pursue court proceedings or any other process available at law.

55.3 Obligations Continue

The Claims Service Provider must continue to perform its obligations under this Agreement while a Contract Dispute is being dealt with, in accordance with this clause 55.

55.4 Urgent Interlocutory Relief and Termination

Nothing in this clause 55 will prevent either party from seeking urgent interlocutory (including injunctive) relief or from exercising any right to terminate this Agreement.

55.5 Meetings

Any meeting under this clause 55 can take place in person, by telephone, video conference or otherwise as agreed by the parties in writing.

56. Disputes with Third Parties

56.1 Management of Third Party Disputes

Subject to subclauses 56.3 and 56.4 the Claims Service Provider may, without the prior Approval of the Principal, act on behalf of the Principal in the event of a Third Party Dispute where the Demand arises out of or in connection with the Claims Service Provider performing its obligations under this Agreement as agent for the Principal. For the avoidance of doubt, this subclause 56.1 only applies to circumstances where the Claims Service Provider is being pursued as agent for the Principal, and not where the Claims Service Provider is being pursued in its own name, for example, by a Subcontractor. The Claims Service Provider will keep the Principal fully informed of all material developments in relation to the Third Party Dispute.

56.2 Legal and Other Costs Incurred by the Claims Service Provider

The Claims Service Provider may incur legal costs, disbursements and third party costs associated with the Third Party Dispute without prior Approval up to an amount of \$25,000 per matter, or series of related matters. Thereafter, the Claims Service Provider must obtain

the Principal's Approval for further costs, disbursements and third party costs associated with the Third Party Dispute.

56.3 Legal Proceedings Require Approval of the Principal

The Claims Service Provider will seek the Approval of the Principal, such Approval to be given at the Principal's absolute discretion, prior to instituting or responding to legal proceedings (including issuing a statement of claim or filing a defence) on behalf of the Principal, subject to any conditions provided (if any) with such Approval, in relation to:

- (a) Privacy or Intellectual Property Rights;
- (b) Confidential Information;
- (c) Third Party Service Providers;
- (d) claims of any nature arising in connection with the *Government Information (Public Access) Act 2009* (NSW);
- (e) any Demand which could have a serious and quantifiable reputational, commercial or economic impact on the Scheme Principles or would become a precedent or cause for subsequent Claims arising from any Policy;
- (f) any Demand which could have an adverse serious and quantifiable reputational, commercial or economic impact on the brand or reputation of the Principal;
- (g) any claim where the exercise of a statutory power is a substantive issue in dispute; or
- (h) any Demand (other than a Demand that arises from a Policy) from a third party which claims damages against the Principal in excess of \$50,000.

56.4 Principal may issue Directions or guidelines

The Principal may issue Directions or guidelines to the Claims Service Provider, in its absolute discretion, regarding the conduct or settlement of any Third Party Dispute, including any legal proceedings pursuant to subclause 56.3.

Without limitation, the Principal may Direct the Claims Service Provider to change its legal representation or seek a reasonable settlement of the Third Party Dispute or allow the Principal to take over the conduct of the legal proceedings.

Nothing in this subclause 56.4 shall require the Claims Service Provider to take any step in the conduct or settlement of a Third Party Dispute that may cause it, or its solicitors, to breach obligations to a Court of law.

56.5 Indemnity by the Principal

The Principal will indemnify the Claims Service Provider for all damages (whether finally awarded or agreed through any form of settlement), legal costs, disbursements and third party costs (but not any internal costs of the Claims Service Provider) associated with the legal proceedings under subclause 56.3 provided that:

- (a) if this Agreement requires the Claims Service Provider to obtain the Principal's

Approval, that Approval has been sought;

- (b) the Claims Service Provider has complied with any Directions or guidelines issued by the Principal in accordance with subclause 56.4;
- (c) the Claims Service Provider has met the obligations in this Agreement that are in any way connected to the indemnity;
- (d) the Claims Service Provider has acted within the authority set out in this Agreement; and
- (e) the provisions of this Agreement do not provide otherwise.

56.6 Compliance with Policies

- (a) The Claims Service Provider must comply, and must ensure that any Third Party Service Providers that are appointed by the Claims Service Provider (where the appointment is in the Claims Service Provider's capacity as Agent of the Principal), comply (or if debt recovery is done by the Claims Service Provider's employees or the Third Party Service Provider's Personnel, then they must comply) with the policies relating to the conduct of litigation, as set out in Schedule 2 (*Service Specifications*). This includes, but is not limited to, the model litigant policy.

57. Remedies and Obligations on a Breach of this Agreement

57.1 Claims Service Provider's Obligations on Breach of Obligations Under this Agreement

- (a) Every time the Claims Service Provider commits a breach of any of its obligations under this Agreement, then the Claims Service Provider must, on becoming aware of such breach, immediately (or at such other time specified in the reporting requirements in this Agreement if applicable) report the breach to the Principal.
- (b) Any report required under clause 57.1(a) above must be in writing and must contain details of the following matters:
 - (i) the problem causing the breach;
 - (ii) the status of the breach; and
 - (iii) the steps being taken to remedy the breach.
- (c) Following submission of a report under clause 57.1(a) above, the Claims Service Provider must promptly:
 - (i) remedy the breach; and
 - (ii) except where the Principal has confirmed in writing that it does not require a Remediation Plan to be implemented, prepare a Remediation Plan for the Approval of the Principal.

57.2 The Principal's rights on Breach of Obligations under this Agreement

- (a) If the Claims Service Provider breaches any of its obligations under this Agreement, the Principal may issue a Direction ("**Remediation Plan Direction**") to the Claims Service Provider requiring that the Claims Service Provider submit a draft Remediation Plan, signed by the Claims Service Provider Authorised Representative, within the time period specified in the Remediation Plan Direction.
- (b) The draft Remediation Plan should include the matters and items specified in the Remediation Plan Direction.
- (c) The Principal should, within five (5) Business Days of the date on which a draft Remediation Plan is received by the Principal:
 - (i) Approve the draft Remediation Plan, in which case the draft Remediation Plan will become a Remediation Plan; or
 - (ii) acting reasonably, requests amendments to the draft Remediation Plan, in which case the Claims Service Provider must make the amendments and resubmit the draft Remediation Plan for the Principal's Approval, within two (2) Business Days of receiving the request. If Approved by the Principal, the amended draft Remediation Plan will become the Remediation Plan.
- (d) The Claims Service Provider must, within five (5) Business Days of the Principal's Approval of the Remediation Plan, provide to the Principal a copy of the Remediation Plan that has been signed by the Claims Service Provider's Chief Executive Officer and the Chair of the Claims Service Provider's board of directors (or such other authorised representatives as agreed by the Principal).
- (e) The Claims Service Provider's obligations under the Remediation Plan commence from the date specified in the Remediation Plan and will not be delayed due to any failure by the Claims Service Provider to obtain the signatures of the Chief Executive Officer and/or the Chair of the Board (or such other authorised representatives as agreed by the Principal) as required under clause 57.2(d) above.
- (f) Subject always to clause 57.2(g) below, if the Claims Service Provider fails to comply with the terms of a Remediation Plan that has been Approved by the Principal in accordance with this subclause 57.2, then the Principal may, in its absolute discretion:
 - (i) withdraw or suspend for such period determined by the Principal, the Claims Service Provider's authority to effect any new Policy, renew any Policy and/or handle any Claim, including withdrawing or suspending for such period determined by Principal the Claims Service Provider's authority to;
 - (ii) transfer any Claim to the Principal or any Other Claims Service Provider.
- (g) Nothing in this subclause 57.2 limits any exercise by the Principal of its rights under subclause 58.2.

57.3 Remediation Plan

If the Principal Approves a Remediation Plan, this does not constitute a waiver of the breach, nor does it affect the Principal's rights, including where the Claims Service Provider does not meet the requirements of a Remediation Plan that has been Approved prior to receipt of any notice of breach.

57.4 Performance Management Framework

Whilst the Principal intends to manage the Claims Service Provider's performance in accordance with Schedule 3 (*Service Standards*), nothing in Schedule 3 (*Service Standards*) limits any rights or obligations of the parties under this Agreement, including the right of the Principal to exercise its powers under clauses 57 and 58. The Claims Service Provider acknowledges that the Principal may commence action to manage the Claims Service Provider's performance at any time.

58. Termination

58.1 Termination Without Cause

The Principal may, in its absolute discretion, immediately terminate this Agreement for any reason by giving not less than three (3) Months' notice in writing to the Claims Service Provider.

58.2 Termination for Cause

The Principal may immediately terminate this Agreement by notice in writing to the Claims Service Provider:

- (a) where the Claims Service Provider makes any statement, provides any information, makes any representation, or provides material in the response, which is false, untrue, or incorrect in a way which in the absolute opinion of the Principal materially affects this Agreement;
- (b) where:
 - (i) the Claims Service Provider makes any statement, provides any information, makes any representation or provides Material in the Negotiation Response, which is false, untrue, or incorrect in a way which in the absolute opinion of Principal materially affects this Agreement.
 - (ii) APRA suspends or withdraws any authorisation or licence held by the Claims Service Provider or any Key Subcontractor or any of their Related Bodies Corporate or APRA or the Treasurer appoints any investigator to or makes any order relating to a dealing in insurance policies or assets of the Claims Service Provider or any Key Subcontractor or any of their Related Bodies Corporate enters into an enforceable undertaking with APRA;
 - (iii) APRA appoints a judicial manager to the Claims Service Provider or any Key Subcontractor or any of their Related Bodies Corporate under Part VB of the *Insurance Act 1973* (Cth);

- (iv) ASIC takes proceedings against or suspends or withdraws any licence held by the Claims Service Provider, Key Subcontractor or any of their Related Bodies Corporate;
 - (v) The Claims Service Provider, Key Subcontractor or any of their Related Bodies Corporate enters into an enforceable undertaking with the Australian Securities and Investments Commission;
 - (vi) the Australian Competition & Consumer Commission takes any proceedings against the Claims Service Provider, any Key Subcontractor or their Related Bodies Corporate or the Claims Service Provider, Key Subcontractor or any of their Related Bodies Corporate enters into an enforceable undertaking with the Australian Competition & Consumer Commission;
 - (vii) the Independent Commission Against Corruption makes finding of corrupt conduct by, or recommends prosecution or disciplinary action in relation to the Claims Service Provider, any Key Subcontractor or their Related Bodies Corporate or any of their directors or officers; or
 - (viii) the police or SIRA (in its role as regulator) or other investigative body takes legal proceedings against the Claims Service Provider, any Key Subcontractor or their Related Bodies Corporate alleging corrupt conduct or breach of any Laws;
- (c) where the Claims Service Provider was or is a party to a Claims Management Agreement other than the Agreement (an “**Other Claims Management Agreement**”):
- (i) the Claims Service Provider breaches a material provision of an Other Claims Management Agreement that is not capable of remedy; or
 - (ii) the Principal becomes aware of a breach of an Other Claims Management Agreement by the Claims Service Provider which, if known prior to the expiry or termination of the that Other Claims Management Agreement, would have entitled the applicable counterparty to terminate that agreement for cause;
- (d) where the Claims Service Provider commits a material breach of the Agreement that is not capable of remedy. For the avoidance of doubt, a material breach may include a failure to achieve a Service Standard or Incentive Measure as set out in Schedule 4 (*Fee Arrangements*) and Schedule 3 (*Service Standards*);
- (e) where the Claims Service Provider commits a breach of the Agreement that is capable of remedy and the Claims Service Provider does not remedy the breach in accordance with the terms of and within the period set out in any Remediation Plan issued or Approved in accordance with subclause 57.2;
- (f) where the Claims Service Provider commits a breach of any of its obligations in any of the following clauses (whether material or not):
- (i) the Scope of its appointment in accordance with the Formal Instrument;

- (ii) subclause 4.6 (No Misconduct);
 - (iii) clause 13 (Delays);
 - (iv) subclauses 29.1, 29.3 and 29.4 (IP Licences);
 - (v) subclause 40.6 (Rectification);
 - (vi) clause 4.7 (Warranties);
 - (vii) subclauses 41.1 and 41.2 (Disclosures);
 - (viii) clause 45 (Insurance to be Maintained by the Claims Service Provider);
 - (ix) clause 46 (Performance Guarantee);
 - (x) clause 47 (Financial Security);
 - (xi) subclause 63.9 (Assignment); or
 - (xii) subclause 63.10 (Assignment of subcontracts).
- (g) in the case of an Insolvency Event occurring in respect of the Claims Service Provider or the Guarantor;
 - (h) if, in the Principal's view, a conflict of interest exists for the Claims Service Provider which in the Principal's absolute opinion prevents the proper performance of the Agreement;
 - (i) there is a change of control (as defined in the Corporations Act) of the Claims Service Provider or the Guarantor, that has not been Approved by the Principal; or
 - (j) the Claims Service Provider represents or communicates to the Principal, or the Principal forms the opinion, on reasonable grounds, that the Claims Service Provider is unable or unwilling substantially to fulfil the Claims Service Provider's duties under this Agreement.

58.3 Remuneration Payable on Termination

- (a) If the Principal terminates this Agreement without cause under clause 58.1 ("Termination Without Cause"), the following amounts will be payable to the Claims Service Provider:
 - (i) the Fee, up until the date specified in the notice issued under clause 58.1 ("Termination Without Cause").and
 - (ii) reasonable remuneration for any additional work undertaken by the Claims Service Provider associated with any migration of Claims on to another system, which are agreed between Principal and the Claims Service Provider .
- (b) If Principal terminates this Agreement for cause under clause 58.2 ("Termination for Cause"):

- (i) Principal need not make any further payments of Remuneration to the Claims Service Provider following the date of the notice of termination; and
- (ii) any amounts referred to in clause 58.3(a) that are payable to the Claims Service Provider will be applied in accordance with clause 58.4(b).

58.4 Powers Following Termination for Cause

If the Principal terminates this Agreement for cause under subclause 58.2, the Principal may do any or all of the following:

- (a) enter into an agreement with any other person to complete the provision of the Services;
- (b) deduct any loss or damages (which will be as ascertained and certified by the Principal) from any money due, or which may become due, to the Claims Service Provider (arising out of or in connection with this Agreement or otherwise) from the Financial Security, or otherwise set-off the amount in accordance with clause 39; and/or
- (c) recover in an appropriate Court the balance of any outstanding loss or damage or Interim Payment as a debt due and payable by the Claims Service Provider to the Principal.

58.5 Right for Claims Service Provider to Terminate

- (a) Subject to clause 58.5(b) below, the Claims Service Provider may not terminate this Agreement for any reason and the Claims Service Provider expressly waives any rights it has to terminate this Agreement.
- (b) If:
 - (i) the Principal has not paid the Claims Service Provider's Remuneration within 90 Business Days after the due date for the payment and has not by that time notified the Claims Service Provider that it is withholding payment of Remuneration in accordance with subclause 31.2;
 - (ii) the amount not paid exceeds 50% of the Annual Base Fee;
 - (iii) the Claims Service Provider has issued a written notice to the Principal advising that:
 - (A) payment is overdue; and
 - (B) the Claims Service Provider will terminate the Agreement if payment is not made within 60 Business Days of the Principal receiving that notice; and
 - (iv) having received a notice under subclause 58.5(b)(iii), the Principal fails to pay the Remuneration within 60 Business Days of receipt of that notice,

then the Claims Service Provider may terminate this Agreement.

58.6 No Release from Liability on Termination

Termination of this Agreement by the Principal will not release the Claims Service Provider from liability in respect of any breach or non-performance of any obligation by the Claims Service Provider under this Agreement.

58.7 Termination Without Prejudice to Accrued Rights or Remedies

Any termination of this Agreement is without prejudice to any accrued rights or remedies of either party.

58.8 Commencement of Disengagement Services

Unless otherwise Directed by the Principal, on and from the date set out in the notice of termination the Claims Service Provider must commence the Disengagement Services in accordance with its obligations under clause 60 and the Disengagement Plan. The Parties agree that the provisions of this Agreement shall, to the extent they may be applicable to the Disengagement Services, remain in full force and effect for the period during which Disengagement Services are provided.

58.9 Cumulative Remedies

The rights, remedies, powers, entitlements or privileges of the Principal in this clause 58 and in this Agreement are cumulative with, without prejudice to, and not exclusive of, any other right, remedy, power, entitlement or privilege granted or given anywhere in this Agreement or the Law, (unless expressly stated otherwise in subclause 58.2).

59. Upon Termination

- (a) Without limiting Principal's rights in relation to this Agreement, if Principal has prepaid any amounts to the Claims Service Provider for Services to be performed which, at the date of termination, have not been performed and this Agreement is terminated for any reason:
 - (i) the Claims Service Provider must refund to Principal such prepaid amounts, within 5 Business Days of termination of this Agreement; and
 - (ii) Principal may recover in an appropriate court the balance of any prepaid amount not refunded as a debt due and payable by the Claims Service Provider to Principal.
- (b) Subject to clause (h), the Claims Service Provider must, except to the extent approved by Principal in writing, deliver to Principal or its Delegate within 5 Business Days of termination or expiry of this Agreement:
 - (i) all Principal's Material;
 - (ii) all other Confidential Information of Principal;
 - (iii) all Contract Material; and
 - (iv) all copies of (i), (ii) and (iii) above.

- (c) Where any of the Material specified in clause (b) is to be provided to Principal in electronic form, the Claims Service Provider must deliver the above in an electronic form which is readily accessible to Principal, and where necessary, comply with the requirements of clause 29.10.
- (d) The provision dealing with the return of Materials upon termination or expiry of this Agreement does not prevent the Claims Service Provider from keeping a bona fide copy of the Contract Material for its records, subject to the confidentiality requirements contained in this Agreement.
- (e) The Claims Service Provider must, for a minimum period of 7 years following the expiration or termination of this Agreement, keep the operational records relating to the provision of the Services securely and in a form and manner so as to facilitate access and inspection under this Agreement.

SECTION I - DISENGAGEMENT

60. Disengagement Services

60.1 Obligation to Provide Disengagement Services

- (a) The Claims Service Provider must commence providing the Disengagement Services immediately on:
 - (i) the date specified in the notice of termination issued under subclause 58.1 or 58.2;
 - (ii) the expiry of the Initial Agreement Period where an extension has not been exercised in accordance with subclause 5.2;
 - (iii) the expiry of any Extension Period exercised in accordance with subclause 5.2 where a further extension has not been exercised or does not apply; or
 - (iv) such earlier date as the Principal Directs.
- (b) The Claims Service Provider must provide the Disengagement Services for the duration of the Disengagement Period.
- (c) The Claims Service Provider must continue to provide the Services and to achieve all Service Standards in each Reporting Period during the Disengagement Period, except as Directed by the Principal.

60.2 Requirements for Disengagement Services

The Claims Service Provider must, when performing the Disengagement Services:

- (a) ensure that there is minimal disruption to Claimants, Employers, Third Party Service Providers and other stakeholders to the fullest extent possible;
- (b) ensure that there is minimal interruption to the provision of Services;

- (c) cooperate as reasonably necessary with the Principal or its nominee;
- (d) perform the Disengagement Services in accordance with the Disengagement Plan or as Directed by the Principal;
- (e) deliver all Deliverables described in the Disengagement Plan by the relevant Milestone; and
- (f) comply with any requirement Directed by the Principal where the Principal believes, in its absolute discretion, that the requirement is necessary or desirable to:
 - (i) minimise disruption to Claimants, Employers, Third Party Service Providers and other stakeholders to the fullest extent possible; or
 - (ii) ensure all Services continue to operate without interruption or adverse effect.

60.3 Disengagement Plan

- (a) The Claims Service Provider must prepare a Draft Disengagement Plan in accordance with:
 - (i) Any Disengagement Plan guide provided by the Principal;
 - (ii) Data and record management requirements; and
 - (iii) As otherwise Directed by the Principal.
- (b) The Principal should, within 20 days of the Commencement Date, either:
 - (i) Approve the Draft Disengagement Plan, in which case the Draft Disengagement Plan will become the Disengagement Plan; or
 - (ii) acting reasonably, requests amendments to the Draft Disengagement Plan, in which case the Claims Service Provider must make the amendments and resubmit the Draft Disengagement Plan for the Principal's Approval, within 20 days of receiving the request. If Accepted by the Principal, the amended Draft Disengagement Plan will become the Disengagement Plan.
- (c) The Disengagement Plan must be updated by the Claims Service Provider:
 - (i) annually;
 - (ii) at any time as Directed by the Principal;
 - (iii) on any occasion when there is a substantial change to:
 - (A) this Agreement; or
 - (B) the number of Claims or Services managed by the Claims Service Provider;

- (iv) 6 Months prior to the end of the Initial Agreement Period and any extension exercised in accordance with subclause 5.2; and
 - (v) if the Agreement is terminated in accordance with subclause 58.1,
- and must at all times meet the requirements as reasonably required by the Principal.

60.4 Appointment of Personnel to Provide Disengagement Services

During the Disengagement Period the Principal may designate which of the Claims Service Provider's Personnel must provide the Services, and the Claims Service Provider must not remove those Personnel from providing the Services without the Principal's prior Approval. The Claims Service Provider is not in breach of this subclause 60.4 if a designated individual is an employee of the Claims Service Provider or any Service Company and the individual leaves the employment of the Claims Service Provider or any Service Company (provided the individual is not then employed, or engaged in any way, by any member of the Claims Service Provider Group).

60.5 Obligations on Claims Service Provider on Disengagement

Without limiting any of the Claims Service Provider's obligations under the Disengagement Plan, the Claims Service Provider must within five (5) Business Days of receipt of a Direction to do so, or by the end of the Term, or by the end of the Disengagement Period (whichever is sooner):

- (a) procure, at its cost, the novation of those Subcontractor contracts, to the Principal or its nominee, as Directed by the Principal. The Claims Service Provider is responsible for any costs associated with the novation of the Subcontractor contracts, and the Principal is responsible for the on-going operational fees and charges for the goods or services that are the subject matter of the Subcontractor contracts;
- (b) deliver to the Principal or its nominee a copy of all of the Principal's Confidential Information in the custody or control of the Claims Service Provider, Subcontractor, Third Party Services Provider or Service Company;
- (c) deliver to the Principal or its nominee a copy of the Materials used in connection with the Services which the Principal either owns the Intellectual Property Rights to or is entitled to have the Intellectual Property Rights in them assigned to it under clause 29; and
- (d) deliver to the Principal, or its nominee, all of the Principal's Confidential Information, the Records, and any ancillary materials, including file jackets and bindings that the Principal believes, in its absolute discretion, are necessary or desirable to enable the Services or goods or services similar to the Services to be provided by the Principal or its nominees in a manner which minimises the disruption, to the fullest extent possible, to Claimants, Agencies, Third Party Service Providers and other stakeholders caused by the Disengagement of the Services.

60.6 Delivery up of Material in Electronic Form

To the extent that the items in clauses 60.5(b), 60.5(c) or 60.5(d) are stored in electronic form, the Claims Service Provider must deliver them in an electronic form which is readily accessible to the Principal and meets any other requirements (including as to file type, reproduction, filtering, and editability) as specified by the Principal in relation to the form of the Materials. If requested by the Principal the Claims Service Provider must provide the Principal or its nominee access to or use of the Claims Service Provider Material as required by clause 29 or use of or access to any Equipment reasonably required to run or exercise its rights of access or use during the Term and for a period of up to six (6) Months after the Term as may be required by the Principal, in its absolute discretion, to enable the Principal to:

- (a) exercise its rights under clause 29;
- (b) store, access and view and reproduce any data incorporated in any item in clauses 60.5(c) or 60.5(d) without technical restriction; and
- (c) provide the Services or goods or services similar to the Services in a manner which minimises any disruption, to the fullest extent possible to Claimants, Agencies, Third Party Service Providers and other stakeholders caused by the Disengagement of the Services.

60.7 Disposal of Material

The Claims Service Provider then must dispose of the Materials after the Principal has provided its written confirmation to do so in accordance with the Disengagement Plan and this Agreement, or as otherwise Directed by the Principal.

SECTION J - GENERAL

61. Force Majeure

61.1 Force Majeure

A party will not be liable for any failure or delay in the performance or discharge of its obligations under this Agreement to the extent that such failure or delay is caused by a Force Majeure Event.

61.2 No Application if Caused or Contributed to by Party Seeking to Rely on Event

This clause 61.2 does not apply to the extent that any Force Majeure Event is caused or contributed to by a breach of this Agreement by the party claiming the Force Majeure Event. The Principal is not liable to pay any Remuneration to the Claims Service Provider in respect of any period during which the Claims Service Provider has failed to perform any Services due to a Force Majeure Event.

61.3 Notification

A party whose performance or discharge of its obligations referred to in subclause 61.1 is affected by a Force Majeure Event must immediately:

- (a) notify the other party in writing; and
- (b) describe in a reasonable level of detail the nature of the Force Majeure Event, its likely effect on that non-performing party's performance or discharge of its obligations under this Agreement, and which Services or obligations can continue to be performed.

61.4 Duty to Mitigate

On the occurrence of a Force Majeure Event, the non-performing party must use every effort to continue or resume performance or observance whenever and to whatever extent possible without delay, including by means of alternate sources, work-around or other means.

61.5 Termination by the Principal

The Principal may terminate this Agreement for cause under subclause 58.2 by notice to the Claims Service Provider if any Force Majeure Event has the result that the Claims Service Provider fails to be able to provide complete normal operational capacity and meet its obligations under this Agreement within ten (10) Business Days of the Force Majeure Event.

62. Notices

62.1 Communication protocol

The parties acknowledge and agree that correspondence between the parties will primarily occur via email to and from the email addresses designated from time to time by the Claims Service Provider and the Principal.

62.2 Giving of Notices

- (a) A notice, Approval, Direction, consent, or other communication under this Agreement must be in writing and must be:
 - (i) left at the property address of the addressee set out in the Agreement Details;
 - (ii) sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the property address of the addressee set out in the Agreement Details;
 - (iii) hand delivered to the relevant person identified in the Agreement Details; or
 - (iv) sent by email to the email address of the addressee set out in the Agreement Details.
- (b) Unless a later time is specified in it or in this Agreement, a notice, Approval, Direction, consent, or other communication takes effect from the time it is received.

62.3 Receipt of Notices

A notice, Approval, Direction, consent, or other communication is taken to be received:

- (a) if left at the property address, on the 1st Business Day after leaving it;
- (b) if posted, on the 2nd (7th if posted to or from a place outside Australia) Business Day after posting;
- (c) if sent by email, at the time the email is sent unless a delivery error or similar response is returned in response to that email; or
- (d) if given or served by hand, at the time of delivery.

62.4 Change of Address to be Given by Notice

A party may notify the other party of a change to the property address, email address or relevant person by notice in accordance with subclause 62.3.

63. General

63.1 Requirement of Writing

All amendments to this Agreement and all consents, Approvals, ratifications, waivers and Directions made under this Agreement must be in writing.

63.2 Perfection of Rights

The Claims Service Provider must execute all Documents and do all acts and things required, at its cost (unless otherwise agreed), for the purposes of giving effect to the provisions of this Agreement (including dealing with Intellectual Property Rights and Moral Rights).

63.3 Giving of Directions, Approvals and Consents

The Principal may make, give, issue, vary, withhold, replace or withdraw a Manual, Direction, Approval or Consent conditionally or unconditionally, in its absolute discretion, and without having or giving any reason, unless this Agreement specifically provides otherwise.

63.4 Variation

Subject to clause 21, no agreement, deed or understanding varying or extending this Agreement will be legally binding upon either party unless the deed or understanding is in writing and signed by both parties. Any variation to this Agreement takes effect from the date specified in the deed or understanding or, if no date is specified, the date on which the Parties agree to the variation in writing.

63.5 Non-waiver

No failure or delay by a party in exercising any right, power or remedy under this Agreement and no course of dealing or grant by that party of any time or other consideration, will operate as a waiver of a default by the other party. Any waiver of a default of this Agreement must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.

63.6 Severability

If any part of this Agreement is prohibited, void, voidable, illegal or unenforceable, then that part is severed from this Agreement but without affecting the continued operation of the remainder of the Agreement.

63.7 Relationship Created by this Agreement

The legal relationship created by this Agreement is that of principal and limited agent. Nothing in this Agreement creates a partnership, joint venture or contract of employment.

63.8 Transfer by the Principal

Notwithstanding any other provision of this Agreement, the Principal may freely assign, novate or transfer this Agreement to any Agency or other person where it is necessary or convenient to do so in order to implement any change to the structure, functions or operations of the Principal or any other Government Agency made by Law. The Principal must give the Claims Service Provider as much notice of such transfer as is reasonable in the circumstances.

63.9 Claims Service Provider Must Not Assign without Approval

The Claims Service Provider must not assign, novate or transfer the whole or part of this Agreement or any payment or other right, benefit or interest under this Agreement without obtaining the prior Approval of the Principal, which may be denied or given in its absolute discretion.

63.10 No Assignment of Subcontract with Key Subcontractor

The Claims Service Provider must ensure that the subcontract between it and any Key Subcontractor is not assigned, novated or transferred in whole or part, including any payment or other right, benefit or interest under that subcontract, by the Key Subcontractor or the Principal without obtaining the prior Approval of the Principal, which may be denied or given in its absolute discretion.

63.11 Change in Control

- (a) The Claims Service Provider must, during the Term, notify the Principal in writing immediately upon becoming aware of any change in effective control, or the possibility of any change in effective control, and must provide to the Principal such information and Material as the Principal, or its Delegate, reasonably requires for the purposes of clause (d).
- (b) Subject to clause 63.11, on receipt of a notice under clause (a), the Principal may in its absolute discretion:
 - (i) approve the Claims Service Provider continuing to provide the Services, which approval may be subject to reasonable conditions to ensure that the change in effective control does not:
 - (A) diminish, fetter, limit or otherwise restrict the ability of the Claims Service Provider to fulfil its obligations under this Agreement; and
 - (B) impact achievement of the Scheme Principles across all portfolios; or
 - (ii) terminate this agreement under clause 58.2 ("Termination for Cause").
- (c) For the purposes of clause 63.11 ("Change in Control"), "change in effective control" will mean a material change in the control of the Claims Service Provider including:

- (i) a change in the effective "control" of the Claims Service Provider as this term is defined in the *Corporations Act 2001* (Cth);
 - (ii) the Claims Service Provider is deemed to be a "subsidiary" of another company within the meaning of *Corporations Act 2001* (Cth);
 - (iii) a change in the control of more than half the issued share capital of the Claims Service Provider ;
 - (iv) the majority of the issued shares in the Claims Service Provider are:
 - (A) registered in the names of persons who are not resident in Australia;
 - (B) in the name of companies which are not incorporated in Australia, or if incorporated in Australia have a majority of issued shares registered in the names of persons who are not resident in Australia;
 - (C) owned directly or indirectly by persons who are not resident in Australia.
 - (v) a change in the control of the composition of the board of directors of the Claims Service Provider;
 - (vi) a change in control of more than half of the voting power of the Claims Service Provider .
- (d) If the Claims Service Provider makes a Change in Effective Control which:
- (i) is constituted by the initial issue or issues of shares in the Claims Service Provider to institutions and/or the public in connection with the admission of the Claims Service Provider to the official list of a stock exchange and the official quotation of those shares on the stock market of that stock exchange, except where such issue or issues of shares result in a person gaining more than 50 % of the shares in the Claims Service Provider;
 - (ii) occurs as a result of a reorganisation of companies in any Group of which the Claims Service Provider is part, or the integration or restructure of all or some of the business of the companies within the Group, provided that in each case:
 - (A) there is no change in the ultimate holding company of the Group; or
 - (B) another company becomes the ultimate holding company of the Group which company:
 - (I) was a part of the Group immediately before it became the ultimate holding company of the Group; and
 - (II) immediately after it becomes the ultimate holding company of the Group, has substantially the same shareholders as the

ultimate holding company of the Group had immediately prior to when it ceased to be the ultimate holding company of the Group;

- (iii) is the acquisition of more than 50% of the shares in the Claims Service Provider where that acquisition is by a company incorporated specifically for the purposes of becoming a holding company of the Claims Service Provider and that company becomes a Related Body Corporate of the Claims Service Provider at the time that company was incorporated,

the Principal will approve the Claims Service Provider continuing to provide the Services, provided that the Claims Service Provider provides information to the reasonable satisfaction of Principal that the change in effective control will not:

- (iv) diminish, fetter or limit or otherwise restrict the ability of the Claims Service Provider to fulfil its obligations under this Agreement; or
- (v) impact achievement of the Scheme Principles across all portfolios, including the Portfolio.

- (e) For the purposes of this clause 63.11 ("Change in Control"):

"Group" means, in relation to the Claims Service Provider, the Claims Service Provider and any Related Body Corporate of the Claims Service Provider;

"Related Body Corporate" has the meaning ascribed to that term under the *Corporations Act 2001* (Cth); and

"ultimate holding company" has the meaning given in the *Corporations Act 2001* (Cth).

63.12 Entire Agreement Constituted by this Agreement

- (a) This Agreement constitutes the entire agreement and understanding between the parties as to the subject matter of this Agreement.
- (b) Subject to clause 63.12(c) below, any prior arrangements, agreements, representations or undertakings as to the subject matter of this Agreement are superseded.
- (c) The entry into this Agreement is not intended to operate as a waiver of any accrued right or obligation of the parties arising prior to the Commencement Date and is not intended to act as a waiver or forgiveness for a breach of any prior agreement between the Principal and the Claims Service Provider.

63.13 Legal Advice and Costs

Each party will bear its own costs incurred in relation to the preparation, negotiation and execution of this Agreement.

63.14 Stamp Duties and Taxes

In relation to this Agreement and its performance:

- (a) all stamp duties (including fines, penalties and interest) that may be payable on or in connection with this Agreement and any instrument executed under it must be borne by the Claims Service Provider;
- (b) all taxes (except GST which is dealt with in clause 37), duties, charges imposed or levied in Australia or overseas in connection with the performance of this Agreement will be borne by the Claims Service Provider; and
- (c) the Claims Service Provider must indemnify the Principal on Demand against any liability for breach of clauses 63.14(a) and 63.14(b) above.

63.15 No Lien over the Principal's Property

In addition to clause 35.2, the Claims Service Provider does not have, and must not permit, the creation of any general or particular security interest or other form of encumbrance over the Principal's property, including the Principal's Confidential Information and the Principal Material, moneys, cheques or any other form of payment, whether for the Claims Service Provider's benefit or for the benefit of any third party.

63.16 Counterparts

This Agreement may be executed by counterparts by the respective parties, which together will constitute one Agreement.

63.17 Applicable Law

This Agreement is governed by, and must be construed in accordance with, the Laws applicable in force in the State of New South Wales.

63.18 Governing jurisdiction

Each party:

- (a) submits to the exclusive jurisdiction of the courts exercising jurisdiction in the State of New South Wales and the courts of appeal therefrom; and
- (b) expressly waives any right to object to the jurisdiction of the courts described in subclause 63.18 above, whether on the ground of forum non conveniens or any similar principle of private international law.

63.19 Survival

Without limiting any other provision of this Agreement relating to survival, the following clauses survive any termination or expiration of this Agreement:

- (a) clause 29 (Intellectual Property Rights);
- (b) clause 30 (Data Protection Obligations);
- (c) subclause 31.6 (Remuneration May be Recalculated);
- (d) subclause 4.7 (Claims Service Provider Warranties);

- (e) clause 43 (Indemnity);
- (f) clause 44 (Limit of Liability);
- (g) clause 45 (Insurance to be Maintained by the Claims Service Provider);
- (h) clause 46 (Performance Guarantee);
- (i) clause 47 (Financial Security);
- (j) clause 50 (Protection of Personal Information);
- (k) clause 52 (Confidentiality);
- (l) clause 54 (Records, Inspections and Audits);
- (m) clause 55 (Contract Disputes);
- (n) clause 58 (Termination); and
- (o) any other provision of this Agreement which contemplates performance or observance following any termination or expiration of this Agreement by the passing of time or the provision of any Services.

APPENDIX A – GLOSSARY

In this Appendix A (*Glossary*), references to clauses and subclauses are references to the terms and conditions of the Agreement. References to sections are references to sections of the relevant Schedule.

“Additional Amount” has the meaning given to it in clause 37.2.

“Adjustments”, **“Adjustment Events”** and **“Adjustment Note”** have the meanings given to them in the GST Law.

“Agency/Agencies” means budget sector entities and agencies of the Government of New South Wales, and participating non-budget sector entities, instrumentalities and agencies of the Government of New South Wales, that are currently included in TMF's Statement of Cover under the Portfolio.

“Agreed Terms” means:

- (a) the Formal Instrument;
- (b) the General Terms; and
- (c) the Glossary.

“Agreement” means the agreement between the Principal and the Claims Service Provider, as described in subclause 1.3.

“Agreement Details” means the section of the Formal Instrument entitled “Agreement Details”.

“Amount Incurred” has the meaning given to it in clause 37.4.

“Annual Service Fee” means the annual service fee as described, calculated and paid in accordance with Schedule 4 (*Fee Arrangements*) and consists of a fixed fee component and a variable fee component.

“APP code” has the same meaning as it has in the *Privacy Act 1988* (Cth).

“Appendix” means an appendix to this Agreement or a Schedule, as the context requires.

“Applicable Standards” means the standards specified by the Principal in this Agreement or notified by the Principal to the Claims Service Provider from time to time, but do not include the Service Standards.

“Approve” or **“Approval”** or **“Approved”** means written notice from the Principal signifying that the relevant Milestone, Deliverable or other item that requires the Principal's approval has been through the formalities for approval.

“Approved Auditor” has the meaning given in subclause 54.3.

"Approved Locations" means the locations set out in the Agreement Details, as amended from time to time in accordance with subclause 14.7.

"APRA" means the Australian Prudential Regulation Authority, or any successor body.

"ASIC" means the Australian Securities & Investments Commission, or any successor body.

"Attachment" means an attachment to a Schedule of this Agreement.

"Authorised Representative" means either the Claims Service Provider Authorised Representative or the Principal Authorised Representative.

"Authority" means a statutory authority, statutory corporation, government or semi-government body.

"Bank Account" means the account assigned by Principal to the Claims Service Provider in relation to each Scheme within the Portfolio, each of which will be maintained and managed by the Claims Service Provider in accordance with clause 9 ("Working Capital Administration") and into which all income received by the Claims Service Provider in respect of their Portfolio must be deposited and from which payments for the settlement of Claims and other costs, fees and expenses as provided in this Agreement must be paid..

"Banking and Financial Management Services" means the Services described in Schedule 2 (Service Specification) to be undertaken by the Claims Service Provider, including in relation to banking arrangements, taxation management and financial reporting.

"Benefits" means amounts paid on behalf of the Principal, in accordance with this Agreement and the Law.

"Builder" means a person required to enter into a contract of insurance by or under Part 6 of the *Home Building Act 1989* (NSW) in relation to residential building work but does not include an Owner Builder.

"Business Activity Statements" or **"BAS"** means the form which the Claims Service Provider must use to report GST and various other taxes, including PAYG to the Australian Taxation Office. For the Claims Service Provider, this includes transactions which the Claims Service Provider undertakes for the Scheme as a registered GST and PAYG branch of the Principal. Up to date details of the BAS contains can be obtained from the Australian Taxation Office website.

"Business Continuity Plan" or **"BCP"** means the plan addressing the Claims Service Provider's capability, systems and processes for business continuity and disaster recovery, in place at the Commencement Date, and as updated from time to time.

"Business Day" means Monday through Friday excluding public holidays, bank holidays and gazetted holidays in New South Wales.

"Calendar Day" means any day of the week from Monday to Sunday, irrespective of whether or not it is a public holiday.

"Calendar Year" or **"Year"** means the period commencing 00:00:00 1 January and ending 23:59:59 31 December.

"Certificate of Insurance" or "Certificate" means the certificate of insurance evidencing the Policy issued by, or for and on behalf of, the Principal.

"Change in Control" has the meaning set forth in clause 63.11.

"Change Notice" has the meaning set forth in clause 19.2.

"Claim" means:

- (a) a request by a Agency or an eligible State official for cover, payment of benefit provided by the TMF under the TMF Statement of Cover; **or**
- (b) claim for indemnity by a Claimant under a Policy where the Claimant has made the Claim in compliance with the requirements of the *Home Building Act 1989* (NSW).

"Claimant" means a person entitled to claim a benefit provided under a Policy.

"Claims Data" means the claims details, payment details and other information relating to the Portfolio including:

- (a) data that is necessary for the Claims Service Provider to manage the Claims;
- (b) data required for inclusion in the icare Insurance for NSW Data Warehouse as specified in Schedule 2 (*Service Specification*) and Schedule 7 (*Data Governance Requirements*); and
- (c) data required by Principal or an Agency, from time to time, not being Claims Data referred to in clauses (a) and (b) above.

"Claims Management" means the effective coordination of all activities associated with the just and economic resolution of a Claim and includes activities associated with determining liability, and processing the Claim.

"Claims Management Agreement" means an agreement between the Claims Service Provider and the Principal relating to agency arrangements or arrangements similar to this Agreement in relation to Claims Management.

"Claims Management Fee Arrangements" means the fee arrangements document (entitled "Fee Arrangements") forming Schedule 4 to this Agreement, as amended from time to time.

"Claims Management Service Specification" means the specification document (entitled "Service Specification") forming Schedule 2 to this Agreement, as amended from time to time.

"Claims Officer" means a person engaged by the Claims Service Provider whose primary function is the management of Claims, but excludes managers, technical support (including for example legal specialists, technical specialists) and back office and related support (including for example claims assistants, payment officers).

"Claims Related Expense" means any expense that is appropriately attributed as a Claims cost and includes, but is not limited to, compensation for economic or other loss, cost of medical and related treatment of the claimant, rehabilitation costs, repair and rebuilding costs, costs of expert

advisors (including loss adjustors and assessors, legal advisors, medical experts) and investigation costs but does not include any cost associated with the delivery of the Core Services or other services which are to be provided by the Claims Service Provider under this Agreement.

"Claims Service Provider" is the party identified as such in the Formal Instrument.

"Claims Service Provider Authorised Representative" means the person named as such in the Agreement Details or such other person as the Claims Service Provider may nominate in writing from time to time who is authorised to represent the Claims Service Provider in accordance with clause 27.

"Claims Service Provider Group" means the Claims Service Provider, Service Company and any Related Body Corporate of the Claims Service Provider or Service Company.

"Claims Service Provider Information Systems" means the Claims Service Provider's information technology systems to the extent they are relevant to the Services, including:

- (a) the information systems specified in Item 16 of the Agreement Details, as amended or varied in accordance with this Agreement;
- (b) Commercially Available IT;
- (c) Licensed Software;
- (d) Developed Software; and

Jointly Developed Software. **"Claims Service Provider Material"** means any Material in which Intellectual Property Rights are owned by the Claims Service Provider or its Personnel or Subcontractors or licensed to the Claims Service Provider or its Personnel or Subcontractors by a third party and which is:

- (a) incorporated within a Deliverable;
- (b) otherwise provided to, or accessed by, the Principal in connection with the Agreement; or
- (c) used by the Claims Service Provider or its Personnel or Subcontractors to provide Services or Deliverables or perform its obligations under this Agreement,

and which, for the avoidance of doubt, excludes Principal Material and Claims Service Provider Information Systems.

"Claims Service Provider Operational Data" means information that relates to, or is created by or for, the Principal or its Personnel relating to the operation, facilities, customers, employees, assets, finances, transactions, policies or processes of a Government Agency.

"Claims Services" means all activities and processes associated with the management and administration of a Claimant's claims.

"Closed Claims" means those Claims identified as being closed.

"Commencement Date" means the date specified in the Agreement Details.

"Commercially Available IT" means commercially available IT infrastructure, operational or general purpose application software that is available as an "off the shelf" software from a third party licensee.

"Company" has the meaning given in the Corporations Act.

"Confidential Information" means

(a) any information disclosed by either party to the other, whether before or after the Commencement Date, that:

- (i) is by its nature confidential;
- (ii) is designated as confidential; or
- (iii) the other party knows or ought to know is confidential;

(b) the following provisions of this Agreement:

- (i) the Agreement Details in the Formal Instrument;
- (ii) Schedule 4 (*Fee Arrangements*);
- (iii) The *Key Personnel Register* as updated from time to time; and
- (iv) *Taxation Manual*,

excluding any provisions of the Schedules as listed in subclause **Error! Reference source not found.**;

(c) the director's declaration, in the form of Schedule 8 (Director's Declaration), as completed and executed;

(d) the identity of the Guarantor inserted into a completed and executed Performance Guarantee;

(e) the Claims Service Provider specific details inserted into a completed and executed Financial Security;

(f) performance data, reports and plans required under this Agreement except where the Principal exercises discretion in accordance with the Agreement to release Records, and any other information including comparative performance data;

(g) all Principal Material that relates to individuals who are directors, officers, employees or contractors of the Principal and the Principal's Personnel;

but does not include information which:

(h) is or becomes public knowledge other than by:

- (i) breach of the Agreement; or
- (ii) breach of any obligation of confidentiality; or
- (i) is in the lawful possession of the other party without restriction in relation to disclosure before the date of receipt of the information; or
- (j) is created independently of the disclosing party's Confidential Information;

"Confidentiality Deed" means the confidentiality deed as provided by the Principal from time to time.

"Conflict" means any conflict of interest, any risk of conflict of interest and any apparent conflict of interest arising through the Claims Service Provider (or its officers, Personnel), Service Company (or its Personnel) or Related Body Corporate engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Claims Service Provider in performing the Services fairly and independently. Without limiting the meaning of Conflict, the parties acknowledge and agree that the following scenarios represent a Conflict:

- (a) if the Claims Service Provider, Service Company or Related Body Corporate (or their respective Personnel) receives, or accepts, an offer of a gift or benefit (directly or indirectly) above \$100 from a third party involved in the Services (including, to avoid doubt, a Third Party Service Provider), unless accepting the gift or benefit that is:
 - (i) expressly permitted under this Agreement; or
 - (ii) approved in writing by the Principal; and
- (b) if the Claims Service Provider fails to pursue a Benefit, remedy or action on behalf of the Principal, a Claimant or Employer, where the pursuit or recovery of that Benefit, remedy or action would cause the Claims Service Provider or a Key Subcontractor, Service Company or Related Body Corporate (or their respective Personnel) to incur a cost or a detriment. For example, a failure to pursue a compulsory third party insurer that is liable for contribution in respect of a Claim when that compulsory third party insurer is a Related Body Corporate of the Claims Service Provider.

"Construction Risks Insurance Fund" or **"CRIF"** means the fund that underwrites State construction risks (including the risks of nominated construction contractors and sub-contractors) such as public liability, product liability, environmental liability, professional indemnity and material damage.

"Contract Dispute" means any difference between the parties arising under or in connection with this Agreement.

"Contract Material" means:

- (c) the New Contract Material; and
- (d) any Existing Contract Material incorporated with the New Contract Material.

"Contract Year" means the 12 Month period commencing on the Commencement Date and ending 12 Months later and each subsequent 12 Month Period during the Term.

"Contribution Notice" means the notice referred to clause 11 of the Agreement (Policies and Contributions).

"Consideration" has the meaning given to it in clause 37.2.

"Core Services" means the claims management services described in the Claims Management Service Specification, as amended or varied from time to time in accordance with this Agreement but does not include Project Services, and Disengagement Services.

"Corporations Act" means the *Corporations Act 2001* (Cth).

"Created Data" means any Records that the Claims Service Provider or its Personnel, or any Service Company or its Personnel create, modify or adapt in the course of providing the Services.

"Critical Milestone" means the Milestone specified as such in the Disengagement Plan or Project Services Order.

"Critical Milestone Date" means the date for achievement of a Critical Milestone as set out in the Disengagement Plan or Project Services Order.

"Crown" means the Crown in right of the State of New South Wales.

"Customer Service Conduct Principles" means the principles published by SIRA and found at <https://www.sira.nsw.gov.au/resources-library/law-and-policy-or-corporate/publications/customer-service-conduct-principles>

"Data" means all technical data, reports, test results, analyses, computer programs, computer data bases, diagrams and specifications, working papers, formulae, operating procedures and any other data or information of any kind relating to the Services or this Agreement.

"Delay" has the meaning given in subclause 13.1.

"Delegate" means any officer or person authorised by Principal to undertake duties in connection with the arrangement and/or operation of this Agreement but does not include the Claims Service Provider and its Personnel.

"Deliverable" means any Material, Documentation or other item to be supplied by the Claims Service Provider under this Agreement.

"Demand" includes any allegation, causes, suits, rights, claims, debt, expenses, liability, losses, proceedings and demands of any nature, including any claim for damages, costs, interest or indemnity, and whenever present or future, fixed or ascertained, actual or contingent, however arising, known or unknown.

"Developed Software" means any software or any modifications to the Commercially Available IT or to the Licensed Software which is developed by the Claims Service Provider and which is subject to Intellectual Property Rights of the Claims Services Provider, which software or modifications are not subject to Intellectual Property Rights of, or licensing by, third parties.

“Direction” or **“Direct”** includes any lawful approval, authorisation, certificate, decision, demand, determination, direction, explanation, guideline, instruction, notice, notification, order, permission, rejection, request or requirement which the Principal may make, give or issue. “Direction” may include an Urgent Direction.

“Disengagement Period” is the period up to 12 Months until all Disengagement Services have been completed to the reasonable satisfaction of the Principal, commencing on the earlier of:

- (a) the expiry of the Initial Agreement Period where an extension has not been exercised in accordance with subclause 5.2;
- (b) the expiry of any Extension Period exercised in accordance with subclause 5.2 where a further extension has not been exercised or does not apply;
- (c) the date specified by the Principal in the notice of termination issued under subclause 58.1 or 58.2; and
- (d) such earlier date as the Principal Directs.

“Disengagement Plan” means the plan developed and updated by the Claims Service Provider in accordance with subclause 60.3.

“Disengagement Services” means:

- (a) the services required by the Claims Service Provider to effect an orderly transfer of the Services, functions and operations provided or required to be provided by the Claims Service Provider under the Agreement to a new Claims Service Provider, an Other Claims Service Provider or to the Principal itself, as set out in the Disengagement Plan; and
- (b) the continuation of the Services until the end of the Disengagement Period in accordance with the Disengagement Plan.

“Document” or **“Documentation”** means documentation or material in any form (including in machine readable or other form) and includes reports, specifications, user or technical manuals, designs, plans, spread sheets, drawings, pictures, or any other marking in any format.

“Draft Disengagement Plan” means the draft plan developed by the Claims Service Provider in accordance with clause 60.3(a).

“Employer” has the same meaning as Agency.

“Equipment” means the systems, hardware, software and telecommunications systems that are owned, licensed, procured by, or subject to the control of, the Claims Service Provider or Service Company (and their respective Personnel) and are used to perform or deliver the Services. To avoid doubt, Equipment includes software and hardware sourced by the Claims Service Provider as a service or provided to the Claims Service Provider by the Principal.

“Existing Claim” means a Claim first reported to a Claims Service Provider, which may or may not be the Claims Service Provider, before the Commencement Date.

"Existing Contract Material" means:

- (a) any Material which exists at the Commencement Date; and
- (b) any Materials created, written or otherwise brought into existence after the Commencement Date that were created independently of this Agreement,

and which, for the avoidance of doubt, excludes Claims Service Provider Information Systems.

"Exiting Claims Service Provider" means an Other Claims Service Provider, from whom a Claim or Service Component is being transferred.

"Failure" means any failure, whether by an act or omission, of the Claims Service Provider to meet an obligation or requirement under this Agreement including:

- (a) a term or condition of this Agreement with the exception of those terms and conditions that invoke a right to claim Liquidated Damages under clause 13.5 of this Agreement;
- (b) the Claims Management Service Specification;
- (c) failure to meet one or more Incentive Measures and/or Service Standards; or
- (d) failure to meet agreed targets for performance indicators contained in the Scheme Principles, Schedule 3 (Service Standards), HBCF Business Model or icare Insurance for NSW Operational Plan;
- (e) failure to adequately respond to a complaint from an Agency or other stakeholder;
- (f) failure to meet agreed targets for performance indicators under Schedule 3 (Service Standards);
- (g) failure to provide the Core Services to Principal; or
- (h) failure to comply with the provisions of clause 49.4 ("Compliance with Laws").

"Fault" has the meaning given in clause 40.6(a).

"Fee Adjustment" means an adjustment to any component of the Fee Arrangements.

"Fee Arrangements" means the fee arrangements set out in Schedule 4, as amended from time to time.

"Fees" means the fees for the Services as detailed in Schedule 4 (*Fee Arrangements*).

"Final Adjustment" means a positive or negative adjustment in relation to an Interim Payment once additional information becomes available in respect of the payment.

"Final Critical Milestone" means the Milestone specified as such in the Disengagement Plan or any Project Services Order.

"Final Critical Milestone Date" means the date referred to as such in the Disengagement Plan or any Project Services Order.

"Financial Security" means the security as defined in subclause 47.2.

"Financial Year" means the period from 1 July in any year to 30 June in the following year.

"Force Majeure Event" is limited to:

- (a) an act of God, lightning strike, meteor strike, earthquake, storm, flood, water damage, landslide, extreme heat conditions, explosion, fire, unexpected electromagnetic interference caused by unlicensed or illegal transmission of electromagnetic energy or interference which is not reasonably foreseeable, or collapse of structures;
- (b) disruption of facilities or systems caused by the impact of an aircraft, ship, vessel or vehicle;
- (c) strikes or other industrial action, other than strikes or other industrial action primarily involving some or all the party's employees, or employees of its subcontractors or agents;
- (d) war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion or disorder, rebellion or epidemic,

the consequence of which:

- (e) is beyond the control of and was not caused or contributed to by the party which is seeking to rely on the event;
- (f) could not have been reasonably prevented or remedied by expenditure by the party which is seeking to rely on the event;
- (g) cannot be circumvented by the party which is seeking to rely on the event through the use of other practicable means including alternate sources and work around plans which provide a viable solution for the other party, as determined by that other party acting reasonably; and
- (h) could not have been prevented by the operation of the Business Continuity Plan.

"Foreground Material" means all Material:

- (a) created by the Claims Service Provider, any Service Company and their respective Personnel on or following the Commencement Date for the purpose of or as a result of performing its obligations under this Agreement;
- (b) incorporated in, supplied or required to be supplied with the Material referred to in the first subclause (a) above; or

- (c) copied or derived from the Material referred to in the first or second subclauses (a) or (b) above.

and includes the Claims Service Provider Operational Data, Created Data and the Project Material and excludes Claims Service Provider Information Systems.

“Formal Instrument” means the document entitled “Claims Management Formal Instrument”, executed by the parties to form the Agreement.

“Fraud” means conduct including fraud on the Schemes, or suspected fraud, that would, if proven, amount to such fraud.

“Fraud Prevention, Identification and Management Model” means the Claims Service Provider’s framework Claims Service Provider that enables the prevention, identification and management of internal and external Fraud and includes the requirements detailed in Schedule 2 (Service Specification).

“General Lines Objectives” means providing insurance coverage and a range of services that help Agencies with their tasks and overall goal of continuous delivery of best practice services to the community. This includes:

- Comprehensive coverage that provisions for all NSW government requirements and exposures and such cover is offered with transparent cost and reduced cost
- Centralised claims that provides ease and consistency in the restoration of assets and cost reduction to ensure scheme sustainability; effective management of service delivery and supply chain capability and capacity; technical and legal advice on complex matters; manage the rights and obligations of all parties, including adherence to Model Litigant Standards and Guidelines
- Risk advice, Guidance and Education through ongoing tactical risk management, guidance and advice; strategic/enterprise risk management and Education programs and resources to build and uplift core capability in risk management
- Reporting and Insights: access to breadth and depth of TMF historical data at the portfolio or individual claim level; access to self-service TMF dashboard providing easy access to predeveloped reports or enabling deeper analysis of raw data.

“General Terms” means clauses 1 to 63 in this document.

"Generator Scheme" means the run-off scheme covering non-employee liability (including non-employee dust diseases related liability) run-off claims for the following State-owned electricity generators, following the disposal by Government of those generators:

- (a) Delta Energy- claims with a date of injury before 21 December 2015; and
- (b) Eraring Energy - claims with a date of injury before 1 August 2013.

“GIPA Act” means the *Government Information (Public Access) Act 2009* (NSW).

"Glossary" means Appendix A (*Glossary*) to this Agreement.

"Government Agency" means:

- (a) a department of state;
- (b) a body corporate or an unincorporated body or office established or constituted for a public purpose by Commonwealth State or Territory Law, or an instrument made under that authority (including a local authority);
- (c) a body established by the Governor-General, a State Governor, or by a Minister of State of the Commonwealth, a State or Territory; or
- (d) an unincorporated company over which the Commonwealth, State or Territory exercises control.

"Government managed fund scheme" has the same meaning given to this term in the *NSW Self Insurance Corporation Act 2004* (NSW).

"Group Executive" means the Group Executive or their delegate.

"GST" has the meaning given to it in clause 37.2.

"GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"GST Law" has the meaning given in the GST Act.

"Guarantor" means a holding company of the Claims Service Provider or other person Approved by the Principal who has executed a Performance Guarantee pursuant to a request under clause 46.

"Guidelines, Procedures and Manuals" means the set of procedures, guidelines and manuals issued or approved by the Principal, from time to time during the Term, specifying the procedures to be followed by the Claims Service Provider in providing the Services, including any amendments, additions or variations to these procedures, guidelines and manuals, from time to time.

"Half Year" and **"Half Yearly"** means each six Month period ending 23:59:59 30 June and 23:59:59 31 December each Calendar Year.

"HBCF Business Model" has the meaning set forth in clause 6.16.

"HBCF Data" means means all data and information, in whatever form, which comes into the possession or control of the Claims Manager before and/or during the Term, and which relates to, or is created by or for, and/or for the purposes of the Claims Manager carrying out the Services for HBCF.

"HBCF Insurance" means insurance under Part 6 of the *Home Building Act 1989*.

"HBCF Objectives" are to:

- (a) provide HBCF Insurance in accordance with the requirements of the Home Building Act;

- (b) proactively protect homeowners by identifying unacceptable risks and taking appropriate action;
- (c) ensure Builders take on the level of work commensurate with their capacity to do so;
- (d) minimise unnecessary disruption to the building industry;
- (e) ensure the HBCF is ultimately self-funding; and
- (f) contribute to improved standards in the housing industry.

"Highest Standard" means that the Claims Service Provider is operating at what would generally be regarded as the 'highest Australian insurance industry standard', and for this purpose it will be assumed that:

- (a) the Claims Service Provider has in place all Equipment and Personnel to enable the performance of the Services and the obligations under this Agreement as required by the Agreement and by Law;
- (b) the Claims Service Provider has the capability to meet the Targets and achieve all Service Standards in each Reporting Period; and
- (c) the Claims Service Provider has the capability to perform the Services in a cost efficient, effective and competitive manner.

"Home Building Act" means the *Home Building Act 1989* (NSW).

"Home Building Compensation Fund" or "HBCF" means the Home Building Compensation Fund established under the SICorp Act.

"Homeowner" means the owner of premises which has been the subject of residential building work within the meaning of Part 6 of the *Home Building Act 1989*.

"icare" means Insurance and Care NSW, the NSW Government Agency constituted by section 4 of the *State Insurance and Care Governance Act 2015* which has various functions including the provision of services to SICorp.

"Incentive Measures" means the Service Standards which are set out in Schedule 3 (*Service Standards*) which are used in the calculation of the Performance Incentive Fee (as defined in Schedule 4 (*Fee Arrangements*)).

"Incident Management Plan" means a document that provides a set of instructions to an organisation, helping in detecting, responding and recovering from an unplanned security event like data breach, cyber-attack and service outages that impact the business as usual activities.

"Industry Guidelines" means the most recent guidelines issued by the Minister administering the Home Building Act and/or the State Insurance Regulatory Authority (as the case may be) in connection with HBCF Insurance.

"Information Security Plan" means a documentation of an organisation's security policies, procedures and controls implemented to achieve higher levels of information security. The

information security plan also provides an overview of the responsibilities and behaviour of all individuals accessing the information systems/assets.

“Information Security Policy” means a set of rules and procedures issued by an organisation to ensure the Confidentiality, Integrity and Availability of the organisation’s information. All personnel having access to the information or systems/assets are required to comply with the rules and guidelines mentioned in the information security policy to protect the information within the organisation’s boundaries of authority.

“Initial Agreement Period” means the period set out in the Agreement Details, starting on the Commencement Date.

“Input Tax Credits” has the same meaning as in the GST Act.

“Insolvency Event” means any of the following occurring to a company:

- (a) an arrangement is entered into between it and its creditors other than for purposes of reconstruction under Part 5.1 or 5.3A of the Corporations Act;
- (b) it ceases to be able to pay its debts as they become due;
- (c) a mortgagee enters into possession or disposes of the whole or part of its assets or business;
- (d) a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, an administrator, or similar is appointed over the whole or any part of its assets or business;
- (e) a voluntary administrator is appointed; or
- (f) any similar event in any foreign jurisdiction occurs.

“Instrument of Acceptance” means an instrument of acceptance substantially in the form provided by the Principal from time to time.

“Insurance for NSW” means icare and SICorp.

“Insurance for NSW Claims Interface Specifications” means the interface specifications documents referred to in the Claims Management Service Specification, as amended from time to time.

“Insurance for NSW Data” means all data and information, in whatever form, which comes into the possession or control of the Claims Service Provider before and/or during the Term, and which relates to, or is created by or for, icare Insurance for NSW and/or an Agency and/or for the purposes of the Claims Service Provider carrying out the Services, including:

- (a) Claims Data;
- (b) Policy Information;

- (c) data and information relating to the operation, facilities, customers, employees, assets and liabilities, finances, transactions, policies or processes of icare Insurance for NSW and/or an Agency and includes for the avoidance of doubt:
 - (i) any databases in which such data or information is contained; and
 - (ii) any Material embodying or referring to such data or information;
- (d) any products resulting from the use, processing or manipulation of such data or information; and
- (e) any and all copies of the above in whatever form.

"Insurance for NSW Data Governance Requirements" means the data governance requirements forming Schedule 7 (*Data Governance Requirements*) to this Agreement, as amended from time to time.

"Insurance for NSW Data Warehouse" is the data warehouse created by Principal for storing and analysing icare Insurance for NSW Data provided to Principal by claims managers and other persons from time to time.

"Insurance for NSW Objectives" ...

- Manage the operation of the NSW Government Managed Fund Schemes and Closed Schemes
- Centrally manage claims on behalf of NSW Government agencies ensuring effective and efficient processes
- Protection for large scale losses
- Provide transparency over performance and understanding of cost drivers
- Ensure predictability and stability of agency contributions and the sustainability of the Managed Fund Schemes

"Insurance for NSW Operational Plan" has the meaning set forth in clause 6.15.

"Intellectual Property Rights" means:

- (a) all rights conferred by statute, common law or in equity and subsisting anywhere in the world in relation to:
 - (i) all copyright (including rights in relation to phonograms and broadcasts);
 - (ii) inventions (including patents, innovation patents and utility models);
 - (iii) Confidential Information, trade secrets, Technical Data and know-how;
 - (iv) registered and unregistered designs;
 - (v) registered and unregistered trademarks;
 - (vi) circuit layout designs, topography rights and rights in databases, whether or not any of these are registered, registrable or patentable;

- (b) any other rights resulting from intellectual activity in the industrial, commercial, scientific, literary or artistic fields which subsist or may hereafter subsist;
- (c) any licence, sub-licence or other similar right from a third party to use any of the above;
- (d) any applications and the right to apply for registration of any of the above; and
- (e) any rights of action against any third party in connection with the rights included in the first to fourth subclauses (a) to (d) above,

but excluding Moral Rights.

"Interference with Privacy" means:

- (e) an interference with the privacy of an individual as defined in section 13 of the *Privacy Act 1988* (Cth); or
- (f) a breach of any requirement of the State Privacy Laws.

"Interim Payment" means any payment made on account by the Principal in respect of a best estimate amount based on the information available at the time of the payment.

"Internal Business Purposes" means the use or application of the Project Material in the business systems and practices of the Claims Service Provider, including in respect to the delivery of a service to a customer of the Claims Service Provider, but excluding the purpose of directly generating revenue from the Project Material such as licensing the Project Material or providing consulting services using the Project Material.

"Internal Controls" means the Claims Service Provider's checks and measures to ensure that appropriate policies and procedures are in place within the Claims Service Provider and which are audited annually by the Principal's independent auditor.

"IP Deed" means the deed in the form provided by the Principal from time to time.

"Jointly Developed Software" means any modifications to the Commercially Available IT or to the Licensed Software or to the Developed Software which is developed jointly by the Claims Service Provider and the Principal, which modifications are not subject to Intellectual Property Rights of, or licensing by, third parties.

"Key Personnel" means:

- (a) the Claims Service Provider Authorised Representative and any personnel of the Claims Service Provider who directly report to the Claims Service Provider Authorised Representative; and
- (b) the key personnel who have been specified in the Agreement Details, as updated from time to time in accordance with the Agreement.

"Key Subcontractor" means a Subcontractor that:

- (a) is remunerated more than \$250,000 per annum;

- (b) provides more than 15% of the Equipment or infrastructure that supports the Claims Service Provider's provision of the Services (e.g. IT systems supplier);
- (c) provides more than 15% of the Personnel used to provide the Services;
- (d) is a Service Company; or
- (e) is designated as a Key Subcontractor by the Principal having regard to the extent or sensitivity of the work to be performed.

"Key Subcontractor Register" means the register of Key Subcontractors referred to in subclause 26.4 which is set out in the Agreement Details, as updated from time to time.

"KPI" means the key performance indicators which are set in accordance with Schedule 3 (*Service Standards*) and used to measure the Claims Service Provider's performance.

"Law" includes:

- (a) *Home Building Act 1989* (NSW);
- (b) *NSW Self Insurance Corporation Act 2004* (NSW);
- (c) any statute, regulation, by-law, ordinance or subordinate legislation in force in Australia, whether made by a State, Territory, Commonwealth, or a local government;
- (d) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued thereunder;
- (e) common law and the principles of equity;
- (f) any Direction issued under any Law; and
- (g) any relevant industry codes of conduct (whether mandatory or voluntary in their application).

"Licensed Software" means any software, or any modification thereof, licensed by the Claims Service provider from third parties and which is not owned by the Claims Service Provider, but does not include Commercially Available IT.

"Liquidated Damages" has the meaning given in subclause 13.5.

"Manuals" means the manuals issued by the Principal to the Claims Service Provider from time to time which describe certain technical requirements, guidelines and instructions for the performance of the Services, and are identified by the Principal as being a 'manual', a "formal instruction", a 'guide' or a 'guideline'.

"Material" includes material in any form including Documents, goods, information, equipment, software (in source code and object code), software tools, software development methodologies and data stored by any means including all copies and extracts of the same.

"Meetings" means the meetings and forums set out in Schedule 2 (*Service Specifications*), including the Performance & Operational Meetings and Strategic Review Meetings.

"Milestone" means a key Deliverable or event in the delivery of any Service that is described in any plan in respect of this Agreement, including the Disengagement Plan or a Project Services Order, for which Approval or Acceptance is required.

"Milestone Date" means the date for achievement of a Milestone.

"Monitoring Tool" means the tool provided by the Principal for the Claims Service Provider to assess its performance.

"Month" means calendar month.

"Monthly Performance Report" means the report referred to in clause 6.13 ("Performance Reporting and Monitoring").

"Moral Rights" means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute, that exist, or may come to exist, anywhere in the world.

"Negotiation Process" means the process of negotiations conducted between the Principal and the Claims Service Provider to enter into this Agreement.

"Negotiation Response" means information provided by the Claims Service Provider to the Principal during the Negotiation Process

"New Contract Material" means any Material created, written or otherwise brought into existence by or on behalf of the Claims Service Provider in the course of performing this Agreement in which subsists newly created Intellectual Property Rights including:

- (a) any analysis, records, reports, financial statements, reconciliations, data, datasets, data definitions, advices to Government Agencies, plans, strategies, procedures, protocols, interfaces and other software scripts, macros, codes and programs, specifications, improvements, ideas, designs and or techniques;
- (b) any new Claims Data, Policy Information, other data, data sets and data definitions; and
- (c) any enhancements, modifications or adaptations made to the Principal's Material,

and which, for the avoidance of doubt, excludes Claims Service Provider Information Systems.

"Notice of Change" has the meaning given in clauses 21(a) or 22(a), as the context requires.

"NSW Auditor General" means the Auditor-General of New South Wales, as appointed under the *Government Sector Audit Act 1983* (NSW), and includes any employee or other representative of that person.

"Other Claims Service Providers" means all persons with whom the Principal has entered or will enter into agency arrangements or arrangements similar to this Agreement in relation to Claims Management.

"Owner Builder" has the same meaning as in the Home Building Act.

"Panel" means a standing offer agreement entered into by the Principal to provide Third Party Service Provider services to the Scheme.

"Party" means the Principal or the Claims Service Provider and **"Parties"** means both of them.

"PAYG" has the meaning given to it in clause 37.6.

"Payment Account" means the Relevant Fund bank account that is allocated to the Claims Service Provider by the Principal from which the Claims Service Provider pays Benefits and Third Party Service Providers.

"Performance Incentive Fee" means the bonus fee payable to the Claims Service Provider in a Contract Year in accordance with clause 31 and calculated in accordance with the Fee Arrangements. The Performance Incentive Fee may not exceed the Performance Incentive Pool but may be nil.

"Performance Incentive Pool" means the maximum Performance Incentive Fee payable in a Contract Year and calculated in accordance with the Fee Arrangements.

"Personal Data Breach" has the meaning set forth in clause 50.1.

"Personal Information" means any personal information as defined in the *Privacy and Personal Information Protection Act 1998* or any health information as defined in the *Health Records and Information Privacy Act 2002*.

"Personnel" means any person, employee, officer, director, contractor, subcontractor or permitted agent of a party, and in respect of the Claims Service Provider, includes its Key Personnel, Subcontractors, any personnel of a Subcontractor, and any personnel of any Service Company but not any Third Party Service Provider.

"Policy" means a policy of insurance.

"Policyholder" means a holder of a Policy with the Principal.

"Policy Information" includes:

- (a) information about who is covered by the policy, and their contact details;
- (b) exposure information with respect to the liabilities covered by Principal
- (c) information about contributions; and
- (d) such other information related to the policy of coverage which Principal may from time to time require.

"Portfolio" means Claims managed or administered by the Claims Service Provider on

behalf of the Principal at any one time, initially set out in the Agreement Details, as may be amended from time to time in accordance with this Agreement(as set out in in Schedule 1 (Portfolio Definitions)).

"Pre-Managed Fund" or "PMF" means the scheme which holds the reserves previously held in the Fire Risk Account, the Fidelity Fund and the Public Liability Fund and has been used to fund claims incurred by the NSW Government before 1 July 1989 which the Government previously met, in particular Government Workers Compensation claims, which are now funded directly from the Consolidated Fund.

"Premium" means the gross premium paid or payable under a Policy.

"Principal Authorised Representative" means the person appointed by the Principal who is authorised to represent the Principal in accordance with clause 25. This is the person named as such in the Agreement Details, or such other person as the Principal may nominate in writing from time to time.

"Principal Database" means the data repository used by the Principal.

"Principal Logos" means the logos set out in the Agreement Details.

"Principal Material" means any Material that is:

- (a) Foreground Material;
- (b) Records;
- (c) the Monitoring Tool;
- (d) the Principal Database;
- (e) provided to the Claims Service Provider by the Principal before or after the Commencement Date, including Material owned or licenced by the Principal and in possession of the Claims Service Provider; or
- (f) otherwise created or brought into existence by or on behalf of the Principal (other than by the Claims Service Provider or its Personnel) in connection with this Agreement,

and excludes the Principal Logos.

"Principal Resources" has the meaning given in subclause 42.2.

"Principal's Actuary" means any person engaged, employed or contracted by icare Insurance for NSW to provide actuarial and information services from time to time in relation to the TMF or HBCF or any other Scheme.

"Privacy Commissioner" means each of:

- (a) the Information and Privacy Commission of NSW; and
- (b) the Office of the Australian Information Commissioner.

"Privacy Deed" means the privacy deed as provided by the Principal from time to time.

"Privacy Management Plan" means an annual privacy management plan prepared by the Claims Service Provider in accordance with section 33 of the *Privacy and Personal Information Protection Act 1998* (NSW) and Approved by the Principal that:

- (a) complies with:
 - (i) section 33 of the *Privacy and Personal Information Protection Act 1998* (NSW); and
 - (ii) the Information and Privacy Commission's guide to making Privacy Management Plans (as updated or replaced from time to time); and
- (b) includes details on the Claims Service Provider's:
 - (i) systems controls and processes relevant to the Claims Service Provider's compliance with its privacy obligations; and
 - (ii) risk analysis of any real or anticipated privacy issues that may impact the Claims Service Provider; and
 - (iii) privacy training and detail refresher privacy training.

"Project Material" means any Material that is created or otherwise brought into existence by or on behalf of the Claims Service Provider, its Personnel or any member of the Claims Service Provider Group in the course of performing a Project Service.

"Project Plan" means a plan which describes the activities that will be undertaken and the processes that will be followed by the Claims Service Provider in relation to the management of a Project Service.

"Project Services" means services that are:

- (a) additional to the scope of the Services at the Commencement Date; and
- (b) are provided under a Project Services Order in accordance with clause 18.

"Project Services Order" means a written order for Project Services and substantially in the form of to Schedule 6 (*Project Services Order*).

"Protected Information" means:

- (a) any personal information (including Personal Information, tax file numbers, credit information files or credit reports or any other information relating to an individual), whether in a written, oral or other form, in respect of which the Claims Service Provider, Principal or an Agency:
 - (i) has a duty not to engage in any act or practice which constitutes; or

- (ii) is required to undertake a specified act or practice, or to provide specified protection, the failure of which to do or provide is an Interference with Privacy;
- (b) health information under the Health Records and Information Privacy Act 2002 (NSW); or
- (c) any information which Principal or any Agency must at law or in equity keep confidential.

“Provider Payment” means an amount which is payable to a Third Party Service Provider, and which does not form any component of the Remuneration.

“Qualifying Invoice” means a Tax Invoice for a Third Party Service Provider’s services that meets all the criteria set out in clause 32.

“Quality Management Framework” means the programs, practices and measures implemented by the Claims Service Provider to ensure the provision of a high quality, contemporary, timely and accountable Service, in accordance with this Agreement.).

“Quarter” or **“Quarterly”** means each three (3) Month period commencing 00:00:00 1 January, April, July and October each Calendar Year and ending at 23:59:59 on 31 March, 30 June, 30 September and 31 December respectively.

“Receiving Claims Service Provider” means the Claims Service Provider, a specific Other Claims Service Provider, or other person, to which responsibility for a particular Claim or Service Component that has been, or may be, transferred under the Direction of the Principal.

“Recipient” has the meaning given to it in clause 37.2.

“Records” means all Material that is made or kept, or received and kept, by the Claims Service Provider in the exercise of its functions, on behalf of the Principal in providing the Services and which, for the avoidance of doubt, excludes Claims Service Provider Information Systems.

“Reinsurance Services Provider” means the provider appointed from time to time by Principal to provide reinsurance services.

“Related Body Corporate” bears the same meaning as defined in the Corporations Act.

“Relevant Fund” has the meaning given in the Agreement Details.

“Remediation Plan” means a plan prepared by the Claims Service Provider to address underperformance or non-compliance by the Claims Service Provider.

“Remediation Plan Direction” has the meaning given in clause 57.2(a).

“Remuneration” means payments to the Claims Service Provider for performing Services during the Term as set out in clause 31 and Schedule 4 (*Fee Arrangements*).

“Reporting Period” in relation to a Service Standard is the reporting period specified in respect of a Service Standard or an element of a Service Standard.

"Schedule" means a schedule attached to this Agreement including any Attachment or Appendix to a schedule.

"Scheme" means any Government managed fund scheme established from time to time during the Term. As at the Commencement Date these include the TMF, Construction Risk Insurance Fund (CRIF) Pre Managed Fund Reserve (PMF) Home Building Compensation Fund (HBCF) Electricity Assets Ministerial Holding Corporation and Electrical Transmission Ministerial Holding Corporation.

"Scheme Outcomes" means improved service delivery for Agencies and Claimants and improved financial performance of the Scheme.

"Scheme Principles" means the principles referred to in subclause 2.2.

"Service Company" means the entity identified as such in the Agreement Details.

"Service Component" means any individual component of the work required to be performed by the Claims Service Provider under this Agreement.

"Service Standards" means the service standards set out in Schedule 3 (*Service Standards*) (as may be varied by the Principal in accordance with this Agreement). The method of calculating and interpreting them are set out in Schedule 3 (*Service Standards*).

"Services" means the work required to be performed by the Claims Service Provider in accordance with the Agreement, including:

- (a) all services and requirements described in Schedule 2 (*Service Specifications*) and any Attachments or Appendices to those Schedules, and which for the avoidance of doubt includes any Direction issued under this Agreement;
- (b) Service Components;
- (c) all obligations to undertake activities, or provide Deliverables or outputs in the clauses of the Agreement or in any Schedule;
- (d) the Project Services; and
- (e) the Disengagement Services,

and includes any service or work that is necessary or incidental to the provision of the Services or by virtue of the Law.

"SI Corp" means the NSW Self Insurance Corporation that operates under the *NSW Self Insurance Corporation Act 2004* (NSW).

"SICorp Act" means the *NSW Self Insurance Corporation Act 2004* (NSW).

"SICorp Core IT Systems" means Principal's information technology systems to the extent they are relevant to the services to be performed by the Claims Service Provider under this Agreement.

"Specified Acts" means:

- (a) failure to identify the authorship of any Principal Material or Claims Service Provider Material (including without limitation 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 any Principal Material or Claims Service Provider Material and dealing in any way with the altered Principal Material or Claims Service Provider Material;
- (c) reproducing, communicating, adapting, publishing or exhibiting any Principal Material or Claims Service Provider Material without attributing the authorship; and
- (d) adding any additional content or information to any Principal Material or Claims Service Provider Material.

"Specified Supplies" for the purpose of subclause 38.4, means the fees specified in clause 31.1(a), including any Interim Payment or final adjustment of those fees.

"State Insurance Regulatory Authority" or **"SIRA"** refers to the State Insurance Regulatory Authority as constituted under Part 3 of the *State Insurance and Care Governance Act 2015* (NSW).

"Statement of Requirements" means Schedule 2 (*Service Specification*) to this Agreement, as amended from time to time in accordance with this Agreement.

"State Privacy Laws" has the meaning in clause 50.1.

"State Records" has the same meaning given to this term in the *State Records Act 1988* (NSW).

"Subcontractor" means any subcontractor or agent and their respective directors, officers, employees, engaged by the Claims Service Provider to fulfil some of the Claims Service Provider's obligations to perform the Services, but is not a Third Party Service Provider. A Key Subcontractor (including the Service Company) is a Subcontractor. A Related Body Corporate may be a Subcontractor.

"Target", where applicable, means a level of performance necessary for each Service Standard to obtain full payment of the Claims Service Provider's share of the Fees allocated to each Service Standard as set out in Schedule 3 (*Service Standards*).

"Tax Invoice" means an invoice that is in a form that complies with the GST Act.

"TCorp" means the New South Wales Treasury Corporation constituted by the *Treasury Corporation Act 1983* (NSW).

"Technical Data" means all research materials, technical reports, test results, analysis, computer programs, computer data bases, computer and software routines, network and topology diagrams and information, working papers, drawings, specifications, formulae, manufacturing processes, recipes, operating procedures and other technical and scientific data and information of whatever kind relating to any Workers Compensation Scheme.

"Term" means the duration of this Agreement as specified in the Agreement Details or until the date on which this Agreement is terminated, whichever occurs first.

"Termination Date" means the last day of the Term set out in the Agreement Details.

"Third Party Contract Material " means any Material in which the Intellectual Property Rights are owned by a party other than Principal or the Claims Service Provider or a member of the Claims Service Provider Group, and is embodied in the Services, or attaches to the Services or is otherwise necessarily related to the functioning or operation of the Services and which, for the avoidance of doubt, excludes Claims Service Provider Information Systems.

"Third Party Dispute" means any Demand by a third party brought against the Claims Service Provider arising out of or in relation to the Services under this Agreement, including but not limited to legal proceedings, administrative appeals and regulatory investigations.

"Third Party Service Provider" means a third party provider who delivers services in relation to a Claim lodged against an Agency or Principal. The services may be supplied to the claimant, the Agency or the Claims Service Provider on behalf of the Principal depending on the circumstances. This includes but is not restricted to medical practitioners, rehabilitation providers, health service providers, legal professionals, assessors, loss adjustors, investigators, motor vehicle repairers, builders and other construction tradespersons. A Key Service Provider is a Service Provider.

"TMF" means the Government managed fund scheme named the Treasury Managed Fund being icare Insurance for NSW's current operating self-insurance scheme.

"Treasurer" means the Treasurer of the state of New South Wales.

"Urgent Direction" means a Direction identified by the Principal, in its absolute discretion, as urgent and which must be implemented urgently.

"Value Added Services" means the services provided directly by the Claims Service Provider to the Agencies as permitted under the Agreement and do not include the Services.

"Virus" includes any 'Trojan horse', 'worm', 'drop dead device', virus or other hardware or software designed or intended to:

- (a) disable, damage, erase, disrupt or impair the normal operation of any hardware, software or system; or
- (b) permit unauthorised access or use of hardware, software or systems; or
- (c) assist in or enable unauthorised access to, or disclosure of or destruction or corruption of data.

"WH&S and Workers Compensation Legislation" includes:

- (a) Workers Compensation Act 1987 (NSW);
- (b) Workplace Injury Management and Workers Compensation Act 1998 (NSW);
- (c) Work Health and Safety Act 2011 (NSW);
- (d) Work Health and Safety Regulation 2017 (NSW);

- (e) any other legislation in force in Australia whether made by a State, Territory, Commonwealth or local government;
- (f) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued thereunder;
- (g) common law and the principles of equity;
- (h) any Direction issued under any of the above; and
- (i) any Direction issued under any of the above as applicable from time to time, in relation to work health and safety and Workers Compensation.

Schedule 1

PORTFOLIO DEFINITIONS

A. GENERAL

1. VARIATION TO PORTFOLIO DEFINITION

1.1. Circumstances may arise where it is necessary to amend a Portfolio definition. Such circumstances may include (but are not limited to):

- Merger, or reorganisation of an Agency or Agencies;
- Introduction of a new Agency to the TMF;
- Expansion or contraction of the Statement of Cover;
- Introduction of a new managed fund under SI Corp; and
- Termination of a Claims Service Provider (prior to the specified end date for the Agreement)

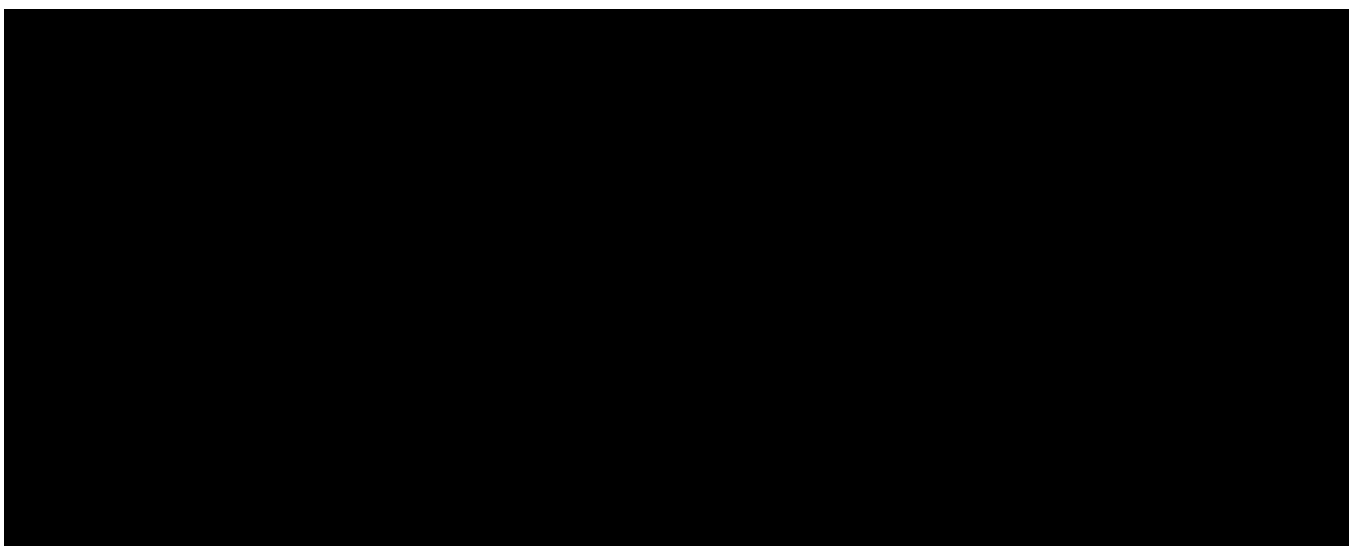
1.2. If the Principal considers it necessary to amend a Portfolio definition it may do so at its absolute discretion in accordance with the relevant provisions of the Agreement. In determining any change to a Portfolio the Principal will consider:

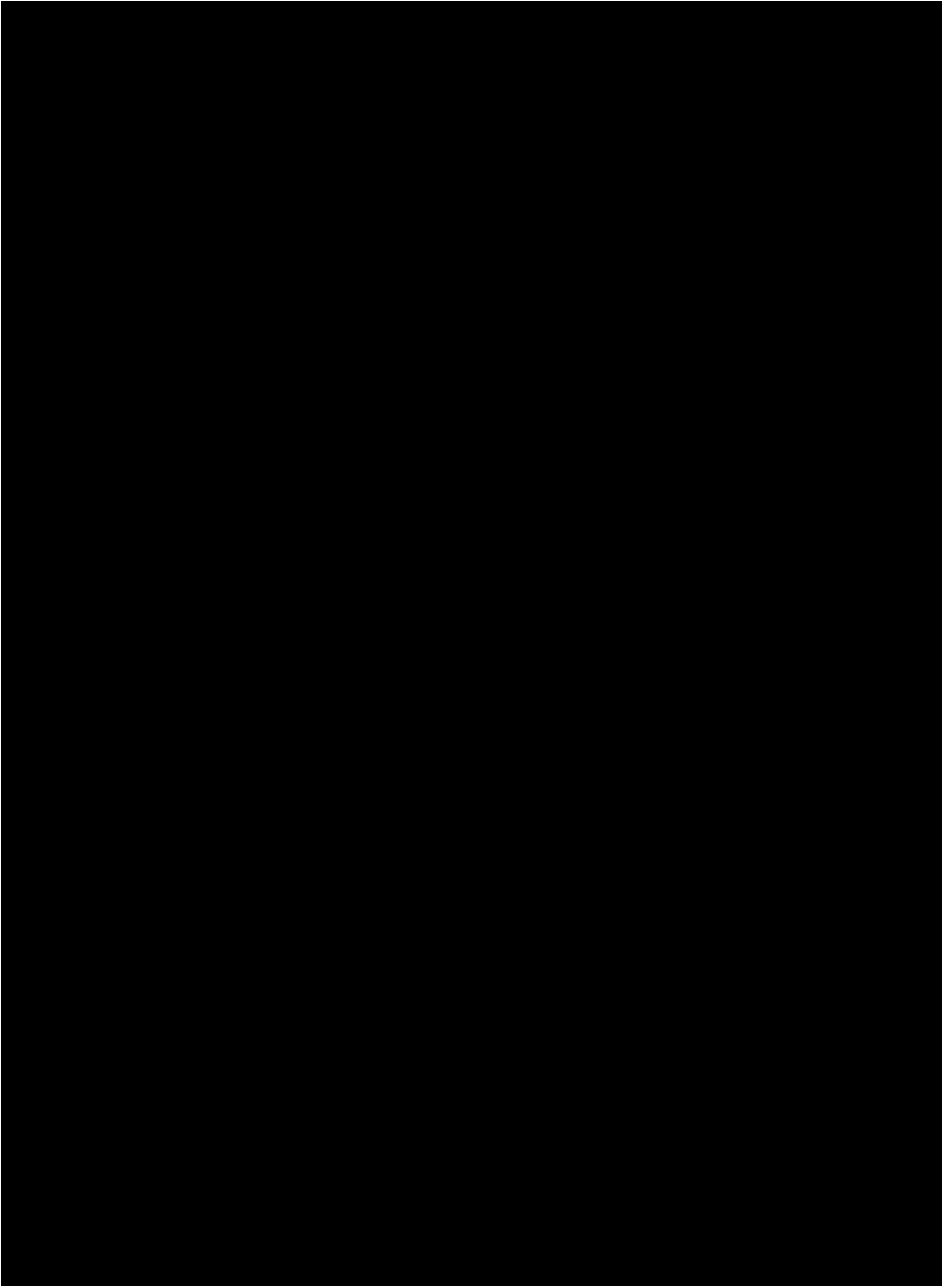
- The performance of Claims Service Provider;
- The nature and type of work involved;
- The cost impacts of available options;
- The capacity of Claims Service Provider to accommodate any additional workload; and
- The preference of the Agency or Agencies concerned.

1.3. The Principal also reserves the right to negotiate specific arrangements with Claims Service Providers in respect of any significant change in Portfolio including in respect of Annual Service Fees, Performance Incentive Fees as described, calculated and paid in accordance with Schedule 4 – “Fee Arrangements”, and Service Standards as described in Schedule 3 – “Service Standards”.

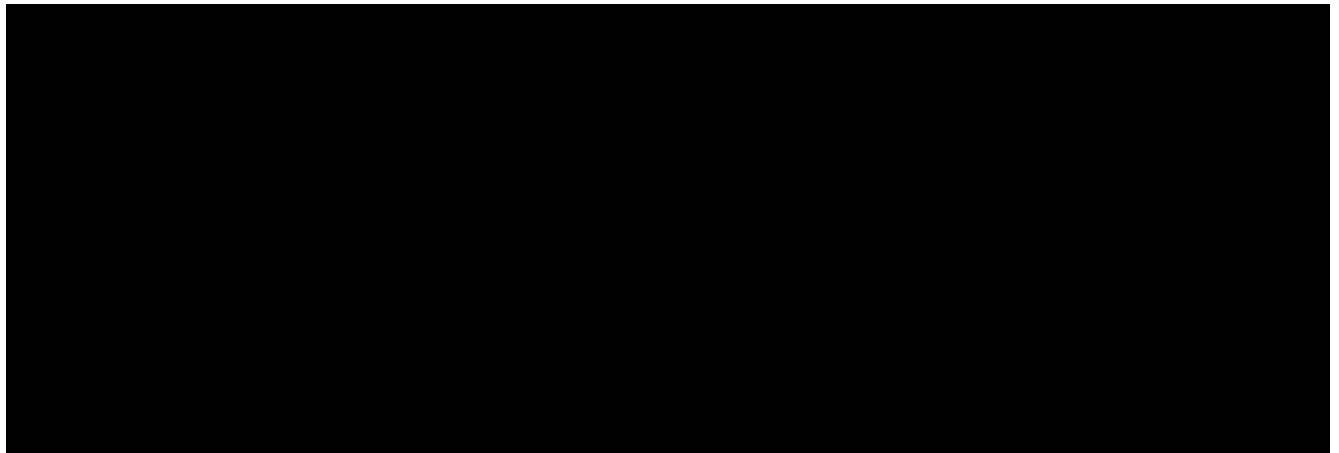
1.4. The Claims Service Provider is required to provide the Services under the Agreement in relation to their allocated Portfolio, as amended from time to time.

B. PORTFOLIO DEFINITIONS FOR GENERAL LINES





C. PORTFOLIO DEFINITIONS FOR HOME BUILDING COMPENSATION FUND



Schedule 2

SERVICE SPECIFICATION

1. PREFACE

1.1. Recitals

The Claims Service Provider is to manage Claims within the Portfolio to achieve the Principal's objectives which include, without limitation, to minimise Government exposures, to reduce Claims costs and budget impacts and to deliver a high-quality service to Agencies. The Claims Service Provider is expected to work with the other Claims Service Providers contracted to the Principal and with the other contracted providers to the Principal, cooperatively, collectively and to contribute to the delivery of all the Principal's objectives.

The Claims Service Provider is also required to adhere to strategies and policies of Agencies and the Government. The Claims Service Provider will operate efficiently and effectively to meet agreed performance benchmarks and operational standards.

As the Treasury Managed Fund (TMF) and other funds form part of a broad based beneficial self insurance scheme, Agencies retain a high level of responsibility for Claims outcomes and costs. Agencies are expected and encouraged to take a strong role in the claims management process. The Claims Service Provider is to support Agencies in this role, working closely with the Agencies within the Portfolio, consulting on key decisions, and building each Agency's capacity. The Claims Service Provider needs to work to the capability of each Agency which will vary with the size and nature of the Agency.

Agencies (and in some cases the Principal and NSW Treasury) take an active interest in any major or precedent setting Claims. This may incorporate a role in key decisions such as indemnity, liability and settlement. The Claims Service Provider needs to accommodate this requirement and at all times be cognisant of the potential broader implications that a Claim may have for an Agency, the Government or broader Government policy.

The primary functions of the Claims Service Provider include:

- Claims recording and updating;
- Indemnity and liability assessment;
- Establishment and management of case estimates;
- Case management of Claims - incorporating claims management strategies, investigation, litigation management;
- Service provider management – loss adjusters, recovery agents, repairers, investigators, legal providers (where required);
- Approvals, negotiations and resolution of Claims;
- Authorisation and payment;
- Portfolio and Performance Management, including Agency engagement; and
- Finance and accounting.

1.2. Act as Agent

The Claims Service Provider will act for and on behalf of the Principal. The Claims Service Provider is to represent themselves as an agent of the Principal in all dealings with Agencies, Claimants (and their agents), Service Providers and suppliers in relation to the various schemes.

All correspondence, cheques, documentation, forms, reports, including electronic and hardcopy, relating to the Schemes are to prominently incorporate the Principal's Logo and relevant Australian Business Number. Any reference to the Claims Service Provider should be less prominent and clearly state that the Claims Service Provider is an agent for the Principal.

The format of letterheads, cheques, remittance advices, forms and standard documents is subject to approval by the Principal. Any changes must be approved by the Principal, in

writing, prior to the change being implemented.

1.3. Comply on behalf of the Principal

As the agent of the Principal, the Claims Service Provider is to ensure that it complies on behalf of the Principal with respect to the Principal's statutory obligations relating to claims management or other functions carried out by the Claims Service Provider on behalf of the Principal. These obligations include, but are not limited to, obligations on the Principal under the following legislation and codes of practice:

- *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- *Annual Reports (Statutory Bodies) Act 1984* (NSW);
- *Anti-Discrimination Act 1977* (Cth);
- *Data Sharing (Government Sector) Act 2015* (NSW);
- *Financial Sector (Collection of Data) Act 2001* (Cth);
- *Fiscal Responsibility Act 2012* (NSW);
- General Insurance Code of Practice;
- *Government Advertising Act 2011* (NSW);
- *Government Information (Public Access) Act 2009* (NSW);
- *Government Sector Audit Act 2018* (NSW);
- *Government Sector Employment Act 2015* (NSW);
- *Government Sector Finance Act 2018* (NSW);
- *Health Care Liability Act 2001* (NSW);
- *Health Records and Information Privacy Act 2002* (NSW);
- *Independent Commission Against Corruption Act 1988* (NSW);
- *NSW Self Insurance Corporation Act 2004* (NSW);
- *Ombudsman Act 1974* (NSW);
- *Privacy Act 1988* (Cth);
- *Privacy and Personal Information Protection Act 1998* (NSW);
- *Public Interest Disclosures Act 1994* (NSW);
- *Public Works and Procurement Act 1912* (NSW);
- *State Insurance and Care Governance Act 2015* (NSW);
- *State Records Act 1998* (NSW);
- *Surveillance Devices Act 2007* (NSW); and
- *Work Health and Safety Act 2011* (NSW).

This requirement extends to all subordinate legislation and other instruments under the above Acts.

2. EFFECTIVE RISK MANAGEMENT

2.1. Risk management requirements

The Claims Service Provider acknowledges that effective risk management is a critical success factor in the provision of its Services to the Principal. Essential elements of effective risk management for the Claims Service Provider include:

- A sound risk culture is everyone's business where awareness of risk management is supported by regular communication;
- Open speak up is encouraged and legitimised with all Personnel receptive to and acting on suggestions, alternative points of view and others' opinions;
- Accountabilities, responsibilities and authorities are clearly defined with consequences for breaches;
- Appropriate level of Personnel with the capability, training and tools required to fulfil responsibilities;
- Clearly defined operating structures and reporting lines;
- Performance metrics for Personnel that support appropriate behaviour concerning risk outcomes;
- Processes and systems that facilitate effective:

- Risk identification, analysis, evaluation and quantification;
- Communication, reporting and escalation of material risk issues and incidents;
- Risk based decisioning; and
- Capture and reporting of risk data.
- Proactive identification and management of concerns, incidents and issues; and
- Assurance processes that demonstrate that documented controls are embedded and effective to address material risks.

At all times the Claims Service Provider will have an integrated approach towards identifying, assessing, and managing all material risks derived from the Agreement. Each risk identified, is to be evaluated to determine its likelihood / impact to the Principal with documented controls existing that are designed and operating effectively to mitigate the identified risk and bring the respective residual risk within defined tolerance parameter agreed with the Principal.

Material risks include:

- Operational Risk – The risk of loss from inadequate or failed internal processes, people and systems or from external events. This consists of:
 - Fraud (internal and external);
 - Employment practices and workplace safety;
 - Negligent practices (privacy and fiduciary breaches, misuse of confidential information, suitability issues, money laundering, unlicensed activities);
 - Business continuity and disaster recovery;
 - Execution management (errors in data entry, miscommunication, deadline misses, inaccurate reports, inaccurate claim records, accounting errors, vendor disputes);
 - Technology and cyber security encompassing repercussions of technology failure, or potential of such failure to disrupt Services through software or hardware issues with certified compliance with ISO 27001:2013; and
 - The risk of loss resulting from a supplier of the Claims Service Provider not conforming with the Claims Service Provider obligations, representations and warranties detailed in the Agreement.
- Conduct Risk – Risk that the provision of Service/s results in unsuitable or unfair outcomes for stakeholders (conflict of interest);
- Compliance Risk – The risk of legal or regulatory sanction, financial or reputational loss arising from a failure to abide by compliance obligations (legal requirements that have to be satisfied together with any other requirements that either the Claims Service Provider or the Principal chooses to comply with for instance General Insurance Code of Practice);
- Related Entity (contagion) Risk – The risk that problems arising in other Claims Service Provider entities compromise the financial and operational position of the Claims Service Provider; and
- Reputational Risk – Risk of loss of reputation, stakeholder confidence or public trust and standing.

3. FRAUD PREVENTION, IDENTIFICATION AND MANAGEMENT

3.1. Overview

The Claims Service Provider must have in place a Fraud Prevention, Identification and Management Model that provides a proactive approach to the early, consistent and accurate identification and investigation of actual and suspected Fraud.

3.2. Scope

The Claims Service Provider's Fraud Prevention, Identification and Management Model must:

- (i) include mechanisms to prevent and identify internal and external Suspect Activity and Fraud on the Scheme by the Claims Service Provider, its Related Bodies Corporate, Service Providers, Subcontractors, Builders, Agencies and Claimants;

- (ii) comply with all legislative requirements;
- (iii) contain:
 - (A) the internal reporting mechanism to the Fraud Co-ordinator of Suspect Activity and Fraud, including timeframes;
 - (B) detailed procedures for the management of all aspects of Suspect Activity and Fraud;
 - (C) training modules and educational materials for Personnel in relation to Suspect Activity and Fraud and the procedures for its management and internal reporting. This must include any necessary tools such as checklist and fact sheets for easy reference and every day use;
 - (D) requirements for the engagement of external investigators, including service level agreements and performance criteria;
 - (E) all documentation and templates necessary to ensure that all reports, statements, evidence and records of Suspect Activity and Fraud meet the requirements in this Agreement and at Law; and
- (iv) align with the Principal's timeframes for Personnel to report and the management of Suspect Activity, Fraud and overpayments to the Claims Service Provider Fraud Co-ordinator.

Suspect Activity means any conduct or behaviour which might give rise to an allegation of a contravention of any Law.

3.3. Reporting Requirements

The reporting requirements for this section 3 of this Schedule are detailed in section 10 of this Schedule.

3.4. Competency of Claims Service Provider's Personnel

The Claims Service Provider must:

- (a) employ dedicated staff who will be responsible for the management of all identified Fraud (**Fraud Co-ordinator**) who is suitably qualified and empowered (with recognised Fraud/risk experience) to facilitate information and evidence gathering within the Claims Service Provider's organisation in relation to Fraud investigations and prosecutions;
- (b) within five Business Days of the selection or appointment of a Fraud Co-ordinator, forward a notice to the Principal outlining the name, contact details and relevant skills and experience of the Fraud Co-ordinator;
- (c) ensure that the Fraud Co-ordinator has the necessary skillset to:
 - i. manage and supervise Personnel and investigations;
 - ii. review the matters referred to them by the Claims Service Provider's Personnel;
 - iii. prepare referrals to the Principal; and
 - iv. perform and assist in investigations as instructed by the Principal;
- (d) ensure that the Fraud Co-ordinator has sufficient authority within the Claims Service Provider's organisation to perform investigations, including:
 - i. assessing and analysing information across all business areas of the Claims Service Provider's organisation;
 - ii. directing the Claims Service Provider's Personnel across all business areas of the Claims Service Provider in relation to Suspect Activity and Fraud;
 - iii. ensuring all timeframes are adhered to in the investigation of Suspect Activity and Fraud;

- iv. facilitating a representative to provide evidence (including statements) for prosecutions or investigations;
 - v. undertaking a calculation;
 - vi. extracting, or procuring the extraction of, evidence from finance records;
 - vii. tracing payments, including cheque and electronic funds transfer;
 - viii. researching, analysing and collating information from internal and external data sources to assist in investigations and evidentiary processes; and
 - ix. liaising with key stakeholders to facilitate research, investigations and prosecutions into Fraud and abuse;
- (e) ensure that the Fraud Co-ordinator understands Service operations and issues including ancillary and support functions relating to the Services such as Claims Management Services, Banking and Financial Management Services, IT security and Third Party Service Providers operations and issues;
 - (f) provide any information relevant to a Suspect Activity and Fraud investigation, or information requested by SIRA or the Principal, in the specified timeframe and in accordance with the Approved format;
 - (g) implement recommendations of SIRA or the Principal in relation to a Fraud investigation, including best practice Fraud identification and investigation techniques;
 - (h) assist SIRA, in its role as regulator, as and when required during the investigation or prosecution of suspected Fraud; and
 - (i) ensure that all of its Personnel involved in the management of Claims Management Services and Banking and Financial Management Services undertake an Approved or accredited Fraud identification course within the first 12 months of the Commencement Date or the date of the Personnel's appointment.

4. CLAIMS MANAGEMENT

4.1. Claims Management

The Claims Service Provider must provide dedicated Personnel for the management of Claims within the Portfolio. These Personnel are to be managed and operate discretely from Personnel managing other business of the Claims Service Provider. Personnel are required to have the necessary competencies and skills stated below:

Position	Minimum experience	Preferred qualifications
Team Leader	7 years insurance experience including 3 years management experience	ANZIIF Executive Certificate in General Insurance Claims or AQF Diploma of General insurance or industry equivalent
Technical Consultant	5 years insurance claims experience in specialized product line/portfolio	ANZIIF Executive Certificate in insurance or AQF Certificate IV in general or insurance or industry equivalent
Senior Claims Consultant	5 years insurance claims experience in specialized product line/portfolio	ANZIIF Executive Certificate in insurance or AQF Certificate IV in general or insurance or industry equivalent
Claims Consultant	2 years insurance portfolio claims experience	Working towards completion of ANZIIF Professional Certificate or AQF Certificate IV in general insurance or industry equivalent.
Claims Assistant	1 years Administration experience and customer service, preferable	(Undertaking) ANZIIF Foundation Certificate in

		Insurance or industry equivalent or (Undertaking) Administration Training & Certification
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The Claims Service Provider may employ Personnel in abovementioned Positions without the minimum experience and preferred qualification subject to the Principal's written consent.

Personnel will be expected to work collaboratively and develop a rapport with their Agency counterparts.

The Claims Service Provider agrees to conduct claims handling in an honest, fair, transparent and timely manner. The Claims Service Provider will only ask for and rely on the information that is relevant to the Principal's decision when deciding on a claim. Key requirements that the Claims Service Provider must satisfy include:

- The Claims Service Provider will work in partnership with the Principal in establishing beneficial tripartite relationships with Agencies. The Principal will hold the primary responsibility for account management;
- The Claims Service Provider must ensure that claims are adjusted and processed in an accurate and professional manner and properly managed to conclusion;
- The Claims Service Provider must maintain processes and procedures for the management of claims and shall ensure that any such procedures are clear, documented and shared with relevant Personnel as needed to ensure effective management of claims;
- Following notice and during the life of claims, assess what actions can be taken to resolve claims on the merits and in reasonable timeframes having regard to the circumstances;
- Provide an appropriate level of service to Agencies in the circumstances of the claim, including communication of actions and progress where appropriate;
- Identify, monitor and pursue where appropriate, rights of subrogation and salvage;
- Assist other parties to fulfil their role, within the terms of the applicable Scheme;
- Ensure that Claims Data are maintained in such a way that relevant Claims information is available in a timely manner;
- Documentation of the investigation of, and approach to resolution for, the Claim will be readily accessible; and
- As appropriate, information barriers are maintained to ensure that an Agency receives independent advice and support.

4.2. Technology platform

The Claims Service Provider will supply and maintain a fully integrated technology platform for managing all elements of the Claims lifecycle. Features of the Claims Service Provider Information Systems that the Claims Service Provider will deploy and maintain are:

- Workflow management and process management to ensure optimum work routing and distribution, in-built escalation and strong external communication features;
- Rules engine utilised to validate transactions with in-built logic to support self-service and straight through processing;
- Specific processing/data capture requirements catered for the Principal;
- Capability to aggregate data at multiple levels;
- High quality input data, including accurate coding;
- High security features with the ability to segregate information at a granular level;
- At registration of Claim, the Claim will be coded in such a way that enables:
 - Multiple Claims to be linked to a common incident (e.g. bushfire event, multiple medical malpractice claims)
 - Claims to be linked to their relevant asset
 - Claims to be linked to their relevant cost centres

- Claims to be linked to multiple Claimants or Agencies
- The Claims Service Provider will delegate authority for the management of self-service claims to Agencies for all stages of the claim lifecycle excluding triage and payments. The Claims Service Provider Information Systems must have appropriate delegations of authority and permissions in place to control access for customers, the Principal and its claims management staff.
- Online tracking, updating and support of Claims, integration with already established providers, and digital payment methods;
- A dedicated 24/7/365 'Out of Hours' emergency helpline for the Principal and Agency use. Outside of normal business hours the emergency line will be answered by an automated IVR providing the caller with options depending upon the type of incident. By pressing the appropriate number, the call will be routed to the appropriate specialist.
 - For motor claims, the Claims Service Provider will use their accident management outsource provider as the first responder. This will ensure that the driver has access to full emergency assistance provided by a specialist and experienced organisation. The helpline will check the wellbeing of the driver, the extent of vehicle damage, the viability of driving the vehicle, arrange towing where necessary, and perform all other accident management activities; and
 - For all non-motor claims, the call will be routed to the Claims Service Provider's 'on call' claims adjuster. A representative from the Claims Service Provider will take the initial details of the incident and provide the necessary advice in relation to safety and mitigation, while liaising with emergency services if required. Where the loss warrants, the Claims Service Provider will appoint a specialist to attend the site. On the rare occasions that the incident may relate to another insurance class the call will again route to the Claims Service Provider's 'on call' adjuster. As with property matters, the Claims Service Provider's representative will assess the incident and provide the necessary advice to the caller and take whatever steps are required to assist with the situation.

Notwithstanding the above, the Parties acknowledge that the below features will not be deployed or maintained by the Claims Service Provider until such time as the Principal gives notice of a requirement under clause 18 (Project Services) and issues a Project Service Order for the feature to be deployed or maintained.

- Rules engine utilised to validate transactions with in-built logic to support self-service and straight through processing;
- The Claims Service Provider will delegate authority for the management of self-service claims to Agencies for all stages of the claim lifecycle excluding triage and payments. The Claims Service Provider Information Systems must have appropriate delegations of authority and permissions in place to control access for customers, the Principal and its claims management staff.
- Online tracking, updating and support of Claims, integration with already established providers, and digital payment methods;

4.3. Reserving

The Claims Service Provider must ensure that Claims reserving is undertaken with the goal of a consistent, timely and accurate result reflecting the most likely outcome and both possible costs and indemnity potential.

The Claims Service Provider shall ensure that they have a documented reserving policy. The reserving policy shall:

- Be agreed by the Principal;
- Be communicated internally to all affected parties;
- Provide overview guidance for assessing and determining Claim Reserves;
- Variance to reserves must be documented and reported when thresholds have been exceeded;
- Reserves shall be inclusive of GST; and
- Reserves are reviewed as information is received.

4.4. Third parties

The Claims Service Provider must employ disciplined procurement and proactive management procedures in the selection and use of third parties. Any sub-contracting to a third-party service provider is the responsibility of the Claims Service Provider, including liability for any failure on the part of the sub-contractor. The Claims Service Provider must:

- Ensure Claims activities managed by any third party are handled in accordance with the Scheme Principles:
 - Demonstrate empathy;
 - Operating transparently;
 - Create simple solutions to complex problems; and
 - Collaborate and constantly innovate.
- Determine the appropriate level of handling, reserving and settlement authority given to the third party in respect of each type of claim for which authority is delegated;
- Regularly monitor the service provided by the third party and, if required standards are not met, restrict or terminate the delegation; and
- Ensure that the third party, to whom authority to determine claims is delegated, is audited in respect of the arrangement at least every 12 months.

4.5. Third Party Service Providers

The Claims Service Provider must have a documented process for the selection and appointment of Third Party Service Providers. Where Third Party Service Providers are used the Claims Service Provider must:

- Select Third Party Service Providers from an approved panel established by the Principal and review the composition of the panel against business requirements and performance delivered;
- Articulate to the Principal when requested the basis for selecting a Third Party Service Provider for an individual claim;
- Communicate and agree the goals and budget with any appointed Third Party Service Providers, the approach to be taken and make available to Agencies and the Principal appropriate information indicating what the Third Party Service Provider is required to deliver; and
- Advise the Third Party Service Provider, where appropriate, that the instruction is also on behalf of the Principal.

4.6. Health liability claims portfolio requirements

The Claims Service Provider is responsible for the management of medical malpractice, other professional indemnity, public and products liability lines in respect of the actions or negligence of the Department of Health, Area Health Services (individual public sector hospitals are part of area health service entities) and their employees.

The Claims Service Provider also manages medical malpractice Claims against visiting medical officers (VMOs) engaged at public hospitals. The VMO scheme was established in February 1999 to provide coverage for certain specified VMOs. The scheme has been expanded a number of times since its introduction. Details of current coverage and the history of coverage can be found in the Statement of Cover.

Due to the high profile nature of these arrangements, the Department of Health and/or the Principal will assume significant responsibility in liability and quantum decisions/compromises. The Claims Service Provider will be required to apply its full technical capabilities and provide its best advice to the Department of Health and the Principal but the Principal may ultimately wish to assume decision making responsibility.

As part of this decision-making process the Claims Service Provider is to advise on the strategic options for management of the Claim and its recommended approach including a cost benefit assessment of the potential cost of each Claim and the potential cost of defending the Claim.

The Claims Service Provider is to provide separate and discrete claims management resources and capability for the management of Department of Health negligence Claims and VMO Scheme Claims to minimise any perceived conflicts of interest between the two parties. The Claims Service Provider will take all reasonable steps to separately service the interests of the Department of Health and the VMO.

Should any potential conflicts of interest arise in terms of the determination and apportionment of liability between the Department of Health and the VMO, the Claims Service Provider is expected to resolve these internally, in consultation with the Department of Health, the relevant Area Health Service and the VMO. Should the matter be litigated, separate legal advisers are to be briefed for each party, until apportionment is agreed to.

4.7. General claims portfolio requirements

The Claims Service Provider is responsible for all Claims under the Statement of Cover excluding workers compensation claims. This includes motor vehicle claims; non-health liability claims; property claims and miscellaneous (travel, directors and officers, fire fighters etc.) claims. The Claims Service Provider is also responsible for claims under the Pre-Managed Fund scheme.

In many cases, particularly for smaller Claims, Agencies will fund the cost of the Claim (for example repairs or replacements costs) and seek reimbursement from the Claims Service Provider. The Claims Service Provider is to ensure that all such Claims are paid in accordance with the Statement of Cover, which provides for full replacement, new for old, but does not cover wear and tear nor the cost of any enhancement upon replacement.

4.8. Generator scheme liability requirements

The Principal has approved Goldrick Farrell Mullan to provide legal advice for asbestos related liabilities of the Generators in view of their experience in defending these Claims, their corporate knowledge of the Generators and management of the archived records on behalf of the Generator Scheme.

The Claims Service Provider is required to continue to use Goldrick Farrell Mullan for Generator Scheme liability Claims, unless otherwise advised by the Principal.

4.9. Motor vehicle claims requirements

The Claims Service Provider is required to accommodate the existing networks of preferred repairers that many major Agencies have in place and to continue to utilise Agency preferred providers unless a change is agreed with particular Agencies. In addition, the Claims Service Provider will need to meet the specialised requirements of some Agencies specialised vehicles, for example, NSW Police Force, NSW Fire Brigades and the Ambulance Service of NSW.

The Claims Service Provider will be required to provide a best practice system of operation and its network of service suppliers – assessors, repairers, investigators, etc. The Claims Service Provider's assessors, repairers and investigators would be generally used (with the exception of a small number of special cases) in the absence of preferred repairers.

The Claims Service Provider will be required to operate a streamlined Claims process which allows electronic notification via the repairer in most cases and for repairs to commence in advance of a liability decision (subject to assessor approval for significant Claims). Liability is not an issue in determining whether to proceed with repairing the damage.

The Claims Service Provider is expected to have automated claims repair communication software to link the Claims Service Provider and the repairer, in terms of quotations and approvals, to maintain efficient and effective cost control functionality and a service/repair quality assessment system.

4.10. Non-Health liability claims requirements

Due to the high-profile nature of these Claims, many Agencies and/or the Principal will assume significant responsibility in liability and quantum decisions/compromises. The Claims Service Provider will be required to apply its full technical capabilities and provide its best advice to the Agency and the Principal but accept that the Agency and/or the Principal may ultimately wish to assume decision-making responsibility.

As part of this decision-making process the Claims Service Provider is to advise on the strategic options for management of the Claim and its recommended approach including a cost benefit assessment of the potential cost of each Claim and the potential cost of defending the Claim.

Some Agencies take full responsibility for claims management of liability claims. Where this is the case the Claims Service Provider's role will be limited for these Claims.

4.11. Property and miscellaneous claims requirements

The Claims Service Provider will be fully responsible for claims management of these claims with the exception of property claims for the Department of Education and Training (DET). The Claims Service Provider will be required to have in place a network of loss adjusters to assess claims and protocols for the effective use of them.

DET have an in-house property claims management team who are responsible for handling all claims below an agreed threshold.

4.12. Pre-Managed Fund scheme requirements

The Claims Service Provider is also required to manage Claims relating to the Pre-Managed Fund scheme. The Claims Service Provider is required to separately, in respect of the Pre-Managed Fund scheme:

- Operate a separate SI Corp operating bank account for this scheme; and
- Provide financial and accounting reports.

4.13. Staff competencies

The Claims Service Provider must ensure that sufficient (appropriately competent, skilled and trained) Personnel are available to manage Claims. Specifically, the Claims Service Provider must make available sufficient appropriately skilled staff in each claims product class covered by this Agreement during the Term of the Agreement. The Claims Service Provider must:

- Ensure that there is appropriate claims resourcing, structure and succession planning for the classes of business written and adequate planning and resourcing to address business development; and
- Ensure that training, development and resourcing needs are identified and addressed in a timely manner as appropriate to the circumstances.

The Claims Service Provider's Personnel, and specifically the Claims Personnel, must meet the specified competency standards as agreed and included in clause 4.1 of this Schedule.

4.14. Determination of indemnity and liability

The Claims Service Provider is to determine indemnity and liability on each Claim. The Claims Service Provider will undertake appropriate investigations and, where there is any doubt about indemnity or liability, liaise with the relevant Agency and/or the Principal to discuss indemnity and liability of each Claim prior to making decisions on indemnity and liability for a Claim. The Claims Service Provider must ensure that any liability decision is made consistent with the relevant legislation.

The Claims Service Provider is to make the appropriate decision based on the evidence available and relying on input from the relevant Agency. Unless otherwise agreed in advance with the Agency and the Principal the Claims Service Provider is to inform the

Agency of its decision on liability prior to advising any third party claimant (or their representatives).

The Claims Service Provider is to seek approval from the Principal before advising the Agency of any coverage declinature (partial or whole).

4.15. Case estimates

The Claims Service Provider is to establish an initial case estimate for the Claim upon its receipt and to maintain an appropriate estimate of the cost of the Claim at all relevant times. There is an absolute requirement for the Claims Service Provider to ensure estimates are current for actuarial valuations and contribution assessments are consistent with the relevant Claims estimation guidelines in force at that time.

Case estimates are to be set in accordance with guidelines or criteria established or agreed to by the Principal. Where the Principal issues Claims estimation guidelines the Claims Service Provider must use those guidelines, as amended from time to time, and ensure that any provider advising on estimates, for example a legal provider, also uses the Principal guidelines.

In the absence of guidelines provided by the Principal, the Principal expects the Claims Service Provider to rely on their own estimation guidelines (provided the Principal has approved these guidelines).

4.16. Claims management reviews

The Claims Service Provider must conduct face to face Claims management reviews with Agencies and/or the Principal on open or outstanding Claims on an agreed basis. Claims management reviews are to take place at a time and location suitable to the Agency and/or the Principal.

If an Agency is based outside the Sydney central business district the Claims Service Provider will travel at its cost to the Agency if requested. Reviews are to occur at least twice every Contract Year at times agreed between the Agency, Principal and Claims Service Provider, but more regular reviews may be required for most large Agencies. The utilisation of video conferencing facilities may be proposed by the Claims Service Provider in lieu of conducting face to face Claims Management reviews with regional Agencies that have a low volume of claims.

The Claims Service Provider is to provide the following to the Agency and/or the Principal at least five Business Days prior to the review meeting:

- A report showing details of open and sensitive Claims of that Agency and/or the Principal;
- Claim trending and analytics per agency, providing benchmarking within the Scheme on key factors, including performance, claim volume, average claim cost and portfolio claim trending; and
- File notes which detail claim history, current status and proposed strategies.

The Agency and/or the Principal will have the opportunity to nominate individual claims for review. Key staff members of the Claims Service Provider and Agency and/or the Principal will attend the review meetings. Representatives from the Principal may also attend these meetings. At these reviews, the Claims Service Provider is expected to:

- Communicate insights based on claims reviews that the Claims Service Provider has conducted, and facilitate the sharing of knowledge and expertise with the Agency and/or the Principal; and
- Review progress of Claims to the Claims Service Provider's claims management strategy for each open Claim and to discuss and agree to strategies for future management of the Claim.

Following each claims review meeting, the Claims Service Provider will provide a written

summary of issues discussed and agreed actions at the claims review. The Claims Service Provider will provide a subsequent action plan within three Business Days of the review meeting.

4.17. Claims closure

The Claims Service Provider is to finalise and close Claims when the Claims Service Provider is satisfied there will be no further payments (or recoveries) to be made in relation to the Claim. The Claims Service Provider is also to establish appropriate procedures to ensure Claims are not closed prematurely (and need to be reopened) or left open unnecessarily.

The Principal may establish guidelines for closing Claims and the Claims Service Provider is to comply with any such guidelines as amended from time to time. Subject to any guidelines from the Principal, the Claims Service Provider is also to adhere to any guidelines issued by regulators, on this issue.

4.18. Service providers

The Claims Service Provider must actively manage all Service Providers (including but not limited to investigators, assessors, repairers, medical providers and rehabilitation providers). the Principal maintains a legal panel and the Claims Service Provider must use the providers on the Principal's legal panel unless otherwise agreed in a particular case with the Principal.

Some Agencies have provider panels in place incorporating Service Providers who meet their specific needs. Where an Agency has their own appropriately qualified provider panel, the Claims Service Provider must use a provider from the Agency panel where the Agency panel provides value for money services equivalent to or better than the Claims Service Provider panel; or unless otherwise agreed in a particular case with the relevant Agency.

The Principal may establish a provider panel or panels for specific classes of providers in addition to the legal panel. Should the Principal establish a provider panel then the Claims Service Provider must use a provider from the Principal's panel.

The Claims Service Provider is also required to maintain panels of relevant Service Providers to provide specialist services to support functions under the Agreement, where an Agency or the Principal panel is not in place. Where geotechnical investigations, hydrological investigations and engineering services are required, the Claims Service Provider will use its existing panel of providers for such services, based on the nature of the claim, complexity and locality.

Where the Claims Service Provider uses its own panel, the Claims Service Provider will ensure there is dedicated personnel to manage and coordinate the panel of providers. The Claims Service Provider is to ensure that all nominated providers are appropriately qualified for their designated role and have been selected for inclusion on the panel on the basis of value for money. The Claims Service Provider is also to provide any providers it appoints with relevant training.

The Claims Service Provider is to provide details of the providers on their panels to the Principal prior to commencement of the delivery of Core Services, including details of the nature of the Services provided and any specialties. The Claims Service Provider is to provide the Principal with updated details as soon as practical following any change. the Principal may instruct the Claims Service Provider to use or not use a particular provider on a specific case and may instruct the Claims Service Provider to remove a provider from their panel for the purposes of providing Services under the Agreement.

The Claims Service Provider must have in place systems for monitoring the quality and effectiveness of their briefs to providers (including providers on Agency and the Principal panels) and of advice arising from those briefs, as well as overall provider performance, delivery to target timeframes and for ensuring providers deliver good value for money. The

Claims Service Provider is to report, in writing, to the Principal and Agencies regularly on service provider performance (at least every fiscal quarter).

The Claims Service Provider confirms that they currently have in place processes and procedures for audit and quality control of service providers, which includes the ability to monitor and track corrective management plans and actions.

The Claims Service Provider is to review membership of their panels based on the performance assessment undertaken each year excluding those providers whose performance is below expectations and, if appropriate, adding new providers who are expected to deliver superior performance and value for money.

4.19. Use of in-house provider

The Claims Service Provider is not to establish or use in-house legal providers, rehabilitation providers or other provider services that are charged back as a provider service and a Claims cost, except as may be agreed in writing in advance by the Principal.

4.20. Disputes or litigated claims

The Claims Service Provider will manage any dispute or litigated Claim (including recovery matters) to achieve the most effective overall outcome for the Principal and the Agency (i.e. considering not just the circumstances of the specific Claim but also the broader implications of the Claim, such as the precedent it may set). The Claims Service Provider will consult with Agencies prior to the determination of any action in relation to dispute resolution or litigation, any hearing or mediation in relation to a dispute or litigation and any proposed resolution (including out of court settlements).

The Claims Service Provider is to discuss and agree on a strategy for the resolution or conduct of any litigated Claim and the need for attendance by the Agency at any hearing or mediation with the relevant Agency. Sufficient notice must be given to Agencies of hearing dates to enable the Agency to arrange for a representative to attend. The Claims Service Provider is also to notify Agencies of any settlement or determination of a litigated Claim promptly and in any event no later than one Business Day after the settlement or determination.

Some Agencies and/or the Principal manage their own litigated Claims and directly instruct legal providers in the matter. Where this is the case, the Claims Service Provider should support the management of the Claim by the Agency and/or the Principal (and their legal providers) by ensuring they are aware of progress on the Claim and providing advice on the proposed claims management strategy and where appropriate recommending or supporting settlement positions.

Notwithstanding that the Agency and/or the Principal may have carriage of the matter on a day to day basis the Claims Service Provider remains responsible and accountable for decisions relating to indemnity, liability and settlement.

4.21. Cost control

The Claims Service Provider must have in place appropriate systems and controls to prevent, detect and minimise errors and over-servicing. These systems must deal with all potential risks including those arising from Claims Service Provider Personnel, Service Providers, claimants and Agencies.

The Claims Service Provider is required to immediately notify the Principal of any prima facie or alleged case of fraud involving the Principal's and the Schemes' funds.

4.22. Regional service delivery

The Claims Service Provider must deliver the Services to regionally based Agencies (or units within Agencies) to the same standard as to Sydney-based Agencies. The physical location of the Claims Service Provider's office(s) should be transparent to Agencies.

Specifically, where a service is most effectively delivered face to face, the Claims Service Provider is to deliver that service, at its own cost, face to face at a place and in a form convenient to the Agency. Such services include but are not limited to client liaison, meetings (including Claims review meetings and contribution briefings) and training. This requirement is not intended in any way to limit the use of other forms of communication and liaison between the Claims Service Provider and Agencies in the Portfolio. Video conferencing facilities may be utilised.

4.23. Recoveries

The Claims Service Provider will establish a recoveries strategy, incorporating a process to actively review each Claim for recovery potential and pursue recoveries from third parties where appropriate.

4.24. Reinsurance recovery claims

At the Principal's request the Claims Service Provider is to capture, compile and maintain all necessary information and documentation to enable a Claim to be notified to and a recovery made against reinsurers. The information is to be provided to the Principal (or its delegate). The Claims Service Provider must cooperate with the Principal and the reinsurance services provider in successfully lodging and pursuing any reinsurance claim.

4.25. Claims lodged outside the Claims Service Providers portfolio

If the Claims Service Provider receives a claim which falls outside the Portfolio, the Claims Service Provider must, where the correct Claims Service Provider is known, forward the Claim to the relevant Claims Service Provider. If the correct Claims Service Provider is not known, the Claim is to be forwarded to the Principal. The Claims Service Provider is to seek written confirmation from the relevant Claims Service Provider or the Principal that it has received the Claim and acknowledges responsibility for it. The Claims Service Provider (who originally received the Claim) remains responsible for the Claim until the correct Claims Service Provider or the Principal acknowledges responsibility.

If the Claims Service Provider is forwarded a Claim by another Claims Service Provider or the Principal, the Claims Service Provider must advise the forwarding Claims Service Provider or the Principal, as the case may be, in writing whether it accepts responsibility for management of the Claim, within two Business Days of receipt of the Claim. If the Claims Service Provider does not accept responsibility for management of the Claim, the Claims Service Provider must provide the Claim and reasons why it does not accept responsibility to the Principal and the Principal will determine who is the responsible Claims Service Provider.

4.26. Policies

The Claims Service Provider is to maintain policy information in respect of each policy issued, which mirrors the way that the Principal maintains policy information, including all costs centre details and policy numbers.

5. CLIENT MANAGEMENT

5.1. Knowledge of operating environment

The Claims Service Provider must develop and maintain an understanding of the needs, requirements and operating environment of their client Agencies to assist in delivering effective service to the Agency.

The Claims Service Provider is expected to have or develop knowledge and understanding of the particular circumstances, requirements and demands of government and Agencies; for example, the additional corporate governance obligations, the nature of the Scheme arrangements, the extent of coverage and the unique range of industries/occupations covered. The Claims Service Provider is also expected to have or develop knowledge and understanding of the particular circumstances, requirements and demands affecting Builders and the HBCF Scheme.

The Claims Service Provider will work with the Principal in the development of common data

and knowledge capture frameworks to support the deeper understanding of Agency and/or the Principal needs and requirements.

5.2. Continuity of personnel

The Claims Service Provider is to minimise the level of Personnel turnover, particularly in positions that are specified client facing positions to provide a high level of continuity of service to Agencies. These positions include but are not limited to the Claims Service Provider's Authorised Representative and Claims Officers. In this context turnover incorporates any change in these clients facing roles, including moving Personnel to another role under the Agreement, moving Personnel to a role within the organisation but outside of the Principal operations and staff leaving the organisation all together.

The Claims Service Provider is required to have strategies in place to minimise turnover and to monitor and report on staff turnover to the Principal.

5.3. Claims Service Provider personnel recruitment, training and development

The Claims Service Provider is to establish and maintain an ongoing recruitment, training and development program for Personnel utilised or proposed to be utilised in the performance of the Agreement. The recruitment program must be designed to ensure sufficient Personnel are on hand to deliver the Services and requirements are met. The training and development program must incorporate elements that cover the Principal specific requirements (in accordance with the Agreement) and an understanding of the business and operations of Agencies within the Portfolio.

Highly sensitive or potentially distressing claims can be the most challenging for staff to manage but, for the sake of the claimant, they're often the most important to get right. The Claims Service Provider will ensure staff are fully equipped to handle these types of claims by providing technical skills and emotional support.

The Claims Service Provider will maintain currency of its in-house training modules which deals with negotiation, conflict management and advanced communication skills. These training modules must extend to dealing with callers who are threatening, or deemed potentials for, self-harm.

The Claims Service Provider staff are also to be trained in, and have access to, policy and procedures in dealing with threatening behaviour.

The Claims Service Provider's internal claims allocation process considers the most appropriate team member for each claim based on a mix of criteria. Where the claim is either known to be sensitive or distressing, or has preliminary indicators suggesting that this is a possibility, allocation will be made to one of the more senior individuals in the team, who not only have the experience to deal with the matter but that have previously demonstrated resilience.

Where a claim is not initially identified, but circumstances change to create a sensitive or distressing case, the Team Manager will review the case and consider reallocation to another team member, or in extreme cases take over personal management of the case.

The Claims Service Provider will provide a safe and healthy workplace. This includes ensuring the Claims Service Provider's staff's emotional and mental needs are met.

5.4. Technical advice and support

The Claims Service Provider is to provide ad-hoc technical advice and support to Agencies on matters relating to their responsibilities in respect of the Portfolio, including:

- Technical Claims issues – legal requirements, liability and process issues;
- Coverage issues; and

- System access and operational support including technical support to the networking of Agencies to Claims Service Provider systems.

5.5. Training and development of Agency personnel

The Claims Service Provider is to establish formal mechanisms for induction and ongoing training/developing the Personnel of Agencies within the Portfolio in:

- Claims notification and reporting requirements;
- Claims management - consistent with the Agency's claims (and injury management) responsibilities; and
- Utilisation of the Claims Service Provider's claims management claims notification and reporting systems as appropriate.

The Claims Service Provider will work with the Principal to ensure that the Agencies' current on-boarding and orientation procedures for new staff are adapted to train new staff members on the Claims Service Provider's system, processes and procedures necessary to fulfil their internal claims management role.

6. FINANCE AND ACCOUNTING

6.1. General requirements

The Claims Service Provider must at all times comply with the relevant accounting standards and with any accounting policy directions from the Principal. The Claims Service Provider is to make all reasonable efforts to assist the Principal and NSW Treasury with budget preparation, cash flow forecasting and management, financial reporting and financial management of the Principal.

The Claims Service Provider must establish a separate chart of accounts for each Scheme that falls within the Portfolio.

The Claims Service Provider must comply with any Internal Control Framework issued by the Principal, as amended from time to time.

6.2. Banking requirements

As at the Commencement Date, Westpac Banking Corporation (**Westpac**) is the Principal's banker and the Claims Service Provider must work cooperatively with Westpac in the provision of the Services. If an alternative scheme banker is appointed, the Principal will notify the Claims Service Provider and provide Directions about the use of different banking facilities. Whilst requests for banking services are to be lodged with the Principal, the Principal can only arrange for services included in the current contract with Westpac and NSW Treasury.

The arrangement between the Principal and Westpac specifies what services will be provided. Details of these services are available from the Principal. The Claims Service Provider is responsible for ensuring that its systems are able to utilise the capabilities of the New Payments Platform (NPP). The Claims Service Provider will ensure that its systems are capable of allocating all receipts and payments correctly and that all bank accounts can be reconciled in accordance with the Principal requirements.

The Principal's personnel are the only "verifying officers" on the Principal bank account. All requests for access to the Corporate Online system are to be made to the Principal's Personnel holding the title of Manager – Banking & Cashflow or as otherwise directed in writing by the Principal.

The Claims Service Provider must ensure the following:

- (a) That the Claims Service Provider's systems are set up to meet the banking needs outlined in the Agreement and Manuals, including changes required by the NPP, along with being able to operate recoveries and payments accounts of the Principal with the banker (Westpac) to the Principal.

- (b) If payment files are to be transmitted to Westpac using any mechanism other than Westpac's Corporate Online system (COL), a fully tested, point-to-point link must be implemented between the Claims Service Provider's data centre, where their IT system is located, and Westpac, which complies with the security needs of both Westpac and the Principal regarding the functions for which the system will be used. This connection may be used for:
 - (i) Transmitting files to the Westpac payment processing service (PPS) system, if set up; and
 - (ii) Receiving transaction files from the Payments and Recoveries Accounts.
- (c) An un-encoded internet transmission of files does not meet this requirement.
- (d) Should the Claims Service Provider determine to use the Westpac 'ilink' system for the point-to-point link, the Approval of the Principal must also be sought on the design/specification of the system to ensure that the security options selected meet the Principal requirements.
- (e) As the COL system is already available for file transfers and is funded by the Principal, any costs of implementing or using the ilink system are to be met by the Claims Service Provider from its own funds unless prior agreement by the Principal has been sought.
- (f) Test the ability of the Claims and financial systems to produce a file in the format required by the PPS/Payments Plus or the Direct Entry systems of Westpac for the production of EFTs and related remittance advices. All payments and remittance advices must be made via PPS system/Payments Plus or the Direct Entry Systems of Westpac.
- (g) Establish appropriate policies for the reconciliation of bank accounts.

The total of payments made by the Claims Service Provider from all of their payments accounts are not to exceed \$10 million per day, unless the Principal, who after liaison with Westpac, advises that for a particular day a higher limit will apply. Where a higher limit is required, at least 24 hours' notice is to be provided to the Principal.

Westpac will reject files that exceed this limit. Accordingly, the Claims Service Provider is required to closely monitor payment levels especially in high payment periods to ensure the limit is not exceeded.

All payments are to be made by EFT unless it is not practicable to do so in the particular circumstances or if payment is required in another method, e.g. police reports.

All payments made by cheque must be approved by the Principal and the cheque requested from the Principal's Treasury. For security reasons, cheques are only to be mailed and are not to be sent via document exchange facilities.

Where a Fraud involving a cheque or any system involving EFT payments is detected the Claims Service Provider is to report the matter to the Police and obtain a Police Report Event Number and the name/telephone number of the officer the report was made to. In addition, as soon as practicable, lodge a claim on company letterhead with Westpac containing the following details:

- (a) Requesting that a full refund be made;
- (b) Details of any alterations to the cheque or EFT;
- (c) The full name of the original beneficiary (if it has been altered);
- (d) The address the cheque was mailed to or the payment details nominated for the EFT;
- (e) Confirmation that the original beneficiary did not receive the cheque or EFT;
- (f) A Police Report Event Number;
- (g) Details of the name and telephone number of the police officer who took the report; and
- (h) Signed by the Claims Service Provider Authorised Representative or a senior Authorised Representative of the Claims Service Provider.

Any replacement payment must be made by EFT. Under the banking contract should any Fraud occur after a cheque is returned to the Claims Service Provider (including for the adding of additional documentation), Westpac will not recompense the Principal for the misappropriated funds. Accordingly, responsibility for restitution of any losses due to such Frauds becomes the responsibility of the Claims Service Provider. Stop payments of PPS system cheques are to be performed via the COL system.

If the Claims Service Provider becomes aware that a cheque has been lost, stolen or destroyed, a stop-payment advice should be issued to Westpac as soon as possible. The Claims Service Provider is required to:

- (a) Regularly review cheques, including bank cheques that have been unrepresented for more than 30 Calendar Days to ascertain why the cheques may not have been presented.
- (b) Contact payees where a cheque with a value of more than \$1,000 has been unrepresented for more than 30 Calendar Days, to advise them that the cheque is unrepresented, and request that they promptly bank the cheque. If the payee advises that the cheque has been lost, stolen or destroyed, the Claims Service Provider is to complete a stop-payment advice to Westpac and provide a replacement payment to the payee by electronic funds transfer (EFT).
- (c) Review all unrepresented cheques that are more than 30 Days old at least every 3 Months and issue stop-payment advices to Westpac, as it is then to be assumed that the cheques are lost, stolen or destroyed. Where cheques to be stopped number more than 500 a bulk stop-payment advice should be used, as it is more cost-effective than individual stop-payment advices.

The Claims Service Provider must as a one-off end of fiscal year activity undertake a process to identify all stop payments that have been processed without a replacement EFT within the year. In circumstances where a replacement EFT has not been made, as at the end of the fiscal year (excluding stops processed within current month), these payments are to be taken to 'other income'. Any amounts taken to 'other income' needs to be recorded in a register by the Claims Service Provider to ensure that amounts can be easily identified if any future claims are made on the payment, thus minimising potential disputes. If, subsequently a replacement payment is issued this amount is to be recorded as an offset to 'other income'. Both of the above entries will result in reconciling items in the Claims Service Provider cash receipts and cash payments returns required.

The Claims Service Provider is required to be able to accept cheques for payments of any amounts owing to the Scheme without charge.

Any person with a bank account which has electronic payments activated can make an electronic payment to any other account. Accordingly, the Claims Service Provider must have facilities in place to accept and process EFT payments made to receipts accounts they manage on behalf of the Principal.

Unidentified deposits should be investigated. Where the deposit is shown as deposited in error the Claims Service Provider should refund the funds. Where the Claims Service Provider has exhausted all avenues for identification the funds should be transferred to Other Income and a register must be maintained to clearly identify all information available.

The corporate online system (COL) is to be used to interact with the Scheme's banker on a real time on line basis. The Claims Service Provider is not to access the Principal banking facilities from a COL system controlled by the Claims Service Provider. Rather each Claims Service Provider has been established as a separate COL "office" of the Principal. This has enabled the Principal to apply the following minimum governance requirements to its accounts:

- (a) A person can only be either an "Authoriser" or "Creator" in the COL system. They cannot occupy more than one of these roles.
- (b) All administrative activities in the COL are controlled by the Principal Personnel.
- (c) 2 authorisers are required to approve all payments.

- (d) A user can be restricted to particular transaction types (payments, receipts, account balances) and particular bank accounts.
- (e) As COL is an internet based system a person with a COL role can be based in any of the Claims Service Provider's Approved Australian offices.

The Claims Service Provider Authorised Representative is required to approve of all persons who they wish to be creators or authorisers in the COL system and the functions (COL facilities) they can access. A completed 'Westpac Certified Customer Identification Document', including certified supporting documents is to accompany all requests for new users.

Additionally in the case of authorisers the Claims Service Provider Authorised Representative is to also advise the financial limits that are to apply to that person including:

- (a) Payment daily limit (the maximum total value of online payments that can be made in a day).
- (b) Payment transaction limit for an online payment (the maximum amount of a payment that can be made).
- (c) Import daily limit (the total amount of PPS/EFT files for a day that can be authorised).
- (d) Import individual transaction limit (the maximum amount that can be included for a particular transaction in a PPS/EFT file).

On a Bi-Annual basis the Principal will provide a listing of users of the COL system and their access rights and require the Claims Service Provider to confirm that the user is still in the Claims Service Provider's employ and the access rights continue to be appropriate. Where the COL system is unavailable due to system issues the Principal is to be advised immediately so that acceptable alternate file transmission procedures can be implemented.

the Principal has determined that the governance principles applied to NSW government agencies are a good governance framework and accordingly have been adopted by the Principal. These principles are:

- (a) *Enforce strict "separation of duties" between COL creators and approvers of payments.* the Principal will incorporate this in its COL set up.
- (b) *Users should have time limits placed on their access.* User access for holidays/other leave should also be suspended. All persons will only be allowed to access COL between 7:00am to 7:00pm Monday to Friday. Administrators will be required to suspend a user when they are on more than 5 Calendar Days leave.
- (c) *Users should not access COL from offices other than those Approved by the Principal.* The Claims Service Provider's NSW premises including offices of related companies are considered Approved sites to access the Principal COL system. Users should not access COL from offices other than those Approved by the Principal. The Claims Service Provider's premises including offices of related companies are considered Approved sites to access icare's COL system. Homes of Personnel and other premises from which Personnel perform work for the Claims Service Provider are also Approved by icare, provided the homes are located in NSW and Personnel are accessing COL by logging in from within the Claims Service Provider's VPN. As part of the Claims Service Provider's regular communication to Personnel, users are to be advised that, subject to the above, they cannot access the Principal's COL functionality from other premises, including from home.
- (d) *Enforce payment templating so that payment creators can only create payments to authorised vendors.* The Claims Service Provider's controls over who payments can be made to is primarily controlled through their claims systems that record BSB and account number for electronic payments.
- (e) *Mandatory use of token security within COL for payment authorisation.* All authorisers of payments are under the the Principal COL setup required to use a token.

- (f) *Create and enforce token management policy.* The Claims Service Provider is required to ensure that:
 - (i) Tokens are stored by authorisers in a locked desk drawer when not in use.
 - (ii) Passwords that are used in conjunction with the token are not to be written down.
 - (iii) Tokens are not to be taken outside of the Claims Service Provider's offices.
- (g) *Create and enforce policy on the payment authorisation process, with emphasis on payment and payment file validation.* This should be multi-level and linked to segregation of duties. The Claims Service Provider will be required to have a person prepare a payment and 2 other persons authorise it. For payment files imported into the COL system the Claims Service Provider is required to implement appropriate procedures and cross checks to ensure that the payment files have not been inappropriately amended since the file was created in the Claims Service Provider's claims system.
- (h) *Maintain payment limits within COL at the lowest practical level.* The Claims Service Provider's daily payment limit is currently set at \$10 million. This amount meets normal needs with occasional need to adjust payment timing during payment peaks such as those arising from GST payments to the ATO, to ensure that the cap is not breached. In addition, individual payment authorisation limits apply to each payment authoriser based on advice from the Claims Service Provider Authorised Representative including:
 - (i) Total daily payment limits.
 - (ii) Payment transaction limit.
 - (iii) Import file total daily limit.
 - (iv) Import file individual transaction limit.
- (i) *Users to check COL website digital certificate before proceeding, ensuring validity of the COL website and the encrypted connection.* As part of the Claims Service Provider's regular communication to Personnel on IT matters, the Claims Service Provider Authorised Representative is to ensure Personnel are advised of these requirements.
- (j) *Users to understand that all activity logging on COL is centralised, detailed and unmodifiable.* As part of the Claims Service Provider's regular communication to Personnel on IT matters, the Claims Service Provider Authorised Representative is to ensure Personnel are advised of these requirements
- (k) Other IT practices not specifically related to COL, that the Government guidelines consider should be introduced. These include:
 - (i) Promulgate a "PC use policy" covering appropriate uses; password (i.e. no password sharing) and Internet download policy. Where practical, these should be enforced using technology and business practices (e.g. the use of a standard operating environment preventing normal users installing software).
 - (ii) Conduct training of COL users that included general PC security around phishing, recognising secure sites and PC use policy.
 - (iii) Enforce prudent security standards around the currency of rule sets on border/perimeter internet and internal firewalls, intrusion prevention, anti-virus and anti-malware so as to minimise any "attack surface" to the Government from the outside.
 - (iv) Inclusion of these controls and the threat model in subsequent security audits and maintenance of the currency of those threats/risks and mitigation.
 - (v) Appropriately published and sanctioned disciplinary actions for breach of these controls.

The Claims Service Provider is to ensure that these issues are appropriately addressed in their general IT controls. These controls will be audited on a regular basis.

6.3. Tax requirements

In respect of transactions undertaken on behalf of the Principal, the Claims Service Provider must comply with Australian taxation Laws in the same way as any other registered entity,

and with other requirements of the Law that may apply to entities that make payments of wages. These taxation obligations include the GST Law, and obligations of a 'large withholder' under the *Taxation Administration Act 1953* (Cth). These obligations include:

- Maintain accurate and timely processing of GST related transactions, including identifying all input tax credits available under Division 11 of the GST Act, any entitlement to claim a Decreasing Adjustment (**DAM**) under Division 78 of the GST Act and the potential GST effect of any recoveries;
- Obtain, issue and retain valid tax invoices and valid tax adjustment notes and other relevant records to support GST claims made to the Australian Taxation Office (ATO);
- Submit business activity statement (BAS) equivalent information to the Principal in respect of the Portfolio in a timely manner, to enable the Principal to submit GST branch BAS Returns in respect of the Portfolio to the ATO. Separate BAS information is required for the TMF (IfNSW), CRIF, PMF and HBCF;
- Pay any net amount of GST owing to the ATO on a GST branch BAS Return to the ATO by the due date required by businesses who lodge monthly BAS Returns.
- Maintain appropriate records to provide the Principal with the required information for completion of the Taxable Payments Annual Report (TPAR) in an accurate, complete and timely manner;
- Deduct Pay As You Go (PAYG) tax from payments to claimants and others where appropriate and remit the PAYG to the ATO by electronic means, using the ATO specified EFT code, on or before the prescribed due dates; and
- Provide payment summaries to claimants and others and the ATO's PAYG Payment Withholding Summary Annual Report (**PSAR**) to the Principal before the due dates as determined by the ATO. Issuing payment summaries using the ATO issued form together with manually lodging the ATO issued "PAYG payment summary statement" form, while permitted by the ATO, is not an acceptable approach to the Principal.

6.4. Miscellaneous transactions

The Claims Service Provider is responsible for dealing with all miscellaneous transactions relating to the Portfolio including but not limited to processing levies, garnishees, un-presented cheques, unclaimed money, miscellaneous receipts, cancelled cheques and stop payments.

6.5. Reconciliation of accounts

The Claims Service Provider must:

- Perform regular account reconciliations throughout the month and perform a monthly bank reconciliation;
- Perform monthly reconciliation of account balances and subsidiary accounts;
- Reconcile monthly cash flow information with data provided to Insurance for NSW Data Warehouse;
- Reconcile monthly trial balance Claim payments with the weekly data extracts provided to the Insurance for NSW Data Warehouse.

Should the Claims Service Provider discover a variance it is to be reported to the Principal the next Business Day.

6.6. Accounting reports

The Claims Service Provider is to prepare any necessary financial reports in accordance with any Guidelines, Procedures and Manuals issued by the Principal, including, but not limited to, the Financial Reporting Manual.

7. SYSTEMS

7.1. Claims management systems

The Claims Service Provider must have a computerised claims management system. Claims must be linked to the appropriate policy record through the policy number. The claims management system is expected to incorporate systems for recording Claims, Claims

details, Claims status and Claims transactions including the history of such information as well as for facilitation and management of workflow and providing decision support tools to Claims Personnel. The Claims Service Provider's claims management system must capture the data specified in the relevant Insurance for NSW Claims Interface Specification(s).

The claims management system is also to meet all the Principal specific requirements and other specified requirements of Agencies (within the Portfolio).

7.2. Records management

All Claims records are to be in electronic format. Hard copy records are not required to be maintained once the electronic record has been created. Claims reopened by the Claims Service Provider that are not in electronic format must be converted to electronic format.

7.3. Claims notification

The Claims Service Provider is to provide mechanisms and/or systems for their Agencies to lodge Claims electronically to assist in the timely and efficient notification and lodgement of Claims.

New Claims are to be registered by the Claims Service Provider including allocation of required Claims coding and data according to the relevant Insurance for NSW Claims Interface Specification. All relevant statutory requirements in relation to the Claims lodgement are to be met by the Claims Service Provider.

Once an Agency enters or advises of a Claim, the Claims Service Provider is responsible for claims management unless otherwise specified for an Agency or Agencies. The Claims Service Provider's claims management system must support this requirement.

7.4. Claims data requirements

The Claims Service Provider must collect Claims Data that meets the Principal requirements. At all times the Claims Service Provider will ensure data is:

- Accurate – the degree to which data is error free and aligns with what it represents;
- Complete – the extent to which data is not missing and of sufficient breadth and depth for the intended purpose;
- Consistent – the degree to which related data is in alignment with respect to dimensions such as definition, value, range, type and format as applicable;
- Timely – the degree to which data is up to date;
- Available – accessibility and usability of data when required; and
- Fit for use – the degree to which data is relevant, appropriate for the intended purpose and meets business specifications.

The Claims Service Provider must meet specific data requirements:

- The Claims Service Provider's claims management system must capture the data items specified in the relevant Insurance for NSW Claims Interface Specification(s); and
- The Claims Service Provider's claims management system must capture data items that are peculiar to the Principal that is TMF or HBCF specific data.

It should be noted these data requirements are not intended to specify or impact data requirements that the Claims Service Provider has for their operational needs to deliver effective claims management outcomes but are restricted to the Principal and Agency requirements for reporting, analytical and monitoring purposes only. The Principal will review its requirements and Agency requirements regularly, as frequently as quarterly, where there is a change in requirements the Claims Service Provider will be required to modify their systems to meet the new requirements.

7.5. Insurance for NSW Data Warehouse

The Principal has established a data warehouse for maintaining, analysing and distributing

Insurance for NSW Claims Data and other information. The Principal intends the Insurance for NSW Data Warehouse will be the primary source of data and information, and the single source of truth, for all reporting and analysis purposes, including (but not limited to):

- Scheme performance reporting and analysis;
- Actuarial analysis and reporting;
- Agency reporting;
- Claims Service Provider performance reporting and monitoring; and
- Assessing Claims Service Provider service and Incentive Fees.

The Claims Service Provider is required to provide Claims Data collected or created by the Claims Service Provider on all Claims within the Portfolio for incorporation into the Insurance for NSW Data Warehouse. Data must be provided to the Principal for inclusion in the Insurance for NSW Data Warehouse in accordance with the relevant Insurance for NSW Claims Interface Specification(s).

The Principal requires provision every Business Day of Claims Data to the Insurance for NSW Data Warehouse. The requirement for daily submissions is included in the Insurance for NSW Claims Interface Specifications and Data Governance Requirements (Schedule 7). The Claims Service Provider must be capable of providing daily data submissions to the Insurance for NSW Data Warehouse.

The Principal may vary the Insurance for NSW Claims Interface Specifications and Data Governance Requirements (Schedule 7). These variations may arise to reflect changing regulatory requirements, changing Principal requirements, changing Agency requirements or clarification, correction or improvements to the existing specifications and requirements. The Claims Service Provider should anticipate regular updates to the Insurance for NSW Claims Interface Specifications and Data Governance Requirements (Schedule 7). Updates should be expected at least annually and may be as frequent as quarterly at times. While most updates will be minor in nature, this does not preclude less frequent substantive changes from time to time. In accordance with Schedule 4 – Fee Arrangements, the Claims Service Provider reserves the right to charge additional fees for designing, developing, testing, deploying and maintaining any substantive charges as Project Service Fees.

As part of the process of developing any revisions to the Insurance for NSW Claims Interface Specifications and Data Governance Requirements (Schedule 7), the Principal will consult with the Claims Service Provider. The Principal will set a commencement date for any revised version of the Insurance for NSW Claims Interface Specifications and Data Governance Requirements (Schedule 7) that allows the Claims Service Provider a reasonable time to make any necessary amendments to their claims systems and/or other systems and processes to give effect to the change. The Claims Service Provider must comply with any revised version of the Insurance for NSW Claims Interface Specifications and Data Governance Requirements (Schedule 7) from the commencement date of that version.

7.6. Accounting systems

The Claims Service Provider must have an appropriate computerised accounting system for retaining details of all financial transactions made on behalf of the Principal, supporting financial and accounting functions and compiling financial statements. The Claims Service Provider is to maintain a discrete general ledger for the Portfolio separate from their ledger for commercial operations.

7.7. Production support

The Claims Service Provider is to provide ongoing production support as required to the Principal and Agency personnel in relation to all information system services and functionality provided under this agreement to the Principal and/or Agencies.

7.8. System changes to be approved by the Principal

The Claims Service Provider is to advise the Principal of any proposed changes to its information systems used in the provision of Core Services under the Agreement including architecture, IT platform, software and programs, prior to the changes being made in accordance with the Agreement. Any change to the Claims Service Provider's information systems used in the provision of Core Services under the Agreement can only proceed with the Principal's approval in accordance with the terms of the Agreement.

The Claims Service Provider is to allow the Principal reasonable time to examine proposed changes. the Principal may agree, or not agree, to the proposed changes, in its absolute discretion. Whether or not the Principal agrees to the changes there shall be no cost or fee impact to the Principal.

If required, as a condition of any approval by the Principal, the Claims Service Provider is to allow the Principal, or if appropriate the relevant Agency or Agencies, access to any system changes in a test environment, prior to any introduction into a production environment, so as to enable the Principal to verify that the changes are consistent with those agreed.

7.9. Variations to system requirements

During the Term of the Agreement, the Claims Service Provider is required to accommodate changes to its information systems from time to time to meet emerging the Principal and/or Agency requirements after the commencement of the Agreement. While minor changes and the correction of any errors or bugs are to be carried out without additional charge, it is intended that the Principal or the relevant Agency will fund the cost of any significant system changes required by the Principal or an Agency subject to the Claims Service Provider reaching agreement with the Principal and, if appropriate, the Agency on the changes to be made, the cost of effecting those changes and all other relevant matters. Any changes requested by an Agency must have the prior written approval of the Principal.

Any changes to Claims Service Provider information systems which are required to meet a regulatory requirement that applies generally to scheme agents, insurers and/or self insurers, either in total or in respect of a particular line of business, will not be funded by the Principal and/or the Agencies.

The Claims Service Provider is required to comply with the following process in relation to requests for changes to the Claims Service Provider's systems by the Principal:

- Initial Advice – the Principal will advise the Claims Service Provider of the proposed change, including high level business requirements, scope of changes and expected timeframe for implementation;
- Planning Phase – The Claims Service Provider will work with the Principal to develop and finalise a project definition to be agreed by the Claims Service Provider and the Principal. Once agreed the Claims Service Provider is required to deliver on the specified changes in accordance with the agreed project definition;
- Implementation Plans – The Claims Service Provider is to develop detailed plans, including a quality management plan and a training program for the Principal/Agency personnel (if applicable), to develop and implement the agreed changes and provide copies to the Principal;
- Reporting to the Principal – the Claims Service Provider must provide regular reports to the Principal, as and when requested, on progress to plan;
- Testing – Prior to putting the changes into production, the Claims Service Provider must allow and assist the Principal to undertake user acceptance testing. The Claims Service Provider must address all issues identified by the Principal and must not implement the changes until the Principal sign-off; and
- Production Support – Following implementation the Claims Service Provider is to provide production support and ongoing training as required in relation to all information system services and functionality provided as a result of the change. The Claims Service Provider is also to resolve any issues (bugs or errors) identified post implementation in a timely manner.

8. ACCOUNT MANAGEMENT

8.1. Introduction

The Account Management Framework describes the functions, interactions and Key Personnel that are expected between the Claims Service Provider and the Principal in providing the Services. It is intended that through this Framework the parties will work cooperatively in achieving Scheme Principles at an operational and strategic level.

8.2. Key Personnel

Principal Authorised Representative and the Claims Service Provider Authorised Representative are the most senior points of direct accountability for the Services within their respective organisations.

The Principal Authorised Representative and the Claims Service Provider Authorised Representative are responsible for:

- (a) Managing the strategic relationship and providing executive leadership and guidance;
- (b) Ensuring their respective organisations' Agreement obligations are met;
- (c) Progressing the goals and objectives of the relationship within the scope of the Agreement;
- (d) Agreeing any Project Services;
- (e) Approving updates to the Business Model Plan; and
- (f) Ensuring that the parties continue to fulfil their obligations throughout the term of this Agreement.

The Claims Service Provider Authorised Representative will be accountable for the Claims Service Provider's performance under this Agreement, including measures against Service Standards and other performance measures.

The Claims Service Provider Authorised Representative may, subject to the limitations described in the Agreement, delegate his/her authority on an ad hoc basis, and must provide Principal Authorised Representative with written notice of any such delegation. This delegation is subject to Principal.

8.2.1. The Principal Authorised Representative

The Principal Authorised Representative is the first point of contact for the Claims Service Provider Authorised Representative and is responsible for performance management and the relationship between Principal and Claims Service Provider. The Principal Authorised Representative has delegated authority from Principal to approve performance management interventions associated with underperformance by Principal. The Principal Authorised Representative will keep a register of all underperformance and issues throughout the Term of the Agreement.

- (a) The Principal Authorised Representative will work collaboratively with the Claims Service Provider as the key liaison point to build and maintain a high performance management culture and build effective business relationships that deliver improved Services. The focus is to be on facilitating the targeted development and delivery of initiatives designed to meet contractual obligations and Scheme Principles, while building industry capability. The Authorised Representative also manages and resolves day-to-day issues and supports the delivery of initiatives aimed at improving performance, Service delivery and continuous investment.
- (b) The Principal Authorised Representative has primary responsibility for monitoring the deliverables and commitments under this Agreement, and ensuring the

relationship between the parties will champion continuous improvement, quality management and innovation.

- (c) The Principal Authorised Representative's responsibilities include:
- i. Monitoring and tracking the Claims Service Provider and Principal's obligation under this Agreement;
 - ii. Overseeing the performance of the Services, including measures against Service Standards and other performance measures;
 - iii. Coordinating the appropriate participation in relevant industry committees;
 - iv. Monitoring performance against the Business Model;
 - v. Resolving escalated issues according to the Contract Dispute procedures; and
 - vi. Developing standard reporting and communication requirements between the parties and other parties as appropriate.

8.2.2. Claims Service Provider Authorised Representative

The Claims Service Provider Authorised Representative is responsible for:

- (a) Monitoring the Claims Service Provider's achievement of the Service Standards, Scheme Principles and providing all reports to Principal, in accordance with this Agreement;
- (b) Preparing the Business Model and reports;
- (c) Coordinating activities regarding the Claims Service Provider initiatives and/or information sharing that may impact customer service, industry trends and other issues; and
- (d) Creating, proposing and if approved, implementing appropriate performance management activities.

8.3. Account management meetings

8.3.1. Purpose

These meetings are the initial escalation point for unresolved operational issues. These meetings are to be scheduled on a monthly, or other agreed, basis, alternating between the offices of Principal and the Claims Service Provider where possible. Minutes for the meetings are to be taken by the Claims Service Provider and distributed to all participants and other relevant parties at Principal and the Claims Service Provider.

The account management meetings have been established as an environment to facilitate discussion of operational issues and analysis of monthly performance results. Agendas for the meetings should include business as usual items such as significant legal matters, media or reputational risks, performance against Service Standards, policy decisions and any other general business. The Claims Service Provider should present its internal monthly performance results and strategies for improvement.

8.3.2. Terms of Reference

These meetings are a component of Principal/Claims Service Provider engagement model and are designed to establish and maintain a professional relationship between the Claims Service Providers and Principal that is conducive to driving Claims Service Provider performance, providing a consistent approach to issue resolution.

The intention is that business as usual items and/or issues are put on the agenda for discussion and ultimate resolution either at the meeting or within a specified timeframe. Those issues that cannot be resolved at the meeting by Principal are referred to the relevant internal stakeholder and, if necessary, escalated to the Claims Service Provider Authorised Representative.

Agendas for these meetings are driven by business requirements and will be agreed in advance so that both parties are able to prepare for the monthly meeting to ensure that it is

as productive as possible. Unless otherwise advised by Principal, all meetings minutes are undertaken by the Claims Service Provider and are forwarded to Principal for review and approval within 5 Business Days following each account management meeting. The minutes are designed to immediately highlight areas of concern and action. Due dates will be included on the action items in the minutes.

8.3.3. Attendance

Account management meetings are to be attended by Principal Authorised Representative and Claims Service Provider Authorised Representative to manage and resolve day-to-day issues, queries and Service delivery matters and to discuss current topics and trends relevant to Principal.

8.4. Quarterly Performance Meetings

8.4.1. Purpose

The Quarterly performance management meetings evaluate and discuss the Claims Service Provider's performance to ensure it is aligned with Service Standards, as well as providing important feedback to the Claims Service Provider regarding its performance. The meetings should include feedback and discussion of the Claims Service Provider's results in respect of performance with the aim of understanding the impact and effectiveness of the Claims Service Provider's strategies in the provision of the Services.

8.4.2. Terms of Reference

These meetings are a component of Principal/Claims Service Provider engagement model and designed to inform performance from a technical and strategic perspective. As such, the action points from performance based issues discussed at this forum will be fed into the account management meetings on a monthly basis.

The intention is that performance results will be jointly discussed at the meeting by Principal and the Claims Service Provider. The Claims Service Provider will have the opportunity to account for its results in terms of its Business Model Plan, business objectives and Scheme Principles.

There may not be any definitive resolution on issues raised at these meetings, as it is likely that results may necessitate further analysis by the Claims Service Provider as to the operational drivers of the results. The results will, however, form the basis for ongoing discussion at the account management meetings which may include further performance monitoring methods.

Agendas for these meetings will be developed by Principal and distributed to the Claims Service Provider prior to the meetings including performance monitoring and discussion questions. The Claims Service Provider will also have an opportunity to forward questions to Principal prior to the meeting which will contribute to the performance discussion. Operational, legal, policy, and individual Claims questions will continue to be discussed in the operational forums.

There is intent at this forum that the Claims Service Provider will have the opportunity to discuss its performance with a view to developing strategies to improve performance and achieve or exceed Service Standards.

8.4.3. Attendance

Quarterly performance management meetings are to be attended by key operational and strategic Claims Service Provider participants and relevant Principal representatives. Attendance of the Claims Service Provider Authorised Representative and the Principal Authorised Representative is required. If the Claims Service Provider Authorised

Representative is unable to attend the meeting, he or she is required to nominate a replacement.

8.4.4. Frequency

Quarterly.

9. STRATEGIC REVIEW MEETINGS

9.1. Purpose, objectives and format

Strategic review meetings will be held to consider issues of a strategic nature relating to the Claims Service Provider and the management of the Portfolio. The Principal will determine the agenda for the meetings, although the Claims Service Provider may request items to be included. The meetings will be chaired by the Principal's Authorised Representative or their nominee. The Claims Service Provider's Authorised Representative will attend these meetings. The Claims Service Provider will prepare and issue the minutes to each meeting.

The Principal expects to conduct strategic review meetings at least twice annually. The purpose of one of these meetings will be to finalise and agree the Insurance for NSW Operational Plan, HBCF Business Model and Service Standards including strategies, budgets and related material for the forthcoming Financial Year for the Claims Service Provider – this is expected to occur in about October each year. The purpose of the second meeting is to review overall performance for the previous Financial Year and consider any strategic issues for the Claims Service Provider for the future – this meeting is expected to occur in or around April each year (or when sufficient year end results are available to warrant calling the meeting). The exact timing of these meetings will be determined by the Principal in consultation with the Claims Service Provider.

Other strategic review meetings may be called by the Principal as required to finalise matters not resolved in the regular strategic review meetings or to address other strategic issues that may arise from time to time. The Claims Service Provider's Authorised Representative will attend these meetings.

10. REPORTING

10.1. Overview

The Reporting requirements provide Principal with the tools for evaluating the performance of the Claims Service Provider's obligations under this Agreement.

The Claims Service Provider must provide the required reports as detailed and requested by the Principal in the format prescribed by Principal. Ad-hoc Reports will be requested from time to time and the Claims Service Provider will provide these Reports to Principal at no cost.

Ad-hoc Report means a report that can be prepared or generated by the Claims Service Provider using the Data, Records or Materials available to it, or involves minimal research effort by the Claims Service Provider.

10.2. Other Reporting requirements

Throughout the term of the Agreement Principal will required Additional Reports to be provided. The Claims Service Provider is to provide such reports within the timeframes specified at no cost to the Principal or at a mutually agreed fee if the cost of the provision of such Additional Reports is associated with a Project Services Order.

Additional Report means a report that is not an Ad-hoc Report.

10.3. Report Timeline

The Claims Service Provider must electronically submit the reports in the prescribed format from its Claims Service Provider email account, to Principal by the due date specified by Principal or within 10 Business Days of the end of each reporting period or as specified in the relevant Manual, whichever is earlier. Alternatively, the Principal and Claims Service Provider may agree on an alternative due date. Where no format is prescribed by Principal, the Claims Service Provider must submit the reports in PDF, Excel or Word format. Hard copies of reports are to be submitted when requested. The Claims Service Provider must submit ad hoc reports from time to time in accordance with the timeframes identified in the request issued by Principal.

10.4. Reporting and Timeframe Requirements – Fraud

- (a) The Claims Service Provider must manage all instances of payment Fraud, including cheque and electronic funds transfer, in accordance with the requirements detailed in any Guidelines, Procedures and Manuals issued by the Principal.
- (b) The Claims Service Provider must report all internal and external Suspect Activity and Fraud and describe its current and proposed management of the Suspect Activity and Fraud to the Principal within five Business Days of the Claims Service Provider becoming aware of the Suspect Activity and Fraud.
- (c) Unless otherwise agreed by the parties in writing, the Claims Service Provider must undertake the following actions and comply with the following timeframes in the management of any Suspect Activity and Fraud:
 - i. desktop reviews to be completed and reports provided to the Principal within 10 Business Days from the date of the Suspect Activity or Fraud;
 - ii. all clinical notes to be obtained within two months of the date of the Suspect Activity or Fraud;
 - iii. in the event that surveillance is required, the Claims Service Provider must request Approval from the Principal within five Business Days from the date of the Suspect Activity or Fraud and instruct any Third Party Service Provider undertaking the surveillance within five Business Days of receiving Approval;
 - iv. any surveillance report must be completed and provided to the Principal no later than one month after the Claims Service Provider has provided its instructions to the Third Party Service Provider;
 - v. all witness statements must be completed within 15 Business Days of the Principal requesting the statement;
 - vi. all analytics required as part of the Suspect Activity and Fraud investigations must be completed with 15 Business Days of the Principal's request for those analytics;
 - vii. provide the Principal with progress reports of all open Suspect Activity and Fraud investigations every month, by the 5th Business Day of the subsequent month in the form required by the Principal; and
 - viii. provide the Principal with its final investigation outcome within three months of the commencement of every Suspect Activity and Fraud investigation, in the form required by the Principal.
- (d) the Principal may review any of the Claims Service Provider's Suspect Activity and Fraud process and procedures, including final closure decisions, and advise the Claims Service Provider of any remedial action required.

11. SUPPLEMENTARY REQUIREMENTS

11.1. Requests for access to information

The Claims Service Provider will provide to the Principal whatever information and/or material, as may be required by the Principal from time to time, to enable the Principal and or any Agency, to comply with and otherwise discharge their respective functions, duties and/or obligations under any laws relating to freedom of information or access to Government information as may be in force from time to time. The Claims Service Provider must forward any such information and/or material, in whatever form as may be reasonably required by the Principal, within five Business Days of the receipt of a request by the Principal.

11.2. Functions delegated under Government Information (Public Access) Act 2009

Decisions under the Government Information (Public Access) Act 2009 (GIPA Act) must be made by properly authorised officers of the Principal. As an agent of the Principal, the Claims Service Provider is to assist the Principal in exercising its functions under the GIPA Act.

The Claims Service Provider's functions in assisting the Principal include:

- Preparation of a draft decision for consideration and signature by the Principal's authorised officer;
- Collation and review of the documents requested;
- Providing an assessment as to whether there is an overriding public interest against disclosure in respect of any information sought;
- Consulting with third parties and arrange any extension with the applicant where appropriate regarding release of the information; and
- Complying with any of the Principal's guide(s) for GIPA applications that the Principal may publish from time to time.

A final decision as to whether to release the information will be made by the authorised officer of the Principal. In all cases, the Principal retains oversight of and responsibility for *GIPA* decisions, even though the workload will be delivered by the Claims Service Provider.

The Claims Service Provider is required to nominate one or more appropriately qualified persons to act as their GIPA representative, to be the first point of contact for GIPA related matters and to be responsible for coordinating responses to these requests from the Principal and for ensuring the completeness and accuracy of the response on behalf of the Claims Service Provider. The GIPA representative must be knowledgeable and experienced in:

- The Claims Service Provider's claims management system and processes;
- The application of the Government Information (Public Access) Act 2009; and
- Be appropriately qualified to make decisions on legal professional privilege.

The GIPA representative/s will, as a minimum, be expected to attend the GIPA information sessions conducted from time to time by the Crown Solicitors Office.

11.3. Large claims report

The Claims Service Provider will provide to the Principal reports on large Claims which may potentially result in reinsurance claims to the Principal and/or the reinsurance services provider. Reports are to include Claims that exceed or are likely to exceed a specified incurred cost (either on an individual basis or in aggregate for an incident) and be in a form agreed to by the Principal. Reports are to be provided quarterly within 10 Business Days of the end of the quarter. The Claims Service Provider will also notify the Principal, by email, of any new Claim where the estimated incurred cost exceeds the specified cost within two Business Days.

11.4. The Principal's Intellectual property

The Claims Service Provider is to provide reports detailing the New Contract Material (as defined in the Agreement). These reports are to be provided quarterly and to include details of the New Contract Material. The Principal may request the New Contract Material and any licences, consents or approvals referred to in Clause 29 (Intellectual Property Rights) of the Agreement be provided to the Principal from time to time.

11.5. Miscellaneous reports to the Principal

The Principal may require additional information or reports from the Claims Service Provider to respond to an emerging issue or an urgent request, for example from the Treasurer. Where the Principal makes such a request the Claims Service Provider shall make all reasonable efforts to comply within the specified timeframe.

11.6. Audits

The Claims Service Provider must allow the Principal (or its delegate) to undertake audits of any aspect of the Claims Service Provider's operations that relate to the delivery of Services under the Agreement, including but not limited to: Claims files and their management, processes and staff; financial statements and accounting systems and reports; computer systems and data extracts for the Insurance for NSW Data Warehouse; plans and progress to plans; and, reports. The Claims Service Provider must fully cooperate with any such audit or review.

12. HBCF CLAIMS PROCESS

12.1. Initial Notification

In responding to the initial enquiry from the Claimant or their representative the Claims Service Provider must:

- (e) Provide the claimant or their representative with information about the Claims process, Claims handling activities and the roles and responsibilities of key parties.
- (f) Establish positive working relationships.
- (g) Gather relevant information to assist in the commencement of the assessment process.
- (h) Provide the Claimant or their representative with details of the service standards as outlined in the Claims Handling Guidelines.
- (i) Forward a loss notification or Claim form to the Claimant.

12.2. Conduct Triage

The Claims Service Provider must:

- (a) Triage notifications to determine the classification of the Claim i.e. Trigger or a non-trigger event has occurred.
- (b) Assign notifications to suitably qualified Personnel depending on the size and complexity of the claim and the Claims Service Provider's cohort management approach e.g. non completion single dwelling, multi-unit major defects Claim.

12.3. Trigger Event Claim

A trigger event is an event where one of the following events occur:

- (a) death of the Builder;
- (b) disappearance of the Builder which includes:
 - i. de-registration of the building company;
 - ii. disappearance of the directors of a building company;
- (c) insolvency (bankruptcy) of sole trader or partnership Builder; and
- (d) where a Builder has failed to comply with a money order issued by the New South Wales Civil and Administrative Tribunal or a court and has had its licence suspended.

12.4. Non-Trigger Event Claim

A non-trigger event is all other Claims that do not fall into a trigger event category.

12.5. Liability

- (a) Liability must be determined in accordance with the relevant Law and the Manuals; and
- (b) All liability decisions must rely on evidence and be documented appropriately.

12.6. Management and processing of the Claim

The Claims Service Provider is responsible for performing all services to manage the Claim including but not limited to:

- (a) Lodge and register a Loss Notification into ClaimCenter.
- (b) Acknowledge receipt of the Loss Notification and notify the Claimant.
- (c) Oversee the technical assessment of the Claim including the engagement of Service Providers.
- (d) Determine the indemnity and liability requirements, providing a written decision to accept or reject the claim.
- (e) Liaise with the Claimant throughout the Claims process culminating in agreement on the scope of work and timeframes for completion.
- (f) Facilitate quoting of Claims scope and arrange rectification and payment.
- (g) Manage all Complaints and/or disputes raised by the Claimants.
- (h) Manage all enquiries from the Principal or State Insurance Regulatory Authority (SIRA) for all claim specific or Scheme policy issues.
- (i) Provide instructions to legal providers in litigated or disputed matters as approved by the Principal.
- (j) Identifying catastrophic situations (more than 100 claims for a single Builder) and management in accordance with the requirements specified in the Claims Manual.

13. CORE COMPETENCIES

13.1. General Requirements

- (a) Core competencies are essential elements of the Agreement and are required to support the delivery of the Services.
- (b) The core competencies for the provision of Services are the requirements and standards described in the following sections.

13.2. Claims Performance Management

The Claims Service Provider must:

- (a) The Claims Service Provider must undertake regular planning, effective measurement and analysis to enable its performance of the Services to be evaluated.
- (b) The Claims Service Provider must undertake regular planning that forecasts and evaluates the level of Claims Service Provider achievement against contract obligations and Service Standards.
- (c) The Claims Service Provider must:
 - i. Utilise a framework for performance measurement that evaluates the Claims Service Provider's achievement against the Claims Service Provider's internal performance levels;
 - ii. Select, collect, align and integrate data and information for tracking operational performance and overall Claims Service Provider performance;
 - iii. Analyse data and information to determine the Claims Service Provider's performance;
 - iv. Use the analysis of the information to support operational and strategic decision-making;
 - v. Establish and utilise necessary reports to communicate results from the performance measurement framework to the Principal; and
 - vi. Ensure that regular reviews of performance management are undertaken, in accordance with the Claims Service Provider's quality assurance framework.

13.3. Competency of Claims Service Provider Personnel

The Claims Service Provider must:

- (a) Establish and maintain sufficient capability and capacity across core and shared functions of Finance, Risk, Governance and Assurance, Information Technology and

- Executive Leadership dedicated to support the operational Personnel engaged in the delivery of the contracted services and the fulfilment of all obligations under this Agreement;
- (b) Develop, maintain and comply with a competency matrix that identifies required competencies for Personnel providing Services that includes every business function related to the delivery of the Services;
 - (c) For each position, recruit Personnel with the appropriate competencies, as defined in the Claims Service Provider's competency matrix;
 - (d) Ensure that the appropriate Personnel are trained and competent in the Claims Service Provider's relevant framework, models and methodologies required to deliver the Services;
 - (e) Demonstrate commitment to building capacity of Personnel through training needs analyses for each role, and training matrix to demonstrate implementation;
 - (f) Ensure that skills of Personnel are kept up to date by ensuring that ongoing training is provided to retain skills and enhance them to meet evolving business needs;
 - (g) Managing performance - apply a process of open and honest communication between employees and their managers about performance against defined capabilities and performance indicators promoting consistency, equity and transparency; and
 - (h) Workforce planning - plan and review the workforce to meet current and future organisational needs.

13.4. Claims Specific Competencies

13.4.1. Effective Communication and Engagement

- (a) Transparent and effective communication from notification of a Claim onwards to build rapport and set clear expectations of key parties' roles and responsibilities;
- (b) Communication must be respectful, open and considerate of the Claimants primary language, cultural background and literacy skills;
- (c) Tailored and event driven (for example Claims decisions) communication to maintain collaboration with key parties which allows prompt resolution of issues;
- (d) Builds relationships with key parties to negotiate and influence the best outcomes.

13.4.2. Evidence Based Decisions

Utilise an evidence based decision making model that includes methods that:

- (a) Determines the issue or matter that requires a decision;
- (b) Gathers relevant information and evidence about the issue in a manner free of preference or prejudice;
- (c) Proposes and evaluates relevant option/s to address the issue;
- (d) Selects the best option based on the most logical, rational, reasonable and commercial outcome;
- (e) Ensures decisions are made and communicated within defined time frames and reviews processes are articulated;
- (f) Considers and applies the relevant Laws and the Principal's and Government Guidelines;
- (g) Identifies escalation points in the management of decisions requiring higher authority levels or for decisions that may be contentious; and
- (h) Ensures that regular reviews of the effectiveness of the evidence based decision making model are undertaken, in accordance with any Guidelines, Procedures and Manuals of the Principal.

13.4.3. A Tailored, Cost Effective Approach

The Claims Service Provider must ensure:

- (a) That the needs of the Claim are identified by means of adequate and appropriate assessment;
- (b) The Service levels match Claim needs;
- (c) The Service costs match the range and extent of service provision; and
- (d) Innovative strategies are utilised and tailored to the Claimants circumstances.

13.4.4. Proactive Claims Management

The Claims Service Provider must ensure:

- (a) The Claim receives prompt attention;
- (b) That all actions are coordinated and integrated; and
- (c) That proactive management of Claims including predicting and preparing for events that will have an impact on Claim progress and outcome.
- (d) That all required Service Standards are adhered to.

13.4.5. Accountability

The Claims Service Provider must:

- (a) Take ownership of the management of the Claim in its entirety;
- (b) Seek to understand the Claimant's circumstances and is engaged throughout the life of the Claim;
- (c) Impartially and objectively manage the Claim; and
- (d) Identify when to seek information and assistance.

13.4.6. Knowledge

The Claims Service Provider must:

- (a) Demonstrate knowledge of the Schemes, Legislation, guidelines and regulatory requirements; and
- (b) Demonstrate knowledge of relevant information technology systems.

14. Service Standards

In providing the Services the Claims Service Provider must:

- (a) meet or exceed the Service Standards detailed in the HBCF Claims Manual as amended from time to time in respect of the HBCF Portfolio;
- (b) Adhere to the SIRA home building compensation (claims handling) insurance guidelines in respect of the HBCF Portfolio;
- (c) meet or exceed the Service Standards detailed in Schedule 3 of this Agreement.

The Principal reserves the right to review and amend the Service Standards.

15. HBCF Business Model Content

The Claims Service Provider must operate its business relating to the HBCF Services in accordance with the Business Model as agreed and approved by the Principal in writing as at the Commencement Date. Any amendments to the Business Model must be approved by the Principal, whose consent must not be unreasonably withheld but may be subject to conditions.

The Business model is to be updated annually and submitted to the Principal 2 Months prior to the first anniversary of the Agreement for its approval.

The HBCF Business Model for the first Contract Year is to be approved by 31 November 2022 and for all subsequent Contract Years is to be submitted to the Principal by 31 July and

approved by the Principal by the 30 September immediately preceding the relevant Contract Year, unless otherwise agreed by the Principal.

The Business Model must address all aspects of the Claims Service Provider's operations under the Agreement and shall include, at a minimum:

- (a) Annual objectives and strategies to achieve those objectives, including objectives and strategies for improving Claims Management outcomes.
- (b) The Claims Service Provider's Claims management model including facilities, locations, subcontractors.
- (c) Quality assurance framework including an annual audit plan.
- (d) Performance monitoring against Service Standards at Schedule 3 and service levels as outlined in the Claims Handling Guidelines.
- (e) Performance management framework of Service Providers.
- (f) Planned improvements/investments/ developments of the Claims Service Provider that will be of benefit for the Services provided.
- (g) Business continuity plan.
- (h) Fraud Prevention, Identification and Management Model.
- (i) Complaints Management Framework to be compliant with the HBCF Claims Manual and HBCF Complaint and Dispute Handling Procedures.
- (j) The next 12 Months operational costs.
- (k) Number and designation of each full time equivalent personnel to support delivery of the services including minimum competencies and staff development plans.

16. HBCF Business Model Report

The Claims Service Provider must provide the Principal with a Business Model report annually 6 weeks prior to the anniversary of the Agreement. The report should comment on the Claims Service Provider's performance and achievements against strategies and objectives. The report should provide a critical analysis of the Business Model and describe the impact on the next Contract Year's Business Model.

17. Project Services

The Principal may require the Claims Service Provider to undertake a project or projects to research or pilot strategies for improving outcomes for the Schemes or to participate in the further enhancement of SICorp Core IT Systems (an "Project Service").

An Project Service may entail, but is not limited to, a research, pilot or enhancement project to:

- Develop and/or test strategies for improving or streamlining underwriting and / or claim reporting arrangements or timeliness;
- Develop and/or pilot initiatives for improving the efficiency of underwriting, risk management, premium collection and/or claims management; or
- Develop and/or pilot alternative service delivery and/or distribution models for the Schemes.

Additionally, a Project Service may entail, but is not limited to:

- Responding to requests for information by third parties

To be considered a Project Service, the type and nature of the project must be outside the core services as defined by the Agreement and this document.

Fees for a Project Service are to be agreed with the Claims Service Provider, together with the definition and scope of the project, prior to the commencement of the Project Service. All or part of the fees allocated may be subject to verification of delivery and/or completion of the

Project Service and/or satisfying performance criteria agreed in relation to the Project Service.

The Claims Service Provider is to provide regular reports on the progress of any Project Service from time to time as may be reasonably required by the Principal.

Should as a result of an Project Service, the Principal decide to change the services to be provided under the Agreement, then this would be dealt with as a variation to the services in accordance with Clause 19.1 (Variation to Core Services) of the Agreement.

Where the Claims Service Provider utilises a Project Manager, Account Manager, Manager, Business Analyst or IT Technical Analyst to provide Project Services, the Claims Service Provider must, on the request of the Principal, provide the qualifications of the resources it proposes to use for that Project Service.

18. QUALITY MANAGEMENT

18.1. Quality Assurance Framework

The Claims Service Provider must operate a quality assurance framework that incorporates documented procedures to ensure the consistent delivery of the Services and continuous improvement. This includes:

- (a) Ensuring that the quality assurance framework is consistent with a recognised management methodology and incorporates:
 - i. The development of an annual quality management plan;
 - ii. Quality control;
 - iii. Quality assurance; and
 - iv. Quality improvement;
- (b) Ensuring that the quality management framework integrates and addresses the key governance obligations and requirements set out in any document issued by the Principal containing audit requirements as amended from time to time;
- (c) Conducting periodic systematic reviews that:
 - i. Assess the Claims Service Provider's performance to identify performance gaps in the service delivery requiring improvement; and
 - ii. Develops and implements mitigation or development strategies where gaps or opportunities have been identified;
 - iii. Records and retains the history of the results of such reviews, and the recommendations; and
 - iv. Tracks the implementation of each recommendation, recording its progress and its achievement.

19. DATA QUALITY

19.1. Data Quality Management

The Claims Service Provider must:

- (a) Capture, utilise and submit accurate, complete and timely data;
- (b) Ensure appropriate data collection processes are in place that allow for the timely, accurate, and complete collection and submission of data;
- (c) Monitor data quality to ensure data is being captured consistently, accurately and completely;
- (d) Ensure that any incorrect data is amended and resubmitted to the Principal;
- (e) Implement controls to ensure the accurate translation of information to data, to support the delivery of Services;
- (f) Ensure data submitted to the Principal meets the requirements of the relevant Manuals, guidelines and legislation.

20. INTERNAL CONTROLS

20.1. Overview

The Principal may issue a document to the Claims Service Provider setting out any Internal Controls that the Claims Service Provider needs to implement. These Internal Controls are designed to protect the assets of the Principal and portfolios managed by the Claims Service Provider and ensure that appropriate policies and procedures are in place within the Claims Service Provider. The Internal Controls will be tested by the Approved Auditor annually in accordance with Internal Control requirements document.

In the event that a noncompliance is identified as part of an audit, inspection and/or review, the Claims Service Provider must rectify the noncompliance and then reaudit the affected area and report its findings to the Principal.

The Principal may reaudit the noncompliance identified as part of the audit, inspection and/or review after the Claims Service Provider has rectified the noncompliance.

All non compliances will be recorded in the Claims Service Provider's issues register. An appropriate risk rating and agreed timeframe for resolution will be included in the issues. The Claims Service Provider is to provide updates to its issues register as they arise and inclusion on the agenda for the account management meeting, as described in this Schedule.

Nothing in this Schedule, limits in any way the ability of the Principal to perform any other audit, inspection and/or reviews under the Agreement that may otherwise not be described in this Agreement.

Schedule 3 SERVICE STANDARDS

A. General Principles

- Service is the contact point with clients upon which the Principal's reputation will be judged.
- The environment in which claims are handled must be one where all staff treat all parties with courtesy and respect, communicate openly in clear, concise and plain English, and ensure a professional standard of claims management.
- The Principal requires the Claims Service Provider to meet the following Service Standards. They provide the framework in which claims staff must operate in order to provide a consistent and high-quality service to all parties involved in the claims process.
- The Principal has developed the following Service Standards to align with the General Insurance Code of Practice.
- Service Standards will be measured in accordance with the approach agreed between the Principal and the Claims Service Provider. The Principal may vary the Service Standards and the method of measuring the Service Standards at any time.

B. HBCF Service Standards

- HBCF Service Standards are contained in the HBCF Claims Manual issued by the Principal to the Claims Service Provider. The HBCF Claims Manual is approved by SIRA in HBCF's annual submission to SIRA.

C. General Lines Service Standards

ACTIVITIES/CLAIM PHASES	TIMEFRAMES
CLAIM ASSIGNMENT AND TRIAGE	
<ol style="list-style-type: none"> 1. Register Claim/Notification on Luminos. 2. Conduct duplicate check prior to registration. 3. Ensure all relevant information is correctly inputted e.g. Date of Loss, Date of Birth, Incident Location Description etc. 4. Ensure all codes are correctly assigned e.g. correct assignment of "Nature of Loss", "Cause of Loss", "Incident Code", "Accident Cause Code" etc. 5. Claim assigned to consultant. 6. Contact agency to acknowledge notification or claim allocation. 	Within 2 business days of receipt of claim notification
INITIAL CLAIM ASSESSMENT	
<ol style="list-style-type: none"> 1. Consultant reviews new claim material. 2. Ensure file is set up with correct information (coding to be checked and updated by consultant). 3. Instruct service providers ie. Loss Adjusters, panel firms, investigators, experts. 	

<ol style="list-style-type: none"> 4. Acknowledge receipt of claim to other involved parties (claimant/other parties) (if no defence firm to be engaged). 5. Consider recovery opportunities/apportionment issues ie. other tortfeasors/contributors. 6. Consultant assesses claim strategy (ie. claim to be denied/settled or further investigations undertaken) and make recommendations to agency regarding future conduct. Determine defence v settlement strategy. 7. Complete initial strategic plan 8. Consultant engages with agency/contractor representatives if approved by the Principal's TCM regarding claim strategy and diarise. 9. Consultant requests further and better claim particulars (if necessary). 10. Raise preliminary claim reserves per the Principal's Guidelines. 11. Consultant to document claim summary, strategy and initial reserves using approved form. 12. Confirm coverage position to agency in writing if claim accepted. If Claims Service Provider recommend ROR or denial, refer matter/escalate matter to the Principal to make decision re indemnity future conduct. 13. Refer matter to the Principal's Claims team if referral trigger met. 14. For Notification claims – Finalise file and close on Luminos if appropriate, otherwise diarise for review (within 90 days of receipt) 	<p>Within 10 business days of receipt of claim notification</p>
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CLAIM INVESTIGATION AND EVALUATION

<ol style="list-style-type: none"> 1. Review loss adjuster report, Legal Advices and claim correspondence and provide ongoing instructions (any instructions given verbally are to be documented by file note and confirmed by email). 2. Follow-up/chase advices, reports or outstanding queries from relevant claim parties as required. 3. Identify any significant legal issues, e.g. claim triggers and refer matters to the Principal if required. 4. Re-consider defence versus settlement strategy and drive resolution accordingly. 5. Consider involvement of expert witnesses and/or Counsel and whether required to progress claim. 6. Review claim reserves and complete the Estimate Calculation Sheet and Large/Sensitive Loss Referral (if required). 7. Provide email claim update to agency/contractor representatives on present claim status, any significant developments and anticipated future conduct if approved by the Principal's TCM. (Note: For CRIF claims details should only be shared with entity which is the subject of the claim). 	<p>At least every 20 business days for short tail claims and 90 days for longtail claims</p> <p>OR</p> <p>within 5 business days of a significant development or receipt of correspondence (whichever occurs earliest).</p>
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<ol style="list-style-type: none"> 8. Consultant to document updated claim summary, claim strategy and updated reserves using approved form. The consultant should document their consideration of expert witness and Counsel engagement, defence vs settlement strategy and why offers can/cannot be made). 9. All denials are to be approved by the Team Leader before being submitted to the Principal's Claims Team for final approval, Team Leader's approval should be documented in the file notes 10. Coding to be checked on Luminos and updated on Luminos. 	
ADR/INFORMAL RESOLUTION	
<p>Pre-Mediation/ISC</p> <ol style="list-style-type: none"> 1. Determine negotiation strategy and settlement target, discuss same with the Principal's Claims Team, if the Principal is involved. 2. Contact Agency/contractor to advise of Settlement Conference/ Mediation date, confirm strategy or approach and any outstanding deductible or information required to progress the claim before the mediation/ISC. 3. Diarise date of mediation/ISC for attendance. 4. Review reserves and update on Luminos (if within Claims Service Provider DA) or send referral to the Principal for consideration (if there is Principal involvement). 5. Provide ongoing instructions to panel lawyers (if involved) re future conduct. 6. Coding to be checked on Luminos and updated on Luminos. 7. Consultant to document updated claim summary, claim strategy and updated reserves using approved form (including that coding checked and updated on Luminos). 	<p>Within 5 business days of receipt of pre-mediation advice OR 30 business days before mediation/ISC date (whichever is earlier).</p>
<p>Post-mediation/ISC</p> <ol style="list-style-type: none"> 1. Provide update to agency/contractor and the Principal (if Principal involved) on outcome of mediation/ISC with recommendations re future conduct and confirm if any Hearing date allocated. 2. If claim settled, consultant to request panel lawyers obtain any necessary statutory clearances. If no panel lawyer involvement, consultant to request any appropriate statutory clearances. 3. Diarise Hearing date if allocated. 4. Request further information from panel lawyers and involved claim parties to make decision reclaim reserves (whether these remain appropriate). 5. Review reserves and update on Luminos (if within Claims Service Provider DA and Claims Service Provider have information to make reserve adjustment) or send referral to the Principal for consideration (if there is Principal involvement). 6. Consultant to document updated claim summary, claim strategy and updated reserves using approved form. 	<p>Within 5 business days of mediation/ISC (if no panel lawyer involvement OR receipt of post mediation/ISC report (if panel lawyer involved).</p>

<p>7. Consultant should document their consideration of Counsel engagement, defense v settlement strategy and why offers can/cannot be made (including costs protection offers). Provide instructions to panel lawyers (if involved) re future conduct.</p>	
HEARING PREPARATION	
<ol style="list-style-type: none"> 1. Provide ongoing instructions to panel lawyers re future conduct. 2. Follow up/chase advices (including timeframe for provision of pre-hearing advice) or outstanding queries from relevant claim parties (including agency and the Principal). 3. Consultant to discuss claim strategy with panel lawyers and agency and the Principal representatives in respect of: Counsel involvement (if not already engaged), any further expert evidence required, expert conclaves and settlement negotiations (consideration of formal costs protection offers). 4. Provide updates to agency/contractor and the Principal on relevant claim developments (if any). 5. Review reserves and update on Luminos (if within Claims Service Provider DA and Claims Service Provider have information to make reserve adjustment) or send referral to the Principal for consideration (if there is Principal involvement). 6. Consultant to document updated claim summary, claim strategy and updated reserves using approved form. Consultant should document their consideration of Counsel engagement, expert evidence, defence v settlement strategy and why offers can/cannot be made (including costs protection offers). 	<p>At least every 90 days OR within 5 business days of significant legal correspondence/legal advices (whichever occurs earliest)</p>
HEARING/POST HEARING/JUDGMENT	
<ol style="list-style-type: none"> 1. At conclusion of Hearing and in period following Hearing conclusion, provide update to agency and the Principal regarding outcome of Hearing, matter status, recommendations re future conduct and reserving, and seeking necessary instructions as required. 2. Provide substantive update to the Principal following receipt of Court Judgment to advise Hearing outcome. 3. Update should include summary of reasons for Judgment, recommendations re reserving and future conduct: <ol style="list-style-type: none"> a. if successful at Hearing, update should include recommendations re recovery prospects against unsuccessful third party and any recommended investigations to be undertaken to advance recovery); <p>OR</p> <ol style="list-style-type: none"> b. if unsuccessful at Hearing, update should include recommendations re appeal prospects and consideration of necessity to seek Counsel's advice on appeal prospects). 	<p>At least every 90 days OR within 5 business days of significant legal correspondence/legal advices (whichever occurs earliest)</p>

<ol style="list-style-type: none"> 4. Consultant to document updated claim summary, claim strategy and updated reserves using approved form. Consultant should document their consideration of recovery prospects and Counsel engagement (depending on Judgment result). 5. Consultant to document any decision by the Principal to pursue or not pursue recovery against unsuccessful third party and reasons for the recovery decision made. 6. Provide ongoing instructions to panel lawyers re future conduct where necessary. 	
APPEAL PHASE	
<ol style="list-style-type: none"> 1. Provide ongoing instructions to panel lawyers re future conduct (where appropriate). 2. Follow up/chase advices (including timeframe for provision of appeal advices) or outstanding queries from relevant claim parties (including agency and Principal). 3. Consultant to discuss claim strategy with panel lawyers and agency and Principal representatives in respect of: ongoing appeal strategy, settlement negotiations, defence costs to pursue appeal. 4. Provide updates to agency and the Principal on relevant claim developments (if any). 5. Review reserves and send referral to the Principal for consideration and instruction if adjustment necessary. 6. Consultant to document updated claim summary, claim/appeal strategy and updated reserves using approved form. Consultant should document their consideration of appeal merits and settlement strategy. 7. At conclusion of Appeal Hearing and in period following Appeal Hearing conclusion, provide update to agency and Principal regarding outcome of Appeal Hearing, matter status, recommendations re future conduct and reserving, and seeking necessary instructions as required. 8. Provide substantive update to the Principal following receipt of Appeal Court Judgment to advise Hearing outcome, make recommendations re future conduct, strategy, reserving and recovery prospects (if relevant). 	<p>At least every 90 days OR within 5 business days of significant legal correspondence/legal advices (whichever occurs earliest)</p>
CLAIM SETTLEMENT	
<ol style="list-style-type: none"> 1. Request panel lawyers obtain any necessary statutory clearances and request they remit any recovery payments/subpoena fees to Claims Service Provider/Principal. If no panel lawyer involvement, consultant to request any appropriate statutory clearances personally. 2. Provide written update to agency and Principal (if involved) about claim resolution and recommended steps to finalise file. 	<p>Within 5 business days of settlement.</p>

<p>3 Upload settlement payment for approval in Luminos or request cheque (whichever is required).</p> <p>N.B. Luminos must be used if making a bodily injury settlement payment.</p>	<p>Within 5 business days of settlement payment requisition and all supporting documentation to make payment</p>
<p>4 Excess reserves are to be reduced by consultant (if within Claims Service Provider DA) or consultant to make recommendation to Principal re reserve reduction and seek instructions.</p>	<p>Within 10 business days of settlement payment requisition and all supporting documentation to make payment</p>
<p>CLAIM CLOSURE</p>	
<p>1. Request any outstanding vendor invoices for payment (including disbursement invoices from investigators, experts, panel lawyers and Counsel fees).</p> <p>2. File coding to be checked on Luminos and updated by consultant.</p>	<p>Within 5 business days of settlement payment request OR decision to close file.</p>
<p>FORMAL FILE REVIEWS (GENERAL LINES CLAIMS)</p>	
<p>First 90 Day Review</p> <p>1. Every new (open) claim is to be reviewed at 3 months (90 days).</p> <p>2. The approved, standard 90-day proforma is to be completed on Luminos by the consultant.</p> <p>3. Preliminary investigations and disclosure should be completed for a “considered” reserve to be raised.</p> <p>4. For Personal Injury claims – Estimate Calculation Sheet to be completed if most likely settlement amount is over \$5,000.</p> <p>N.B. The purpose of the review is to ensure the evaluation of indemnity/liability is correct, strategy and reserve are aligned and sound, that system coding is correct, that all required new claim actions and follow-up have been performed, and that the file is appropriately maintained in all aspects (including diaries, documentation, etc.).</p>	<p>90 days following receipt of notification from agency</p>
<p>Peer Review Requirement</p> <p>Claims Service Provider and the Principal agree that Claims Service Provider will implement a peer review system using the Agreed template.</p> <p>N.B. Excluding claims that have already been referred to the Principal via the Referral Process.</p>	<p>The review is triggered by the following milestones:</p> <p>a) 4 months post lodgment (Long Tail), 6 months post lodgment (Short Tail).</p> <p>Then every 180 days thereafter</p>
<p>File Review – (CFR)</p> <p>1. Claim Manager’s QA team is to conduct closed file reviews monthly.</p>	<p>By end of the month, monthly in arrears</p>

<ol style="list-style-type: none"> 2. Reports are produced and can be provided to Team Leader and Consultant if required. 3. Reports are provided to the Principal's Claims Team. 	
PAYMENTS	
<p>Vendor Invoices/Settlement Payments.</p> <ol style="list-style-type: none"> 1. Attend to payment of any vendor invoices/Settlement payments (where within Claims Service Provider DA). 2. If Principal's approval necessary for invoice payment, refer invoice to the Principal for approval to pay. <p>Claims Service Provider Authorizing Payments/Delegated Authority</p> <p>Claims Service Provider to authorize payment within 2 days of payment being uploaded on Luminos by Consultant and within the 10 business days of receipt of invoice.</p> <p>N.B. Mainframe cut off is 4pm so all payments are to be authorized and the batch closed prior to this time.</p>	<p>Within 10 business days of receipt of invoice</p>
RECOVERY	
<p>Recovery of funds</p> <ol style="list-style-type: none"> 1. Consultant is to receipt the funds to the Luminos file. 2. Consultant is to document the recovery by making a file note in Luminos (on the claim level). N.B the notes are to at least specify who has paid the funds, what the funds relate to, the amount receipted to the file and any balance outstanding). 	<p>Within 2 business days of monetary recovery into bank account</p>
FILE NOTES	
<ol style="list-style-type: none"> 1. Document all communication with clients, intermediaries, service providers, and stakeholders on Luminos. 2. Maintain documentation standards e.g. objective, professional 	<p>Within 2 business days of communication</p>
CLAIM CODING (LUMINOS)	
<p>Consultant to update matter coding on Luminos.</p>	<p>As detailed earlier in document under relevant claim activity phases</p>
DIARISING	
<ol style="list-style-type: none"> 1. All active claims must have a forward due diary date and be proactively managed. 2. Cases in which we have sought additional information /advice should be diarised for review on the due date of the 	<p>Forward diary date in evidence at all times</p>

<p>report/advice and followed up until the relevant report/advice is received.</p> <p>3. If applicable, the diary date should be in line with the Claim Service Standards.</p> <p>Diaries should be reviewed on the date they fall due.</p>	
COMMUNICATION	
<p>1. Update claim status/Conduct substantive contact or email status reports/updates to Agency and Principal (if applicable) as appropriate.</p> <p>2. Conduct substantive contact with Agency or Principal's Claims Team.</p> <p>N.B. Ensure documents are marked as privileged as appropriate.</p> <p>3. Maintain file notes recording all telephone contact on Luminos within timeframes nominated in this SLA document.</p>	Every 90 days, or within 5 days of a significant development
Respond to request for verbal claim status update from Agency or the Principal's Claims Team.	Within 1 business day of request or as agreed
Respond to routine requests from Agency or Principal's Claims Team for additional information/documents	Within 5 business days of request
DOCUMENTATION	
All correspondence received on Luminos should be reviewed, actioned, and apply naming conventions (as required) and itemised in relevant sub type folders in Luminos as required.	Within 5 business days of receipt
INCIDENT MANAGEMENT	
<ul style="list-style-type: none"> Incidents are to be notified to the Principal within 1 business day of being made aware of the incident. Initial investigative reports i.e. PIR to be provided to the Principal 14 business days after initial incident lodgment. Ongoing PIR to be provided within reasonable timeframes 	Notification of incident within 1 business day and PIR to be provided within 14 business days
COMPLAINTS AND DISPUTES	
<p>1. Escalate any complaints regarding claims handling to the Team Leader if unable to be resolved at first point of contact:</p> <p>2. Team Leader to send acknowledgement letter (advising complainant of process and rights of review)</p> <p>3. Record complaint on database</p> <p>4. Respond to request for information from Customer Care Handler / IDR</p> <p>5. Implement recommendations of Customer Care Handler / IDR</p> <p>6. Refer complaint to the Principal's claims team if it cannot be resolved at the Claims Service Provider level</p>	<p>Within 1 business day.</p> <p>Within 2 business days of receiving complaint.</p> <p>Within 2 business days of request.</p> <p>Within timeframe specified by Customer Care / IDR advice</p>

Note: Schedule 4 (*Fee Arrangements*) is commercial-in-confidence and not included in this copy for disclosure under Part 3 Div 5 of the *Government Information (Public Access) Act 2009*.

SCHEDULE 5

FINANCIAL SECURITY

The party specified in Item 5 of Schedule 1 (**Beneficiary**) requires that the party specified in Item 4 of Schedule 1 (**Guaranteed Party**) provides and maintains Financial Security for the amounts and on the conditions as set out in the Agreement.

The financial institution specified in Item 1 of Schedule 1 (**Bank**) has agreed at the request of the Guaranteed Party to provide this Financial Security in favour of the Beneficiary.

The Bank agrees with the Beneficiary as follows:

Interpretation within this Deed Poll

In this Deed Poll except where the context otherwise requires:

- (a) a reference to this Deed Poll includes any variation, and includes where the Deed Poll has been assigned, novated, or otherwise transferred, in accordance with this Deed Poll;
- (b) a reference to any Law will be deemed to extend to include a reference to all Laws amending, consolidating, replacing or overruling that Law from time to time;
- (c) the singular includes the plural and vice versa;
- (d) a reference to one gender includes every other gender;
- (e) persons will be taken to include any natural or legal person;
- (f) 'include', 'includes' and 'including' means 'including without limitation';
- (g) 'absolute discretion' means absolute and unfettered discretion;
- (h) the headings and index in this Deed Poll are for convenience only and do not affect the interpretation of this Deed Poll;
- (i) in the construction and interpretation of this Deed Poll, no rule of construction applies to the disadvantage of the Beneficiary on the basis that the Beneficiary initiated or drafted this Deed Poll or any part of it;
- (j) a reference to a person which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable any other person or body in its place, must be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable;
- (k) any time limit under this Deed Poll falls on a non-Business Day then that time limit will be deemed to have expired on the next Business Day;
- (l) where a word or phrase is given a defined meaning in this Deed Poll, any other part of speech or other grammatical form in respect of such word or phrase will have a corresponding meaning;
- (m) where a reference occurs to the doing of anything by the Principal including giving any notice, approval, direction or waiver, this may be done by a duly authorised officer of the Principal; and

- (n) a reference to a group of persons is a reference to all of them collectively and to any two or more of them collectively and to each of them individually.

Definitions

"Business Day" means Monday through Friday excluding public holidays, bank holidays and gazetted holidays in New South Wales.

"Agreement" means the agreement under which the Guaranteed Party has been selected to provide Services in relation to the General Lines and HBCF Portfolios for the Beneficiary and agreed to have commenced by the Parties on 1 July 2022 dated.

"Deed Poll" means this deed poll executed by the Bank dated as the date of execution or as otherwise agreed by the parties.

"Financial Security" means the security arrangement for payment from the Bank to the Beneficiary as created by this Deed Poll.

"Maximum Amount" means the maximum aggregate amount as specified in Item 6 of Schedule 1.

"Law" includes:

- (a) any statute, regulation, by-law, ordinance or subordinate legislation in force in Australia, whether made by a State, Territory, Commonwealth, or a local government;
- (b) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued thereunder;
- (c) common law and the principles of equity;
- (d) any direction issued under any Law; and
- (e) any relevant industry codes of conduct (whether mandatory or voluntary in their application).

as applicable from time to time.

Operative Part

- 1 The Bank unconditionally and irrevocably undertakes to pay the Beneficiary upon receipt from the Beneficiary of a written demand any amount or amounts to the Maximum Amount.
- 2 To make demand under this Deed Poll the Beneficiary must deliver a demand in writing to be signed by or on behalf of the Beneficiary and substantially in the form specified in Schedule 2 to the Bank at the address specified in Item 2 of Schedule 1 for the attention of the office specified in Item 3 of Schedule 1.
- 3 The Bank guarantees prompt and punctual payment to the Beneficiary within 3 business days, via Real Time Gross Settlement or bank cheque delivered to the address specified in Item 5 of Schedule 1, upon receiving the demand referred to in paragraph 2 above without reference to the Guaranteed Party and notwithstanding any contrary direction or notice by the Guaranteed Party.
- 4 When payment is demanded under paragraph 2, the Bank shall make all payments without set-off, counter claim or other deduction.
- 5 The liability of the Bank under this Deed Poll will continue until:

- (a) written notice has been given to the Bank by the Beneficiary that the Financial Security is no longer required;
 - (b) the time at which the total of all payments of such amounts as the Beneficiary may demand from time to time when aggregated, equal the Maximum Amount; or
 - (c) the date specified in item 8 of Schedule 1.
- 6 The Beneficiary will, upon request by the Bank, following the first occurrence of any of the events specified in Clause 5 above, return the original of this Deed Poll promptly to the Bank for cancellation.
- 7 Unless the Bank's liability has terminated pursuant to Clauses 5 or 6 above, the liability of the Bank under this Deed Poll will not be affected, discharged or released for any reason, including the fact that the Agreement expires or is terminated.
- 8 A notice, approval, direction, consent, or other communication is taken to be received:
 - (a) if left at the property address, on the first Business Day after leaving it;
 - (b) if posted, on the second (seventh if posted to or from a place outside Australia) Business Day after posting;
 - (c) if given or served by hand, at the time of delivery; or
 - (d) if sent by electronic mail, only in the event that the other party acknowledges receipt by any means.
- 9 The Bank warrants that this undertaking has been executed in accordance with the laws of the place specified in Item 7 of Schedule 1. The Bank agrees that, in respect of any dispute relating to this Deed Poll, the Bank submits to the jurisdiction of the courts of the place specified in Item 7 of Schedule 1.
- 10 The Bank makes the following representations and warranties:
 - (e) It has the power to enter into and perform its obligations under this Deed Poll. It has taken all necessary corporate action to authorise the entry into and performance of this Deed Poll and to carry out the transactions contemplated by this Deed Poll; and
 - (f) This Deed Poll is its valid and binding obligation enforceable in accordance with its terms.
- 11 If this Deed Poll is executed by an attorney of the Bank, the attorney warrants by their execution of this Deed Poll that their power of attorney confers the power to execute this Deed Poll and the appointment has not been revoked.
- 12 Neither the Beneficiary nor the Bank may transfer or assign its right or interest under this Deed Poll except that a statutory successor of the Beneficiary will have the same rights as the Beneficiary specified in this Deed Poll.
- 13 Where a demand pursuant to paragraph 2 has been made by the Beneficiary and the Bank has paid the Beneficiary the amount demanded, the Bank may request the Beneficiary to exchange this Deed Poll with one representing the difference between the Maximum Amount and the accumulated amounts paid under this Deed Poll to the Beneficiary to date, provided that the replacement deed poll is identical in all other respects to this Deed Poll.

14 Neither the Bank or the Guaranteed Party may assign, novate or transfer the whole or part of this Deed Poll or any payment or other right benefit or interest under this Deed Poll without obtaining the prior written approval of the Beneficiary, which may be denied or given in its absolute discretion.

Signed by the attorney of [] under power of attorney registered Book [] No [], and who has received no notice of the revocation of the power, in the presence of:



.....
Signature of witness	Signature of attorney

.....
Name of witness (print)	Name of attorney (print)

Signed [place of execution]

Dated this day of 20

Schedule 1

Item 1	
Item 2	
Item 3	<p><i>Not specified - instead, the following will be noted on the Guarantee itself:</i></p> <p>"All claims, and other communications in connection with this Guarantee need to sent to any of our branches or to our contact details above"</p>
Item 4	<p>Gallagher Bassett Services Pty Ltd ABN 68 009 778 018</p> <p>Level 15, 144 Edward Street, Brisbane QLD 4000</p> <p>GPO BOX 14 Brisbane QLD 4001</p>
Item 5	<p>NSW Self Insurance Corporation ABN 97 369 689 650 and Insurance and Care NSW ABN 16 759 382 489 (together "icare Self Insurance")</p> <p>Level 15, 321 Kent Street, Sydney NSW 2000</p> <p>GPO BOX 4052 Sydney NSW 2001</p>
Item 6	
Item 7	New South Wales
Item 8	1 July 2026

.....

Initialed by signatory

Schedule 2

(Form of Demand - clause 2 of Deed Poll)

TO: [Bank as per item 1 of Schedule 1]
[Address per item 2 of Schedule 1]
[For the attention of per item 3 of Schedule 1]

This is a demand under the Deed Poll specified in Item 1 issued by you on the date specified in item 2 below.

Please pay to Insurance and Care NSW (ABN 16 759 382 489) within 3 business days via Real Time Gross Settlement to the account specified in item 3 below the amount specified in item 4 below.

The person signing this demand confirms that they are authorised and empowered to issue this demand.

Item 1: [Deed Poll reference number]
Item 2: [date of Deed Poll]
Item 3: BSB [insert 6 digit number] Account number [specify] Account name [retro paid loss account]
Item 4: [amount of demand - not to exceed Maximum Amount]
Item 5: If demand is for part of the Maximum Amount, the remaining Balance after payment of such amount will be: [remaining balance of Maximum Amount]

Dated this day of 20

Signed for and on behalf of Insurance and
Care NSW and NSW Self Insurance
Corporation in the presence of:

.....
Signature of witness

.....
Signature of authorised person

.....
Name of witness (print)

.....
Name of authorised person (print)

SCHEDULE 6 PROJECT SERVICES ORDER

Project Services Title	
Project Services	
Contact Phone Number	
Date Raised	
Date of Implementation	
Claims Service Provider Response (Accepted / Not Accepted)	

Objective(s)
Overview of the objectives and planned outcomes of the Project.

Implementation
Outline Implementation of the Project including due dates.

Amount Payable
Costs including the Claims Service Provider contribution towards project costs.

Additional Notes

Documents affected by the Project Services
List Documents affected including Agreement and Manuals.

Attachments
List any attachments to this Project Services Order

Execution

This Project Service Order is made in accordance with the Agreement.

Approval Number: _____

Execution by the Principal:

Signed for and on behalf of the)
Insurance and Care NSW by)
_____ but not so)
as to incur personal liability in the)
presence of:)

.....
[insert]

.....
(signature of witness)

.....
(print name of witness)

Execution by the Claims Manager:

Signed for and on behalf of...)

A.C.N:)

(insert Claims Manager's A.C.N.))

in accordance with section 127 of the)
Corporations Act 2001 (Cth))

by _____ – Director)

.....
(signature of Director)

and by _____ – Company Secretary)
(signature of Company Secretary)

SCHEDULE 7

DATA GOVERNANCE REQUIREMENTS

A. GENERAL LINES AND HBCF REQUIREMENTS

1. RECORDS MANAGEMENT

1.1. Compliance

The Claims Service Provider must comply with, and ensure that any Subcontractor and/or Third Party Service Provider complies with, any Guidelines, Procedures and Manuals issued by the Principal in respect of Records management, including, but not limited to, the retention and destruction of Records, and reporting on any Records retained or destroyed.

The Claims Service Provider must comply with, and ensure that any Subcontractor and/or Third Party Service Provider complies with, Functional Retention and Disposal Authority No. 343 (FA343) issued by the State Records Authority of NSW to SICorp, as amended from time to time.

1.2. Destruction of Records

The Claims Service Provider must not, and ensure that any Subcontractor and/or Third Party Service Provider does not, destroy any Records except with the prior approval of the Principal or in accordance with any Guidelines, Procedures and Manuals issued by the Principal.

1.3. Digitising Physical Records

The Principal may direct the Claims Service Provider and any Subcontractor and/or Third Party Service Provider to recall from the Principal's archives and digitise any physical Record, for the purpose of managing any Claim that the Record is relevant to.

The Record must not be destroyed except in accordance with clause 1.2 and must be returned to the Principal's archives when the Record has been digitised. The Claims Service Provider is not entitled to any additional remuneration for digitising physical Records which are relevant to the management of any Claim.

Claims Service Provider must not destroy any Records except with the prior approval of the Principal or in accordance with any Guidelines, Procedures and Manuals issued by the Principal.

2. PRIVACY MANAGEMENT

2.1. Notification

- a) If the Claims Service Provider, or any Subcontractor and/or Third Party Service Provider, reasonably suspects that there may have been a Data Breach, it must notify the Principal in accordance with clause 40.2 and 50.1 of the Agreement. This must include notice in writing of the Data Breach, including details of whether:
 - i. it has been identified as a known breach (including whether it occurred in the past or is a present/ongoing breach) or a Near Miss; and
 - ii. Whether the Claims Service Provider considers that the Data Breach is likely to have a serious and quantifiable reputational, commercial

- or economic impact on an individual, the Principal or one or more other NSW Government entity.
- b) If the Data Breach is likely to have a serious and quantifiable reputational, commercial or economic impact on an individual, the Principal or one or more other NSW Government entity, the Claims Service Provider must await Direction from the Principal on how to respond except to the extent immediate action is necessary to contain the Data Breach.
- c) The Claims Service Provider or any Subcontractor and/or Third Party Service Provider must subject to clause 2.1(b), immediately make all reasonable efforts to contain any Data Breach in respect of Data within the possession of the Claims Service Provider or any of its Subcontractors.
- d) The Claims Service Provider or any Subcontractor and/or Third Party Service Provider must promptly provide all relevant information to the Principal to enable the Principal to undertake an assessment of the data breach in accordance with any voluntary or mandatory notification data breach scheme including but not limited to:
 - i. the types of personal information involved in the breach
 - ii. the sensitivity of the personal information involved in the breach,
 - iii. whether the personal information is protected by security measures,
 - iv. the persons who have obtained, or who could obtain, the Personal information,
 - v. the likelihood that persons who have obtained, or could obtain, the personal information—
 - i. have the intention of causing harm, or
 - ii. could circumvent the security measures,
 - vi. the nature of the harm that has or may occur,
 - vii. any other matters specified in guidelines issued by the Privacy Commissioner about whether the disclosure is likely to result in serious harm to an individual to whom the information relates.
- e) In this Schedule, **Near Miss** means unauthorised access to or unauthorised disclosure of Personal Information or a loss of Personal Information that could have resulted in an adverse impact on the Principal or its Personnel, an Agency or its Personnel, a Builder, a Claimant or any other third party but was narrowly avoided.

2.2. Privacy Management Plan

The Claims Service Provider must submit an annual Privacy Management Plan to the Principal that:

- a) complies with:
 - i. section 33 of the *Privacy and Personal Information Protection Act 1998* (NSW); and
 - ii. the Information and Privacy Commission's guide to making Privacy Management Plans (as updated or replaced from time to time); and
- b) includes details on the Claims Service Provider's:
 - i. systems controls and processes relevant to the Claims Service Provider's compliance with its privacy obligations;
 - ii. risk analysis of any real or anticipated privacy issues that may impact the Claims Service Provider;
 - iii. privacy training content, results from testing conducted during that privacy training and detail any refresher privacy training undertaken or any remediation/improvement plans arising from such training having been conducted on a quarterly basis.

The Claims Service Provider must comply with its Privacy Management Plan.

2.3. Privacy Complaints

Where a Data Breach or privacy Complaint has been reported to the Information and Privacy Commission, or any other authority, by a third party, the Claims Service Provider must notify the Principal immediately and provide the Principal with a draft copy of the Claims Service Provider's response to the Complaint. The Claims Service Provider or any Subcontractor and/or Third Party Service Provider is not to respond directly to any authority, without the Principal's prior written consent, except to the extent that it is required to by Law.

2.4. Privacy Complaints Handling

The Claims Service Provider is required to manage Complaints in accordance with the Principal's Complaints Policy and its Privacy Management Plan. Subject to clause 2.3, privacy Complaints should be dealt with by the Claims Service Provider in the first instance via their Complaint handling process and referred to the Principal's Privacy Team (privacy@icare.nsw.gov.au) if the complainant is unsatisfied with the outcome.

Any request for an internal review under section 53 of the *Privacy and Personal Information Protection Act 1998* (NSW) must be provided to the Principal's Privacy Team who will conduct the internal review, and the Claims Service Provider must co-operate with the internal review process

B. GENERAL LINES REQUIREMENTS

1. DOCUMENT MANAGEMENT

1.1. Lines of Business

The Lines of Business that are covered by this document are:

1. Liability
2. Motor
3. Property
4. Miscellaneous
5. Construction & Engineering

1.2. Schemes

The schemes covered by this document are:

1. TMF - Treasury Managed Fund – All claims from 1 July 1989 and including:
 - a. The following "Active Funds"
 - i. The Bush Fire Fighters Compensation Fund ("BFFCF")
 - ii. The Emergency and Rescue Workers Compensation Fund ("ERWCF")
 - iii. The Supplementary Sporting Injuries Fund ("SSIF")
 - b. The following "Closed Funds"
 - i. The run off liabilities of the State Rail Authority and Rail Infrastructure Corporation, (collectively "Rail" Schemes)
 - ii. The Governmental Workers' Compensation Account ("GWC") of NSW Treasury
 - iii. The Electricity Assets Ministerial Holding Corporation ("EAMHC")
 - iv. The Electricity Transmission Ministerial Holding Corporation ("ETMHC")
2. PMF - Pre-Managed Fund – All claims prior to 1 July 1989
3. CRIF- Construction Risks Insurance Fund – All claims from 27 March 2012
4. Other applicable Runoff Schemes

1.3. Definitions

Analytics – The systematic computational analysis of data or statistics.

Business Intelligence – A set of methodologies, processes, tools and technologies used to support the provision of business insights and analysis.

Critical Service Standard 3 – A set of standards applied to the interaction between Claims Service Providers and the Principal.

Data Governance – The process and procedures to the ongoing integrity of the Insurance for NSW Data Warehouse.

Data Warehouse (DW) – A centralised repository of integrated data from one or more disparate source, used for reporting and analysis.

Data Quality – The process and procedures to ensure the ongoing and continuous quality of data supplied to the Principal.

IMS – The issue management system utilised by the Principal to track all master data management requests, as notified to the Claims Service Provider from time to time.

Line of Business (LoB) – Describes the nature of the business covered under the scheme.

Master Data Management (MDM) – A set of methodologies, processes and tools used to ensure consistency and integrity of data in transactional and non-transactional data environments.

SLA – Service level agreement.

PMF – Pre-managed Managed Fund.

TMF – Treasury Managed Fund.

GL – General Ledger.

Data & Analytics (D&A) - icare central platforms team that manages the Insurance for NSW Data Warehouse.

2. ROLES

2.1. Actuaries

Actuaries – This refers to the Principal's internal actuarial function.

Pricing Actuaries – This refers to the actuarial function/s responsible for the pricing of specific LoB or schemes.

Valuation/Scheme Actuaries – This refers to the actuarial function/s responsible for the valuation of specific LoB or schemes liabilities.

2.2. Claims Service Provider

As defined in the master Claims Management Agreement between the Principal and Gallagher Bassett Services Pty Ltd

2.3. Data Owner

This refers to the Principal nominated individual/s with responsibility for

ownership of the data in accordance with the Principal's data quality and governance frameworks.

2.4. Data Steward

This refers to the Principal nominated individual/s with responsibility for day to day responsibility of the data in accordance with the Principal's data quality and governance frameworks.

2.5. Data Manager

This refers to the Manager, Data Management within the Principal's Data & Analytics team.

3. OVERVIEW

3.1. Purpose

The purpose of this document is to outline the roles and responsibilities of the Principal's data governance processes as they pertain to data collected, validated and supplied by the Claims Service Provider. This information the "data submissions" are used for a number of purposes including the support of reporting to the NSW Government agencies covered by the various funds managed by the Principal, analytics to support the NSW Government agencies covered by the various funds managed by the Principal, financial reporting, control process and the actuarial control cycle including the valuation of outstanding liabilities and pricing of the funds. The document is not a complete or comprehensive outline of the Principal's governance and control process and procedures. Consumers of the data supplied by the Claims Service Provider:

- The NSW government agencies;
- Principal's reporting, Finance & analytical teams;
- The scheme actuaries;
- Principal's actuaries;
- NSW Treasury; and
- Internal and external Auditors.

3.2. Document Review

A review will be carried out by the Principal at a minimum of once a year, and at the commencement of any future tender processes for any of the funds covered by this document or as required, and changes will be notified to the Claims Service Providers and other stakeholders within the time periods as per Appendix A.

The Claims Service Providers are also to provide as part of the review an updated version of their data dictionary and associated documentations to support the update of this document and associated data related documentations.

3.3. Background

The Principal has a commitment to data quality which it fulfils through its organisational data governance program. This program includes the people, structures, corporate processes and procedures to ensure ongoing data quality within the Insurance for NSW Data Warehouse, where quality is defined as:

- Completeness of data - All the data in all LoBs being managed is required to be supplied by Claims Service Providers and transmitted to Insurance for NSW Data Warehouse.

Completeness is defined as expected comprehensiveness (certain attributes always have assigned values in a data set or all appropriate rows in a data set are present). Data can be complete even if optional data is missing. As long as the data meets the expectations then the data is considered complete.

For example, a customer's first name and last name are mandatory but middle name is optional; so a record can be considered complete even if a middle name is not available.

- Consistency of data – Consistency means data across all systems reflects the same information and are in synch with each other, based on a set of business rules or logic. Consistency can be defined between one set of attributes values and another attribute set within the same record (record level consistency), between one set of attributes values and another attribute set in different records (cross-record consistency) or between one set of attributes values and another attribute set within the same record at different points in time (temporal consistency).

Examples:

- A business unit status is closed but there are sales for that business unit.
 - Employee status is terminated but pay status is active.
- Uniqueness of data – Uniqueness reflects the degree to which the data is free from duplicate values or duplication of records.

Uniqueness is satisfied when the level of duplication is reduced to a level whereby a single record represents a unique and single view of the details comprising the entity or records being considered.

For example, in a customer database, there should only be a single customer record, that provides a complete picture of all the customer details, transactions and interactions. There should be no duplicate records representing the same customer, but with differing details, transactions and interactions.

- Validity of data – Validity refers to whether data elements are stored, exchanged or presented in a format that is consistent with the domain of values, as well as consistent with other similar attributes values. Validity ensures that data values conform to numerous attributes associated with the data element: its data type, precision, format patterns, use of a predefined enumeration of values, domain ranges, underlying storage formats, and so on. Validating to determine possible values is not the same as verifying to determine accurate values.
- Integrity of data - Data submitted by Claims Service Providers conforms to the agreed data specifications.
- Accuracy of data - Data in the Insurance for NSW Data Warehouse is an accurate representation of the actual claims and any subsequent processing of the claims. Accuracy takes on two forms, reasonableness and consistency.
 - Reasonableness controls seek to ensure the data is within the expected range of values; and
 - Consistency controls seek to ensure that the claim data is internally consistent and matches the actual claim.

Accuracy refers to the degree that data correctly reflects the 'real world' object OR an event being described. In many cases, accuracy is measured by how the values agree with an identified reference source of correct information, such as comparing values against a database of record or a similar corroborative set of data values from another table, checking against dynamically computed values or applying a manual process to check value accuracy. This also depends on audit and governance process defined within the business to confirm the accuracy of the data.

Examples:

- Sales of the business unit are the real value.
 - Address of an employee in the employee database is the real address.
 - Calculated fields are correct, for example Total Billed Amount = Premium - Discounts
- Timeliness of data – in line with agreed upon submission timetables as per the data interface manual for each LoB see Appendix B.

Timeliness refers to the degree to which information is current with the world that it models. It measures how 'fresh' the data is, as well as correctness in the face of possible time-related changes. It is measured as a function of the expected frequency rate at which different data elements refresh.

A key part of the Principal's data governance is the assurance that extract data from Claims Service Providers is complete, accurate, has integrity and is concordant with data in the Claims Service Provider's claims management system. The data governance processes within the Principal verifies the quality of Claims Service Provider's submitted data via comparison against independent sources of data.

A comparison of claim information between the Claims Service Provider and the Principal is expected through the provision of a detailed audit file provided, containing certain key fields across claims, payments, estimates, and changes to claim status for claims related to all relevant schemes extracted from the Claims Service Provider's claim management system.

Comparison of claim payment information facilitated by the provision of general ledger information from the Claims Service Providers' financial system for all relevant scheme related claim transactions are to be provided monthly to the Principal.

Any issues uncovered through the application of the above, mentioned data governance activities will be logged into the issue management system. Issues will be assigned by the Principal to the relevant Claims Service Provider to be resolved. Resolution of issues by Claims Service Providers should be tracked and accepted through the issue management system.

Resolution of any issues identified by The Principal or the Claims Service Providers should be in line with the timelines outlined in Appendix C and Appendix D.

4. DATA SUBMISSIONS

4.1. Overview

See Appendix B for the listing of the technical claims specifications "Interface Data Manuals".

The Claims Service Provider must comply with any Direction issued by the Principal and/or SIRA in relation to the content and/or quality of data submissions.

5. MASTER DATA MANAGEMENT

5.1. Overview

MDM comprises a set of processes and tools that consistently defines and manages the non-transactional data entities of the Insurance for NSW Data Warehouse. To ensure good MDM within the Insurance for NSW Data Warehouse the following considerations are taken into account.

- Where is the original source of data held;

- How often is the data updated;
- What is the nature of the changes made – are the changes incremental or all encompassing; and
- Does The Principal need to update the relevant data item.

The Claims Service Provider must ensure that if the Claims Service Provider makes any errors in entering data, it will remediate the error at the point of capture and remediate the incorrectly entered data. Data quality remediations should ensure that the correct data is available for review and/or extraction without the need for further “adjustments” to make good that data.

5.2. Main MDM Fields

Agency codes are integral to the integrity of the Insurance for NSW Data Warehouse. Any alterations to an agency needs to be synchronized across the data warehouse and all relevant data stakeholders. When creating new master data code, it is the responsibility of the Principal and the Claims Service Provider:

- To manage the process of allocating new agency codes with NSW Treasury;
- To manage the process of allocating new event codes;
- To advise Claims Service Providers of the newly allocated agency in line with the timeframes in Appendix A; and
- If the agency/event code is not delivered in this time frame, the agency/event code update should be held over to the following month.

Policy numbers are integral to the integrity of the Insurance for NSW Data Warehouse. Any additions to policy numbers needs to be synchronized across the data warehouse and all relevant data stakeholders. When creating new master data code, it is the responsibility of the Principal and the Claims Service Provider:

- Relevant personnel will send a request to the Principal’s D&A team for the creation of a new policy number;
- Principal’s D&A team to assign the next available number. This will need to be agreed to by the Principal’s D&A team, Underwriting (UW) team, Agency Engagement (AE) team and other parties within the Principal as required;
- The new policy number is then emailed by the Principal’s D&A team and UW team to the Claims Service Provider; and
- Claims Service Provider to then send an email to the Principal’s D&A team and UW team confirming the new policy number in line with the timeframes in Appendix A.

The procedure for policy number creation may change in the future. The Claims Service Provider must follow any Direction and/or Guidelines, Procedures and Manuals from the Principal in respect of any change in the procedure for policy number creation.

Cost centres are utilised by a number of NSW government agencies for internal reporting and accounting. The following process is initiated when there is a change in an agency’s cost centre structure:

- The agency is to update the cost centre template with their new cost centre hierarchy. The agency will also need to provide a mapping of the old cost centre structure to the new cost centre structure in the same file. This is essential so that the current claims are able to be mapped to the new structure;
- The agency will notify the Principal via the AE and UW teams or in the

case of it pertaining to workers compensation via the workers compensation Claims Service Provider, this will be validated by the AE and UW teams and passed to the Principal's D&A team and notified to all relevant stakeholders (see Appendix A for timings);

- The Claims Service Provider is to be notified by the Principal when the new cost centre structure has been loaded;
- Notification is to happen prior to (see Appendix A for timings) the end of the month; and
- Claims Service Provider to send through the updated cost centre codes for all affected claims in the next submission.

Event codes describe particular events that have been attributed to the claim. Event codes are maintained by the Principal and updated in conjunction with Claims Service Provider and NSW Treasury. The Process is as follows:

- Relevant Principal claims personnel will send a request to the Principal's D&A team for the creation of a new event code;
- Principal's D&A team to assign the next available code from master list and include a brief description. Corresponding accident cause codes will also need to be specified. This will need to be agreed to by the Principal's D&A team, Claims team and other parties within the Principal as required;
- The final decision is then emailed by the Principal's D&A team to the Claims Service Provider for review;
- Claims Service Provider to then send an email to the Principal's D&A team accepting the new code in line with the timeframes in Appendix A;
- The Principal's D&A team will update the event code file with the new data;
- If the data has related data e.g. accident cause code, ensure that this data is updated as per the relevant master data management process; and
- Send the full updated event code file to Claims Service Provider for review and verification of updates.

Any and all default values whether they be financial (for example default or initial estimates on claims) or masters data values outside of those supplied by The Principal will require notification to The Principal and all associated parties within the agreed timeframes as per Appendix A, these must be signed off in writing by all parties prior to implementation.

The Principal will provide updates to MDM fields as per Appendix E and the as specified in the reference codes as per the LoB reference code documents referred to in Appendix B from time to time. The Claims Service Provider will update their systems and claims process to accommodate these changes in line with timeframes in Appendix A.

6. DATA VALIDATION AND RECONCILIATION

6.1. Financial Data Reconciliations

The Claims Service Providers will carry out reconciliations between the submission files and the financial records supplied to the Principal's finance department and detailed audit files on a monthly basis to ensure the financial accuracy of the information being supplied to the Principal.

The Claims Service Provider must ensure that the Principal is able to trace the source and destination of all transactions made in the performance of the Services, and reconcile the payments to within an error of one cent for every \$100 million in transactions.

In-addition the Principal will carry out reconciliations and monitor the differences between the Claim Managers GL system and submission files on a monthly basis to ensure the financial accuracy of the information being supplied by the Claims Service Providers and provide where appropriate feedback to the Claims Service Providers around variances deemed to be outside of tolerance.

The Claims Service Provider will provide, in addition to any financial reporting or journal information, the details of the workings for any allocations/accruals of claims payments or recoveries, this will include the details of any allocation methods used and any changes to that method or input to it must be notified and signed off by the Principal prior to implementation or change in line with the timeframes outlined in Appendix A. Reconciliation tolerances for payments, recoveries and estimates by LoB are set out in Appendix F. The tolerance set out in Appendix F are based on a normal steady state, where variances outside these tolerances are identified the Claims Service Provider should provide supporting documentation to support the variance reason, and ensure any errors or issues are remediated prior to the following end of month.

The Claims Service Provider will carry out a reconciliation of payments data submitted to the Principal on a monthly basis in line with timeframes in Appendix D to ensure the completeness of payment data submitted, this should be done at a line of business level of detail. Any gaps should be notified to The Principal in line with the timeframes outlined in Appendix D.

The Principal will also carry out a reconciliation of the claims payments against the submission files loaded into the data warehouse at a line of business level to ensure completeness of recoveries data against the GL system in line with the timeframes in Appendix D. Any gaps will be notified to the Claims Service Provider in line with the timeframes in Appendix D for investigation and remediation in line with the timeframes in Appendix D. Where required the Principal will provide detailed data sets that support and identify any reconciliation issues to the Claims Service Provider.

The Claims Service Provider will carry out a reconciliation of recoveries data submitted to the Principal on a monthly basis in line with timeframes in Appendix D to ensure the completeness recoveries of the data submitted, this should be done at a line of business level of detail. Any gaps should be notified to The Principal in line with the timeframes outlined in Appendix D.

The Principal will also carry out a reconciliation of the recoveries against the submission files loaded into the data warehouse at a line of business level to ensure completeness of recoveries data against the Principal's GL system in line with the timeframes in Appendix D. Any gaps will be notified to the Claims Service Provider in line with the timeframes in Appendix D for investigation and remediation in line with the timeframes in Appendix D. The Claims Service Provider will provide detailed journals supporting the unallocated accrual revenue movements. Accrued revenue movements will be taken into account in the Principal's reconciliation and excluded from Appendix F 8.6.2 tolerance measures.

Where required the Principal will provide detailed data sets that support and identify any reconciliation issues to the Claims Service Provider.

The Claims Service Provider should carry out a reconciliation of the

outstanding claims estimates data submitted to the Insurance for NSW Data Warehouse on a monthly basis in line with the timeframes in Appendix D, to ensure the completeness of estimates data submitted. This will be done at a line of business level of detail against the detailed audit file. Any gaps should be notified to The Principal in line with the timeframes in Appendix D of the identification of an issue.

The Principal will also carry out a reconciliation of the outstanding claims estimates between the submission files loaded into the data warehouse at a line of business level to ensure completeness of payments data against the detailed audit file in line with the timeframes in Appendix D. Any gaps will be notified to the Claims Service Provider in line with the timeframes in Appendix D for investigation and remediation.

Where required the Principal will provide detailed data sets that support and identify any reconciliation issues to the Claims Service Provider.

6.2. Detailed Audit File Financial Data Reconciliations

This section describes the DAF process used to ensure ongoing accuracy of data transferred from the Claims Service Providers to the Principal. The DAFs are to be provided on a monthly basis as at the end of the month it relates to. The usage of the DAFs provides a selection of key fields as described in the technical specification, these are used to reconcile and validate the monthly submission files. It is also expected that Claims Service Providers will conduct their own reconciliations of the submission files to DAFs and to the financial information supplied to the Principal's finance department.

The detailed audit files must be generated through an alternate mechanism than that used to produce the standard monthly data extracts provided to The Principal. This process must be verified by the Principal through the standard audit procedures. When changes occur to the Claims Manager's system, the DAFs generation process will be managed through the Claims Service Provider's change management process. This must be adhered to, and the independent extract regression tested.

- Claims Service Provider to generate DAFs for each LoB;
- Claims Service Providers to send the DAFs and control files on a monthly basis via the secured link;
- The Principal to import the DAFs into the Insurance for NSW Data Warehouse;
- The Principal to generate summarized audit comparison reports; and
- The Principal in consultation with the internal Actuaries will determine whether the variances need further explanation or adjustment and communicate accordingly to Claims Service Provider.

On receipt of the audit file, data reconciliation will take place. The reconciliation will compare the totals between the detailed audit file and data existing in the Insurance for NSW Data Warehouse.

The reconciliation will generate a summarized audit comparison report.

6.3. Data Completeness Report

The data completeness report compares totals for the following:

- Claim Count;
- Payment totals;

- Estimate totals;
- Payments Current month; and
- Payments Quarter to date.

6.4. Distribution Report

The report should be distributed to the Principal's stakeholders on a monthly basis and to the Claims Service Providers to demonstrate any out of tolerances, as outlined in Appendix F. The Claims Service Providers should also distribute their report to The Principal proactively to demonstrate compliance with the tolerance in Appendix F.

7. CLAIM FILE DATA QUALITY AUDITS

7.1. Overview

The Principal can anytime request a data quality claims audit as support of the basic quality control or in support of remediation or issues identified by any downstream data consumers. The requirement for audit will be notified to the Claims Service Provider in line with the timeframes outlined in Appendix A.

8. CLAIM FILE DATA QUALITY AUDITS

8.1. Appendix – A (Notification Periods)

Process	Notification Period
Notify Claims Service Provider of Document review	5 Business Days
Notify Claims Service Providers of new agency code	5 Business Days
Notify Claims Service Providers of new policy number	5 Business Days
Notify Claims Service Providers of new cost centres	5 Business Days
Notify Claims Service Providers of new event codes	5 Business Days
Notify Claims Service Providers of new default values	5 Business Days
Notify Claims Service Providers of new reference data	5 Business Days
Changes to allocation method or inputs	2 Business Days
Notification of a detailed claims quality audit	10 Business Days

8.2. Appendix – B (Document References)

Data Manuals

Line of Business	Document	Version
Liability	Liability Claims Interface Data Manual	v5.2
Property	Property Claims Interface Data Manual	v5.2
Motor	Motor Vehicle Claims Interface Data Manual	v5.2
Miscellaneous	Miscellaneous Claims Interface Data Manual	v5.2
Workers Compensation	Workers Compensation Claims Interface Data Manual	v5.9
Detailed File Audit "DAF"	SICorp GP08 – Detailed Audit File	v2.2

Reference Codes Appendices

Line of Business	Document	Version
Liability	Liability Codes Appendix 4	v5.0
Property	Property Codes Appendix 4	v5.0
Motor	Motor Vehicle Codes Appendix 4	v5.0
Miscellaneous	Miscellaneous Codes Appendix 4	v5.0
Workers Compensation	Workers Compensation Codes Appendix 5	v5.9

8.3. Appendix – C (File Submission Timeframes)

Process	Error Type	The Principal to Notify	Resolution / Investigation
File Submissions	Reject	1 Working Day	1 – Day
File Submissions	Load Errors	1 Working Day	2 – Weeks
File Submissions	Consistency Errors	1 Working Day	2 – Weeks

8.4. Appendix – D (Reconciliation and Validation Timeframes)

Party	Reconciliation	Party to notify	Resolution / Investigation
Claims Service Provider	Payments	1 Working Day	1 – Week
Claims Service Provider	Recoveries	1 Working Day	1 – Week
Claims Service Provider	Estimates	1 Working Day	1 – Week
The Principal/Principal's D&A	Payments	1 Working Day	1 – Week
The Principal/Principal's D&A	Recoveries	1 Working Day	1 – Week
The Principal/Principal's D&A	Estimates	1 Working Day	1 – Week

8.5. Appendix – E (MDM Elements^)

Accident Cause	Liability Status
Accident Lighting	Line Of Business
Accident Location Code	Litigation Result
Accident Location Post Code and Suburb	Mechanism of Injury TOOCS v1.0
Accident Road Surface	Mechanism of Injury TOOCS v2.1
Accident Weather	Medical Certificate Fitness
Accident Loss Result	Nature Of Injury/Disease
Action Type - Section 66	Nature of Injury/Disease TOOCS v1.0
Additional Body Function Affected	Nature of Injury/Disease TOOCS v2.1
Additional Incident	Other Defendants
Agency	Party at Fault
Agency of Injury TOOCS V1.0	Payee Type

Agency of Injury/Disease TOOCS V2.1	Payment Type
Area Health Service Code	Permanent Employment Code
Area Of Practice	Policy
Bodily Location	Postcode
Bodily Location of Injury/Disease TOOCS V1.0	Practice Context
Bodily Location of Injury/Disease TOOCS V2.1	Primary Body Affected Code
Breakdown Agency TOOCS V1.0	Primary Incident
Breakdown Agency TOOCS V2.1	Reason for Changing Date of Relevant Particulars (Section 66)
Cause of loss code	Reasonable Excuse Code
Claim Finalization Process	Recovery Investigation Indicator
Claim Payment Details	Recovery Status
Claim Screening Action	Rehabilitation Provider Code
Claim Status	Rehabilitation Status
Claimant Language	Reimbursement Schedule Code
Claimant Marital Status	Relationship
Claimant Occupation ASCO v1.0	Re-opened Reason
Claimant Occupation ASCO v2.0	Result Code
Claims Service Provider	Result of Injury
Clinical Service Context	Salvage Action
Clinical Incident Category	Second Injury Claim Code
Clinical Speciality	Section 52A Code
Continuous Weekly Benefits Exception Code	Service Provision Sub-type
Country Code	Service Provision Type
Dependent Status	Severity of Loss Code
Driver Occupation	Shared Claim Code
Duty Status	Status of Health Claim
Estimate Type	Suburb
Event Code	Training Status Code

Extent of Harm	Transaction Code
Full-time / part-time code	Type of Claim
Gender	Type of Dispute
General Nature of Lose Code	Type of Injury
Health Occupation Code	Vehicle Duty
Health Service Setting	Vehicle Type
Incident Code	Where Incident Occurred
Initial Notifier	Work Status Code
Interpreter Required Flag	Workers Compensation Commission Status Code
Jurisdiction Status	Workplace Industry - ANZSIC
Liability Claim Type	Workplace Industry - ASIC

^ This table contains reference to both Workers Compensation and General Insurance lines of business.

8.6. Appendix – F (Reconciliation Tolerances)

Payments

The acceptable tolerance is the higher of “Percentage” or “Dollar Values”.

Line of Business	Percentage	Dollar Values
Liability	Less than 0.5%	Less than \$50k
Property	Less than 0.5%	Less than \$10k
Motor	Less than 0.5%	Less than \$10k
Miscellaneous	Less than 0.5%	Less than \$5k

Recoveries

The acceptable tolerance is the higher of “Percentage” or “Dollar Values”.

Line of Business	Percentage	Dollar Values
Liability	Less than 0.5%	Less than \$10k
Property	Less than 0.5%	Less than \$10k
Motor	Less than 1%	Less than \$10k
Miscellaneous	Less than 0.5%	Less than \$5k

Estimates

The acceptable tolerance is the higher of “Percentage” or “Dollar Values”.

Line of Business	Percentage	Dollar Values
Liability	Less than 1%	Less than \$100k
Property	Less than 0.5%	Less than \$50k
Motor	Less than 0.5%	Less than \$50k
Miscellaneous	Less than 0.5%	Less than \$50k

C. HBCF REQUIREMENTS

1. HBCF Claims Technology Platform

1.1. General Use

The Principal has its own HBCF Claims Technology Platform for the management of all HBCF Claims. The HBCF Claims Technology Platform is cloud-hosted and enables specific technology capability for the end-to-end provision of the Services.

HBCF Claims Technology Platform means the network of information technology systems owned or licensed by the Principal for the management of all HBCF Claims. The HBCF Claims Technology Platform includes systems relating to the following components:

- (a) policy and claim management;
 - (b) Builder and/or Claimant portals and websites (as available);
 - (c) Builder and/or Claimant service platform including telephony (as available);
 - (d) document management;
 - (e) financial management;
 - (f) data and analytics;
 - (g) platform integrations including to external system; and
 - (h) user access and delegation controls.
- a) The Claims Service Provider is required to use the HBCF Claims Technology Platform provided by the Principal (unless otherwise agreed with the Principal).
 - b) The HBCF Claims Technology Platform is cloud-hosted with security protections and measures. The Claims Service Provider is required to have and maintain an appropriate Standard Operating Environment (SOE) for devices and establish a secure network connection at all times when it has access to the HBCF Claims Technology Platform.
 - c) The Claims Service Provider must ensure its Equipment can support, and its Personnel can use, the HBCF Claims Technology Platform (including all Components) as updated from time to time in accordance with this Schedule.
 - d) The Claims Service Provider must follow all reasonable instructions and Directions from the Principal with regards to the access, use, system maintenance, system updates and other activities associated with using the HBCF Claims Technology Platform, within the timeframes required by the Principal or as reasonably agreed (or where no timeframe is provided, as soon as reasonably practicable). For clarity, the Claims Services Provider is not required to update the Principal's systems.
 - e) Where the Claims Service Provider intends to use bolt-on systems which interface with the HBCF Claims Technology Platform, it must seek the Principal approval and comply with the processes and requirements in accordance with clause 2.

1.2. Security Patching

The Claim Service Provider is required to install and implement security patches on its own systems where reasonably required by the Principal, within the timeframes notified by the Principal or as reasonably agreed. The Principal will use reasonable endeavours to provide reasonable prior written notice of any requirement to install or implement patches. The Claims Service Provider acknowledges that some security patches may need to be installed and implemented urgently to maintain the security, reliability or integrity of the HBCF Claims Technology Platform. For clarity, the Principal will install and implement security patches on its own systems.

1.3. Onboarding and Access

- f) The Claims Service Provider must request new user access and access changes through the Claims Service Provider's service desk.
- g) The Claims Service Provider must submit a user offboarding request no later than five Business Days after any user leaves the Claims Service Provider's organisation.
- h) The Claims Service Provider is required to undertake user access reviews every 6 months to assess the validity of user access and delegations as required by the Principal.

2. Bolt-on systems

2.1. Approval required

The Claims Service Provider must not use any Claims Service Provider cloud-based system that integrates with the HBCF Claims Technology Platform (**bolt-on system**) for the provision of the Services without prior Principal Approval. Any change to the Claims Service Provider's use of the HBCF Claims Technology Platform must be approved by the Principal pursuant to clause 17 of the Agreement.

3. Maintenance and Incident Management

3.1. Maintenance Schedule

- a) Generally, the Principal will perform regular maintenance on the HBCF Claims Technology Platform. The Claims Service Provider acknowledges that any urgent incidents may require an outage and that the Principal will notify the Claim Service Provider as soon as they become aware of the issue.
- b) The Claims Service Provider must provide written notice to the Principal at least 10 Business Days in advance of any system operating environment maintenance in relation to the Claims Service Provider's environment that may affect the operations of the HBCF Claims Technology Platform.

3.2. Incident Management

The Principal uses a range of monitoring tools to ensure issues and outages are responded to in a timely manner and may require the installation of a monitoring client onto the Claims Service Provider's staff computers. To support the Principal's monitoring activities, the Claims Service Provider will install monitoring software tools to support investigations of any service disruption, as Directed by the Principal.

The Claims Service Provider must notify the Principal of any service disruptions detected and resolve them in accordance with any Guidelines, Procedures or Manuals issued by the Principal.

4. HBCF Claims Technology Platform Updates, Changes and Enhancements

4.1. Updates, changes and enhancements

- a) The Principal may implement updates, changes and enhancements to the HBCF Claims Technology Platform, or any requirements in respect of the of the HBCF Claims Technology Platform (**Platform Changes**), from time to time.
- b) The Principal is not required to make any Platform Changes, and will have sole discretion in respect of any Platform Change.
- c) For any Platform Change that may require the Claims Service Provider to update or modify its systems, interfaces, Equipment, processes or procedures, or otherwise materially impact the Claims Service Provider, the Principal must, subject to clause 4.1(d):
 - i. provide reasonable prior notice of the Platform Change

- d) Where the Principal reasonably considers an urgent Platform Change must be implemented to:
 - i. comply with any applicable Law or guidelines; or
 - ii. maintain or support the security, integrity or performance of the HBCF Claims Technology Platform,then the Principal will implement the Platform Change, and provide notice to the Claims Service Provider (prior to the Platform Change, to the extent reasonably practicable).
- e) The Principal will use reasonable endeavours to consult with the Claims Service Provider in connection with planned Platform Changes.
- f) The Claims Service Provider must, as directed by the Principal, participate in the testing (such as user acceptance testing) of any planned Platform Changes.

SCHEDULE 8 DIRECTOR'S DECLARATION

To: The Principal

From: Gallagher Bassett Services Pty Ltd ("Claims Service Provider")

Dated: [date]

Dear [name],

Claims Management Agreement dated [date] (the "**Agreement**")

1. We refer to the Agreement. This is a Director's Declaration Certificate. Terms defined in the Agreement have the same meaning when used in this Director's Declaration unless given a different meaning in this Director's Declaration.
2. We confirm that:
 - (a) in the period since the provision of the immediate previous Director's Declaration Certificate, all of our obligations, representations and warranties detailed in the Agreement have been fulfilled unless otherwise reported to the Principal;
 - (b) we identify, monitor and mitigate the risks that are generated by the services that we perform for the Principal. Each risk identified, has been evaluated to determine its likelihood / impact to the Principal with documented controls existing that are designed and operating effectively to mitigate the identified risk and bring the respective residual risk within defined tolerance parameter agreed with the Principal.
 - (c) In the period since the provision of the immediate previous Director's Declaration Certificate, the Claims Service Provider's financial returns reporting on the transactions and balances of the Principal as managed by the Claims Service Provider (including trial balance, bank reconciliations (including list of all unrepresented cheques), GST schedule and Business Activity Statement):
 - i. complies with the measurement requirements of Australian Accounting Standards;
 - ii. presents fairly the assets and liabilities of the Principal managed by the Claims Service Provider and transactions of the Principal undertaken by the Claims Service Provider on behalf of the Principal for the most recent financial period;
 - iii. is free from material misstatement.
 - (d) there are reasonable grounds to believe that we will be able to pay our debts as and when they become payable.
 - (e) The Claims Service Provider:
 - i. recognises that customer service conduct has an impact on outcomes for people that have made a claim for compensation or have purchased a policy;
 - ii. has resources and skills in place to give effect to practices and a culture that supports the delivery of service in line with SIRA's *Customer Service Conduct Principles*;
 - iii. has a customer service framework (or equivalent) which aligns to SIRA's *Customer Service Conduct Principles* when dealing with policy holders (where appropriate) and managing claims.
 - iv. has disclosed any and all systemic failures or inability to meet SIRA's *Customer Service Conduct Principles* to the Principal.

Signed:
Director Director/Secretary
Gallagher Bassett Services Pty Ltd Gallagher Bassett Services Pty Ltd

Schedule 9

GOVERNMENT PROCUREMENT POLICIES

A. SME Policies

1 Small and Medium Enterprises and Regional Procurement Policy

1.1 Application of this clause

The Claims Service Provider acknowledges that the NSW Government's Small and Medium Enterprises and Regional Procurement Policy applies to this Agreement.

1.2 SME and Local Participation Plan

The Service Provider will use reasonable endeavours to comply with the SME and Local Participation Plan.

2 Small Business Shorter Payment Terms Policy

2.1 Application of this clause

The Claims Service Provider acknowledges that the NSW Government's Small Business Shorter Payment Terms Policy applies to this Agreement.

3 Payment of Small Businesses

- (a) In any subcontract between the Claims Service Provider and a Small Business (as defined in the Small Business Shorter Payment Terms Policy) that is wholly or partly for the provision of goods or services for the purposes of this Agreement (whether or not the Subcontract was entered into before or after the date of this Agreement), the Claims Service Provider must:
 - (i) identify those direct Subcontractors and inform them of the Small Business Shorter Payment Terms Policy
 - (ii) include in the Subcontract a clause which requires the Claims Service Provider to pay the Small Business (for goods or services provided for the purposes of this Agreement) within twenty (20) Business Days following the receipt by the Service Provider of a correctly rendered invoice from the Small Business;

- (iii) pay the Small Business in accordance with the clause included in the subcontract pursuant to clause 3(a)(ii) above.
- (b) The Claims Service Provider must provide periodic reporting to the Principal on the Claims Service Provider's payment performance under clause 3(a)(iii) above. Unless otherwise directed by the Principal in writing, the frequency of such periodic reporting should be quarterly as part of the reports referred to in the Agreement.
- (c) The Claims Service Provider agrees that if it is the subject of a complaint in relation to its compliance with this clause 3 or the associated payment terms of the Subcontract, it will not take any prejudicial action against the complainant due to a complaint being made or due to any investigation or inquiry by the Principal in relation to the complaint.

4 SME Policies and reporting

4.1 Application of this clause

The Claims Service Provider acknowledges that the SME Policies apply to this Agreement.

4.2 Reports

The Service Provider must provide the Principal with a quarterly report containing details of the Claims Service Provider's compliance with the SME Policies, including (to the extent that the SME Policies apply):

- (a) the SMEs (as defined in the SME Policies) engaged in the Claims Service Provider's activities;
- (b) the amounts paid to any such SMEs;
- (c) the Claims Service Provider's compliance with the SME and Local Participation Plan; and

such other matters that are required under the SME Policies.

B. Aboriginal Procurement Policy

1 Aboriginal Participation Requirements

1.1 Application of this clause

The Claims Service Provider acknowledges that the Aboriginal Participation Policy applies to this Agreement.

1.2 Aboriginal Participation Requirements

- (a) The Claims Service Provider must at all times, comply with, and perform its obligations under this Agreement in compliance with the requirements of the Aboriginal Participation Plan and the Aboriginal Participation Requirements.
- (b) The Claims Service Provider:
 - (i) agrees to:
 - (A) provide to the Principal, the Aboriginal Participation Plan on commencement of this Agreement;
 - (B) report every calendar quarter to the Principal, in the format reasonably requested by the Principal, on the Claims Service Provider's progress towards meeting its commitment on the Aboriginal Participation Requirements in accordance with the Aboriginal Participation Plan; and
 - (C) submit a final report on or before expiry or termination of this Agreement and in the format reasonably requested by the Principal, confirming its compliance with the Aboriginal Participation Plan and the Aboriginal Participation Requirements. If the Claims Service Provider is unable to confirm compliance with the Aboriginal Participation Plan and the Aboriginal Participation Requirements in the final report, the report must include a statement setting out (in reasonable detail) its computations in determining the Actual Aboriginal Participation and Unmet Percentage.
 - (ii) represents and warrants that any report or information it provides to icare in relation to its compliance with the Aboriginal Participation Requirements and the Aboriginal Participation Plan is, to the best of its knowledge, complete and accurate.
- (c) If at the time of termination or expiry of this agreement, the Claims Service Provider does not meet the Aboriginal Participation Requirements, the Claims Service Provider must within 30 days of providing the final report

under clause 1.2(b)(i)(C) of this Schedule, pay the Principal, for the Principal to transfer into the Aboriginal Participation Fund, an amount equal to the Unmet Percentage multiplied by the APP Contract Value. If any amounts are not paid by the Claims Service Provider in accordance with this clause, it will constitute a debt due and owing by the Claims Service Provider to the Principal. The Principal may set off any amounts due and owing by the Claims Service Provider to the Principal under this clause against any amounts due and owing by the Principal to the Claims Service Provider under this Agreement.

- (d) The Crown in right of the State of New South Wales, the Principal or an auditor engaged by the Crown in right of the State of New South Wales or the Principal, may at any time conduct an audit of the Claims Service Provider's compliance with the Aboriginal Participation Requirements or the Claims Service Provider's processes and reporting standards in relation to reports provided under clause 1.2(b) of this Schedule. The Claims Service Provider will, and procures that its Subcontractors will, assist and cooperate with the audit in good faith and provide all the necessary information as requested by the NSW Government, the Principal or the auditor.
- (e) The Claims Service Provider must provide the Principal with any information or other assistance, as reasonably requested by the Principal, to enable the Principal to meet its obligations under the Aboriginal Procurement Policy.
- (f) The obligations of the Claims Service Provider under this clause 1.2 will survive termination of this Agreement.

C. Definitions

Aboriginal Business means a business that has at least 50 per cent Aboriginal or Torres Strait Islander ownership and that is recognised as such through an appropriate indigenous business verification organisation, including Supply Nation or the NSW Indigenous Chamber of Commerce.

Aboriginal Employees means employees of the Service Provider or its subcontractor, who are people of Aboriginal or Torres Strait Islander descent as verified by the Service Provider in accordance with guidance provided under the Aboriginal Procurement Policy.

Aboriginal Participation Fund means the “Aboriginal Participation Fund” (or its successors managed by the Department of Education. This fund is designed to target skills and capacity gaps for Aboriginal people and businesses and to build the capacity and capability of Aboriginal businesses in NSW.

Aboriginal Participation Plan means the “Aboriginal Participation Plan” submitted by the Service Provider and approved by icare, setting out how the Service Provider will meet the Aboriginal Participation Requirements in respect of this Agreement.

Aboriginal Participation Requirement means the mandatory minimum requirement for Aboriginal participation in the Services as determined by:

- (a) [at least 1.5% of the APP Contract Value is subcontracted to Aboriginal Businesses]; or
- (b) [at least 1.5% of the full time equivalent Australian based workforce deployed on the Project are Aboriginal Employees, on average over the term of the Agreement]; or
- (c) [at least 1.5% of the APP Contract Value is applied to the cost of education, training or capability building for Aboriginal Employees or Aboriginal Businesses directly contributing to the Services]; or
- (d) [any combination of the following, such that the combined percentages add up to at least 1.5%:
 - a. a percentage of the APP Contract Value is subcontracted to Aboriginal Businesses;
 - b. a percentage of the full time equivalent Australian based workforce deployed on the Services are Aboriginal Employees, on average over the term of the Agreement; and
 - c. a percentage of the APP Contract Value is applied to the cost of education, training or capability building for Aboriginal Employees or Aboriginal Businesses directly contributing to the Services.]

Aboriginal Procurement Policy means the NSW government’s “Aboriginal Procurement Policy” and published at <https://buy.nsw.gov.au/policy->

[library/policies/aboriginal-procurement-policy](#) (as updated, amended or varied from time to time).

Actual Aboriginal Participation means the percentage of actual Aboriginal participation in the Services, as determined by combining:

- (a) [the percentage of the APP Contract Value that is subcontracted to Aboriginal Businesses;]
- (b) [the percentage of the full time equivalent Australian based workforce deployed on the Project who are Aboriginal Employees, on average over the term of the Project; and]
- (c) [the percentage of the APP Contract Value that is applied to the cost of education, training or capability building for Aboriginal Employees or Aboriginal Businesses directly contributing to the Project.]

APP Contract Value means the total amount payable by icare under this Agreement.

SME and Local Participation Plan means the plan of that name developed pursuant to the Small and Medium Enterprise and Regional Procurement Policy and attached to this Schedule 9.

SME Policies means:

- (a) the NSW Government's Small and Medium Enterprises and Regional Procurement Policy
- (b) the NSW Government's Small Business Shorter Payment Terms Policy; or
- (c) other NSW Government policies relating to small and medium businesses.

Unmet Percentage means the difference between the 1.5% Aboriginal Participation Requirement and the Actual Aboriginal Participation in the Project.

D. Attachments

Attachment 1 – Approved SME and Local Participation Plan

Attachment 2 – Approved Aboriginal Participation Plan