

Treasury Managed Fund 2021 Statement of Cover

Version 5 takes effect on 1 July 2021

Contents

1. Preamble	3
2. Summary of TMF cover	3
3. Purpose	4
4. Scheme structure	5
5. Interpretation	7
6. Definitions	8
7. Cover	10
8. Common exclusions	11
9. Claim notices, handling and settlement	12
10. Workers compensation	14
11. Legal liability	15
12. Directors & officers liability	17
13. Medical indemnity for medical practitioners	20
14. Property	22
15. Motor vehicle	24
16. Personal accident	28
17. Travel insurance	31
18. Miscellaneous covers	32
Appendix 1 - Deed Poll	34
1. Interpretation and Definitions	34
2. Indemnity	35
3. Conditions of Indemnity	36
4. Claim notices, handling and settlement	37
5. General	38

The Treasury Managed Fund (TMF)

1. Preamble

In 1989, the NSW Government replaced its traditional insurance arrangements with a scheme called the NSW Treasury Managed Fund (TMF). The purpose of the TMF is to compensate TMF Agencies and Covered Individuals for any unexpected loss, damage or liability that they may suffer worldwide.

Treasury Circular TC-20-05 requires all government agencies to be TMF members for their insurance requirements. All government agencies that are not current members of the TMF are required to consult with the NSW Self Insurance Corporation (SICorp) with a view to joining the TMF for all their insurance requirements.

SICorp was established by the *NSW Self Insurance Corporation Act 2004*, and the TMF is a “government-managed fund scheme” conducted under that legislation. Insurance and Care NSW (icare) is established under section 4 of the *State Insurance and Care Governance Act 2015*, and provides services to SICorp and other entities operating insurance and compensation schemes in accordance with that Act.

The TMF is not insurance and is not subject to the *Insurance Act 1973* (Cth), nor is it subject to the regulatory control of the Australian Prudential Regulation Authority. The TMF forms part of the NSW Government’s self-insurance arrangements. It provides no risk cover in the nature of a contract of insurance and is exempt from claims for dual insurance.

2. Summary of TMF cover

Under the Statement of Cover, TMF Agencies are covered worldwide in respect of:

- a) Legal liability, including, but not limited to, public liability, products liability, environmental liability, liability for claimed misleading representations, professional indemnity, directors & officer’s liability, cyber liability, legal expenses, statutory liability, aviation liability, watercraft liability and medical negligence;
- b) Workers’ Compensation liabilities arising under NSW legislation;
- c) Property (for repair or full replacement, and consequential loss);
- d) Motor vehicles (loss or damage); and
- e) Other miscellaneous covers, including (but not limited to):
 - i. employee dishonesty;
 - ii. personal accident;
 - iii. cancellation of events;
 - iv. travel (domestic and international).

Certain exposures are not covered, including:

1. certain kinds of liability arising from, or connected with, illegal activities;
2. wear and tear; and
3. inherent vice.

Certain heads of cover are also extended to Covered Individuals.

The foregoing is intended as a summary of cover under the Statement of Cover only. Please refer to specific heads of cover in this document for details of the cover that is extended.

The Statement of Cover is a statement of Government policy, and may be departed from by icare in its absolute discretion and without limitation.

3. Purpose

The purpose of the Statement of Cover is to:

- a) explain the scope of cover provided by the TMF;
- b) identify where the TMF will compensate TMF Agencies and Covered Individuals for any loss or damage caused by unexpected events, or cover unexpected loss or damage that they may suffer worldwide;
- c) provide cover which is equal or superior to current covers and emerging covers available in the commercial insurance market;
- d) provide information about how to make a claim; and
- e) set out the roles and responsibilities of:
 - i. the NSW Self Insurance Corporation and icare;
 - ii. TMF Agencies;
 - iii. Covered Individuals

This Statement of Cover is not intended to, and does not, give rise to any legally enforceable rights on the part of TMF Agencies or Covered Individuals.

4. Scheme structure

1) NSW Self Insurance Corporation and Insurance and Care NSW

SICorp operates the TMF scheme. icare sits within the portfolio of the NSW Treasury and provides services to SICorp in the operation of the scheme.

The Chief Executive of icare manages icare under the authority of the icare Board, and reports to the Treasurer on policy issues relating to the TMF. icare has the following roles and responsibilities in respect of the TMF:

Role

- a) managing the operations of the TMF, including contributions, claims, and valuations;
- b) coordinating policy advice regarding risk transfer, management and compensation with input from TMF Agencies;
- c) maintaining relationships with TMF Agencies, the TMF Agency Advisory Council and other stakeholders, including the Audit Office; and
- d) promoting risk management and efficient claims management practices with TMF Agencies.

Responsibilities

- a) reviewing strategies, operational issues and policies for the administration of the TMF to minimise the cost of exposures;
- b) providing sound financial and prudential management;
- c) advising Treasury on the funding process for TMF Agency Contributions which are centrally funded;
- d) supporting the Model Litigant Policy and other guidelines for claims management, including compliance with Premier's Memorandum M2016-03 or any successor guidelines;
- e) undertaking surveys of declared risks, including but not limited to a survey of TMF Member Agencies' liabilities and risks and valuation and declaration of property, assets and business activities;
- f) identifying existing and emerging risks; and
- g) sponsoring forums to promote risk management.

2) TMF Agencies

For TMF Agencies, the obligation attached to the cover is accountability through the implementation and practice of risk management principles. Government, like the private sector, believes that observing risk management principles creates a more efficient management environment and reduces both the frequency and severity of losses, thus saving taxpayers' money. This philosophy is expressed as "this privileged protection equals accountability". Fundamental to every element of the managed fund concept is the active adoption of risk management practices by each TMF Agency. In addition, TMF Agencies are required to promptly report every claim to their claims manager.

Covered Individuals are expected to adopt similar risk management principles in respect of the matters for which cover is extended to them under the Statement of Cover.

The Statement of Cover is not intended to give rise to legally enforceable rights on the part of participating TMF Agencies or Covered Individuals. The Statement of Cover is not intended to be, and is not, a contract of insurance or other type of legally binding contract or agreement.

TMF Agencies have a number of broad risk management commitments including:

1. Government Sector Finance Act 2018 (section 3.6 – Policies and procedures for financial management of GSF agencies) states:

(1) *The accountable authority for a GSF agency is:*

(b) *to establish, maintain and keep under review*

(i) *effective systems for risk management, internal control and assurance (including by means of internal audits) that are appropriate systems for the agency.*

2. TPP 20-08 Internal Audit and Risk Management Policy for the General Government Sector - Core Requirement 1.2.2 states:

The Accountable Authority shall establish and maintain a risk management framework that is appropriate, fit for purpose, tailored to the needs of the agency and consistent with AS/NZS ISO31000:2018.

Role

In broad terms, the role of TMF Agencies is to:

- a) undertake a regular survey of their property and liability landscape, including valuations, to understand the risks they face;
- b) implement appropriate risk identification measurements, mitigation and management procedures arising out of surveys of TMF Member Agencies' property, assets and business activities;
- c) provide icare with accurate information in a timely manner;
- d) respond to incentive arrangements that are part of the scheme; and
- e) report on results.

Responsibilities

Generally, TMF Agencies' responsibilities are to:

- a) ensure appropriate risk management resources are available;
- b) provide timely and accurate data required for calculation of each TMF Agency's annual Contribution towards the cost of the TMF scheme;
- c) promptly notify claims and incidents giving rise to potential claims to the claim's manager;
- d) provide the claims managers, within agreed and statutory time frames, with all claims information and cooperation necessary to effectively manage claims;
- e) deliver a timely, safe and durable return to work for injured workers;
- f) conduct regular proactive claims reviews; and
- g) ensure that Agency staff are aware of statutory requirements and their responsibilities under service level agreements.

5. Interpretation

In the Statement of Cover, unless the contrary intention appears:

- a) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- b) a reference to 'includes' or 'including' must be construed without limitation;
- c) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- d) a reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing;
- e) a reference to any thing is a reference to the whole or any part of that thing;
- f) the singular includes the plural and vice versa;
- g) a reference to a clause is a reference to a clause of this Statement of Cover;
- h) a reference to an instrument, a document or agreement, including this Statement of Cover, includes a reference to that instrument, document or agreement as novated, altered or replaced from time to time;
- i) a reference to \$ is a reference to Australian currency;
- j) and a reference to writing includes typewriting, printing, photocopying and any other method of representing words, figures or symbols in a permanent visible form; and
- k) a reference to a law means legislation and the general law, as applicable to a particular matter or thing.

6. Definitions

In this Statement of Cover:

Covered Individual means an individual to whom cover is extended under this Statement of Cover in a particular case.

Claim means a request by a TMF Agency or Covered Individual for cover, payment or benefit under this Statement of Cover.

Contribution means money received by icare as contributions from TMF Agencies towards the cost of the TMF scheme.

Eligible State Official has the same meaning as in the *NSW Self Insurance Corporation Act 2004 (NSW)*. For clarity, it means a person who is:

- a) an employee or officer of the State, or
- b) an employee, or a member, director or other officer, of an authority of the State;
- c) without limiting (a) or (b), includes a member of a committee or other body established for the purpose of assisting an authority of the State (including a Public Service agency or a Minister) in the exercise of its functions.

In this context, a reference to:

- a) an **Eligible State Official of a TMF Agency** means an employee, or a member, director or other officer of the TMF Agency within the meaning of paragraph (b) of the definition of “Eligible State Official”, and includes a person who is employed in the service of the Crown to enable the TMF Agency to perform its functions; and
- b) a reference to a **Member, Director or Officer of a TMF Agency** is a reference to a person who is a “member, director or other officer” of the TMF Agency (respectively) within the meaning of paragraph (b) of the definition of “Eligible State Official”.

icare means the NSW Self Insurance Corporation, which operates the TMF Government managed fund scheme under the *NSW Self Insurance Corporation Act 2004 (NSW)*, and Insurance and Care NSW, which under the *State Insurance and Care Governance Act 2015 (NSW)* provides services to the NSW Self Insurance Corporation in the administration of the TMF (and other schemes).

Minister means the Minister responsible for a TMF Agency.

NSW Workers Compensation and Injury Management Legislation means the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*, and the terms **worker** and **deemed worker** (when appearing in conjunction with this term) derive their meaning from those Acts.

Period of Cover for a TMF Agency means from the period commencing on the date the TMF Agency joined the TMF scheme, if after 1 July 1989, and ending on the earliest of the following:

- a) the TMF scheme being cancelled by ministerial order,
- b) the TMF Agency withdrawing from the TMF scheme; or
- c) the cover for the TMF Agency is otherwise being cancelled.

Policy Period means from 1 July 1989 to the 30 June 1990 and each subsequent 12-month period thereafter.

Pollutant means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, chemicals or Waste. In this context, Waste includes materials to be recycled, reconditioned or reclaimed.

State means the State of New South Wales.

Statement of Cover means this document and its schedules and annexures.

TMF means the scheme implemented by the NSW Government on 1 July 1989 known as the Treasury Managed Fund which is now a Government managed fund scheme as defined under the *NSW Self Insurance Corporation Act 2004*. Where, in this Statement of Cover, it is indicated that the TMF provides cover or performs some other act, it is a reference to icare (as defined) and may include performance by agents acting on icare's behalf.

TMF Agencies means the authorities of the State named from time to time in the schedule held by icare.

TMF Agency Coverage Schedule means any documented arrangement between icare and a TMF Agency as to any endorsements, variations of cover and claim protocols applying or varying the scope of cover within the Statement of Cover.

Voluntary Worker means a person who voluntarily performs work for no or nominal reward.

Work Experience Program means a short term placement program for no reward for students to work for an employer and gain industry insights that assist with their educational studies.

Wrongful Act means any actual or alleged breach of duty, breach of trust, neglect, error, misstatement, misleading statement, omission, breach of warranty of authority or other wrongful act.

7. Cover

Cover is provided to TMF Agencies and Covered Individuals for each Policy Period and for the total Period of Cover.

The cover is worldwide, unless otherwise stated.

This Statement of Cover is not intended to, and does not, give rise to any legally enforceable rights on the part of TMF Agencies or Covered Individuals. This Statement of Cover is not intended to be, and is not, a contract of insurance or other type of legally binding contract or agreement. However, certain eligible State officials have the benefit of the Deed Poll of Indemnity associated with this Statement of Cover.

The TMF provides protection on an occurrence basis. That is, a TMF Agency or Covered Individual that ceases to be covered by the TMF (e.g. privatised) will retain cover for incidents giving rise to a Claim that occurred during the TMF Agency's or Covered Individual's Period of Cover by the TMF.

8. Common exclusions

What TMF will NOT Cover

The TMF will not cover any liability, damages, costs or expenses:

- a) arising out of building or infrastructure projects delivered by non-government entities on behalf of or in partnership with the government in respect of the risks relating to the projects, except where:
 - i. the policy or policies of insurance are provided through the Construction Risks Insurance Fund or agreed to be covered in the TMF Agency Coverage Schedule; and
 - ii. either the coverage afforded by the relevant policy or policies does not respond or the combined limit(s) has been exhausted, in which case this cover will respond to a Claim, but only to the extent of any difference in conditions or limits;
- b) arising out of any illegal activity by the covered party, except where:
 - i. there was no knowledge of the activity by the covered party;
 - ii. the activity was not a deliberate act of the covered party; and/or
 - iii. the covered party, acting reasonably, was not aware that the activity was illegal;
- c) arising out of any fraudulent, dishonest or malicious conduct, act or omission by the covered party;
- d) in respect of any fine or penalty, the insurance of which is not allowed or is prohibited by law;
- e) for personal injury or death covered by any Compulsory Third Party policy; or
- f) arising from conduct involving a lack of good faith by the covered party.

9. Claim notices, handling and settlement

1. Minimum Claim

Every Claim, with the exception of a Claim under the Workers Compensation Section, is subject to a minimum amount claimable of \$300 excluding GST, or as otherwise set out in the TMF Agency Coverage Schedule. Where the minimum amount is reached, the Claim, if accepted, will be paid in full.

2. Reporting of Claims

A TMF Agency or Covered Individual must give written notice as soon as possible to icare:

- a) of any loss or damage, accident, demand, writ, summons or proceedings or of any impending prosecution, investigation or inquest or any circumstance(s) likely to give rise to a Claim; and
- b) of any material change(s) in the facts or circumstances to the loss or damage on an ongoing basis.

TMF Agencies and Covered Individuals need to notify icare of all matters in sub-clause (a) within 12 months of becoming aware thereof. In rare circumstances, for Claims notified outside of the 12 months period, icare may reduce its coverage to the extent of any prejudice icare believes the TMF has suffered as a result of the late notification.

3. Co-operation

In the event of a Claim, the TMF Agency or Covered Individual will at all times, and at their own cost, use all reasonable endeavours to:

- a) provide icare with all available and relevant information, evidence, documentation, assistance and co-operation in connection with the Claim;
- b) execute and/or sign documents including but not limited to statements, affidavits, deeds & releases in connection with the Claim;
- c) fully assist and co-operate with icare in the defence, investigation or settlement of matters giving rise to the Claim; and/or
- d) mitigate any loss or damage or avoid any further loss or damage.

icare may undertake any investigation it deems necessary and the TMF Agency must facilitate and co-operate with such investigation.

4. Consent

A TMF Agency or Covered Individual must not settle, or offer to settle, any matter giving rise to a Claim, or incur any costs, charges, fees or expenses, assume any contractual obligation or admit any liability in connection with any Claim, without the prior written consent of icare, other than as part of an apology made in accordance with the *Civil Liability Act 2002*. icare also reserves the right to enforce, or decline to enforce, any entitlement to costs payable to the TMF Agency or Covered individual where those costs are the subject of a Claim.

5. Disputes

Any Claim in respect of loss, damage, liability, costs or expenses shall be reviewed by and decided upon by icare.

Conflict or disagreement in resolving claims or coverage disputes between the TMF Agency or Covered Individual and icare can be escalated to an appropriate representative as appointed by the Treasurer for final arbitration, adjudication and resolution.

6. Conduct of defence & representation

icare will be entitled to take over conduct in the name of the TMF Agency or Covered Individual of any matter giving rise to a Claim, including the defence and/or settlement of proceedings.

icare will be entitled to defend or settle any proceedings, investigation or inquiry giving rise to a Claim under the Directors & Officers Liability Coverage Section, and to exercise the TMF Agency's or Covered Individual's legal right of recovery or otherwise against any other party for the benefit of the TMF.

icare will have full discretion in the conduct of any covered Claim, proceedings, investigation or inquiry giving rise or reasonably likely to give rise to a Claim, and the TMF Agency or Covered Individual shall give all reasonable information and assistance as icare may require, to the degree permitted by law.

7. Subrogation and Recoveries

The TMF Agency or Covered Individual is required to preserve its rights of recovery against third parties in the event a Claim is paid under the Statement of Cover.

The TMF Agency or Covered Individual will advise icare at the time of notifying a Claim if the TMF Agency has, by way of a contractual undertaking, agreed not to sue, released or waived any rights, indemnified any person, or prejudiced any rights of subrogation in connection with that Claim.

8. Confidentiality

icare will keep confidential any information provided by a TMF Agency or Covered Individual for the purposes of, or in connection with, a Claim, save for its use or disclosure:

- a) for the purposes of resolving the Claim (including making any reinsurance claim); or
- b) as otherwise authorised or required by law, or by any administrative requirement applicable to icare.

A TMF Agency or Covered Individual is taken to have consented to such use or disclosure when making a Claim.

A TMF Agency or Covered Individual must keep confidential all information concerning its dealings with icare in connection with a Claim, save for use or disclosure mandated by any applicable legal or administrative requirements.

10. Workers compensation

Coverage Description

- a) The TMF covers a TMF Agency for its liability to workers or deemed workers pursuant to the NSW Workers Compensation and Injury Management Legislation.
- b) Each TMF Agency shall comply with all provisions of the NSW Workers Compensation and Injury Management Legislation, and indemnify the State and icare against any punitive actions (whether in court proceedings or not) brought about by the TMF Agency's failures and/or errors and omissions in relation thereto.

11. Legal liability

Coverage under this section is for the liabilities of a TMF Agency and specified Covered Individuals, including, but not limited to, public liability, products liability, professional indemnity, environmental impairment liability, liability for claimed misleading representations, aircraft liability, watercraft liability, cyber liability, legal expenses, statutory liability and medical negligence.

1. Who is Covered

Coverage under the Statement of Cover is provided to: -

- a) A TMF Agency;
- b) Eligible State Officials of the TMF Agency, including:
 - i. Voluntary Workers of the TMF Agency;
 - ii. eligible State officials of the TMF Agency who have been appointed to a role in an outside entity at the request of the TMF Agency, in respect of that appointed role;
- c) Members of the Parliament of New South Wales;
 - i. Ministers; and
 - ii. members of the Judiciary.

2. Coverage Description

The TMF covers all sums which the TMF Agency or Covered Individual shall become legally liable to pay for:

- a) compensation or damages in connection with the activities of the TMF Agency or Covered Individual;
- b) legal costs, charges and expenses incurred in the settlement or defence of a claim (including any proceeding) for compensation or damages referred to in paragraph (a);
- c) legal costs, charges and expenses recoverable by any claimant from the covered party in respect of a claim (including any proceeding) for compensation or damages referred to in paragraph (a);
- d) costs, charges and expenses in relation to any proceeding, inquiry or investigation held or conducted by a regulatory body, a government authority, a self-regulatory body recognised as such by the applicable law or an external administrator of a body corporate, where there is risk of the TMF Agency or Covered Individual incurring a legal liability, or coverage is otherwise in the interest of the TMF;
- e) advancement of costs, charges and expenses until such time as a court, or a commission, tribunal, board or other regulatory or investigative body constituted under State or Commonwealth law, finds that the conduct arose out of any criminal, illegal, fraudulent, dishonest or malicious conduct, act or omission or a lack of good faith;
- f) legal costs, expenses and charges in defending a prosecution, or responding to an inquiry, inquest, investigation or complaint brought by a board, tribunal, complaints unit, commission, court or coronial court where there is a risk of the TMF Agency or Covered Individual incurring legal liability. Cover is extended to include pursuing or defending an appeal from a decision or judgement made in such matters;
- g) loss of or damage to property in the care, custody or control of the TMF Agency or Covered Individual; and
- h) clean-up costs TMF Agencies become legally liable to pay arising from or in connection with any discharge, dispersal, seepage, release or escape of Pollutants to persons, property or the environment emanating from the TMF Agency's operations.

3. What TMF will NOT Cover – Specific to the Legal Liability Section

In addition to the exclusions detailed in Section 8. Common Exclusions, the TMF will not cover any liability, damages, costs or expenses:

- a) in respect of any matter which may be dealt with under any workers compensation legislation, including in respect of any claim for payment under any workers compensation legislation by any person in the service of any contractor or sub-contractor to a TMF Agency or by any dependant of such person;
- b) arising from a breach of duty of a Covered Individual which is covered under the Directors & Officers Liability Coverage Section;
- c) arising from or in connection with any discharge, dispersal, seepage, release or escape of Pollutants into or upon any property owned, leased or occupied by the TMF Agency where the TMF Agency knew or should reasonably have known that Pollutant existed before the TMF Agency became the owner, lessee, or occupier of the property;
- d) arising from or in connection with any fraudulent, dishonest or malicious conduct, act or omission, where the fraud, dishonesty and maliciousness is proven against the TMF Agency or Covered Individual;
- e) in respect of any fine or penalty, the insurance of which is not allowed or is prohibited by law;
- f) in respect of out of pocket expenses incurred (or to be incurred) by the TMF Agency or Covered Individual, including costs associated with travelling to conferences and hearings;
- g) incurred (or to be incurred) by the TMF Agency or Covered Individual providing information to the legal representative approved by icare;
- h) where the TMF Agency or Covered Individual:
 - i. does not follow the advice of the legal representative unless otherwise approved by icare;
 - ii. does not co-operate, provide information or documents reasonably requested by the legal representative approved by icare; or
 - iii. causes delay which in the icare's reasonable opinion prejudices the outcome of the case or results in increased costs or expenses;
- i) where there has been conduct including omissions by the TMF Agency or Covered Individual (as relevant) involving a lack of good faith or a failure to make full and frank disclosure of all relevant circumstances;
- j) when a Covered Individual is appointed to a role in an external entity at the request of their TMF Agency – where the individual is indemnified by their TMF Agency or by the external entity in respect of their performance of that role (but excluding any indemnity provided by the TMF or where otherwise agreed by icare).

12. Directors & officers liability

1. Nature of Cover

Exercising its power under section 8(3) of the *NSW Self Insurance Corporation Act 2004*, it is a function of icare to provide non-discretionary cover under the TMF to Eligible State Officials as provided through the instrument of the deed poll (Appendix 1). The scope of that non-discretionary cover is set out below.

2. Who is Covered

The TMF covers an Eligible State Official for legal liability arising out of a Wrongful Act committed anywhere in the world by that Eligible State Official whilst acting in the capacity of:

- a) a Member, Director or Officer of a TMF Agency; or
- b) a board member, director or officer of another entity (external to the TMF Agency), where that position is held at the request of the eligible State official's TMF Agency.

3. Coverage Description

The TMF covers all sums which the TMF Agency or Eligible State Official shall become legally liable to pay in connection with:

- a) any Demand or Proceeding arising from or in relation to a Wrongful Act committed by the Eligible State Official whilst acting in the capacity of:
 - i. a Member, Director or Officer of the Eligible State Official's TMF Agency; or
 - ii. a board member, director or officer of an outside entity in the circumstances referred to at 2. b) above; and
- b) any other Proceeding in which the Eligible State Official is required to participate in connection with, or as a result of, acting in those capacities.

Coverage under this section extends to (without limitation):

- c) damages and legal costs awarded against the Eligible State Official in connection with any such Demand or Proceeding;
- d) amounts payable under settlements negotiated in connection with any such Demand or Proceeding, provided that the settlement is approved by icare; and
- e) all costs and expenses (including legal costs and expenses) incurred by the Eligible State Official in respect of any such Demand or Proceeding which may be paid in advance, provided such costs and expenses are approved in advance by icare. Where it was not practicable to have obtained icare's prior approval, the TMF will provide cover to the Eligible State Official for reasonable costs and expenses, provided that such costs and expenses were reasonably incurred. This includes costs and expenses incurred by an Eligible State Official in responding to or participating in a Demand or Proceeding; and
- f) legal costs, expenses and charges in pursuing or defending an appeal from a decision or judgement in any such proceeding, where icare considers the appeal has merit and reasonable prospects of success.

4. Legal Representation

icare will allow an Eligible State Official to select a legal representative to act for them in respect of any matter giving rise to a Claim, subject to that representative being appropriately qualified and experienced and their rates being reasonable.

Unless otherwise requested by the Eligible State Official, icare will appoint legal representation for the TMF Agency and the Eligible State Official. If so, icare will consult with the TMF Agency and/or the Eligible State Official prior to giving instructions to the legal representative on matters related to the Claim.

5. Definitions Applicable to this Section

Notwithstanding anything else in this Statement of Cover, in this section the following terms are defined as follows:

Demand means any demand in writing by a third party for payment of damages or other amounts, and includes a statement of claim, summons or other originating process.

Proceeding means any proceeding, inquiry or investigation held or conducted by a court, tribunal, commission, government authority, regulatory body, self-regulatory body recognised as such by an applicable law (including a stock exchange) or an external administrator of a body corporate, and includes any requirement under law to produce documents.

Wrongful Act means any:

- a) actual or alleged act, error, omission, conduct, misstatement, misleading statement, negligence, breach of duty, breach of trust, breach of contract, or breach of warranty of authority by an Eligible State Official in their capacity as such;
- b) Employment Wrongful Act; or
- c) other actual or alleged wrongdoing by an Eligible State Official in their capacity as such.

Employment Wrongful Act means any actual or alleged employment related act, error, omission or conduct constituting actual, constructive or alleged: wrongful dismissal, discharge or termination of employment, wrongful failure to employ or promote, wrongful deprivation of career opportunity, misleading representation or advertising in respect of employment, wrongful disciplinary action, negligent employee evaluation, wrongful demotion, breach of employment contract, sexual or workplace harassment (including the creation of a workplace environment conducive to such harassment), wrongful discrimination, failure to grant tenure or invasion of privacy or defamation.

6. Directors & Officers Liability Exclusions

In addition to the exclusions detailed in Section 8. Common Exclusions, the TMF will not cover a TMF Agency, or an Eligible State Official, for any liability, damages, costs or expenses arising from any: -

- a) deliberately dishonest or deliberately fraudulent Wrongful Act of the Eligible State Official or an intentional breach of the law by the Eligible State Official;
- b) personal profit or advantage gained by the Eligible State Official to which such Eligible State Official was not legally entitled;
- c) conduct or contravention in respect of which a prohibition in section 199B of the *Corporations Act 2001 (Cth)* applies;
- d) arising from or attributable to violation of any law, rule or regulation relating to competition, activities in restraint of trade, or deceptive acts and practices in trade and commerce.

- e) illegal activity, except where the TMF Agency and/or Eligible State Official (as applicable) had no knowledge of and could not have reasonably been expected to know of the activity;
- f) improper use of information acquired because of the Eligible State Official's position, or improper use of the Eligible State Official's position to gain a personal advantage or to deliberately cause detriment to the TMF Agency or another entity or person;
- g) conduct involving a lack of good faith of the Eligible State Official, including but not limited to fraudulent, dishonest or malicious conduct, act or omission;
- h) criminal proceedings in which the Eligible State Official is found guilty, except where:
 - i. there was no knowledge of the activity by the covered party;
 - ii. the activity was not a deliberate act of the covered party; and/or
 - iii. the covered party, acting reasonably, was not aware that the activity was illegal.
- i) where the TMF Agency or eligible State official:
 - i. does not co-operate, provide information or documents reasonably requested by the legal representative approved by icare; or
 - ii. causes delay which in the icare's reasonable opinion prejudices the outcome of the case or results in increased costs or expenses;
- j) conduct including omissions by the TMF Agency or Covered Individual (as relevant) involving a lack of good faith or a failure to make full and frank disclosure of all relevant circumstances;
- k) matter which may be dealt with under any workers compensation legislation, including in respect of any claim for payment under any workers compensation legislation by any person in the service of any contractor or sub-contractor to a TMF Agency or by any dependant of such person.

icare may not refuse to advance all sums payable under this Directors and Officers coverage section by reason only that the icare considers that the conduct specified above has occurred, until such time as any of the above is established by final adjudication by a judicial or arbitral tribunal or any formal written admission (that has not been withdrawn) by the TMF Agency or Eligible State Official. However, where such conduct is established, the TMF Agency or Eligible State Official must repay all sums advanced under this Directors and Officers coverage section.

13. Medical indemnity for medical practitioners

1. Coverage Description

Coverage under the Liability Section of the Statement of Cover extends the medical indemnity to include cover for a Public Health Organisation (as TMF Agencies) for their liability assumed by agreement to indemnify all medical practitioners who have a current Contract of Liability Coverage with a Public Health Organisation. Accordingly, the TMF indirectly indemnifies those medical practitioners.

Coverage is for any civil liability of a Public Health Organisation arising from a Health Care Claim in relation to the provision of medical services to patients in public hospitals or public health services (including failure to warn and consent issues relating to patients).

Cover continues for a Health Care Claim arising from an Incident occurring during the contract period even though the medical practitioner may have resigned, retired or died.

2. What Claims are Excluded from Coverage?

In addition to the exclusions detailed in Section 8. Common Exclusions, the TMF will not cover:

- a) any Health Care Claim that does not fall within the terms of coverage set out in the Contract of Liability Coverage between the Public Health Organisation and the medical practitioner;
- b) any Health Care Claim arising from the manufacture of any products or the construction, alteration, repackaging, repair, servicing, treating of any products sold, supplied or distributed by the medical practitioner;
- c) any Health Care Claim arising out of the failure of any product to fulfil the purpose for which it was designed, specified, warranted or guaranteed to perform, other than products supplied to the medical practitioner by the Public Health Organisation;
- d) any Health Care Claim that arises out of medical practitioner conduct that constitutes a criminal offence or any other serious and wilful misconduct; or
- e) any representation, legal and other costs or penalties arising out of disciplinary proceedings, criminal proceedings, coronial inquests and any other similar actions or inquiries against a medical practitioner, such as those taken by the Medical Board, Health Care Complaints Commission and other disciplinary tribunals, except where there is risk of legal liability for the Public Health Organisation or coverage is otherwise in the interest of the TMF.

3. VMO Responsibilities

In extending cover under this section, icare expects that:

- a) the medical practitioner or their practice company will have a written service contract and a Contract of Liability Coverage with the Public Health Organisation.
- b) the medical practitioner will report in writing using a standard form, to icare through the Public Health Organisation, any Incident that may trigger the liability cover as soon as the medical practitioner becomes aware of such an Incident. Where the medical practitioner is not aware of the Incident until much later, cover will be extended provided that the medical practitioner acted in good faith and was genuinely unaware that the Incident might give rise to a Health Care Claim.
- c) the medical practitioner will co-operate with and participate in clinical quality assurance, quality improvement and risk management processes, performance review processes, projects and activities as required by the Public Health Organisation.

- d) the medical practitioner will, within 10 days of being requested by a Public Health Organisation, provide a record of their claims history for the last 6 years.
- e) the medical practitioner will co-operate in full with the Public Health Organisation, icare and legal service providers appointed for the purpose of managing and conducting the Health Care Claim.
- f) the medical practitioners will ensure they retain copies of all signed contracts and service agreements and any lodged Incident reports and acknowledgements in a secure and accessible location.
- g) the medical practitioners will be advised that should they lodge an Incident report form and not receive acknowledgement of same within 21 days, they must contact their Public Health Organisation and/or icare to ensure notification has been received.

4. Definitions Applicable to This Section Only

Contract of Liability Coverage means an agreement between a medical practitioner and the Public Health Organisation whereby the Public Health Organisation agrees to indemnify the medical practitioner.

A **Health Care Claim** in the context of the TMF is a claim for damages or monetary compensation, through legal proceedings or a verbal or written demand, against a medical practitioner in respect of any injury or death allegedly caused wholly or partly by the medical practitioner in providing health care to patients.

An **Incident** is something which occurs during the patient's course of treatment that a medical practitioner believes could give rise to a possible Health Care Claim. It includes (but is not limited to) matters such as incorrect surgical procedure, incorrect drug treatment program, inadequate warnings of risk, alternative treatments or inadequate post-surgical regimes.

A **Public Health Organisation**, as defined in the *Health Services Act 1997*, is—

- a) a local health district, or
- b) a statutory health corporation, or
- c) an affiliated health organisation in respect of its recognised establishments and recognised services.

14. Property

The TMF covers all property and assets of a TMF Agency. It is important to declare all assets during the declaration period.

1. Coverage Description

The TMF covers a TMF Agency for:

- a) loss and/or damage;
 - i. to all real and personal property it owns or has an interest in, including aircraft hulls and watercraft;
 - ii. from or in connection with any discharge, dispersal, seepage, release or escape of Pollutants affecting all real and personal property which it owns or has an interest in, including aircraft hulls and watercraft;
 - iii. to property in the care, custody or control of the TMF Agency for any reason and for which the TMF Agency is responsible; and
 - iv. to non-tangible property it owns or has an interest in, resulting from a breach of information or security failure, including the costs of data restoration, public relations services, investigation services, containment of a security failure, resolving denial of service attacks, removing malicious software or virus and remediation actions;

provided the loss and/or damage is fortuitous, real and can be quantified in monetary terms, and the occurrence giving rise to the loss or damage happened during the Period of Cover. Cover for the loss of or damage to property above is for full replacement or reinstatement (new for old), without any deduction by reason of the condition of the property replaced or reinstated. With new for old replacement, reasonable allowances are made for compliance with national standards or to the standard agreed in the TMF Agency Coverage Schedule. Where an item cannot be replaced with the same item such as art work or items of cultural significance, then an item of equal declared value to the lost or damaged item may be purchased as replacement;

- b) consequential loss and increased costs of operation as a direct result of the physical loss of or damage sustained to the property covered in 1(a) above;
- c) loss of revenue and/or reasonable additional costs (where these are incurred with icare's approval), if the business or operation of a TMF Agency is interrupted as a direct result of:
 - i. loss and/or damage to any property of the TMF Agency where the occurrence giving rise to the loss or damage happened during the Period of Cover; or
 - ii. access to property of the TMF Agency being prevented or restricted by a third party, and the interruption began during the Period of Cover and the loss of revenue and/or reasonable additional costs were incurred during the Period of Cover.

2. Loss of Revenue and/or Additional Costs

With respect to cover for loss of revenue and/or additional costs:

- a) the maximum period of cover for a TMF Agency is as per the limit set out in the TMF Agency Coverage Schedule and
- b) the loss of revenue is to be calculated by taking the revenue the TMF Agency would have earned but for the loss, damage or denial of access and deducting from that amount the costs and expenses the TMF Agency has saved as a result of the loss, damage or denial of access.

3. Not Covered by Property Cover

In addition to the exclusions detailed in Section 8. Common Exclusions, the TMF does not cover a TMF Agency for loss or damage arising out of:

- a) wear and tear;
- b) inherent vice;
- c) inventory shortages or unexplained loss, unless the loss is established by other evidence. Any inventory computation is to only prove the amount of loss;
- d) losses that reflect poor bookkeeping, mathematical errors, waste, or mismanagement; or
- e) damage to motor vehicles, except as provided under the Motor Vehicle Coverage Section.

15. Motor vehicle

TMF Agencies are covered for loss or damage to motor vehicles, and liability associated with the use of motor vehicles, as provided by this Section.

1. TMF Cover for loss or damage to motor vehicles

TMF Agencies are covered for loss or damage to motor vehicles owned or leased by the TMF Agency arising out of any one incident during the Period of Cover as follows:

- a) Where the covered motor vehicle is leased, icare will settle the claim on either of the following basis:
 - i. repair the motor vehicle, where the motor vehicle has been assessed and repair of the motor vehicle has been recommended; or
 - ii. pay out the lease payout figure only and recover the salvage value of the motor vehicle

In addition to the above icare will pay for:

1. the full replacement of accessories, if fitted
2. the full replacement of decals, if fitted

- b) Where the covered motor vehicle is owned by the TMF Agency, icare will settle the claim on either of the following bases:

- iii. repair the motor vehicle, where the motor vehicle has been assessed and repair of the motor vehicle has been recommended; or
- iv. replace the motor vehicle if it is determined to be written off in accordance with applicable sections of the *Road Transport Act 2013 (NSW)*

for the following classes of motor vehicle:

1. sedans;
2. station wagons;
3. vans;
4. four-wheel drives;
5. utilities;
6. trucks under two tonnes;
7. caravans;
8. trailers; and
9. motorcycles.

The replacement of the covered motor vehicle is on a new for old basis with regard had to a similar type, make and model of motor vehicle.

c) Notwithstanding the preceding paragraphs, where the TMF Agency owns or leases a covered motor vehicle in the following classes:

- i. trucks greater than 2 tonnes;
- ii. buses;
- iii. other/special vehicles;
- iv. emergency service vehicles, including ambulances and patient transport vehicles; or any other motor vehicle exceeding a Gross Vehicle Mass of 4.5 tonnes.

icare will consult the TMF Agency to agree on the repair or replacement of the covered motor vehicle, considering the operational requirements of the TMF Agency.

2. Additional benefits for loss or damage to motor vehicles

Coverage is also extended for:

- a) reasonable cost of protection and removal of damaged motor vehicle to the nearest repairer or place of safety;
- b) reasonable hiring cost of a similar motor vehicle for no more than 14 business days if an additional motor vehicle cannot be provided to the TMF Agency. This cover excludes the motor vehicle's running costs, and cost of optional/extra features or services, or any security deposit. Cover will cease prior to the 14 business days if:
 - i. the covered motor vehicle is repaired and returned to the TMF Agency;
 - ii. the covered motor vehicle is returned undamaged;
 - iii. the covered motor vehicle is replaced; or
 - iv. an additional motor vehicle is made available for use by the TMF Agency.

3. Loss or damage not covered

In addition to the exclusions detailed in Section 8. Common Exclusions, the TMF does not cover the TMF Agency for:

- a) loss of use, depreciation, wear and tear, rust or corrosion, mechanical or electrical breakdowns, failures or breakages;
- b) damage to tyres by application of brakes or by road punctures, cuts, deflation or bursts; or
- c) loss of use or damage resulting from fuel contamination caused by using the incorrect type of fuel or placing the fuel in the incorrect place.

4. Accumulated damage

The TMF Agency must submit a separate Claim notification for each incident at the date on when the incident occurred. Where the TMF Agency fails to notify individual incidents then icare reserves the right to apply an excess of \$2,500 where multiple incidents are identified when the Claim is assessed.

5. Vehicles not owned or leased by TMF Agency

Coverage in this section for loss or damage to motor vehicles is also extended for motor vehicles not owned or leased by the TMF Agency but used by an employee or authorised person of the TMF Agency in connection with the business of the TMF Agency, provided that:

- a) use of the motor vehicle has been approved by the TMF Agency
- b) coverage under this section is equal to and not broader than the terms and conditions provided by the motor vehicle insurance policy of the owner or hirer of the motor vehicle.

The motor vehicle owner will be required to hold, at all times, and provide details of:

- i. a certificate of registration;
- ii. compulsory third-party insurance;
- iii. comprehensive motor vehicle insurance;
- iv. a valid driver licence.

6. TMF Cover for motor vehicle liabilities

The TMF covers the TMF Agency and any person driving, using or in charge of, entering into or alighting from, a motor vehicle in connection with the TMF Agency's business for civil liability arising out of any one incident for:

- a) all legal costs and expenses incurred;
- b) all legal costs awarded against them;
- c) loss or damage to third party property resulting from the use of the motor vehicle except the collection or delivery of persons or goods beyond the limits of carriageway or the thoroughfare;
- d) all costs, charges and expenses for removing or cleaning up debris as result of the accident;
- e) death or personal injury to another person, but only where the legal liability is not covered or capable of being covered by any statutory scheme, compulsory third party insurance or public liability insurance.

The cover for civil liability only applies where the incident was caused by:

- i. an authorised driver driving, using or being in charge of the vehicle;
- ii. goods being carried by or falling from the vehicle;
- iii. loading goods onto the vehicle from a fixed place of rest directly beside the vehicle;
- iv. unloading goods from the vehicle to a fixed place of rest directly beside the vehicle; or
- v. a passenger in the vehicle with the authorised driver's permission while travelling or getting in or getting out of the vehicle.

Where the vehicle is not owned or leased by the TMF Agency, the following additional conditions apply:

- a) use of the motor vehicle must have been approved by the TMF Agency;
- b) the motor vehicle owner must hold, and provide details of, a certificate of registration, compulsory third-party insurance, and comprehensive motor vehicle insurance;
- c) coverage under this section is equal to and not broader than the terms and conditions provided by the motor vehicle insurance policy of the owner or hirer of the motor vehicle.

7. Not covered for motor vehicle liability

In addition to the exclusions detailed in Section 8. Common Exclusions, the TMF does not cover any civil liability arising from:

- a) use of the motor vehicle in testing in preparation for racing, pace-making, reliability trials, speed or hill-climbing tests;
- b) use of the motor vehicle for conveyance of passengers for hire, fare or reward, except where documented in the TMF Agency Coverage Schedule;
- c) use of the motor vehicle in contravention of any laws relating to the carriage of dangerous goods; or
- d) personal injury or death covered by compulsory third party policy.

The TMF does not cover the driver of the motor vehicle for any liability, fine or penalty if the driver:

- i. was under the influence of any alcohol or drug;
- ii. did not hold a valid driver licence; or
- iii. was disqualified from driving or held a cancelled or suspended licence.

8. Coverage Conditions

TMF provides coverage under this Section on the following conditions.

- a) A separate claim notification must be submitted for each incident at the date on when the incident occurred, and an incident description must be provided on the claim notification. Multiple incidents cannot be submitted in the one claim notification;
- b) All motor vehicles must be maintained in a safe and roadworthy condition;
- c) Cover only applies whilst the motor vehicle is being used in connection with the business of the TMF Agency, or as otherwise approved by the TMF Agency;
- d) Compulsory Third Party Injury and Comprehensive Motor Vehicle Insurance must be in place in relation to hired motor vehicles;
- e) The TMF Agency must not allow use of any motor vehicles by an unlicensed driver nor a driver with suspended licence; or
- f) The TMF Agency must not allow any motor vehicles to be used to convey a greater number of passengers, or to carry or tow a load, which is in excess of the vehicle's registered capacity or rating;
- g) The TMF Agency must make any motor vehicle, the subject of a Claim, available to icare for inspection and assessment.

16. Personal accident

1. Personal Accident Coverage

Coverage will be provided for death or Injury in the course of official duties to Eligible State Officials who are not covered under NSW Workers Compensation and Injury Management Legislation, including:

- a) Ministers;
- b) NSW Parliamentarians;
- c) Members of the Judiciary;
- d) Jurors;
- e) Voluntary Workers while actively engaged in voluntary work with, or at the request of, a TMF Agency; and
- f) NSW Public School Students, TAFE Students or other students of a TMF Agency-operated Registered Training Organisation during educational Work Experience Programs.

2. Air Travel within Australia

The following persons are covered for death or Injury sustained anywhere during the Period of Cover in the Commonwealth of Australia while the person, as a passenger, is being carried in, or is entering or alighting from any aircraft used for bona fide transport purposes, including piloting of privately owned or chartered aircraft and the person was doing so for the purpose of or in connection with their official duties:

- a) All Eligible State Officials not covered by the NSW Workers Compensation and Injury Management Legislation, including:
 - i. Members of the New South Wales Parliament;
 - ii. Members of the Judiciary; and
 - iii. All persons working for a TMF Agency who are not covered by the NSW Workers Compensation and Injury Management Legislation

Cover under this clause extends to death or Injury sustained during leisure and recreational periods by persons listed in the categories above, provided that approval in writing is obtained from the TMF Agency for that person to be so covered prior to the commencement of travel.

3. Official Visits Abroad

The following persons are covered for death or Injury sustained during the Period of Cover caused by accident while travelling abroad for the purpose of or in connection with their functions of the State:

- a) all Eligible State Officials not covered by the NSW Workers Compensation and Injury Management Legislation, including:
 - i. members of the New South Wales Parliament;
 - ii. members of the Judiciary; and
 - iii. all persons working for a TMF Agency who are not covered by the NSW Workers Compensation and Injury Management Legislation

The cover in this clause extends to:

- b) persons not referred to above, provided that approval in writing is obtained from the TMF Agency for those alternative persons to be so covered prior to the commencement of travel; and
- c) death or Injury sustained during leisure and recreational periods whilst the person is away, provided that approval in writing is obtained from the TMF Agency for that person to be so covered prior to the commencement of travel.

4. Benefits payable under the Personal Accident section

The TMF will pay benefits in accordance with and equivalent to the benefits payable under Part 3 of the *Workers Compensation Act 1987* (NSW) or as otherwise set out in the TMF Agency Coverage Schedule, except that the Personal Injury Commission, the State Insurance Regulatory Authority, or the Workers Compensation Independent Review Officer have no jurisdiction in respect of this cover and each reference to the Commission or the Authority or the Independent Review Officer in that Part is to be read as a reference to the Chief Executive of icare.

5. Supplementary (Top Up) Payments

Cover under this Section is extended to include Supplementary (Top Up) Payments to an Emergency Service Worker, provided that:

- a) the Commissioner of the relevant TMF Agency has approved the Supplementary (Top Up) Payments;
- b) the payments are made where there is ongoing financial hardship; and
- c) the period of Supplementary (Top Up) Payments is limited to six (6) months. Additional periods can be considered, at the discretion of the Commissioner of the TMF Agency.

6. Medical Expenses

The following persons are covered for medical expenses reasonably incurred while outside of Australia and while they are travelling for the purpose of or in connection with their functions of the State:

- a) all Eligible State Officials not covered by the NSW Workers Compensation and Injury Management Legislation, including:
 - i. members of the New South Wales Parliament;
 - ii. members of the Judiciary; and
 - iii. all persons working for a TMF Agency who are not covered by the NSW Workers Compensation and Injury Management Legislation

The cover under medical expenses extends to:

- b) persons not referred to above, provided that approval in writing is obtained from the relevant TMF Agency for those alternative persons to be so covered prior to the commencement of travel; and
- c) death or Injury sustained during leisure and recreational periods whilst the person is away, provided that approval in writing is obtained from the relevant TMF Agency for that person to be so covered prior to the commencement of travel.

7. Not covered by Personal Accident Section.

In addition to the exclusions detailed in Section 8. Common Exclusions, cover excludes Claims arising directly or indirectly from:

- a) intentional self-Injury or suicide;
- b) sexually transmitted diseases; or
- c) engaging in professional sport(s).

8. Definitions Applicable to This Section Only

Emergency Service Worker has the same meaning as in section 23 of the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*.

Injury has the same meaning as in section 4 of the *Workers Compensation Act 1987* (NSW).

Supplementary (Top-Up) Payment means the difference between workers compensation benefits payable under the *Workers Compensation (Bush Fire and Emergency Rescue Services) Act 1987* and level of income of the volunteer at the pre-accident level.

17. Travel insurance

1. Travel Insurance Coverage

Coverage will be provided to the following persons in respect of damage, loss or liability incurred while travelling during the Period of Cover for the purpose of or in connection with their functions of the State:

- a) Eligible State Officials of a TMF Agency, including persons working for a TMF Agency who are not covered by NSW Workers Compensation legislation;
- b) NSW Parliamentarians; and
- c) members of the Judiciary.

The cover under the Travel Insurance section extends to:

- d) persons not referred to above, provided that approval in writing is obtained from the TMF Agency for those alternative persons to be so covered prior to the commencement of travel; or
- e) death or injury sustained during leisure and recreational periods whilst the person is away, provided that approval in writing is obtained from the TMF Agency for that person to be so covered prior to the commencement of travel.

2. Benefits payable under the Travel Insurance Section

Benefits included are: -

- a) Medical expenses
- b) Evacuation costs
- c) Cancellation costs
- d) Changes to journey
- e) Additional accommodation costs
- f) Baggage and personal items
- g) Travel documents, passports, credit cards and cash
- h) Personal accident cover
- i) Personal liability

3. Pre-existing Medical Conditions

Claims arising from a pre-existing medical condition will be covered provided the person travelling has written approval to travel from their treating physician.

4. Not covered by Travel Insurance Section.

In addition to the exclusions detailed in Section 8. Common Exclusions, Cover excludes Claims arising from:

- a) illegal drug use, possession, manufacture or distribution;
- b) other illegal activity (including fines, penalties, imprisonment);
- c) loss of enjoyment / non-financial loss.

18. Miscellaneous covers

1. Fidelity Coverage

The TMF covers a TMF Agency for loss of money or property owned by the TMF Agency, for which the TMF Agency is legally liable, or for which it has accepted responsibility, where the loss arises from:

- a) fraudulent or dishonest acts by any person engaged by the TMF Agency; or
- b) a computer virus, or the fraudulent input, modification, or destruction of any TMF Agency's electronic data.

In the event of a Claim under the Fidelity section of this Statement of Cover, any unpaid salary, commission or other monies of the person found to be responsible for any fraudulent or dishonest act or where they have acted outside of their authority, shall be used toward compensating for the loss before any payment is made by the TMF in respect of the claim.

2. Unauthorised Actions

The TMF covers the TMF Agency against loss sustained during the Period of Cover directly caused by any person deemed by the TMF Agency to be in its service and acting:

- a) in excess of permitted financial limits;
- b) outside of permitted product lines;
- c) dealing with a person or organisation not authorised by the TMF Agency; or
- d) deliberately or recklessly acting outside their authority of the TMF Agency's policies, procedures and guidelines.

as set out in the written policies and procedures of the TMF Agency.

3. Event Cancellation

TMF Agencies are covered for losses due to the cancellation of a TMF Agency organised Event when the loss is fortuitous and beyond the control of the Agency, or the cancellation of an Event by order of a regulatory authority. Coverage extends to consequential loss as a result of the Event's cancellation where the venue is unusable.

Not covered by Event Cancellation Section.

In addition to the exclusions detailed in Section 8. Common Exclusions, the Event Cancellation Cover excludes Claims:

- a) caused by a cancellation of an Event for the sole reason the Event would not be financially viable, for example, due to lack of ticket sales, lack of sponsorship or lack of support; or
- b) caused by a cancellation of an Event for the sole reason the TMF Agency failed to make all necessary arrangements essential to ensure the Event could be held on time and at the appropriate venue; or
- c) arising from losses assumed by contract, warranty or agreement unless such losses would have attached to the TMF Agency in the absence of such contract, warranty or agreement.

Definitions Applicable to Event Cancellation Section

Notwithstanding anything else in this Statement of Cover, in this section:

“**Event**” means a planned event attended by members of the general public or a particular group of the public, but not exclusively to be attended by employees of TMF Agencies, for the purpose of attraction, celebration, contest, competition, display, entertainment, fundraising, performance, spectacle, play, drama, match, game, meet, exhibition or curtain raiser.

4. Personal Effects

Coverage will apply to the following persons for loss of or damage to personal effects, including baggage, tools of trade and field equipment:

- a) all Eligible State Officials of a TMF Agency, including all persons working for a TMF Agency not covered by NSW Workers Compensation legislation;
- b) NSW Parliamentarians;
- c) jurors; and
- d) members of the Judiciary.

Coverage under the Personal Effects section will apply where the loss or damage is sustained:

- e) in the workplace (or assigned working environment); or
- f) while travelling.

Cover under the Personal Effects section is subject to the following conditions precedent:

- g) the Claim for loss or damage is first submitted under Workers' Compensation legislation, if applicable; and
- h) the cover accords with the management policies of the TMF Agency.

The cover under the Personal Effects section:

- i) extends to persons not referred to in this subsection if approval in writing is obtained from the TMF Agency for those persons to be so covered prior to the commencement of travel; and
- j) extends to loss of or damage sustained during leisure and recreational periods, provided that approval in writing is obtained from the TMF Agency prior to the commencement of travel.

The basis of the cover under Personal Effects section is the cost of replacing or reinstating the item, but shall be limited to:

- k) \$5,000 per Claim for loss or damage in the workplace; and
- l) \$10,000 per Claim for loss or damage while travelling.

Appendix 1 - Deed Poll

This Deed Poll is made by

NSW Self Insurance Corporation (“icare TMF”)

for the benefit of each Eligible State Official covered under the Section 12 (Directors & Officers Liability) of the Statement of Cover for the Treasury Managed Fund (an “Indemnified Person”).

Recitals:

- A. icare TMF is a corporation constituted pursuant to s.4 of the SICorp Act
- B. icare TMF’s functions include:
 - a. the operation of Government managed fund schemes within the meaning of the SICorp Act,
 - b. the provision of indemnities to Eligible State Officials in respect of liabilities to which a Government managed fund scheme applies; and
 - c. acting for an Eligible State Official in dealing with claims under a Government managed fund scheme (including the recovery of amounts payable to an Eligible State Official in connection with such claims).
- C. icare TMF operates the Treasury Managed Fund as a Government managed fund scheme under the SICorp Act. Insurance and Care NSW provides services to icare TMF in the administration of the Treasury Managed Fund in accordance with s. 10 of the *State Insurance and Care Governance Act 2015*.
- D. The Treasury Managed Fund covers certain liabilities of an Eligible State Official where acting in his/her capacity as a Member, Director or Officer of a TMF Agency, or as a board member, director or officer of an external entity where that position is held at the request of their TMF Agency.
- E. icare TMF intends, on the terms of this Deed Poll, to indemnify each Eligible State Official in respect of those liabilities for which they are covered under Section 12 of the Statement of Cover for the Treasury Managed Fund in their capacity as a member, director or officer of a TMF Agency or of an external entity where that position is held at the request of their TMF Agency.

Operative provisions

1. Interpretation and Definitions

- 1.1 In this deed poll, unless the context otherwise requires:
 - a) Claims Manager has the same meaning as in the SoC, to the extent referable to this Deed Poll;
 - b) Effective Date means the date on which the Indemnified Person is or was appointed as a Member, Director or Officer of the relevant TMF Agency, or as a board member, director or officer external entity at the request of the TMF Agency;
 - c) Eligible State Official has the same meaning as in the SoC;
 - d) Indemnity means the indemnity given in this deed poll;
 - e) Member, Director or Officer has the same meaning as in the SoC;
 - f) SICorp Act means the NSW Self Insurance Corporation Act 2004;
 - g) SoC means the Statement of Cover for the Treasury Managed Fund as published from time to time, available through www.icare.nsw.gov.au; and
 - h) TMF Agency has the same meaning as in the SoC.

1.2 In this deed poll:

- a) headings are for convenience only and do not affect interpretation; and
- b) unless the context indicates a contrary intention:
 - i. a reference to icare TMF includes any successor entity to icare TMF that assumes relevant statutory functions of that entity;
 - ii. a reference to this deed poll or to any other deed, agreement or document includes, respectively, this deed poll or that other deed, agreement or document as amended, supplemented, varied or replaced from time to time;
 - iii. words importing the singular include the plural (and vice versa), words denoting a given gender include all other genders, and words denoting individuals include corporations (and vice versa);
 - iv. a reference to a clause is a reference to a clause of this deed poll;
 - v. where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - vi. a reference to any legislation or to any section or provision thereof includes any statutory modification or re-enactment or any statutory provision substituted for it, and ordinances, by-laws, regulations, and other statutory instruments issued thereunder; and
 - vii. a reference to any defined term or provision of the SoC (in this paragraph (h), "Referenced SoC Provision") includes:
 - A. a reference to any definitions used in that document to the extent that they are referenced in the defined term or Referenced SoC Provision;
 - B. a reference to any provision that states exclusions from the Referenced SoC Provision, to the extent necessary to determine the scope of the Referenced SoC Provision; and
 - C. a reference to any later provision that amends or replaces the Referenced SoC Provision from time to time.

2. Indemnity

Scope of Indemnity referable to SoC

- 2.1 Subject to this deed poll, on and from the Effective Date icare TMF indemnifies the Indemnified Person against any liability for which cover is provided to the Indemnified Person under Section 12 (Directors & Officers Liability) of the SoC.

Exclusions

- 2.2 Subject to clause 2.3, the Indemnity does not apply in respect of any liability of the Indemnified Person for which cover may be excluded under the SoC for an Eligible State Official.
- 2.3 The Indemnity is effective notwithstanding that Icare TMF seeks to exercise absolute, general discretion to exclude cover arising under Section 7 (Cover) of the SoC, which states that the SoC is Government policy only and may be departed from by icare TMF in its absolute discretion. To avoid doubt, this exception to Section 7 does not apply if icare TMF seeks to exercise a specific discretion to exclude cover under other provisions of the SoC including, without limitation, a discretion to exclude cover under Section 8 (Common Exclusions) of the SoC on the basis of one of the stated exclusions to that cover as listed in that document.

3. Conditions of Indemnity

Initial claim to be made under SoC

- 3.1 Before making any claim under this deed poll the Indemnified Person must first make a claim through his/her TMF Agency under the SoC and have that claim dealt with under and in accordance with that document.

Minimum claim

- 3.2 Every claim under this deed poll is subject to a minimum amount claimable of \$300 excluding GST. Where the minimum amount is reached then, subject to the terms of this deed poll, the claim is paid in full.

No double recovery

- 3.3 The Indemnified Person may not recover under the SoC and under this deed poll in respect of the same liability. If the Indemnified Person is entitled to cover under the SoC in respect of those liabilities that are covered under this Indemnity the Indemnified Person may not make any claim under this Indemnity.
- 3.4 If the Indemnified Person is insured or entitled to any other indemnity from a third party (other than the Crown in right of the State of NSW and/or other than under the SoC) for any liability for which the Indemnified Person is entitled to be indemnified under this deed poll, the Indemnified Person:
- a) must claim under the applicable third party insurance policy or other indemnity.
 - b) is not required to await the outcome of a claim under the third party insurance policy or other indemnity before claiming under this deed poll but may be required to refund moneys paid in respect of a claim under this Deed poll for which the Indemnified person also receives payment under a third party insurance policy or indemnity.

Full and frank disclosure

- 3.5 The Indemnity is conditional upon the Indemnified Person making full and frank disclosure to icare TMF of all relevant circumstances pertaining to a claim under this deed poll.
- 3.6 If at any stage it becomes apparent to icare TMF that the Indemnified Person has failed to make full and frank disclosure of all circumstances pertaining to a claim under this deed poll:
- c) icare TMF may decline to indemnify the Indemnified Person in respect of the claim:
 - d) any moneys already paid under this deed poll in respect of the claim may be recovered from the Indemnified Person as a debt due and owing to icare TMF.

4. Claim notices, handling and settlement

Notices

- 4.1 On and from the date of execution of this deed poll the Indemnified Person must give written notice as soon as possible to icare TMF:
- a) if any loss or damage, accident, claim, writ, summons or proceedings or of any impending prosecution, investigation or inquest or any circumstance(s) likely to give rise to a claim under this deed poll; and
 - b) of any material change(s) in the facts or circumstances from those existing at the commencement of the reported claims, proceedings, investigation or inquiry.
 - c) In the event of a breach of clause 4.1, icare TMF is entitled to refuse to pay the Indemnified Person, who but for this clause 4.1(c) would have been entitled to payment under this deed poll.
- 4.2 A notice under this clause 4 is properly given if the Indemnified Person delivers it by hand, posts it or transmits a copy electronically (email or facsimile) to the address last advised by icare TMF to the Indemnified Person (which, as at the date of execution of this deed poll, is the address given below). If the notice is given electronically, the Indemnified Person must obtain an acknowledgement of receipt.
- 4.3 icare TMF's address for notices is:
- icare TMF - NSW Self Insurance Corporation
GPO Box 4052
Sydney NSW 2000
Email - insurancefornew@icare.nsw.gov.au

Conduct of defence

- 4.4 icare TMF, through the Claims Manager, shall be entitled to take over and conduct in the name of the Indemnified Person, the defence or settlement of any third party claim giving rise to a claim under this deed poll.
- 4.5 The Claims Manager, with the approval of the Director of icare TMF, shall be entitled to defend or settle any third party claim, proceedings, investigation or inquiry giving rise to a claim under this deed poll and to exercise the Indemnified Person's legal right of recovery or otherwise against any other party for the benefit of icare TMF.
- 4.6 The Claims Manager shall have full discretion in the conduct of any third party claim, proceedings, investigation or inquiry giving rise to a claim under this Indemnity and the Indemnified Person shall give all information and assistance as the Claims Manager may require in the prosecution, defence or settlement of any such claim, proceedings, investigation or inquiry.

Rights of recovery and admission of liability

- 4.7 The Indemnified Person must protect and not do anything to prejudice all of his/her rights of recovery at law, except as approved by the Claims Manager in writing. Upon payment of any claim under this deed poll, icare TMF shall be subrogated to the rights of the Indemnified Person against any third parties to recover payments made under this deed poll.
- 4.8 The Indemnified Person must not, without the consent of the Claims Manager, make any admission, offer, promise or payment in connection with any accident or claim, proceedings, investigation or inquiry giving rise to a claim under this deed poll, other than as part of an apology made in accordance with the Civil Liability Act 2002.

5. General

Variation or termination

- 5.1 This deed poll may be varied or terminated by icare TMF at any time, by publication on its website of a notice of variation or termination, provided that such variation or termination will not affect the right of the Indemnified Person to claim indemnity under and subject to this deed poll in respect of liabilities arising (whether before or after such variation or termination) from conduct of the Indemnified Person that occurred prior to the date of that variation or termination, which right will survive such termination or variation.

Governing law

- 5.2 This deed poll is governed by the laws of the State of New South Wales.

Severability

- 5.3 If any provision of this deed poll is invalid or of no force or effect under any statute or other law, then this deed poll is to be construed as if that provision is not in this deed poll, but the remainder of this instrument retains its full force and effect.

No assignment of the benefit of this deed poll

- 5.4 The Indemnified Person may not assign, transfer, mortgage or deal with any of its rights under this deed poll, which are personal to the Indemnified Person.

Compliance with law

- 5.5 Nothing in this deed poll requires icare TMF to act, or not act, contrary to any law.

